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## **Part 1: Statement of Need**

When a person is violently beating their spouse, the victim may feel hopeless, afraid, and angry. They might have little recourse due to the relationship, children, living with the abuser, and a lack of knowledge about the legal system. Filing charges may also take time and may require evidence. Abused women may seek a more efficient way to protect themselves from their abusers instead of waiting for an arrest or conviction in the court system. Over the past few decades, legislatures have addressed the issue of domestic violence (DV) by passing laws that empower judges to grant relief to alleged victims of DV by serving emergency restraining orders (also referred to as “protective orders” and other names in other states) to the alleged abuser. In recent years, legislatures have expanded the laws to allow others to file restraining orders, with some states making them available to everyone. These are generally referred to as “stalking” orders and numerous states including New Hampshire, Washington, and Indiana allow any person to ask a judge for a restraining order against anyone else, regardless of their relationship. Today, restraining orders are available to many parties for a variety of reasons, and they do not require the “beyond a reasonable doubt” threshold that criminal convictions do or even the “probable cause” standard that law enforcement need in order to arrest someone. Due to the relatively short duration of the *ex parte* orders, judges liberally grant the restraining orders which restrict the defendant for only around 24-72 hours, after which point they are entitled to a hearing where they could counter the accusation.

These orders generally prohibit the alleged abuser from contacting or coming within a specific distance of the petitioner, which includes evicting them from their home. In nearly all cases in the U.S., the orders also strip the defendant of their right to own any weapons or ammunition and directs the police to confiscate all of them upon service of the order. All of this

occurs before the alleged abuser is notified of a hearing and before they have the opportunity to counter the allegations. While there are similar pre-conviction restrictions on defendants in criminal cases after being arrested but before being convicted in court, those defendants could be presumed to be “more guilty” due to their arrest indicating that the government attained the higher “probable cause that they committed a crime” threshold than the lower “preponderance of the evidence” standard that is statutorily prescribed in restraining order cases. In practice, judges often grant the petitioner a temporary restraining order without evidence of abuse and without an allegation of abuse (essentially based solely on the petitioner's request).

I reviewed many scholarly papers relating to domestic violence and restraining orders and the unique version of procedural due process that these court proceedings entail in the United States. In my research, I found remarkably few papers addressing typical restraining orders and the abridged due process that exists before they are approved.

The Fifth Amendment to the US Constitution provides that: “No person shall . . . be deprived of life, liberty, or property, without due process of law. . . .”

This clause makes it clear that no person should ever be deprived of liberty or property without due process, which is well-documented in case law and statutory law to include adversarial hearings, fair trials, the right to cross-examine witnesses, and the presumption of innocence. In other words, Americans cannot be punished in any way until they have a chance to defend themselves in the aforementioned ways.

On its face, *ex parte* (without the defendant being present or notified) hearings and orders by judges appear to violate the principle of due process. In the context of restraining orders, the American public, judiciary, legislatures, media, and academics have largely ignored this issue.

The *ex parte* punishments against defendants in restraining orders often involve restrictions on their natural rights guaranteed by the First and Second Amendments, as well.

Being that these orders necessarily include a “red flag” gun confiscation provision, they also put police officers, defendants, bystanders, and the Bill of Rights at heightened risk.

Restraining orders practically always strip the defendant of their right to own or have any access to weapons or ammunition and direct the police to confiscate all of them upon service of the order. All of this occurs before the alleged offender is notified of a hearing and before they have the opportunity to contest the allegations.

### **Factors Contributing to the Problem**

- Courts prioritize immediate issuance to protect plaintiffs from imminent harm.
- Current *ex parte* procedures allow restraining orders to be granted based solely on the plaintiff’s account of incident or based solely on a DVRO request without allegations.
- Limited use of technological tools to facilitate timely hearings.

This grant will address the failure of New Hampshire courts in these types of cases to use widely accessible technology such as phones and remote hearings via video platforms. In doing so, all three factors/issues would be resolved.

### **Existing Data**

In order to best analyze contributing factors to the due process issues in DVROs and similar cases, relevant data could include how many restraining orders are requested and granted, how many of those are *ex parte*, which restrictions are included in those orders, how many of those allegations are unsubstantiated, and how many accusations of crimes are found to be false.

In New Hampshire, the government website provides data on temporary restraining orders filed and granted in the state during each year from 2017-2023. The government data shows that in each of the past three years, around 80% of applications for temporary orders of protection for domestic violence and around 60% of temporary orders of protection for “stalking” are granted by judges in *ex parte* proceedings (New Hampshire Courts, 2024). Notably, the state does not seem to track (or publicly provide data for) emergency orders of protection, which are granted with even less due process than the temporary orders (RSA 173, 2021). A key reform would be tracking data on telephonic emergency orders of protection (in which a police officer calls a judge after hours, who remotely approves the order) and making that information publicly available.

Vittes and Sorenson (2006) found that 89.2% of petitions for domestic violence restraining orders filed in Los Angeles County in California were approved. The lack of due process in these types of proceedings could undermine public confidence in the justice system and lead to increased distrust and resentment toward law enforcement. It is challenging to find data demonstrating how the general public is impacted by the due process limitations in restraining order cases. This is because only a few individuals are directly affected by DVROs and fewer still are aware that these policies impose punishments without due process. Fratello et al. (2013) surveyed NYC residents who had been stopped by police and found that 88% of young people “believed that residents of their neighborhood do not trust the police.” Polls over the past few years from Washington Post/ABC (2023) and Gallup (2022) show that fewer than half of Americans trust the police and that support is declining in recent years. The Gallup poll found that in 2022, only 14% of Americans had a “Great deal/Quite a lot” of confidence in the criminal

justice system, down six percentage points from the year prior. People had more confidence in police than in the justice system, but cops also lost six points of trust since the prior year.

Ideally, surveys could be conducted to determine how people perceive police officers, courts, the justice system, restraining orders, and how much due process they believe is involved in DVROs. Researchers could ask defendants in these types of cases how much due process they felt they had, possibly on a scale of 1-100 or with a binary yes/no answer. If researchers could somehow control for the huge amount of ignorance about the specifics of DVROs, they would likely find that no defendants believe the process fairly gives both parties an opportunity to make their case before imposing punishments on the defendant.

To address these critical gaps in due process, it is essential to implement reforms that enhance the fairness and transparency of the restraining order process. By utilizing widely accessible technology, such as telephonic and remote video hearings, we can ensure timely hearings that allow both parties to present their cases, thereby restoring public confidence in the legal system. Our proposal seeks to not only protect victims of domestic violence but also uphold the rights of the accused, fostering a more equitable judicial process for all parties involved.

## **Part 2: Problem Statement**

Restraining orders are often granted without providing defendants the opportunity to contest allegations, undermining their due process rights and exposing systemic weaknesses in the justice system. This lack of procedural fairness creates public mistrust, strains law enforcement resources, and increases risks for all involved parties.

### **Part 3: Solution Definition and Evaluation**

There are a number of reforms that could mitigate the lack of due process, but the key solution would be to allow the defendants to receive notice and the opportunity to defend themselves against the restraining order (possibly at a remote hearing) before it is granted by a judge. Traditionally, the sole purpose that judges immediately rule on emergency/temporary restraining orders is to ostensibly protect the plaintiff from imminent harm. The minor delay in approving the restraining order that we propose would not place the plaintiff at any increased risk of harm, because they would be in a court or police station for the entire duration of the short delay. When filing the order, the plaintiff must currently go to a court. If the court is closed, they must call the police and/or go to the police station to file the order with a police who contacts an on-call judge for approval of the order. The simple solution would involve having police or court staff contact the defendant immediately once the plaintiff gives them their information. If they cannot be reached via phone or other means, the process could proceed *ex parte*, as is currently the routine. If the defendant is successfully reached, they would be given the opportunity to defend themselves against the allegation at an immediate remote or in-person hearing. If the defendant had to wait at a court (business hours) or a police station (after hours) for an extra hour while the defendant is contacted and while the hearing occurs, it's a negligible price to pay for the restoration of due process. Practically speaking, it is reasonable to presume that officers can protect an alleged victim for an hour while they are in their police station or a courthouse.

Another interesting point regarding the routine practice in our local police department might lead to the new policy making alleged victims safer. Usually, the order only goes into effect — meaning the defendant must legally stay away from the plaintiff — once they are officially served with the order by police officers. In order to serve them the papers, the police

must physically locate him. Usually, the plaintiff requests the order and then returns to their home or their daily routine, often unaware that the order is not in effect and the defendant knows nothing about it; they remain vulnerable. Under our proposed policy, the police or court staff would be required to (at least attempt to) get in contact with the defendant, thereby giving them immediate notice of the order. Notably, Sorenson and Shen (2005) found that 17% of restraining orders in California went unserved by police and were not legally enforceable.

In researching for this solution, we analyzed restraining order statistics and procedures and reviewed mixed-methods studies regarding remote hearings and restraining orders. We found that remote hearings already occur in every state and have become increasingly common since 2020 (NCSC, 2024). Thornburg (2020) remarked in a paper published in the *Family Law Quarterly* that while the remote hearings were conducted for safety purposes to avoid a contagious disease, they present a revolution in efficiency for the court system. The paper focused on 305 remote hearings in Texas throughout 2020, which were observed by law students who then reported their findings. Judges, lawyers, and other court staff were also interviewed. Thornburg found that despite a few initial challenges, the virtual hearings were hugely beneficial for several reasons. Most notably, the online venue allowed participants who were in other states or busy at work or caring for children to easily attend hearings without losing large amounts of time and money. She also observed that the Zoom platform presented a new area in which litigants could make a strong impression - both positive and negative - on the court by appearing in neat offices or untidy areas. She tells of one case in the study in which a mother was sitting on a messy bed while smoking, likely making a negative impression on the judge. This could be seen as a good or a bad addition to court proceedings, though participants already had the potential to make an impression in court by their dress and demeanor. Photo backgrounds and

other non-admitted elements seen via Zoom could be prejudicial, which judges could prevent by making the rules clear to all participants before the hearing begins.

The side-bar, conference, and removal of the jury to discuss objections and procedural issues is far easier on Zoom, as the judge could place people in the waiting room or create a breakout room for a sidebar that nobody else could hear. She speaks of cases in which judges could preside over multiple hearings at once, such as when they instruct the two lawyers to confer on an issue while tending to another virtual case.

Using an online video platform also allowed participants to self-schedule hearings online, which improved accessibility and flexibility. By allowing lawyers to litigate far more cases each day due to obviating the need to travel, the efficiency benefits could be massive.

While some worried that poor people and those who live in rural areas might have trouble accessing Zoom, the study found that such fears were unfounded. Accessing a computer with internet is at least as easy as traveling to a courthouse for these people, and they could simply go to their lawyer's office and virtually attend the hearing together. Over 99% of the participants also had smartphones with internet access that were able to use Zoom anyway.

Sharing evidence with the court was found to be at least as easy in virtual court, especially with Zoom's screen share feature. Thornburg also mentioned that virtual hearings keep heated parties physically separate, which negates potential for violent outbursts during proceedings. For better or for worse, judges cannot direct bailiffs to immediately arrest participants for contempt, though they could mute or remove them. During the observed five months in 2020, "an estimated 440,000 remote hearings in every case type and type of proceeding, including bench and jury trials, with 1.3 million participants lasting almost 1 million

hours." The students observed that almost all of the hearings ran very smoothly, and the judge was able to effectively troubleshoot technical issues without much delay. The judges, lawyers, and others involved had a very positive view of virtual hearings.

Davis et al. (2024) likewise explored remote hearings for intimate partner violence and similar disputes. The researchers looked at over 400 virtual hearings and discussed programs in Kansas, Arizona, and North Carolina. The remote hearings were found to greatly improve access to justice and decrease barriers such as taking off from work, finding child care, and traveling to court. The courts approve of the e-file systems and virtual hearings, as they drastically improve their efficiency. The authors also noted that remote hearings could make some participants more comfortable and more engaged in the proceedings, especially minors and those recently traumatized. This is likely because they are able to remain in the comfort of their own homes or shelters and are not subjected to the intimidating environment of a courtroom.

When analyzing this data, we looked for evidence demonstrating how courts and parties in these types of cases adapted to remote hearings. We wanted to learn whether there were technical issues, due process issues, increases in petitions for DVROs, or other unforeseen issues. We used these methods because we are proposing a solution based on the premise that these unique and sensitive proceedings could be moved online for the sake of efficiency and justice. The data regarding how often judges approve petitions for restraining orders discussed above serves as circumstantial evidence that the process may be biased toward the plaintiff, which is a major departure from all other areas of the law, in which the burden of proof is substantial and on the plaintiff/movant.

## **Benefits and Drawbacks for Internal Stakeholders**

Implementing this policy would bring substantial benefits to internal stakeholders. Defendants would finally have the right to defend themselves before losing their rights, addressing a significant fairness issue in the legal process. Police officers would benefit from increased public trust by prioritizing due process and balanced enforcement, while also saving time by eliminating the need to serve restraining orders in person. Additionally, they would face fewer risks tied to the execution of weapon confiscations, enhancing their safety on the job. Courts would become more efficient, processing cases with greater clarity and fairness, which would help restore public confidence in the judiciary. Victims of abuse would gain faster and more transparent resolutions regarding the status of their restraining order requests, ensuring their concerns are addressed without unnecessary delays. However, some plaintiffs seeking restraining orders may view the elimination of routine *ex parte* orders as a drawback, as it alters the immediacy they have come to expect from the current system.

In evaluating the benefits and drawbacks of this policy for internal stakeholders, we considered several critical factors. First, we assessed fairness and due process, ensuring the policy would strike a balance that protects the rights of all parties involved, including victims and defendants. We also evaluated operational efficiency, focusing on how the policy would reduce the time and resources required for police officers and courts to process and enforce restraining orders. We considered public trust in our police department and internal officer morale. Risk management was also essential, ensuring that the policy mitigates risks associated with rushed or improper actions, such as serving orders or confiscating property. Finally, we looked at accessibility and clarity, evaluating how the policy would help both victims and defendants navigate the restraining order process more effectively.

The benefits and drawbacks of this policy would directly reflect on our agency's commitment to fairness, efficiency, and trustworthiness. By prioritizing due process and reducing risks linked to rushed decisions, the agency positions itself as a leader in promoting balanced and just practices. Enhanced officer morale and improved operational efficiency would also send a clear message to the public that the agency is taking meaningful steps to refine its procedures and strengthen public trust.

The policy would also have a significant impact on the broader criminal justice system. Police departments would operate more efficiently, allowing officers to focus on other critical tasks instead of spending excessive time serving restraining orders. Courts would benefit from improved case management, enabling faster, more equitable resolutions and rebuilding public confidence in the judicial process. Victims and defendants alike would experience a system that prioritizes fair treatment and provides clear resolutions, reducing unnecessary tensions and fostering a stronger sense of justice. By addressing these critical areas, the policy would enhance the interconnected components of the criminal justice system, creating a more balanced and trusted system for all stakeholders.

### **Benefits and Drawbacks for External Stakeholders**

The proposed policy would be of interest to a wide range of external stakeholders, including legislators in New Hampshire and across the nation, judges, police officers, women's rights organizations, men's rights organizations, civil rights groups, attorneys, and others. While we do not foresee these stakeholders experiencing direct positive or negative impacts, many will benefit indirectly from the increased trust that the public will place in their institutions. However, we anticipate opposition from organizations that advocate for women's rights to unrestricted

access to restraining orders and similar protections. At the same time, individuals who previously feared being unfairly targeted by weaponized *ex parte* restraining orders — such as a divorced father with partial custody of his children — are likely to feel a sense of relief under this policy.

To evaluate the benefits and drawbacks of this policy for external stakeholders, we applied several key criteria. We considered its impact on public trust, assessing how the policy might strengthen confidence in the legal system, law enforcement, and associated institutions. We evaluated accessibility and justice, ensuring the policy promotes fair access to legal remedies without creating unnecessary barriers. We also examined operational efficiency, focusing on whether the policy simplifies legal processes and interactions for stakeholders like judges and law enforcement. Importantly, we analyzed the alignment between the policy and the advocacy goals of various groups, such as civil rights organizations and those protecting victims of abuse from physical harm. Finally, we assessed the policy’s ability to mitigate risks, including the misuse of legal mechanisms or unintended consequences for plaintiffs and defendants alike.

The benefits of this policy are numerous. Legislators, civil rights organizations, and due process advocacy groups will likely view it as an enhancement to the criminal justice system, as it ensures both parties’ rights are given fair consideration. Attorneys and men’s rights advocates may see this policy as a step toward fairer outcomes by reducing the potential for restraining orders to be used as weapons against accused individuals without proper examination. Judges, police officers, and legal professionals may also benefit from improved efficiency, as the policy facilitates faster and more balanced resolutions. Additionally, by eliminating routine *ex parte* orders, the policy reduces scenarios where individuals feel unjustly targeted, minimizing the risk of retaliatory actions or increased resentment toward partners and legal institutions.

However, there are also potential drawbacks. Women's rights organizations and groups advocating for abuse victims may perceive the policy as adding barriers for individuals seeking immediate protection, potentially discouraging some from pursuing restraining orders. Plaintiffs could see the removal of *ex parte* orders as introducing delays in obtaining urgently needed safeguards. Finally, judges and law enforcement accustomed to the current system may face challenges adapting to new procedures, particularly if they view the changes as burdensome or inconsistent with established norms.

Ultimately, the policy seeks to strike a balance between accessibility and fairness, ensuring that no stakeholder is disproportionately disadvantaged while fostering greater trust in the legal system. By addressing potential concerns and engaging collaboratively with stakeholders, the policy can be implemented effectively, ensuring minimal disruption while improving the integrity of restraining order procedures. This policy would affect the community by reinforcing faith in the criminal justice system. Our residents would be reassured that the police and the courts are interested in maintaining due process even when people are accused of loathsome acts such as domestic violence. It is possible that victims of domestic violence and similar offenses would resent the new policy and experience a decrease in faith in police and the courts. Part of the grant would be used for public education efforts, which would substantially improve our community members' understanding of how these proceedings work and the importance of due process in general. By improving public trust in law enforcement and the judiciary, the policy could lead to higher rates of cooperation with legal authorities. When community members feel that their institutions operate with fairness and transparency, they are more likely to engage positively, whether that means reporting crimes, participating in jury duty, or advocating for justice reforms of their own.

We expect the policy to improve judicial and police efficiency. Police officers may regain substantial time on their shifts to address other important issues in the community once they are no longer searching for, tracking down, and serving these orders. We are aware of cases in our community where *ex parte* orders lacking actual accusations of wrongdoing were approved and led to numerous officers spending three hours in the homes of peaceful families because they had to confiscate large collections of firearms and ammunition from basements. This represents a potentially unlawful detention of an innocent family and potentially unlawful confiscation of firearms. The department faced challenges properly transporting and storing the firearms and ammunition, which weighed thousands of pounds and occupied a lot of space. Once the defendant had an opportunity to contest the restraining order, the judge dismissed it, and all the firearms had to be returned to the owners along with awkward apologies and newly-formed rust on their firearms, leading to even more potential complaints against our department. All of this would have been avoided if the policy prevented *ex parte* orders from being approved for low-risk cases.

### **Legal and Regulatory Considerations**

We took into account the current New Hampshire state laws, primarily RSA 173 (2014), which governs all restraining orders. We noted that RSA 633:3-a (2018) is the “stalking” statute and provides for the same restraining order as the RSA 173 “domestic violence” statute, but it expands the potential petitioners to all persons, regardless of their relationship to the defendant. It references RSA 173 in regard to the process and restrictions, making RSA 173 the root statute.

It is possible that the new policy could conflict with state statutes. We plan to receive an advisory opinion from our state supreme court regarding the constitutionality of this policy in the

coming weeks. We did not find any state or controlling federal case law that would conflict with our proposed policy. In *United States v. Rahimi* (2024), the SCOTUS upheld the federal ban on firearm possession by a person subject to a domestic violence restraining order, finding that it did not violate the 2nd or 5th Amendments. There is a substantially similar ban in New Hampshire (and presumably all other states). The Fifth Amendment and many SCOTUS decisions affirm the right to due process in a full hearing before losing rights or even benefits that people have grown accustomed to receiving. In *Goldberg v. Kelly* (1970), the SCOTUS held that a person is entitled to a full hearing before their welfare benefits could be discontinued. To our knowledge, no other state or federal regulations, laws, or court precedents would conflict with our proposal.

### **Ethical Considerations**

We considered the issues of privacy, safety, accessibility, and informed consent. The proposed solution must ensure that remote hearings do not compromise the privacy of victims or other involved parties. This includes safeguarding sensitive information and ensuring that hearings are conducted in secure, private settings. Utilizing secure and user-friendly technology platforms is essential for conducting remote hearings. These platforms should incorporate features that protect privacy and confidentiality, such as secure log-ins, encrypted communication, and controlled access to hearings and their recordings. We plan to utilize a video platform that ensures a high level of security and privacy so that no unauthorized persons could see or hear the proceedings. Access to justice is a critical ethical concern, and our proposal would enhance access to the justice system by lay people by making the process simple and able to be conducted remotely from their own homes or other secure locations. A part of the grant would be used on training police and court staff to assist plaintiffs and defendants in the use of the technology for remote hearings. We also considered informed consent, which is another

universal ethics principle. We recognize that both plaintiffs and defendants should be aware of the new policy before it goes into effect. Therefore, we plan to spend a month on public education campaigns prior to implementing the new policy. The government official who is first contacted by the petitioner will explain to them immediately what the new process will entail, ensuring that they have informed consent before requesting the restraining order.

Our policy will incorporate these ethical considerations by creating a dedicated email, website, and phone number for stakeholders to provide feedback on the process. We will constantly monitor and evaluate the policy to ensure that it does not violate any laws or ethical principles and that it provides for an overall net improvement in efficiency, access to justice, and the preservation of constitutional rights without sacrificing physical safety.

#### **Part 4: Recommended Solution**

The data supports our recommended solution by confirming that remote hearings function smoothly and without measure issues. Even in 2020 in rural Texas, the 440,000 virtual hearings went very well, according to the judges, lawyers, court staff, and the law students who observed them in a mixed-methods study (Thornburg, 2020). The data shows that nearly all American adults regularly use the internet, so the remote hearings would not be a technical issue and would likely be far more convenient in general (Pew Research, 2024). Additionally, the grant would allow for the court and police department to potentially purchase a few tablets and “hotspot” internet connection devices, if needed.

There is massive amounts of data demonstrating the anti-male bias in domestic violence, restraining orders, and society in general. Dim and Lysova (2022) conducted a qualitative study of men who experienced domestic violence and received a very unequal response from police

and the courts, and they cite numerous other studies that found disturbing biases against men. Among the dozens of studies they cite were Muller et al. (2009), which found that “judges were 13 times more likely to grant female TROs against their male partners than male requests, controlled for the severity of abuse.” Another benefit of this new policy could be decreasing the growing resentment that men have toward women, especially in cases involving *ex parte* restraining orders based on little to no evidence of actual abuse.

Research has found that women were more likely than men to be cited rather than arrested for domestic violence (Hamel, 2012). Men are more likely to be convicted and more likely to be given harsher sentences and “were consistently treated more severely at every stage of the prosecution process, particularly regarding the decision to prosecute. . . .” Predictably, the data found that DVROs were “far more likely to be granted, and with more restrictions to women than to men. . . .” and that mock juries were “more likely to assign blame responsibility to male perpetrators in contrast to female perpetrators, even when presented with identical scenarios.” The gender bias was confirmed by the data showing that dual arrests were more likely in DV cases involving same-sex couples. Men may be aware of these biases and resent them.

## **Evaluation**

Our team will monitor and evaluate the new policy in real-time so that we could make adjustments as necessary. By using the feedback gained from surveying all plaintiffs, defendants, judges, police officers, attorneys, and court staff who handle restraining orders under the new policy, we will have rich data regarding its effectiveness and any issues that arise. While we cannot compel anyone to take the survey, we will call each of the aforementioned participants in the process one week after the restraining order is requested and ask them both quantitative and open-ended questions regarding their experience of the new policy. The calls will be recorded

with consent and the data will be fed into our report. All data will be anonymized, with only their role (plaintiff, defendant, judge, etc.) being maintained. For those who wish to remain even more anonymous, we will have an anonymous online survey URL and mailing address that we will provide to the public.

We will monitor all data regarding requests for restraining orders, whether they are during court hours, how the staff handled the newly-required contacting of the defendant, whether they successfully contacted them, whether the defendant exercised their right to have a remote or in-person hearing, and whether the judge granted the order. We will present all of this data to the DOJ and make it publicly available within one month of the end of our six-month trial period for the policy.

Additionally, we will invite all stakeholders to weekly meetings (with the option for them to attend virtually) throughout the six-month period to discuss any issues that have arisen.

Most importantly, we will closely monitor physical safety data to ensure that plaintiffs are not exposed to heightened danger due to the new policy. Our team will dedicate personnel to track any complaint that the plaintiffs make to the police or the court regarding assault, abuse, or violations of the restraining order by the defendant or others. We will also track how much extra security is needed from our officers in order to adequately protect abuse victims. We will remain open to feedback from all internal and external stakeholders, and we will work diligently to incorporate the feedback we receive into the policy in real-time to the extent that it's possible.

## **SMART Goals**

- 1) Reduce the percentage of *ex parte* restraining orders granted by at least 20% within the 6-month trial period compared to the prior 6-month period. If the system works as well as we believe it could, there will be very few *ex parte* restraining order hearings.
- 2) Achieve at least a 75% satisfaction rate in surveys among defendants regarding the opportunity to contest the restraining order during the period.
- 3) Achieve 90% positive feedback from participants (plaintiffs, defendants, court staff) who use the technology for remote hearings when asked if the platform was user-friendly.
- 4) No increase in reported incidents of violence or safety breaches against participants during the period.

## **Part 5: Presentation Considerations**

We recognize that such a substantial reform on such a sensitive issue requires tactful presentation to stakeholders. The new policy would be communicated to internal stakeholders at our police department, our local court staff, and attorneys by presenting evidence, the justification, and the new requirements that they must fulfill. We will send them this document in digital format so that they can read all of the research on their own. We will explain to them that they will benefit in all the ways discussed above, including efficiency, safety, and public trust.

We will provide our officers and court staff with the following statement: As we've discussed, the department has determined that a serious issue facing our town at the moment is the expansive use of *ex parte* DVROs by civilians, which our officers facilitate and enforce. The high number of orders that our officers submit to judges telephonically after hours and the time spent serving those restraining orders to defendants costs significant time that our officers could

better spend on patrol or investigations. Additionally, the orders have a built-in firearm confiscation order, which potentially puts our officers and community members at heightened risk. Petitioners who request restraining orders worry that if the police inform the defendant, they could hurt the petitioner before the order could be issued or enforced. Numerous defendants, the state's Family Law Bar, legislators, and advocacy groups have complained that *ex parte* orders violate due process. We have worked collaboratively with members of those groups and we have achieved unanimous agreement among all 17 of us that we should propose one potential solution to the police department and the local family court to address the absence of an adversarial hearing prior to the issuance of DVROs. We will be implementing a new policy for six months (from January 1 until July 1) while constantly evaluating its effectiveness.

For internal stakeholders such as plaintiffs and defendants, we cannot precisely present this new policy to them before they enter the system as participants, because they only become stakeholders once a restraining order is sought. Upon first contact with them, police officers and court staff will present them with a simple sheet of paper outlining the new policy so that they have informed consent about how the process will work:

**For in-person DVRO requests:** Upon receiving the application for the order of protection, the court shall attempt to contact the defendant via phone and email and allow him to defend himself at a remote (or in-person) hearing to counter the claims stated in the petitioner's affidavit.

**For after-hours DVRO requests:** The responding police officer shall attempt to contact the defendant via phone and email to inform them that they have the right to defend themselves at a remote (or in-person) hearing regarding the instant restraining order. The officer must begin attempting to contact the defendant before calling the on-call judge, who may then use discretion to determine the process for issuing the order.

In all cases involving temporary restraining orders, the defendant shall have a right to defend themselves at a hearing prior to the issuance of the order. If they cannot be reached before the order is issued, they shall have the right to an adversarial hearing immediately or at the open of the court if the order was issued after hours by an on-call judge. No property shall be confiscated from a defendant before an adversarial hearing actually occurs.

**If you feel unsafe for any reason,** please call 911 or visit the nearest police station or courthouse, where you will be kept safe by officers specifically dedicated for this purpose.

We will also inform all internal stakeholders about the robust, real-time monitoring and ongoing surveys that will allow us to collect unprecedented feedback about any concern imaginable. Our police department is open 24/7 and we encourage our residents to walk in and speak with the on-duty supervisor about any concerns they may have.

We will make sure to communicate with court participants with sensitivity throughout the process, ensuring that our officers understand that they may be under extreme stress and may be nervous, angry, and confused. All participants will be provided with the state's resources for counseling, therapy, and addiction treatment in order to help them deal with the experience of a restraining order. It is critical that we explain to plaintiffs that the new policy is not an attack on

them, but it's a preservation of constitutionally-mandated due process for the accused. The safety of all parties remains our top priority.

We will present the new policy to external stakeholders in a substantially different way. We have been working with numerous external stakeholders on this policy for months, including state legislators, constitutional scholars, and interest groups including the American Civil Liberties Union (ACLU), Institute for Justice (IJ), Brennan Center for Justice (BCJ), Fraternal Order of Police (FOP), and National Coalition Against Domestic Violence (NCADV). Representatives from these advocacy groups have been working with us and are very familiar with the policy. We will officially send a letter to these groups and other external stakeholders such as legislators and lawyers that speaks to them on a more academic level, stating the following:

Our interdisciplinary working group on *ex parte* DVROs has had a wonderful and productive two weeks, and we have devised a new policy and received a grant from the DOJ to implement it. In keeping with the effort by all internal and external stakeholders to maintain good faith, transparent communication, we are sharing the final proposed policy with all of you and we are making all of our working documents available to you and to the public. We invite your members to attend the City Council meeting next Thursday, during which this topic will be discussed. All city residents and all external stakeholders will have an opportunity to speak during public comments at the meeting.

The issue: Our department has identified a critical issue with the current implementation of *ex parte* restraining orders. Specifically, these orders are often issued and enforced without

adversarial hearings, raising serious concerns about due process for defendants while placing significant operational burdens and safety risks on law enforcement officers.

We recognize the concerns of all parties involved—petitioners seeking protection, defendants navigating the legal system, and law enforcement officers enforcing orders. We also appreciate the critical work that members of advocacy groups such as yours do on a daily basis promoting fairness, safety, and constitutional rights. To address these concerns, our department has collaborated with representatives from the legal community, advocacy groups, and legislators to propose a temporary policy aimed at improving the DVRO process.

This memo outlines the policy, its rationale, and its potential impact. We invite your input and partnership as we pilot this reform from January 1 to July 1 on a trial basis. For in-person DVRO requests: Upon receiving the application for the order, the court shall attempt to contact the defendant via phone and email and allow him to defend himself at a remote (or in-person) hearing to counter the claims stated in the petitioner’s affidavit. For after-hours DVRO requests: The responding police officer shall attempt to contact the defendant via phone and email to inform them that they have the right to defend themselves at a remote (or in-person) hearing regarding the instant restraining order. The officer must begin attempting to contact the defendant before calling the on-call judge, who may then use discretion to determine the process for issuing the order. In all cases involving temporary restraining orders, the defendant shall have a right to defend themselves at a hearing prior to the issuance of the order. If they cannot be reached before the order is issued, they shall have the right to an adversarial hearing immediately or at the open of the court if the order was issued after hours by an on-call judge. No property shall be confiscated from a defendant before an adversarial hearing actually occurs.

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