

Domestic Violence Orders of Protection

Where, why and how enforcement breaks down

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Background

- State AG grant from NIJ to promote consistent use and enforcement of DVOP
- Key Problem
 - Efficacy of DVOP in NM varies across jurisdiction, agency, and individuals
- Key Question
 - How can we account for and reduce this variation?

Research Questions

How do law enforcement agencies currently enforce DVOP?

- What are departmental rules (SOPs) regarding enforcement of DVOP?
- Do officers understand and follow these rules?

What are the barriers to effective use and enforcement of DVOPs?

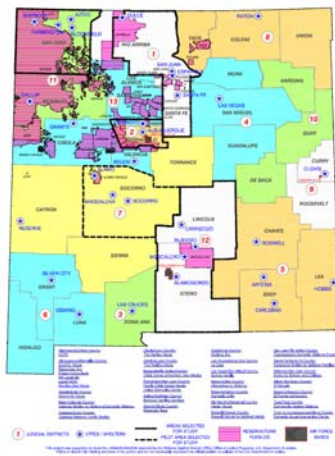
- What do the key agencies involved in the DVOP process perceive as the primary barriers to DVOP enforcement?

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Study regions



- Sample selected by AG's office:
 - 1st Judicial District (Santa Fe and Rio Arriba)
 - 2nd Judicial District (Bernalillo County)
 - 11th Judicial District, Div. 1 (San Juan)
 - 12th Judicial District (Otero and Lincoln Counties)
- Sampling designed to:
 - Maximize variation across urban v. rural areas
 - Incorporate areas in the Northern, Central, and Southern regions of the State
 - Include areas that contain or border tribal lands

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The Research Process

Data and related research questions

- SOPs
 - Do department's have SOPs regarding DVOP?
 - Do the SOPs cover key statutory elements of DVOP enforcement?
- Law Enforcement Survey
 - Do officers understand their departmental rules and the statutory requirements regarding enforcement of DVOP?

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The Research Process

Data and related research questions

- Key Informant interviews with representatives from:
 - Victim Services
 - Civil Legal Assistance
 - Prosecutors
 - Judiciary
 - Law enforcement
- What works and where are the gaps in DVOP enforcement?

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Analysis of SOPs

Document analysis

- Evaluate and compare content of SOPs across agency
- Goal: Assess degree to which SOPs conform to best practices and statutory requirements

Developed coding rubric based on best practices and statutory requirements

SOPs: Best Practices

Does the SOP conform to best practices?

- Specific Elements
- Facial validity test described and enumerated
 - Name of parties, Date of issue, Expiration date (if present, not an expired order), Name of issuing court, Judiciary signature, Terms and conditions
- Describes what to do if facial validity CANNOT be established
- Outlines how to handle firearms at scene of DVOP violation
- Details how to handle officer involved DV

SOPs: FVPA Statutory Reqs

Does the SOP cover Statutorily defined duties under the FVPA (40-13 NMSA 1978)?

- Specific Elements
 - Outlines statutory definition of domestic violence
 - Specifically mentions:
 - Emergency orders
 - Warrantless arrest and charging
 - Full faith and credit
 - NCIC entry
 - Service of process
 - Protection of victim
 - DV forms for victim
 - Victim notification of release

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SOPs: Key findings

- The majority of agencies within the project area have an SOP for enforcement of DVOP
 - Still, number of agencies that lack a DVOP related SOP is not trivial
- The content and quality of SOPs vary widely across agency (even within jurisdiction)

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SOPs: Key findings

Common strengths

- Nearly all SOPs:
 - Define DV under the FVPA
 - Advise officers to make forms for securing DVOP available to victims
 - State that LE should take all reasonable steps to protect the victim
- About one-half of the SOPs we examined:
 - Describe processes for warrantless arrest assuming probable cause for a violation of a protective order
 - Typically discuss warrantless arrest for DV in general
 - *e.g.*, assault and battery
 - Outline service of process issues
 - Detailed explicit policies for officer involved DV

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SOPs: Key findings

Notable weaknesses

- Few SOPs covered:
 - Facial validity (and particularly the specific elements that comprise facial validity)
 - Full faith and credit
 - Victim notification of offender release
 - Issues related to firearms and protective orders.
 - NCIC entry (though some did discuss entry into local databases).
- Several agencies explicitly stated that they should arrest whoever violates an order (petitioner or respondent)

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Law Enforcement Survey

Goal:

- Do officers understand their departmental rules and the statutory requirements regarding enforcement of DVOP?
 - Self-reported written survey
 - Collected anonymously during briefings
 - Survey all LE agencies within study geographic areas

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LE Survey Results: Demographics

Total Sample	474	Respondent Demographics	
		Male	92%
		Tribal LE	14%
Region		Years of Experience	
1 st	13%	Less than 5	35%
2 nd	58%	5 to 9	23%
11 th	19%	10 to 14	17%
12 th	4%	15 or more	25%
other	7%		

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LE Survey Results: Key Findings

- Majority of respondents familiar with departmental procedures
 - Departmental SOP covers enforcement of DVOP (90%)
 - Have undergone DVOP enforcement training (90%)
 - Department has mandatory arrest for DV crimes (84%)
 - Only 50% say their department has mandatory arrest policy for DVOP violations.
- Few understand facial validity
 - Respondents could not correctly identify the elements necessary to establish facial validity

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LE Survey Results: Factors affecting arrest

More likely to arrest if...		
Injuries to victim	83%	Officer will only enforce an order the/she can validate (76%)
Behavior of offender	52%	
Behavior of victim	34%	It is appropriate to charge petitioners who violates the terms of their own order (72%)
Presence of children	33%	
Presence of witnesses	30%	Compared to DV calls without a DVOP, the presence of a DVOP makes the officer's job easier. (62%)
Other serious chargeable offense	30%	
Alcohol/drug use by offender	20%	
Damage to property	16%	
Injuries to offender	15%	
Alcohol/drug use by victim	9%	
Other	14%	
Always arrest, offender present at scene, totality of circumstances, victim statements, danger/fear/safety concerns		

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Key Informant Interviews

Goal:

- Solicit expert opinion from professionals who work within the DVOP “system” to identify strengths and weaknesses regarding the access, issuance and enforcement of orders of protection
- Identify barriers and facilitators within the system
- Develop strategies for system improvement

KI Interviews: Number & Type


	Santa Fe & Rio Arriba	Bernalillo	San Juan	Lincoln & Otero	Total
Law Enforcement	5	7	6	7	25
Prosecution	2	1	3	2	8
Civil Legal	1	2	3	1	7
Judiciary	3	5	6	3	17
Victim Services	2	4	5	3	14
Total	13	19	23	16	71



Enforcement Question Examples

- What makes victims more likely to notify authorities once a violation of an order has occurred?
- Is your agency ever called on to enforce a DVOP involving a minor?
- How do you validate a DVOP?
- What makes it difficult to validate the DVOP
- What additional steps, if any, are needed to enforce a foreign order?
- In general, do you think that orders of protection are effective?

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Results Overview

- Informants overall feel that orders of protection work well, for most parties
- Informants, however, identified numerous areas where challenges exist or where the system could work more effectively
- Three primary barriers to enforcement:
 - Victims hesitant to invoke the system
 - Law enforcement does not routinely arrest for violations
 - Court sanctions for violations are minimal

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Players and their characteristics

- Three groups were consistently identified as playing a significant role in enforcement:
 - Petitioners / Respondents
 - Law enforcement
 - Court personnel
- Problems with DVOP enforcement generally related to
 - structural/contextual factors
 - Attitudes and beliefs

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Petitioners / Respondents: Situational/Contextual Factors

- Fear / Perceived danger
 - Seriousness of the violations
 - Threatening actions / behavior by the respondent to control the victim
- Support systems
- Personal and financial resources (time, money, transportation, work, etc.)
- Family and relationship issues
- Alcohol/drug issues
- Immigrant status / fear of deportation

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Petitioners / Respondents: Attitudes and Beliefs

- System too complicated
 - Victims do not always understand how orders work or the terms of the orders they receive
- Prior experience with the 'system' affects whether and how victims use the system
 - prior party contacts and results influences whether victims seek and try to enforce protective orders
- Prior 'use' of the system affects how the system views and treats victims
 - overuse, repetitive calls (victim-LE mistrust)
 - "Playing the system"

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Law Enforcement: Attitudes and Beliefs

- All groups (P, V, LE, C) of respondents identified the beliefs and attitudes of law enforcement and individual officer biases as a barrier to enforcement.
- Perceived reluctance of LE to enforce orders
 - Liability concerns
 - Men having empathy for men.
 - Hesitancy to arrest or charge perpetrators without physical evidence or direct eye sight testimony by LE
 - "They think they need to see blood"
- Law enforcement respondents identified numerous frustrations:
 - Repeat victimization and 'uncooperative' victims
 - The court process and perceived lack of sanctions for violations

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Law Enforcement: Structural/Contextual factors

- Training and/or education deficits
- Confusion regarding how to enforce orders (especially “technical violations”)
 - Lack of understanding of mandatory arrest policies
 - Officer discretion vs. mandatory arrest
 - Determination of primary aggressor challenging
 - How to handle petitioner initiated violations (Desire to arrest the petitioner for violating their own order)
 - Terms and conditions, particularly around distance and child custody confusing
- Difficulties surrounding validation of orders
 - Not enforcing an order unless it is in NCIC
 - Not serving because of “technical issues”
- Internal procedures / SOPs that hamper enforcement

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Courts: Attitudes and Beliefs

- Too hard to “prove” a violation in court
- Informants report that judges are reluctant to sentence violators to jail time or other penalties (e.g., modifying orders in favor of victim, etc.)
- Some view the judicial process and unfair and unresponsive
 - Court officials say violations “not serious enough” (VS)
- Judges not creative or experimental in dealing with violators
- Magistrate judges treat LE poorly, which hampers future investigations
- LE lacks trust that court will follow through after an arrest

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Courts: Structural / Contextual

- Lack of uniformity of orders
 - Variations in language across courts
 - Confusing language in temporary orders
 - Confusing language / terms and conditions particularly around child support and custody
- Court system is overburdened
 - inadequate number of judges to handle volume of DVOP cases
- Process times are too long, particularly around civil hearings for motions alleging violations
 - “Too long to set hearings”

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Courts: Structural / Contextual

- Standard required for prevailing is high
 - most informants cited the need for physical evidence, such as photos, proof of injury and third-party/LE witness testimony
- Sanctions
 - Nearly all groups of informants felt that sanctions for violations too lenient
 - “Don’t do it again, or else”
- Concurrent civil and criminal proceedings hamper enforcement of orders for fear of double jeopardy

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Conclusions— Where the system breaks down

- Organizational limitations
 - Law Enforcement
 - Limited guidelines and training for officers re—enforcement of DVOP
 - Courts
 - Limited support for sanctioning DVOP violations
- Individual limitations
 - Victims reluctant to invoke the system
 - Law enforcement do not trust victims or the court

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Conclusions— Where do we go from here

- Address Organizational limitations
 - Law Enforcement
 - Trainings for officers
 - Courts
 - Encourage creative sanctioning—e.g., coercive sanctions to compel compliance
- Address distrust and foster collaboration across victims, law enforcement, and courts

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