

WHEN PETITIONERS SEEK CUSTODY IN DOMESTIC VIOLENCE COURT AND WHY WE SHOULD TAKE THEM SERIOUSLY

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INTRODUCTION

For a number of years now, the law has encouraged judges in domestic violence court to address child custody when a parent who receives a protective order asserts that custody is in issue between the parties. Despite our intuition that judges *should* address custody in these circumstances, they have been reluctant to do so. The legal system initially organized civil domestic violence courts to enter protective orders to direct the batterer either to stop the violence or face the consequences of disobeying the court's order. But as it turns out, most of the people asking the court to protect them from domestic violence are the parents of minor children,¹ and, in the majority of those actions, the parent seeking the protective

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1. N.C. Criminal Justice Analysis Ctr., *Dispositional Outcomes of Domestic Violence Ex-Parte and Domestic Violence Protective Orders*, SYS. STATS, Winter 2002, at 4.

order maintains that, in addition to domestic violence, the custody of a minor is indeed in issue.²

Any visitor to the civil domestic violence courts of this country knows one of the reasons that judges have been reluctant to address custody: the numbers. Since the 1980s, every state has recognized a civil cause of action for domestic violence,³ the primary function of which is to issue protective orders in appropriate cases.⁴ In the intervening years, the civil domestic violence court has become the legal world's emergency room with a volume that threatens to overwhelm the system.⁵ To deal with crowded dockets, court personnel try to move the cases quickly, assessing the evidence that the petitioner offers to justify the court's entering a protective order. Custody issues, on the other hand, are time consuming and difficult, even when lawyers representing both parties marshal the evidence for the court to weigh.

Not only are the dockets crowded in domestic violence court, but lawyers are conspicuously absent. While an increasing number of people represent themselves pro se in family matters in general,⁶ pro se representation is especially common in civil domestic violence actions.⁷ In fact, the domestic violence court is among the most—if not *the* most—pro se friendly of the nation's civil courts. By statute in many states, court personnel must assist the plaintiff,⁸ and

2. See *infra* Part II.B.

3. *State Protection Order List*, NAT'L COALITION AGAINST DOMESTIC VIOLENCE, <http://www.ncadv.org/files/StateProtectionOrderList.pdf> (last updated Jan. 19, 2006).

4. N.C. GEN. STAT. § 50B-1, -3(a) (2011).

5. See Sarah M. Buel, *Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct*, 26 HARV. WOMEN'S L.J. 217, 224 (2003) (noting that some battered women are denied protection because of "overwhelmed courts"); Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1509 (2008) (stating that civil protection orders "bring the domestic violence victim into contact with the legal system" and "[are] often a battered woman's first step toward obtaining legal assistance to stop the violence" (citations omitted)); Kit Kinports & Karla Fischer, *Orders of Protection in Domestic Violence Cases: An Empirical Assessment of the Impact of the Reform Statutes*, 2 TEX. J. WOMEN & L. 163, 198–99 (1993) (describing the dockets as overcrowded).

6. John M. Greacen, *Framing the Issues for the Summit on the Future of Self-Represented Litigation*, in THE FUTURE OF SELF-REPRESENTED LITIGATION: REPORT FROM THE MARCH 2005 SUMMIT 19, 23 (2005) (noting that sixty percent to ninety percent "of family law cases now involve at least one self-represented litigant").

7. Alesha Durfee, *Victim Narratives, Legal Representation, and Domestic Violence Civil Protection Orders*, 4 FEMINIST CRIMINOLOGY 7, 10 (2009).

8. See, e.g., Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 1049 (1993) ("Both state statutes and case law encourage

prepared forms from administrative offices of state courts attempt to make it possible for persons seeking relief to navigate the system without a lawyer. For these reasons, the domestic violence courts are filled with families unrepresented by lawyers.

The pro se friendly nature of the domestic violence court, however, gives rise to one of the most serious reasons why judges hesitate to address custody in an action for a civil protective order. Judges suspect that the petitioner has fabricated the domestic violence claim in order to access the pro se friendly court and have the judge address the real issue—custody.⁹ The parties may believe, and rightly so, that their actions will be heard more quickly—and less expensively—in domestic violence court. Further, judges suspect that a plaintiff raising custody as an issue in domestic violence court later plans to file in family court and hopes that, if a judge has found that the defendant has committed an act of domestic violence, the finding will give the plaintiff an advantage in the later family court action.¹⁰ True or not, these suspicions have made judges reluctant to address the custody issue in domestic violence court.

Because of crowded dockets in domestic violence court, these suspicions, and perhaps other reasons, judges have avoided addressing custody in domestic violence court. While they have always had the statutory authority to deal with custody,¹¹ they

and require court employees to assist petitioners in filing for civil protection orders.” (citation omitted)).

9. See Margaret B. Drew & Marilu E. Gresens, *Denying Choice of Forum: An Interference by the Massachusetts Trial Court with Domestic Violence Victims’ Rights and Safety*, 43 SUFFOLK U. L. REV. 293, 324 (2010) (“[F]amily court judges often adopt a cynical point of view towards allegations of domestic violence, and often assume that a parent who applies for a protection order does so in order to get a ‘leg up’ in the custody dispute.” (citation omitted)); Deborah M. Goelman, *Shelter from the Storm: Using Jurisdictional Statutes to Protect Victims of Domestic Violence After the Violence Against Women Act of 2000*, 13 COLUM. J. GENDER & L. 101, 114 (2004) (finding that courts are reluctant to issue temporary custody and visitation orders for fear that “petitioners are attempting to circumvent the rules governing domestic relations cases” (citation omitted)); Cherry Henault, *The Reissuance of Domestic Violence Orders Under Kentucky Law: A Due Process Analysis*, 40 BRANDEIS L.J. 575, 577–78 (2001) (describing “The Poor Man’s Divorce”—a situation in which a domestic violence order is obtained with the objective of being granted custody faster and cheaper than commencing divorce proceedings).

10. See JULI KIM & LESLIE STARSONECK, NORTH CAROLINA DISTRICT COURTS’ RESPONSE TO DOMESTIC VIOLENCE: BEST PRACTICES AND JUDICIAL TRAINING 16 (2007) (finding that judges concurred with the assessment that “sometimes parties pursue custody [when domestic violence protective orders are being considered in order to gain] a later advantage as part of a divorce action”).

11. PETER FINN & SARAH COLSON, U.S. DEP’T OF JUSTICE, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT 38–39 (1990) (noting that forty states had statutes authorizing judges to grant temporary custody and visitation in a protection order).

simply have not exercised that authority. After a decade into our country's experience with civil domestic violence actions, empirical studies began reporting how often judges ignored plaintiffs' requests for custody.¹² Later studies report similar findings.¹³ A 2002 study in North Carolina, for example, found that domestic violence courts granted custody requests less often than other requests in the action for a protective order.¹⁴

On the other hand, advocates against domestic violence have always insisted that, for families with minor children, a domestic violence order that fails to address custody is inadequate—or even worse. If the victim gets a protective order directing the batterer to stay away from the victim, the order will separate the victim and batterer. There is overwhelming evidence that separation is a particularly dangerous time for the victim¹⁵ and for the victim's child. If the protective order is silent on custody, that silence gives the batterer an excuse to contact the victim to make arrangements to see the child. This contact between batterer and victim after separation is especially dangerous.¹⁶

For decades, across the country, advocates against domestic violence lobbied for legislation to encourage judges in domestic violence courts to deal with custody.¹⁷ The Violence Against Women

12. See, e.g., Kinports & Fischer, *supra* note 5, at 205–07 (“11.2% of the respondents indicated that the judges in their county will not consider awarding custody of the children in an order of protection.” (citation omitted)).

13. See, e.g., Goelman, *supra* note 9 (“A recent survey revealed that even in jurisdictions in which protection order statutes explicitly provide for the issuance of temporary custody and visitation orders, some courts are unwilling to issue such orders.” (citation omitted)).

14. N.C. Criminal Justice Analysis Ctr., *supra* note 1, at 5 (noting the greatest discordance between requests that the defendant not interfere with the plaintiff's child(ren) and orders granting this request).

15. Goldfarb, *supra* note 5, at 1520 (“Women are most at risk after ending, or while trying to end, an abusive relationship.” (citations omitted)); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65–68 (1991) (discussing stories of “separation assault”—an “assault on a woman's body and volition that seeks to block her from leaving, retaliate for her departure, or forcibly end the separation”).

16. See Goldfarb, *supra* note 5, at 1519–20 (“Batterers often use their access to the children to perpetrate further violence against the mother—for example, when exchanging the children for visitation periods.” (citations omitted)); Kinports & Fischer, *supra* note 5, at 197 (“Awarding the petitioner temporary custody of the children and limiting the alleged abuser's visitation rights is crucial because ‘[j]udges and victims alike agree that nowhere is the potential for renewed violence greater than during visitation.’” (alteration in original) (citation omitted)); Klein & Orloff, *supra* note 8, at 952 (“Court orders which force victims to share custody with their abusers place both victims and children in danger.”).

17. E.g., Joan Zorza, *Child Custody Practices of the Family Courts in Cases Involving Domestic Violence*, in DOMESTIC VIOLENCE, ABUSE, AND CHILD

Act¹⁸ gave funds to healthcare providers, law enforcement agencies, prosecutors, courts, and community advocacy services to study how their states were handling domestic violence, especially in their civil courts.¹⁹ Eventually these studies led legislative and judicial committees to recommend amendments specifically targeting the need for domestic violence judges to address child custody.²⁰ No state went so far as to *require* these judges to address custody, however, out of concern that the requirement would delay decisions about protective orders in cases where delay could be deadly.²¹ More typically, in states amending their domestic violence statutes, the amendments merely exhorted judges to address custody in domestic violence court if custody was in issue.²² The statutes provided that judges “should” or “may” address custody in domestic violence court, stopping short of telling judges that they “must.”²³ At least ten states, including North Carolina, went further with enhanced amendments that not only exhorted the judge to address custody but also gave the judge discretion to appoint a representative—a “custody guardian ad litem” (“GAL”)—for the child in a civil protective order case.²⁴ The reformers believed that with the help of these GALs to gather facts, judges might have enough facts to address the custody issue without delaying an appropriate protective order.²⁵

CUSTODY: LEGAL STRATEGIES AND POLICY ISSUES 1-1, 1-5 (Mo Therese Hanna & Barry Goldstein eds., 2010).

18. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960.

19. See, e.g., *id.* § 102, 119 Stat. at 2975–78 (“Grants to encourage arrest and enforce protection orders improvements.”); *id.* § 105, 119 Stat. 2979–81 (“The Violence Against Women Act court training and improvements.”); *id.* § 504, 119 Stat. at 3026–28 (“Grants to foster public health responses to domestic violence, dating violence, sexual assault, and stalking grants.”); *id.* § 1131, 119 Stat. at 3107 (“Grants to local nonprofit organizations to improve outreach services to victims of crime.”).

20. See, e.g., H.R. 1354, 2003 Leg., 2003 Sess. (N.C. 2004).

21. Annette M. Gonzalez & Linda M. Rio Reichmann, *Representing Children in Civil Cases Involving Domestic Violence*, 39 FAM. L.Q. 197, 199 (2005) (“[F]orty-nine jurisdictions allow courts to make custody determinations during a protective order hearing.”).

22. See, e.g., N.C. GEN. STAT. § 50B-3(a1) (2011) (“Upon the request of either party . . . the court shall consider and may award temporary custody of minor children”).

23. See, e.g., *id.* § 50B-3(a)(4) (providing that a “protective order *may* include” an award of temporary custody of minor children (emphasis added)).

24. Gonzalez & Reichmann, *supra* note 21, at 202 & n.42 (referencing Alaska, California, Indiana, Massachusetts, Missouri, Montana, New Hampshire, North Dakota, and Washington). For a discussion of the North Carolina amendments, see *infra* Part II.A.

25. See Susan R. Elsen, *Guardian Ad Litem*, in FAMILY LAW ADVOCACY FOR LOW AND MODERATE INCOME LITIGANTS 281, 282 (2d ed. 2008).

These statutes encouraging judges to address custody in domestic violence court are now only a few years old, and there has been little analysis of what impact, if any, the statutes have had. This Article offers a first look at the handling of the custody issue in a domestic violence court. Part I describes the approaches to treating high-conflict custody cases over the last sixty years, concluding with the reorienting of the treatment of domestic violence in child custody disputes. Part II describes the methodology and results of our study, particularly the data and analysis supporting the conclusions that indicate that judges' suspicions about the motives of the plaintiffs appear to be wrong. Part III offers observations about the results. Lastly, the Conclusion offers suggestions for refining our handling of custody disputes in domestic violence courts.

I. CHILD CUSTODY AND DOMESTIC VIOLENCE

High-conflict child custody cases have confounded the legal system. In this country, for the last sixty years, we have experimented with one fix after another, looking for an approach that would serve the best interests of the children so unfortunate to be at the center of these high-conflict cases. Fortunately, only a relatively few number of dissolving families find themselves in what could be called high-conflict custody disputes.²⁶ Still, for the hundreds of thousands who do, the legal system seems to have failed them.²⁷

The systemic failure persists despite concerted efforts to fix it. Reformers from different fields—law, sociology, psychology, and others—have advocated for one reform after another. In the 1960s, reformers focused on mediation, hoping that mediators could enable parents in dissolving families to agree on a parenting plan.²⁸ Convinced that mediation had real promise, a few states enacted mandatory mediation statutes.²⁹ On the other hand, mandatory

26. For a discussion of high-conflict custody, see, for example, ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY* 141–53 (1992).

27. See *id.* at 149–53.

28. See Connie J. A. Beck & Bruce D. Sales, *A Critical Reappraisal of Divorce Mediation Research and Policy*, 6 *PSYCHOL. PUB. POL'Y & L.* 989, 991 (2000) (noting that an advantage of mediation is that it “develop[s] agreements that are more satisfying to both parties, thereby increasing the likelihood that the parents will comply with them over time”).

29. For a discussion of California, Connecticut, and Massachusetts as the first states to mandate custody mediation, see Daniel G. Brown, *Divorce and Family Mediation: History, Review, Future Directions*, 20 *CONCILIATION CTS. REV.*, Dec. 1982, at 1, 18. North Carolina initiated child custody mediation with a pilot project in 1983 and authorized statewide implementation in 1989. 3 SUZANNE REYNOLDS, *LEE'S NORTH CAROLINA FAMILY LAW* § 13.76(a) (5th ed. 2002). As of 2009, North Carolina had implemented mandatory mediation in

mediation drew vociferous, sometimes eloquent, criticism.³⁰ Feminist scholars warned that mandatory mediation threatened to take custody away from dominated caregivers—often mothers—and to award it instead to their dominating partners—often fathers—despite the best interests of the child.³¹ While mediation continues to have strong supporters,³² the trend towards *mandatory* mediation for child custody disputes appears to have dissipated.

In the 1970s and 1980s, reformers focused on joint physical custody, with a number of factors paving the way for the passage of statutes that promoted it. In the first place, the system felt the

forty-one judicial districts serving ninety-seven of its one hundred counties. N.C. ADMIN. OFFICE OF THE COURTS, BEST PRACTICES FOR CHILD CUSTODY AND VISITATION MEDIATION PROGRAM 3 (2010).

30. See generally Martha Fineman, *Dominant Discourse, Professional Language, and Legal Change in Child Custody Decisionmaking*, 101 HARV. L. REV. 727 (1988).

31. See, e.g., Penelope E. Bryan, *Killing Us Softly: Divorce Mediation and the Politics of Power*, 40 BUFF. L. REV. 441, 446–98 (1992) (noting that “mediation empowers only the already more powerful husband” and “does not protect the lesser powered wife from disadvantageous outcomes”); Richard E. Crouch, *The Dark Side of Mediation: Still Unexplored*, in ALTERNATIVE MEANS OF FAMILY DISPUTE RESOLUTION 339, 343–44 (Howard Davidson et al. eds., 1982) (describing mediation as the exploiter’s ally); Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545, 1592 (1991) (noting that the mediator may not “have a sufficiently clear vision of the interaction between the divorcing spouses to make a considered decision about if and how the power needs to be balanced”); Harriet N. Cohen, *Mediation in Divorce: Boon or Bane?*, WOMEN’S ADVOC. (Nat’l Ctr. On Women and Family Law, New York, N.Y.), Mar. 1984, at 1 (noting that mediation poses a potential danger of “[u]nequal information and bargaining power and unequal bargaining ability between husbands and wives”). See generally Carol Lefcourt, *Women, Mediation and Family Law*, 18 CLEARINGHOUSE REV. 266 (1984) (summarizing a conference of women’s advocates in family law that discussed the “growing use of mediation in family law and its harmful impact on women”); Laurie Woods, *Mediation: A Backlash to Women’s Progress on Family Law Issues*, 19 CLEARINGHOUSE REV. 431 (1985) (“Mediation seeks to privatize family law problems . . . denying women the opportunity to enforce and consolidate their victories and to empower themselves further through the development of new rights in the legislatures and the courts.”).

32. Some of the strong support for mediation draws on a study of couples who were litigating custody and then agreed to be randomly assigned either to mediation or litigation. For reports on this study, see generally Robert E. Emery & Melissa M. Wyer, *Child Custody Mediation and Litigation: An Experimental Evaluation of the Experience of Parents*, 55 J. CONSULTING & CLINICAL PSYCHOL. 179 (1987); Robert E. Emery & Melissa M. Wyer, *A Systematic Comparison of Child Custody Mediation and Litigation*, FAIRSHARE, Feb. 1988, at 10. For the longitudinal study based on these participants, see generally Robert E. Emery et al., *Child Custody Mediation and Litigation: Custody, Contact, and Coparenting 12 Years After Initial Dispute Resolution*, 69 J. CONSULTING & CLINICAL PSYCHOL. 323 (2001). For the book drawing on this study, see generally ROBERT E. EMERY, *THE TRUTH ABOUT CHILDREN AND DIVORCE* (2004).

pressure of rising divorce rates³³ and the increasing numbers of children affected by divorce.³⁴ Also around this time, several important longitudinal studies concluded that children suffered long-lasting harm from divorce³⁵—conclusions that stimulated interest in changing the handling of custody cases. In addition, as more women worked outside the home, with some change in traditional parenting,³⁶ fathers who parented more wanted more custodial time at divorce.³⁷ Finally, courts were continuing to struggle with the “best interests of the child” standard, the indeterminate standard that had replaced the tender years presumption.³⁸ The tender years presumption—the presumption that the court should award custody of a young child to the mother³⁹—raised equal protection concerns but, at least, led to predictable outcomes. In comparison, the indeterminate “best interests of the child” standard provided little guidance on how to make custody decisions.⁴⁰ Presumptions for joint physical custody, at least, offered something determinative.⁴¹

Equally as important, the “discourse” about custody was changing.⁴² Commentators spoke of custody less as a legal issue and more as an emotional crisis, calling for involvement of mental health professionals rather than lawyers.⁴³ Parents proved their “fitness”

33. Elizabeth Scott & Andre Derdeyn, *Rethinking Joint Custody*, 45 OHIO ST. L.J. 455, 458 (1984).

34. See Paul C. Glick, *Children of Divorced Parents in Demographic Perspective*, 35 J. SOC. ISSUES 170, 174 (1979) (noting that the number of children involved in divorce rose from .5 million per year in 1960 to 1.1 million in 1973 and remained at about 1.1 million per year through 1976).

35. See JUDITH S. WALLERSTEIN & JOAN BERLIN KELLY, *SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE* 211 (1980) (finding that children in divorced families were “consciously and intensely unhappy and dissatisfied with their life,” “felt rejected and unloved” by their parents, and were “moderately to severely depressed”); E. Mavis Hetherington et al., *The Aftermath of Divorce*, in MOTHER/CHILD, FATHER/CHILD RELATIONSHIPS 149, 149–50, 174 (Joseph H. Stevens, Jr. & Marilyn Mathews eds., 1978) (finding in a two-year longitudinal study that “[c]hildren in divorced families were more dependent, disobedient, aggressive, whining, demanding, and unaffectionate than children in intact families”).

36. Jana B. Singer & William L. Reynolds, *A Dissent on Joint Custody*, 47 MD. L. REV. 497, 501 (1988).

37. See *id.*; see also Scott & Derdeyn, *supra* note 33, at 461.

38. REYNOLDS, *supra* note 29, § 13.6(c).

39. *Id.* § 13.6(b)(iii).

40. *Id.* § 13.7(a).

41. Scott & Derdeyn, *supra* note 33, at 469–71.

42. Fineman, *supra* note 30, at 728.

43. *Id.* at 742–44; see also Linda K. Girdner, *Custody Mediation in the United States: Empowerment or Social Control?*, 3 CAN. J. WOMEN & L. 134, 141–42 (1989) (comparing attorney mediators, whose focus is negotiating agreements about the disputed issues, to nonlawyer mediators, whose focus is restructuring the family).

by agreeing to a custody arrangement.⁴⁴ Otherwise, the parent was uncooperative and obstructionist, even pathological.⁴⁵ The combination of these forces resulted in states promoting joint physical custody. In some states, statutes directed the court to presume an award of joint physical custody with the burden on the objecting parent to rebut the presumption.⁴⁶ Other states adopted “friendly parent provisions” that instructed the court to consider how willing a parent was to promote contact with the other parent.⁴⁷ As used in some states, these friendly parent provisions applied pressure; if a parent thought that opposing joint physical custody might appear “unfriendly,” the parent would agree to joint physical custody to avoid a judge awarding custody to the “friendlier” parent.⁴⁸

To some degree, the bandwagon for joint physical custody has slowed down. Later longitudinal studies reported more nuanced findings about the effect of divorce on children. While studies in the late 1970s and early 1980s reported the devastating effects of *divorce*,⁴⁹ these later studies reported the devastating effects of *conflict*.⁵⁰ These later studies reported that children fared *better*

44. Fineman, *supra* note 30, at 765–66 (“[T]he parent who is willing to live up to the ideal of shared custody and control is the one with the child’s real interests at heart.” (citation omitted)).

45. *Id.*

46. For the first presumption as it appeared in California in 1979, see CAL. CIV. CODE § 4600.5(a) (Deering 1988) (repealed 1994) (presuming joint custody even in a disputed case). For the presumption that remains in the current version of the Florida custody statute, see FLA. STAT. § 61.13(2)(b)(2) (2012) (requiring shared parenting unless the court finds that the arrangement “would be detrimental to the child”).

47. *See, e.g.*, IOWA CODE § 598.41(1)(c) (2012) (directing the court to “consider the denial by one parent of the child’s opportunity for maximum continuing contact with the other parent, without just cause, a significant factor in determining the proper custody arrangement”).

48. REYNOLDS, *supra* note 29, § 13.60. For an analysis of the effect of these statutes in one state, see Margaret F. Brinig, *Penalty Defaults in Family Law: The Case of Child Custody*, 33 FLA. ST. U. L. REV. 779, 804–14 (2006) (analyzing the shared-custody preference enacted in Oregon and concluding that the statute had only a limited effect on joint physical custody awards). For a similar conclusion about custody settlements, see Margaret F. Brinig, *Unhappy Contracts: The Case of Divorce Settlements*, 1 REV. L. & ECON. 241, 249–61 (2005) (analyzing settlements in a county in Iowa and concluding that what the parties might have expected in litigation did not significantly affect the custody terms of their settlements).

49. *See supra* note 35 and accompanying text.

50. *See, e.g.*, Jennifer M. Jenkins, *Marital Conflict and Children’s Emotions: The Development of an Anger Organization*, 62 J. MARRIAGE & FAM. 723, 733 (2000) (“Children exposed to anger-based conflict between parents showed more frequent anger expressions, more deviant anger expressions, and more frequent taunting.”); Lynn Fainsilber Katz & John M. Gottman, *Patterns of Marital Conflict Predict Children’s Internalizing and Externalizing Behaviors*, 29 DEVELOPMENTAL PSYCHOL. 940, 946 (1993) (finding that when

after divorce for marriages characterized as high conflict.⁵¹ The research isolated most of the more serious long-term effects to those marriages that had suffered only low to moderate conflict.⁵² By emphasizing the central role of conflict, the later research supported those commentators opposed to presumptions of joint physical custody.⁵³ These commentators argued that if joint physical custody led to more conflict, then parents should not agree to it.⁵⁴ And if the parties reached joint physical custody as a compromise in cases of high conflict, then children would suffer.⁵⁵ As critics began to point out, “conflict localized around the time of litigation and divorce is less harmful than conflict, which remains an intrinsic and unresolved part of the parents’ relationship and continues after their divorce.”⁵⁶

The approximation rule surfaced as a rival for presumptions of joint physical custody. Proposed by Elizabeth Scott, this rule recommends sharing physical custody *after* separation in proportion to the time that each parent spent performing caretaking functions with the child *before* separation.⁵⁷ Related both to primary caregiving and shared parenting, the rule recognizes that parents in

parents are hostile or angry when resolving marital conflict, children exhibit signs of antisocial behavior and anxiety).

51. PAUL R. AMATO & ALAN BOOTH, *A GENERATION AT RISK: GROWING UP IN AN ERA OF FAMILY UPHEAVAL* 237 (1997) (finding that divorce is advantageous for children of parents in highly conflicted marriages).

52. *Id.* (“[M]any children from these low-conflict divorces experience adverse effects that last far into adulthood”). For more somber conclusions, see E. MAVIS HETHERINGTON & JOHN KELLY, *FOR BETTER OR FOR WORSE: DIVORCE RECONSIDERED* 203–24 (2002) (noting the adverse risks for children of divorce); JUDITH WALLERSTEIN ET AL., *THE UNEXPECTED LEGACY OF DIVORCE: A 25 YEAR LANDMARK STUDY* 294–316 (2000) (noting that the impact of divorce “increases over time and rises to a crescendo in adulthood” where “children of divorce suffer the most”).

53. See, e.g., MACCOBY & MNOOKIN, *supra* 26, at 284–85 (rejecting a presumption of joint custody); Margaret Martin Barry, *The District of Columbia’s Joint Custody Presumption: Misplaced Blame and Simplistic Solutions*, 46 CATH. U. L. REV. 767, 821 (1997) (rejecting a presumption of joint custody).

54. See Barry, *supra* note 53, at 820–22.

55. MACCOBY & MNOOKIN, *supra* note 26, at 284–85 (“[I]n those cases where the parents are involved in bitter dispute, we believe a presumption for joint custody would do harm. Our study suggests that in a number of cases in which families today adopt joint physical custody, there has been substantial legal conflict. To the extent that this custody arrangement is the result of encouragement by mediators, or judges for that matter, we think it is unwise.”).

56. Michael E. Lamb, *Placing Children’s Interests First: Developmentally Appropriate Parenting Plans*, 10 VA. J. SOC. POL’Y & L. 98, 105–06 (2002) (citations omitted).

57. Elizabeth S. Scott, *Pluralism, Parental Preference, and Child Custody*, 80 CALIF. L. REV. 615, 617 (1992).

modern households often share caregiving responsibilities.⁵⁸ The approximation rule reflects the realities of dual career families by recognizing shared custody, but only in proportion to the pre-separation experience of the parents and child, and avoids labeling one of the parents as “the primary caregiver.”⁵⁹ The American Law Institute adopted the rule,⁶⁰ and it has received significant support.⁶¹ Because some studies had suggested that parties in joint physical custody arrangements often drifted into the custody patterns before separation,⁶² the approximation rule may simply reflect the likely long-term outcome.

While the debate about joint physical custody continues,⁶³ other issues have taken center stage. More recently, reformers have advocated for reform that acknowledges the presence of domestic violence in high-conflict custody cases.⁶⁴ By some estimates,

58. With the primary caregiver presumption, the judge makes findings on which parent, if either, performed most of the caregiving functions. If there was a primary caregiver, the court awards primary custody to that parent and awards visitation to the other. The approximation rule allocates time between the two based on time spent, without requiring the court to label one parent or the other as primary. AM. LAW INST., PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 2.08 & cmts. a–b (2002).

59. *Id.* § 2.08 & cmt. a.

60. *Id.* § 2.08; see also Robert F. Kelly & Shawn L. Ward, *Allocating Custodial Responsibilities at Divorce: Social Science Research and the American Law Institute’s Approximation Rule*, 40 FAM. CT. REV. 350, 351–55 (2002) (discussing the approximation rule and the rationales for its adoption). For an explanation of the rule by the reporter for the custody chapter, see Katharine T. Bartlett, *U.S. Custody Law and Trends in the Context of the ALI Principles of the Law of Family Dissolution*, 10 VA. J. SOC. POL’Y & L. 5, 16 (2002).

61. Nancy S. Weinfeld, *Comment on Lamb’s “Placing Children’s Interests First,”* 10 VA. J. SOC. POL’Y & L. 120, 123, 127–28 (2002) (noting the potential negative consequences of creating two “primary caregivers”). See generally Cheri L. Wood, *Childless Mothers?—The New Catch-22: You Can’t Have Your Kids and Work for Them Too*, 29 LOY. L.A. L. REV. 383 (1995) (arguing for custody based on previously established patterns of care and acknowledging the importance of bonding and attachment security).

62. See MACCOBY & MNOOKIN, *supra* note 26, at 197 (“When families had been awarded joint physical custody in their divorce decree, the children quite often . . . actually lived primarily with one parent or the other, rather than in dual residence.”). See generally Wood, *supra* note 61 (arguing for custody based on previously established patterns of care).

63. See generally Margaret F. Brinig, *Does Parental Autonomy Require Equal Custody at Divorce?*, 65 LA. L. REV. 1345 (2005) (discussing the joint custody preference); Fineman, *supra* note 30 (discussing the trend towards joint custody). For a critical review of Brinig’s methodology, see generally William S. Comanor, *Child Visitation and Performance: The Evidence*, 66 LA. L. REV. 763 (2006). For a critical review of Fineman’s work, see generally Milton C. Regan, Jr., *Divorce Reform and the Legacy of Gender*, 90 MICH. L. REV. 1453 (1992).

64. See, e.g., Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 AM. U. J. GENDER SOC. POL’Y & L. 657, 667–88 (2003) (criticizing the courts’ separation of “domestic violence from custody/visitation”).

domestic violence occurs in as many as seventy percent of the high-conflict custody cases.⁶⁵ In light of this shocking statistic, in the last two decades, child advocates from different communities have collaborated to highlight the problems of children and domestic violence.⁶⁶

The law of child custody only recently has acknowledged the harm that children suffer from living in households with domestic violence. At one point in our legal history, judges hesitated to consider domestic violence in deciding child custody disputes as long as the batterer did not physically assault the child.⁶⁷ In fact, during the height of the movement for joint physical custody, judges appeared suspicious when mothers alleged domestic violence.⁶⁸ Parents were supposed to cooperate with each other and promote the child's relationship with the other parent. "Friendly parent" statutes promised more parenting time to parents willing to cooperate and threatened less parenting time to parents who did not. With more and more states urging parents to cooperate, mothers who alleged domestic violence appeared more and more uncooperative.

Advocates against domestic violence began to track what was happening in custody litigation where a party, usually the mother, claimed to be the victim of domestic violence. From family court records, the data revealed that if the mother raised the issue of domestic violence, it lowered her chance of having custody of her children.⁶⁹ Studies of trial and appellate cases across the country documented judges' tendencies to find against mothers who complained of domestic violence in custody cases.⁷⁰ Surveys indicated that judges thought that partner violence was irrelevant to custody⁷¹ or that statutory and common law rules favoring joint

65. Janet R. Johnson, *High-Conflict Divorce*, FUTURE CHILD., Spring 1994, at 165, 168.

66. In families where minor children are present, "domestic violence" is more properly termed "family violence." See Peter G. Jaffe, *Children of Domestic Violence: Special Challenges in Custody and Visitation Dispute Resolution*, in DOMESTIC VIOLENCE AND CHILDREN: RESOLVING CUSTODY AND VISITATION DISPUTES 20 (Janet Carter et al. eds., 1995).

67. Mahoney, *supra* note 15, at 46.

68. Meier, *supra* note 64, at 668-69.

69. RUTH I. ABRAMS & JOHN M. GREANEY, REPORT OF THE GENDER BIAS STUDY OF THE SUPREME JUDICIAL COURT 62-63 (1989).

70. ELIZABETH M. SCHNEIDER, BATTERED WOMEN & FEMINIST LAWMAKING 170-72 (2000); Mahoney, *supra* note 15, at 44-46; Meier, *supra* note 64, at 684-85.

71. Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAND. L. REV. 1041, 1072 & n.171 (1991); Karen Czapanskiy, *Domestic Violence, the Family, and the Lawyering Process: Lessons from Studies on Gender Bias in the Courts*, 27 FAM. L.Q. 247, 255-58 (1993).

physical custody required them to give batterers rights of supervised visitation without analyzing the danger for the child and victim/parent.⁷²

The fact that victims were losing custody of their children to batterers came as no surprise to some advocates against domestic violence. Some commentators pointed to the characteristics of the batterer, especially the batterer's need to control, to explain these incongruous results in custody cases. An award of custody to the batterer gives the batterer a way to extend control over the victim,⁷³ which explains why batterers contest custody twice as often as nonbatterers.⁷⁴ This finding persists even though the batterer was not previously involved in caregiving for the child.⁷⁵ Moreover, batterers are "skillfully dishonest," giving them advantages in credibility contests with their victims.⁷⁶ The anger and emotions of victims, on the other hand, make them less effective communicators, especially in the courtroom.⁷⁷ Likewise, the victim is often depressed, which may enable the batterer to convince the judge of his or her superior skills as a parent.⁷⁸ Economics usually favor the batterer as well. Because the batterer frequently controls the parties' finances, the batterer is likely to appear more economically stable than the victim.⁷⁹ Taken together, these and other factors can result in a larger proportion of batterers having custody than nonbatterers.⁸⁰

In the meantime, child psychologists had begun to document the harmful effect of domestic violence on children. Regardless of

72. Judith G. Greenberg, *Domestic Violence and the Danger of Joint Custody Presumptions*, 25 N. ILL. U. L. REV. 403, 404, 411 (2005).

73. Evan Stark, *Re-presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 1016-17 (1995).

74. AM. PSYCHOLOGICAL ASS'N, VIOLENCE AND THE FAMILY 40 (1996).

75. See CATHERINE KIRKWOOD, LEAVING ABUSIVE PARTNERS: FROM THE SCARS OF SURVIVAL TO THE WISDOM FOR CHANGE 54-55 (1993); EINAT PELED & DIANE DAVIS, GROUPWORK WITH CHILDREN OF BATTERED WOMEN: A PRACTITIONER'S GUIDE 8 (1995).

76. LUNDY BANCROFT & JAY G. SILVERMAN, THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS 124 (2002).

77. JUDITH LEWIS HERMAN, TRAUMA AND RECOVERY 246 (1997); Joan S. Meier, *Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 HOFSTRA L. REV. 1295, 1328-29 (1993).

78. Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1216-17 (1993).

79. See Joan Zorza, *Protecting the Children in Custody: Disputes When One Parent Abuses the Other*, 29 CLEARINGHOUSE REV. 1113, 1118 (1996).

80. Martha McMahon & Ellen Pence, *Doing More Harm than Good? Some Cautions on Visitation Centers*, in ENDING THE CYCLE OF VIOLENCE: COMMUNITY RESPONSES TO CHILDREN OF BATTERED WOMEN 186, 187 (Einat Peled et al. eds., 1995).

whether batterers physically battered their children, the children suffered. Children who witness battering, like children who are battered, learn violent behavior and repeat it.⁸¹ Studies estimate that children witness about half of the incidents of domestic violence.⁸² These children are more aggressive towards other children, more oppositional, more likely to be cruel to animals, and more likely to use drugs and alcohol.⁸³ These children suffer severe psychological injuries as a result of witnessing domestic violence,⁸⁴ with psychological symptoms and syndromes that may extend throughout childhood and beyond.⁸⁵ Children in families with violence have difficulty in school and are at a higher risk of being suspended or expelled.⁸⁶ The symptoms resemble posttraumatic stress disorder,⁸⁷ and some children even experience irreversible changes in their brain structures.⁸⁸

We know now, too, that even if batterers have physically injured only adult intimate partners, they are statistically likely to eventually inflict physical injuries on their children.⁸⁹ Many batterers inadvertently injure their children in the reckless violence aimed at the intimate partner.⁹⁰

Because of the impact of domestic violence on children and the results in custody disputes, child advocates and advocates against domestic violence tried to increase judges' awareness of the relationship between domestic violence and custody. This law coalition focused first on judges in family courts. The National Council of Juvenile and Family Court Judges ("NCJFCJ") published its *Model Code on Domestic and Family Violence* in 1994, urging

81. Cynthia Grover Hastings, *Letting Down Their Guard: What Guardians Ad Litem Should Know About Domestic Violence in Child Custody Disputes*, 24 B.C. THIRD WORLD L.J. 283, 311–12 & n.193 (2004).

82. *Id.* at 308.

83. BANCROFT & SILVERMAN, *supra* note 76, at 37–38.

84. PETER G. JAFFE ET AL., CHILDREN OF BATTERED WOMEN 32–75 (Alan E. Kazdin ed., 1990) (discussing the impact on children who witness domestic violence both “directly through exposure to aggressive models and indirectly through the stress created for the mother”).

85. William Arroyo & Spencer Eth, *Assessment Following Violence-Witnessing Trauma*, in ENDING THE CYCLE OF VIOLENCE: COMMUNITY RESPONSES TO CHILDREN OF BATTERED WOMEN, *supra* note 80, at 27, 29.

86. See Susan F. Cole & M. Geron Gadd, *Uncovering the Roots of School Violence*, 34 NEW ENG. L. REV. 601, 604–14 (2000).

87. David A. Wolfe et al., *The Effects of Children's Exposure to Domestic Violence: A Meta-Analysis and Critique*, 6 CLINICAL CHILD. & FAM. PSYCHOL. REV. 171, 184 (2003).

88. Clare Dalton et al., *High Conflict Divorce, Violence, and Abuse: Implications for Custody and Visitation Decisions*, JUV. & FAM. CT. J., Fall 2003, at 11, 18.

89. BANCROFT & SILVERMAN, *supra* note 76, at 43.

90. MARIA ROY, CHILDREN IN THE CROSSFIRE: VIOLENCE IN THE HOME—HOW DOES IT AFFECT OUR CHILDREN? 92–96 (1988).

states to enact statutes that established a rebuttable presumption against sole or joint custody to violent parents.⁹¹ Various coalitions lobbied state legislatures for statutes establishing presumptions against awards of custody to batterers or for statutes requiring judges to at least make special findings on the evidence of domestic violence.⁹² Today, every state requires courts to consider evidence of domestic violence when deciding child custody, and statutes in twenty-four states recognize a presumption that awarding custody to the batterer is not in the best interests of the child.⁹³

While coalitions succeeded in passing this legislation to reform the handling of custody in family courts, the impact has disappointed some who have followed the results.⁹⁴ Anecdotally, various groups shared their concerns that the statutory efforts had little effect, and later empirical studies from Alaska, Arizona, Massachusetts, Pennsylvania, and California tend to support that conclusion.⁹⁵

Frustrated with the lack of progress in the handling of children and domestic violence, the NCJFCJ and the Association of Family and Conciliation Courts (“AFCC”) convened a Wingspread Conference in 2007 on high-conflict custody cases, many of which, the organizers knew, involved domestic violence.⁹⁶ The attendees at the NCJFCJ and AFCC Wingspread Conference identified five central sets of issues facing those working at the intersection of domestic violence and court systems: differentiation among families experiencing domestic violence; screening and triage; participation by families in various processes and services; appropriate outcomes for children; and family court roles and resources.⁹⁷ The report emphasized the need for continued multidisciplinary collaboration that integrates all five of these issues in order to better serve

91. MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE § 401 (Nat’l Council of Juvenile and Family Court Judges 1994).

92. See Nancy K. D. Lemon, *Statutes Creating Rebuttable Presumptions Against Custody to Batterers: How Effective Are They?*, 28 WM. MITCHELL L. REV. 601, 604–05 (2001).

93. Gonzalez & Reichmann, *supra* note 21, at 198 (noting that every state except Connecticut had passed a statute addressing domestic violence in custody awards). Connecticut has since enacted a statute addressing the topic. CONN. GEN. STAT. § 46b-56(c)(14) (2009).

94. Lemon, *supra* note 92, at 667.

95. Sharon K. Araji & Rebecca L. Bosek, *Domestic Violence, Contested Child Custody, and the Courts: Findings from Five Studies*, in DOMESTIC VIOLENCE, ABUSE, AND CHILD CUSTODY: LEGAL STRATEGIES AND POLICY ISSUES, *supra* note 17, at 6-1, 6-16 to 6-17.

96. Nancy Ver Steegh & Clare Dalton, *Report from the Wingspread Conference on Domestic Violence and Family Courts*, 46 FAM. CT. REV. 454, 454–55 (2008).

97. *Id.* at 455–65.

families affected by domestic violence.⁹⁸ At the conclusion of the conference, the organizers urged courts to identify and explore conceptual and practical tensions that had hampered effective work with families in which domestic violence had been identified.⁹⁹

As these various courts began to share their findings, the reformers concluded that many families experiencing violence and custody issues never made it to family court; they were in domestic violence court instead.¹⁰⁰ The next round of legislative reforms, therefore, focused on domestic violence courts, culminating in the legislation described above.¹⁰¹ This legislation encouraged judges in civil domestic violence court to address the custody issue with a temporary order of custody when the plaintiff was entitled to a protective order and told the court that the custody of a minor child was also in issue.¹⁰² At the same time, a number of states passed statutes and changed local rules in order to facilitate the entry of temporary custody orders, most specifically by making custody GALs available to the court to gather information for the judge.¹⁰³ These efforts reflected the concern that the consequences of not addressing custody in domestic violence orders are far more serious than have been documented to date.

II. THE STUDY

A. *The Parameters of the Study*

While researchers have gathered data about the handling of domestic violence in cases in family court,¹⁰⁴ no one has studied court records of whether, and if so, how, judges handle requests for custody in domestic violence court. For many reasons, the Twenty-First Judicial District of North Carolina provided a natural testing ground.

A number of factors suggested that if the statutory reforms would have an impact, the domestic courts of the Twenty-First Judicial District of North Carolina would reflect it. First of all, of the legislation addressing custody in domestic violence court, North Carolina passed one of the more comprehensive statutes. In 2004, the General Assembly amended Chapter 50B, the chapter dealing with the civil action for a domestic violence protective order

98. *Id.* at 466.

99. *Id.* at 468.

100. *See, e.g., Domestic Violence Issues in District Court Civil Cases*, N.C. CT. SYS., <http://www.nccourts.org/Citizens/SRPlanning/Documents/dome2007-2008.pdf> (last visited Nov. 1, 2012) (providing statistics on the number of domestic violence cases in North Carolina).

101. *See supra* notes 21–24 and accompanying text.

102. *See, e.g.,* N.C. GEN. STAT. § 50B-3(a), (a1) (2011).

103. Gonzalez & Reichmann, *supra* note 21, at 202–03.

104. Araj & Bosek, *supra* note 95, at 6-14 to 6-17.

("DVPO"), giving guidance to judges on how to handle custody issues.¹⁰⁵ The amendments provide that in ex parte orders, the judge has the authority to enter a temporary order for custody if he or she finds that the child is "exposed to a substantial risk of physical or emotional injury or sexual abuse."¹⁰⁶ For orders after notice and service of process, the statute provides that, if the judge finds that an act of domestic violence has occurred and orders a protective order, upon the request of either party, the judge "shall consider and may award temporary custody," and the statute gives a long list of things for the judge to consider.¹⁰⁷ The statute also specifically recognizes the role of a GAL or attorney for the minor child.¹⁰⁸ In addition, the amendments make clear that custody orders in domestic violence court are temporary orders.¹⁰⁹ As a temporary order, if a party later seeks a different custody order, the court will not apply the higher burden of proof that the law imposes to modify a permanent order of custody.¹¹⁰

While the statute made all of the North Carolina courts a good testing ground for how judges in domestic violence court were responding to the statutory changes, several other factors singled out the Twenty-First Judicial District, comprised of Forsyth County, from all the districts in the state. National studies had identified coordinated services in its litany of best practices.¹¹¹ In 2005, Forsyth County received a grant from the United States Department of Justice ("DOJ") to provide integrated services to victims of domestic violence.¹¹² These services encourage victims to feel "Safe on Seven" because representatives from various agencies have offices on the seventh floor of the Forsyth County courthouse in Winston-Salem, North Carolina.¹¹³ Safe on Seven, also known as the Forsyth County Domestic Violence Center, offers victims a "one-

105. 2004 N.C. Sess. Laws 740-41 (codified as amended at N.C. GEN. STAT. § 50B-2(c) (2011)).

106. N.C. GEN. STAT. § 50B-2(c). The statute also gives sample provisions for these orders, like directives to stay away from a child or to return the child, terms for contact, provisions for exchange of the child, suggestions for supervised visitation, and other conditions to protect the minor child and the aggrieved party. *Id.*

107. *Id.* §§ 50B-3(a1)(2)-(3) (emphasis added).

108. *Id.* § 50B-3(a1)(3)(h).

109. *Id.* §§ 50B-2(c), -3(a)(4), -3(a1).

110. REYNOLDS, *supra* note 29, § 13.100(a). "Permanent" orders of custody are modifiable but trigger the substantial change of circumstances standard. *Id.*

111. EMILY SACK, FAMILY VIOLENCE PREVENTION FUND, CREATING A DOMESTIC VIOLENCE COURT: GUIDELINES AND BEST PRACTICES 5-7 (Lindsey Anderson et al. eds., 2002).

112. *Domestic Violence Services for Victims*, FAMILY SERVS., <http://www.fsifamily.org/dvsv.cfm> (last visited Nov. 1, 2012).

113. *Id.*

stop shop” with representatives from the offices of Family Services, the Clerk of Superior Court, the Sheriff’s Department, the District Attorney’s Office, Legal Aid of North Carolina, and others.¹¹⁴

Even before the DOJ grant, Forsyth County had responded to other best practices and created a specialized domestic violence court. In 1998, the chief district court judge, responding to recommendations for best practices issuing from national studies,¹¹⁵ organized the domestic violence court with separate criminal and civil dockets heard on the same day in two different courtrooms.¹¹⁶ With this organization, Chief Judge William Reingold hoped to promote better coordination of cases, more consistency between cases involving the same parties, more consistent procedures, and an increase in the accountability of batterers.¹¹⁷

Finally, we drew our data from Forsyth County because unique resources in that county made judges more likely to utilize the custody GAL, authorized in the 2004 legislation,¹¹⁸ than judges in any other county in the state. A nonprofit organization established in 2005, the Children’s Law Center of Central North Carolina (“CLC”), provided volunteers to serve as custody GALs.¹¹⁹ Not long after the North Carolina legislature amended the domestic violence statute to authorize judges to appoint custody GALs in domestic violence proceedings, the CLC offered its services to judges in Forsyth County to serve as these custody GALs and to train other volunteers from the community, many of whom were local lawyers or law students at Wake Forest University School of Law.¹²⁰ The GALs at CLC and the guardians they trained received specific instruction on domestic violence as well as on other legal, social, and medical issues related to custody in families with domestic violence.¹²¹ There were no other programs in North Carolina and few in the country doing this work.¹²²

114. *Id.*

115. Conversation with William Reingold, Chief Judge, Twenty-First Judicial District of N.C., in Winston-Salem, N.C. (May 20, 2009).

116. *Id.*

117. *Id.*

118. 2004 N.C. Sess. Laws 742–43 (codified as amended at N.C. GEN. STAT. § 50B-3 (2011)).

119. *How We Do It*, CHILD. LAW CENTER CENT. N.C., <http://www.childrenslawcenternc.org/how/Default.aspx> (last visited Oct. 13, 2012); *What We Do*, CHILD. LAW CENTER CENT. N.C., <http://www.childrenslawcenternc.org/what/Default.aspx> (last visited Oct. 13, 2012).

120. *How We Do It*, *supra* note 119; *Legal Areas*, CHILD. LAW CENTER CENT. N.C., <http://www.childrenslawcenternc.org/what/legal-areas.aspx> (last visited Oct. 13, 2012).

121. Lisa Snedeker, *Child Advocacy Clinic Rewarding for Students While Benefitting Piedmont Children*, WAKE FOREST U. SCH. L., <http://news.law.wfu.edu/2012/08/child-advocacy-clinic-rewarding-for-students/>

For all these reasons, we concluded that the Twenty-First Judicial District would be among the more receptive of courts to the statutory efforts to encourage judges to address custody in domestic violence court. Also, characteristics of Forsyth County made the Twenty-First Judicial District a good natural experiment. In many ways, Forsyth County is typical of North Carolina as a whole. It is both urban and rural. The county's estimated 2005 population was 325,967, representing a 6.5% increase from the 2000 census population of 306,067.¹²³ The county seat of Forsyth County, Winston-Salem, with a 2000 population of 185,776, ranks as one of the five largest cities in the state.¹²⁴ The 2003 median household income for Forsyth County was \$41,335, slightly higher than the statewide median of \$39,438.¹²⁵ The average number of persons per household was 2.39,¹²⁶ somewhat less than the statewide average of 2.49.¹²⁷ According to the 2000 census, whites accounted for 68.5% of the county's population, and blacks accounted for 25.6% of the county's population.¹²⁸ The corresponding percentages for the state as a whole were 72.1% and 21.6%, respectively.¹²⁹ As of 2000, the percentage of persons aged twenty-five or older in Forsyth County

(last visited Oct. 13, 2012); *News*, CHILD. LAW CENTER CENT. N.C., <http://www.childrenslawcenternc.org/News/Default.aspx> (last visited Oct. 13, 2012).

122. *How We Do It*, *supra* note 119. For programs in other states, see the description of the Rocky Mountain Children's Law Center Pro Bono Attorney Project in Colorado and the District of Columbia's Children's Law Center Pro Bono GAL project in Gonzalez & Reichmann, *supra* note 21, at 203–06.

123. *People QuickFacts, Forsyth County, North Carolina*, U.S. CENSUS BUREAU, <http://web.archive.org/web/20070419040258/http://quickfacts.census.gov/qfd/states/37/37067.html> (last visited Oct. 13, 2012).

124. U.S. CENSUS BUREAU, COUNTY AND CITY DATA BOOK: 2000, at 656–57 (2000), available at http://www.census.gov/prod/2002pubs/00ccdb/cc00_tabC1.pdf.

125. *Estimates for North Carolina Counties, 2003*, U.S. CENSUS BUREAU, <http://www.census.gov/did/www/saipc/county.html> (select “2003” for “Year,” select “North Carolina” for “State,” and click “Continue”; for “Select areas to display,” select both “North Carolina” and “Forsyth County,” and click “Display Data”) (last updated Oct. 2006).

126. *Profile of General Demographic Characteristics: 2000, Census 2000 Summary File 4*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/bkmk/table/1.0/en/DEC/00_SF4/DP1/0500000US37067 (last visited Oct. 13, 2012).

127. U.S. CENSUS BUREAU, NORTH CAROLINA: 2000, CENSUS 2000 PROFILE 2 (Aug. 2002), available at <http://www.census.gov/prod/2002pubs/c2kprof00-nc.pdf>.

128. *Profile of General Demographic Characteristics: 2000, 2000 Census Summary File 1*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/bkmk/table/1.0/en/DEC/00_SF1/DP1/0500000US37067 (last visited Oct. 13, 2012).

129. U.S. CENSUS BUREAU, *supra* note 127.

who were high school graduates was 82%,¹³⁰ compared to a statewide percentage of 78.1%.¹³¹

Because of these factors, we designed our study to collect data from the Twenty-First Judicial District of North Carolina. We captured an entire population of families in domestic violence court for which custody was in issue, and we followed that population for a number of years after they put both custody and violence before the domestic violence court. We chose 2006 because that year gave time for the 2004 amendments encouraging child custody orders in domestic violence actions to take effect. Also, by 2006, Safe on Seven was fully implemented.

We defined the population as everyone in the Twenty-First Judicial District who asked for a civil DVPO in 2006 and put the issue of custody before the court. From the records of Safe on Seven, we compiled a list of all the petitions for a civil domestic violence order in 2006—1014 filings for a “50B,” the shorthand for a civil domestic violence order under Chapter 50B of the North Carolina General Statutes.

After we compiled the list of all 50B filings in 2006, we developed a data collection form to collect all relevant information from these files. First, we narrowed the 1014 cases to 339 cases in which custody was “in issue.” We concluded that custody was “in issue” if, on the complaint for a 50B, the petitioner checked one of the two boxes that indicated that the petitioner was asking for temporary child custody.¹³² We also concluded that, even if the petitioner did not check either box indicating a request for custody, custody was “in issue” if a judge ordered temporary custody to either party.¹³³

After we compiled this list of 339 cases in which custody was in issue in a civil action for a DVPO, we collected all the data that the court records contained. Students gathered all the available information about the parties, the child, the allegations, the findings, and the conclusions reflected in the file. As explained above, statutes in many states direct the appropriate agencies to

130. *Profile of General Demographic Characteristics: 2000, 2000 Census Summary File 3*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/bkmk/table/1.0/en/DEC/00_SF3/DP2/0500000US37067 (last visited Oct. 13, 2012).

131. U.S. CENSUS BUREAU, *supra* note 127, at 3.

132. *See infra* Appendix I, p. 1 Box 7, p. 3 Box 10. The North Carolina court forms included in this publication are created by the North Carolina Administrative Office of the Courts, which has given permission for the use of these forms in this publication. The North Carolina court forms are the 2006 versions of the forms and not the most current versions of the forms.

133. *See infra* Appendix III, p. 3 “Order” Box 10; Appendix IV, p. 6 “Order” Box 1. Most of the parties in domestic violence court appear pro se. The pleadings reflect that many of the parties fill out these forms with little or no assistance, explaining why they fail to check appropriate boxes or check boxes that are inapplicable.

make forms available for petitioners seeking a civil domestic violence order.¹³⁴ In North Carolina, the Administrative Office of the Courts (“AOC”) developed forms for the Complaint and Motion for Domestic Violence Protective Order,¹³⁵ the Affidavit as to Status of Minor Child,¹³⁶ the Ex Parte Domestic Violence Order of Protection,¹³⁷ and the Domestic Violence Order of Protection, or Consent Order, and Temporary Child Custody Addendum.¹³⁸ The information recorded on these forms provides the bulk of the data that this study describes and analyzes.

We also wanted to follow the members of this population for a number of years after they requested a DVPO and also placed the custody of a minor child before the court. To do this, we took the names of the plaintiffs and the defendants in our 339 cases from the 2006 civil domestic actions in which custody was in issue. With access provided by the North Carolina AOC, we collected data on a cohort of people who obtained an ex parte order and two cohorts of people who obtained a protective order after notice and service of process. We tracked the appearance of these people in any civil or criminal record anywhere in North Carolina from the time of their court appearance in the 2006 civil domestic action through December 2011.

B. Findings: The Parties, the Children, and Their Representation

Contrary to conventional wisdom, not everyone seeking a protective order who also has a minor child asks the court to address custody. In North Carolina, studies across the state reveal that in about 57% of actions for a civil protective order, the plaintiff and defendant have a child in common.¹³⁹ Applying this percentage to the year of our population, which generated 1014 filings for a domestic violence order, one would expect that in approximately 578 of these cases (1014 x 57%), the parties had a child in common. In our data, however, only in 339 cases did the parties indicate that custody was in issue. In other words, using 578 as an approximation of the cases in which the parties had a child in

134. See *supra* note 8 and accompanying text.

135. See *infra* Appendix I.

136. See *infra* Appendix II.

137. See *infra* Appendix III.

138. See *infra* Appendix IV.

139. *E.g.*, N.C. Criminal Justice Analysis Ctr., *supra* note 1, at 1, 5 (basing information on a 2000 survey of twenty-five counties in North Carolina, including Forsyth). While the studies did not indicate whether all of these were minor children, other findings indicated that they were. For example, the studies referred to the “custody” of the child, with 88.7% of the children in common in the “custody” of the plaintiff. *E.g.*, *id.* at 4. Moreover, the average age of the plaintiffs in the study was thirty-four years old, strongly suggesting that the children in common were minor children. *Id.* at 2.

common, we found that the parties put custody in issue in 58.7% of the cases, and in 239 of the cases (41.3%), the parties did not. These numbers suggest that a significant percentage of people who ask the court for a protective order do not put the custody of the minor child who lives with them before the court.

1. *Plaintiff and Defendant Demographics*

The demographics of the plaintiffs and defendants in civil domestic cases in which custody is in issue generally reflect the demographics of domestic violence litigation. In 93% of the cases, the records made it possible to determine the age of the plaintiff. The average age of the plaintiff population was 30.4 years old, with a median of 29 years old and a mode of 26 years old. The results were similar for the defendant population: the average age of the defendant population was 31.9 years old, with a median of 30 years old and a mode of 24 years old.

In 334 of the 339 cases, the data indicated the gender of the plaintiff. By far, most of the plaintiffs were female: 296 cases (89%). In 338 of the 339 cases, the data indicated the gender of the defendant. Again, most defendants were male: 296 cases (88%).¹⁴⁰

On racial characteristics, the records provided information only for defendants and revealed that African-Americans were overrepresented compared to their numbers in the general population. In the 331 cases in which the records identified the race of the defendant, 157 of them were Caucasian (47.4%). African-Americans accounted for 136 defendants (41.1%). Latinos represented 34 of the defendants (10.3%). Asians and Indians each had 2 defendants among the population (less than 1%). Table 1 depicts a cross-tabulation for defendants' race by gender.

TABLE 1: DOMESTIC VIOLENCE DEFENDANTS BY RACE AND GENDER*

	White	African-American	Latino	Asian	Indian	Total
Female	30 (9.1%)	10 (3%)	2 (.6%)	0	0	12.7%
Male	127 (38.5%)	125 (37.9%)	32 (9.7%)	2 (0.6%)	2 (0.6%)	87.3%
Total	157 (47.6%)	135 (40.9%)	34 (10.3%)	2 (0.6%)	2 (0.6%)	100%
*Note: The percentages in this table do not necessarily match those reported above due to differences in the denominators; missing data affect the differing base calculations and subsequent percent distributions.						

140. The forms do not always contain the information that they are designed to collect; therefore, missing data affect the base calculations and subsequent percent distributions.

2. *The Children*

The disputes over custody and domestic violence involved more families with one child than any other number of children, most of whom were young. In 336 of the cases, the plaintiff had identified the number of children involved in the proceeding. In 191 of them, the complaint involved only one minor child (56.8%). In 98 of the cases, the complaint identified two children (29.2%), and in 41 of the cases, the complaint identified three children (12.2%). Only 6 of the cases involved more than three children (1.8%).

The records provided the ages of the children in 333 cases. For the many complaints involving only one child, the average age of the child was six years old, with a median of four and a half years old and a mode of an infant one month old or less. For the complaints involving a second child, the average age of the child was also six years old, with a median of a little over five years old and a mode of one month old or less. For the few cases involving a third child, the average age of the child was five years old, with a median of four years old and a mode of nine months. These high incidences of complaints for a protective order in families with an infant suggest a significant increase of conflict associated with the birth of a child. The majority of the complaints, however, involved parents in their early thirties with one or two young children allegedly exposed to violence.

3. *Their Representation*

As in civil domestic violence proceedings across the country, lawyers were largely absent from these proceedings. Among the ex parte orders, the plaintiff had an attorney in only 31 of the 333 cases (9%) where an order was entered, either granting or denying the order. In cases in which a protective order was entered after notice and service of process, commonly called a “ten-day order” in North Carolina,¹⁴¹ the plaintiff had an attorney in only 74 of the 301 cases (25%), either granting or denying the order. An attorney represented the defendant at the hearing for a ten-day order in slightly fewer of the cases—64 of the 301 cases (21%). Tables 2 and 3 depict a cross-tabulation for representation at the hearing for a ten-day order by gender.

141. This Article distinguishes between the ex parte order under N.C. GEN. STAT. § 50B-2(c) and the order after notice and service of process under N.C. GEN. STAT. § 50B-3 by the phrases “ex parte order” and “ten-day order” respectively. The statute on ex parte orders requires a hearing within ten days from the issuance of the order or within seven days from the date of service of process on the defendant, whichever occurs later. N.C. GEN. STAT. § 50B-2(c) (2011). For this reason, the legal community uses the phrase “ten-day order” to refer to the order after notice and service of process.

TABLE 2: PLAINTIFFS IN TEN-DAY ORDER HEARINGS
BY REPRESENTATION AND GENDER*

	Plaintiff represented	Plaintiff not represented	Totals/Percentages
Female	64 (21.5%)	196 (65.8%)	260 (87.3%)
Male	9 (3%)	29 (9.7%)	38 (12.7%)
Total	73 (24.5%)	225 (75.5%)	298 (100%)
*Note: The percentages in this table do not necessarily match those reported above due to differences in the denominators; missing data affect the differing base calculations and subsequent percent distributions.			

TABLE 3: DEFENDANTS IN TEN-DAY ORDER HEARINGS BY
REPRESENTATION AND GENDER*

	Defendant represented	Defendant not represented	Totals/Percentages
Female	8 (2.7%)	31 (10.3%)	39 (13%)
Male	56 (18.7%)	205 (68.3%)	261 (87%)
Total	64 (21.4%)	236 (78.6%)	300 (100%)
*Note: The percentages in this table do not necessarily match those reported above due to differences in the denominators; missing data affect the differing base calculations and subsequent percent distributions.			

As noted above, one of the reasons why Forsyth County was a good testing ground for the effect of amendments encouraging the handling of custody in domestic violence court was the presence of the CLC, a nonprofit organization providing custody GALs.¹⁴² According to Chief Judge Reingold of the Twenty-First Judicial District, judges in domestic violence court randomly appoint a custody GAL as volunteers trained by the CLC are available.¹⁴³ Of the 339 cases of our population, the CLC appeared in twelve of the cases.

C. *When the Judge Addressed Custody*

1. *How Often*

The first goal of the study was to determine in how many civil protective orders the judge also addressed custody. Before a judge has the authority to address custody in domestic violence court, the plaintiff must be entitled to the relief requested—the protective order. There is little national or state information about the success

142. See *supra* notes 119–21 and accompanying text.

143. Conversation with William Reingold, *supra* note 115.

rate of ex parte protective orders, but we do know the success rate locally. According to Allison Cranford, Director of Safe on Seven, in Forsyth County, plaintiffs receive ex parte orders in about 79% of the cases.¹⁴⁴ Based on our study, the percentage of judges entering the ex parte order when the custody of a minor is also in issue is slightly higher. In our study involving plaintiffs who sought not only a protective order but also put the issue of custody before the court, plaintiffs received the protective order in 274 of the 339 cases (81%) in which custody was in issue.

We do have state information about the success rate for protective orders entered after notice and service of process, called ten-day orders in North Carolina. Statewide, judges enter ten-day orders in only 25% of the cases.¹⁴⁵ There was a much higher success rate in the Twenty-First Judicial District. In our study, of the 339 cases where custody was in issue, there was a ten-day order, either granting or denying the protective order, in 301 cases. Of these 301 cases, the judge granted a ten-day order in 133 of them (44%).

Our study presented the judges in domestic violence court with 274 ex parte orders and 133 ten-day orders in which the judge had the authority to address custody. While Chapter 50B encourages the judge who has entered a protective order to also address custody, the statute sets additional, stringent findings for ex parte orders that are not required for ten-day orders. For ex parte orders, the judge must find that the plaintiff is entitled to the protective order *and* that “the child is exposed to a substantial risk of physical or emotional injury or sexual abuse.”¹⁴⁶ On the other hand, the judge has the authority to enter a custody order addressing custody in a ten-day order simply upon a finding that an act of domestic violence has occurred and that the plaintiff is entitled to the order.¹⁴⁷

Despite the higher standards for ex parte orders, orders in which the judge not only granted the protective order but also addressed custody¹⁴⁸ were much more common in ex parte orders than they were in ten-day orders. Of the 274 cases in which a judge

144. Conversation with Allison Cranford, Dir., Safe on Seven, in Winston-Salem, N.C. (Aug. 15, 2012).

145. Conversation with Alisa Huffman, Senior Manager of Court Programs and Mgmt. Servs., N.C. Admin. Office of the Courts, in Winston-Salem, N.C. (Nov. 13, 2012).

146. N.C. GEN. STAT. § 50B-2(c).

147. *Id.* § 50B-3(a).

148. For the purposes of this study, the judge could “address custody” in a number of different ways. Certainly if the judge awarded temporary custody to one of the parties, then the judge “addressed custody.” But we also counted an order as one that “addressed custody,” even without an award of temporary custody, if the order imposed conditions on access to the child on one of the parties.

entered the ex parte order, the judge addressed the custody issue in 172 of the cases (62.8%). On the other hand, of the 133 cases in which the judge granted the ten-day order, the judge addressed the custody issue in 46 of them (35%). Table 4 reflects these numbers.

TABLE 4: ORDERS ADDRESSING CUSTODY IN EX PARTE AND TEN-DAY ORDERS

Type of order	Was order entered?		Did order also address custody?	
	Entry of order	Percentage	Order also addressing custody	Percentage
Ex parte orders	274/333	82%	172/274	63%
Ten-day orders	133/301	44%	46/133	35%

These numbers reflect the historical reluctance to address custody. Despite the higher standard for awarding custody in ex parte orders, judges were more willing to award temporary custody in an ex parte order that would expire after a short period of time—in North Carolina, after the later of ten days from issuance or seven days after service of process.¹⁴⁹ On the other hand, despite the lower standard for awarding custody in ten-day orders, judges were less willing to address custody in those orders, which could last as long as a year.¹⁵⁰

2. Common Features

After we determined the number of cases in which the judge not only granted the protective order but also awarded custody, we set about trying to see what, if any, features were common to the orders addressing custody.

a. When the Parties Were Represented

While the parties seldom had attorneys, the presence of an attorney was extremely important. Among the 274 cases in which the judge granted an ex parte order, the plaintiff had an attorney in only 22 of them (8%). But every time the plaintiff had a lawyer and the judge granted the ex parte order, the judge also addressed custody in a way favorable to the plaintiff. In other words, in 100% of the cases in which the plaintiff was represented by a lawyer, if the judge granted the protective order, he or she also addressed the custody issue. Judges cite the difficulty of assessing custody-related

149. N.C. GEN. STAT. § 50B-2(c).

150. *Id.* § 50B-3(a1)(4).

facts in an ex parte hearing; it is not surprising then that when a lawyer is present to marshal those facts for the judge, the judge is much more likely to respond with an order addressing custody. But in our study, in another 150 cases in which the plaintiff had no lawyer, the judge who entered the ex parte order also addressed custody in a way favorable to the plaintiff.

TABLE 5: EX PARTE ADDRESSING CUSTODY, BY PLAINTIFF REPRESENTATION

Plaintiff representation	Did the ex parte order also address custody?		
	Addressed custody	Did not address custody	Totals/ Percentages
Represented	22 (8%)	0 (0%)	22 (8%)
Not represented	150 (55%)	102 (37%)	252 (92%)
Total	172 (63%)	102 (37%)	274 (100%)

For the ten-day orders, where the plaintiff *and* defendant might be represented, it is interesting to correlate custody for the plaintiff by plaintiff and defendant representation. Among the 133 cases in which the judge granted the ten-day order, in 46 of them (35%) the judge also addressed custody in a way favorable to the plaintiff, either by awarding the plaintiff temporary custody or by limiting the defendant's access to the child. Table 6 breaks down those 46 cases by plaintiff and defendant representation, with the percentage equaling the number of orders favorably addressing custody for the plaintiff.

TABLE 6: TEN-DAY ORDER WITH CUSTODY BY REPRESENTATION

Plaintiff represented / Defendant represented 15% (7/46)	Plaintiff represented / Defendant not represented 39% (18/46)
Plaintiff not represented / Defendant not represented 37% (17/46)	Plaintiff not represented / Defendant represented 9% (4/46)

A comparison of Tables 5 and 6 reveals some interesting differences. Among the ex parte orders described in Table 5, the order also addressed custody 63% of the time overall, 100% of the time when the plaintiff had a lawyer. In ten-day orders, the judge also addressed custody 35% of the time. In Table 6, that 35% is broken down by plaintiff and defendant representation. The

plaintiff had a lawyer in 54% of the cases in which the judge addressed custody. On the other hand, the absence of a lawyer for the defendant characterizes 76% of the cases in which the judge addressed custody. In other words, at the ten-day hearing, the absence of a lawyer for the defendant had a higher correlation with an order addressing custody than the presence of a lawyer for the plaintiff.

b. Pending Proceedings

The 172 *ex parte* orders and the 46 ten-day orders that also addressed custody have a number of features in common. First, there was some correlation between the allegation of a pending proceeding and the granting of an order, especially an order addressing custody. In the 274 cases where the *ex parte* order was granted, the plaintiff had indicated under Box 3 of the complaint¹⁵¹ that there was some kind of proceeding pending between the parties in 42% of the cases. The judge entered an order that also addressed custody in 44% of the cases when the plaintiff indicated that there was a prior pending proceeding between the parties. The effect was more pronounced depending on the kind of proceeding that the plaintiff said was pending. If the plaintiff identified multiple actions pending—especially if the pending action included an assault or an assault on a female—the *ex parte* order also addressed custody 87% of the time.

Likewise, for the ten-day orders, there was some correlation between the allegation of a pending proceeding and the granting of the ten-day order. In the 133 cases where the ten-day order was granted, the plaintiff had indicated under Box 3 of the complaint¹⁵² that there was some kind of proceeding pending between the parties in 46% of the cases. The judge entered an order that also addressed custody in 48% of the cases when the plaintiff indicated that there was a prior pending proceeding between the parties. The effect was more pronounced depending on the kind of proceeding that the plaintiff said was pending. If the plaintiff identified multiple actions pending—especially if the action included an assault or an assault on a female—the ten-day order also addressed custody 100% of the time. The allegation of criminal conduct either at the *ex parte* or ten-day hearing appears to allay the judges' suspicions that the plaintiff was in court about custody and not about violence.¹⁵³

151. See *infra* Appendix I, p. 1 Box 3.

152. See *infra* Appendix I, p. 1 Box 3.

153. KIM & STARSONECK, *supra* note 10, at 45.

c. Where Did the Plaintiff Put the Facts?

Among the cases granting the ex parte or ten-day protective order, the allegations in the cases in which the judge also addressed custody followed a similar pattern. As the complaint in Appendix I reveals, plaintiffs check Box 4 on the first page of the complaint if they allege that the defendant caused or attempted to cause the plaintiff bodily injury, placed the plaintiff or a member of the plaintiff's family or household in fear of injury or harassment, or committed a sexual offense against the plaintiff.¹⁵⁴ The form provides space under the allegation for specific dates and facts.¹⁵⁵ Because the plaintiff must prove an act of domestic violence in order to receive a protective order,¹⁵⁶ not surprisingly, plaintiffs almost always check Box 4.

Plaintiffs check Box 5 on the first page of the complaint if they allege that the defendant caused or attempted to cause bodily injury to the children, placed the children in fear of imminent serious bodily injury or harassment, or committed a sexual offense against the children.¹⁵⁷ The form provides space under the allegation for specific dates and facts.¹⁵⁸ Plaintiffs check Box 8 on the second page of the complaint, on the other hand, if they allege not that the defendant had actually attempted or caused the injuries to which Box 5 referred but if the minor children were exposed to a substantial risk that they would occur, with space underneath for the plaintiff to give specific details.¹⁵⁹ In other words, Box 5 alleged that the defendant *attempted* or *caused* the conduct which the child merely *faced a substantial risk* of in Box 8. One would think, then, that the conduct in Box 5 was more serious than the conduct in Box 8. Nevertheless, the judge was much more likely to enter an order addressing custody if the plaintiff checked Box 8 than if the plaintiff checked Box 5.

When the plaintiff checked Box 5, the judge addressed custody in 64% of the successful ex parte orders, but when the plaintiff checked Box 8, the judge addressed custody in 83% of the successful ex parte orders. For ex parte orders, a statutory requirement helps explain the difference: the statute regulating ex parte orders limits the judge's authority to award temporary custody to the plaintiff to cases in which the judge "finds that the child is exposed to a substantial risk of bodily injury or sexual abuse."¹⁶⁰ Box 8 most closely corresponds to the statutory language. Even when the

154. See *infra* Appendix I, p. 1 Box 4.

155. See *infra* Appendix I, p. 1 Box 4.

156. N.C. GEN. STAT. § 50B-3(a) (2011).

157. See *infra* Appendix I, p. 1 Box 5.

158. See *infra* Appendix I, p. 1 Box 5.

159. See *infra* Appendix I, p. 2 Box 8.

160. N.C. GEN. STAT. § 50B-2(c).

plaintiff alleged multiple kinds of acts under Box 5, including physical violence against the child, the judge did not address custody in 36% of the successful *ex parte* orders. But when the plaintiff checked Box 8 and alleged the same kind of conduct, judges were much more likely to address custody. In fact, the judge *declined* to address custody in successful *ex parte* orders only 17% of the time when the plaintiff checked Box 8.

The statutory requirement governing *ex parte* awards of custody does not apply to ten-day orders. A judge need not find that “the child is exposed to a substantial risk of physical or emotional injury or sexual abuse” to address custody in a ten-day order. Nevertheless, the phenomenon relating an order addressing custody to a check in Box 8 applied to ten-day orders as well. When the plaintiff checked Box 5, the judge addressed custody in 63% of the successful ten-day orders but addressed custody in 85% of the successful ten-day orders when the plaintiff checked Box 8. Again, even though the plaintiffs described the same kind of conduct in the spaces under Boxes 5 and 8, the judge was more likely to address custody if the allegations appeared under Box 8. In the expedited hearings that necessarily take place in domestic violence court, it appears that the judge may sometimes rely on form over substance for the confidence to address the custody issue.

d. Findings Associated with Orders Addressing Custody

Apart from the use of Box 8 to allege the need for a protective order, there was little in the allegations to distinguish the orders in which the judge also addressed custody from the orders only granting the protective order. We turned to the judges’ findings for distinctions. There was one feature that all the orders addressing custody shared: they all had “additional findings.” Both the form for *ex parte* orders and the form for ten-day orders have pages for additional findings.¹⁶¹ In fact, if the ten-day order addresses custody, there is a special form—the “Temporary Child Custody Addendum”—for yet two more pages of additional findings.¹⁶² On all of these forms, preprinted findings follow boxes that the judge may check to indicate that the judge has found what appears after the boxes—findings that track the statutory requirements for a protective order. In all but one of the *ex parte* orders addressing custody, there were boxes checked for additional findings; in all of the ten-day orders addressing custody, the judges had checked at least some of the boxes indicating that the judge had found the facts indicated after the checked boxes.

161. For *ex parte* orders, see *infra* Appendix III, pp. 2–3. For ten-day orders, see *infra* Appendix IV, p. 2.

162. See *infra* Appendix IV, pp. 5–6.

But these checked boxes do little to explain why some orders addressed custody and others did not. In the 172 ex parte orders addressing custody, the only boxes that were checked a majority of the time indicated that the defendant had placed the plaintiff in fear of imminent serious bodily injury¹⁶³ and that the minor child was exposed to a substantial risk of physical or emotional injury or sexual abuse.¹⁶⁴ In the 46 ten-day orders addressing custody, again, the only boxes that were checked a majority of the time indicated that the defendant had placed the plaintiff in fear of imminent serious bodily injury¹⁶⁵ and that the minor child was exposed to a substantial risk of physical or emotional injury or sexual abuse.¹⁶⁶ Table 7 shows the instances of all the findings supporting ex parte and ten-day orders addressing custody if the findings appeared in at least 10% of the cases. Note that the same findings appeared more than 10% of the time in both types of orders.

TABLE 7: FINDINGS SUPPORTING EX PARTE AND TEN-DAY ORDERS ADDRESSING CUSTODY*

Findings on Defendant's conduct	Numbers and percentages by types of order			
	Ex parte orders	Percentage	Ten-day orders	Percentage
Attempted to cause bodily injury to Plaintiff	40/172	23%	13/46	28%
Intentionally caused bodily injury to Plaintiff	73/172	42%	15/46	33%
Placed Plaintiff in fear of imminent serious bodily injury	109/172	63%	26/46	57%
Placed a member of Plaintiff's family in fear of imminent	35/172	20%	5/46	11%

163. See *infra* Appendix III, p. 2 "Additional Findings" Box 2b.

164. See *infra* Appendix III, p. 2 "Additional Findings" Box 6. Note that this is a requisite finding for an ex parte order of custody. N.C. GEN. STAT. § 50B-2(c).

165. See *infra* Appendix IV, p. 2 "Additional Findings" Box 3b.

166. See *infra* Appendix IV, p. 5 "Findings" Box 3.

serious bodily injury				
Placed Plaintiff in fear of continued harassment	34/172	20%	5/46	11%
Threatened Plaintiff with a deadly weapon	25/172	15%	6/46	13%
Threatened to seriously injure or kill the Plaintiff	29/172	17%	8/46	17%
Threatened to commit suicide	34/172	20%	6/46	13%
Exposed child to a substantial risk of injury or sexual abuse**	154/172	90%	See Temporary Custody Addendum	See Temporary Custody Addendum
*Tabulating findings that appeared in more than 10% of the cases. **For the ten-day order, this finding appears on the Temporary Child Custody Addendum. ¹⁶⁷				

Certainly the forms for the ex parte order and for the ten-day order encourage judges to do more than check a box. Both forms have lines for the judge to fill in under findings for which specific facts are appropriate. For example, under Box 4 on the form for the ex parte order, lines under Box 4e provide space for the judge to indicate specific facts supporting the judge's finding that the defendant inflicted serious injuries upon the plaintiff or minor children.¹⁶⁸ Moreover, the appellate courts have cautioned judges to find specific facts¹⁶⁹ and not rely on checking boxes. Nevertheless, for the ex parte orders, the judges usually did not support the

167. See *infra* Appendix IV, p. 5 "Findings" Box 3.

168. See *infra* Appendix III, p. 2 "Additional Findings" Box 4e.

169. *Hensey v. Hennessy*, 685 S.E.2d 541, 546-47 (N.C. Ct. App. 2009) (finding that the order is sufficient if it incorporates the allegations of the complaint as its "specific facts"). In *Hensey*, the North Carolina Court of Appeals also cautioned judges that the ex parte order requires a hearing, which means something more than the judge reading a verified complaint and reaching a conclusion in chambers. *Id.* at 545.

checked boxes with specific findings. By a wide margin, the most frequent box supporting an ex parte order addressing custody indicated that the minor child was exposed to a substantial risk of physical or emotional injury or sexual abuse.¹⁷⁰ Only for this finding did the judge consistently do more and support the checked box with details. Most often the judge described the child's witnessing of physical abuse against the plaintiff. The next most frequent specific finding described physical violence against the child, followed less frequently by a specific finding about the defendant creating an unsafe environment for the child.

By a lesser but significant margin, the most frequent findings supporting ten-day orders addressing custody were that the defendant placed the plaintiff in fear of imminent serious bodily injury¹⁷¹ and exposed the minor child to a substantial risk of physical or emotional injury or sexual abuse.¹⁷² Even for these findings, the judge rarely supported the checked boxes with specific findings. Likewise, on the Temporary Child Custody Addendum, the judge checked very few findings to support the order and rarely added specific findings in the available spaces. Table 8 gives the checked findings that appeared more than ten percent of the time and gives the most frequently appearing specific findings, noting also the percentage of cases in which that kind of specific finding appeared.

170. See *infra* Appendix III, p. 2 "Additional Findings" Box 6.

171. See *infra* Appendix IV, p. 2 "Additional Findings" Box 3b.

172. See *infra* Appendix IV, p. 5 "Findings" Box 3.

TABLE 8: FINDINGS IN TEMPORARY CUSTODY ADDENDUM SUPPORTING TEN-DAY ORDERS ADDRESSING CUSTODY,* MOST FREQUENTLY APPEARING SPECIFIC FINDING, AND PERCENTAGE OF CASES IN WHICH THE SPECIFIC FINDING APPEARS

Findings	Numbers and percentages		Details and percentages	
	Numbers	Percentages	Specific finding	Percentages
Child exposed to a substantial risk of injury or sexual abuse	23/46	50%	Child present during altercation	9%
Child present during acts of domestic violence	22/46	48%	Witnessed physical violence against Plaintiff or other children	10%
Party caused or attempted to cause serious bodily injury to a party or child	10/46	22%	Physical violence against Plaintiff	4%
Party placed the other party or child in fear of imminent serious bodily injury	8/46	17%	Physical violence against Plaintiff or child	2%
Pattern of abuse against the party or child	7/46	15%	History of physical violence against child	2%
Party has acted otherwise not in the best interest of the child	5/46	11%	Threat of violence against child	1%
Other findings on custody and safety	15/46	33%	Plaintiff is primary caregiver	1%

*Tabulating findings that appeared in more than 10% of the cases.

3. *How Did the Judge Address Custody?*

a. Did the Judge Name a Primary Custodian? Who?

In both the ex parte and ten-day orders addressing custody, the judge either explicitly or implicitly named a primary custodian, who was always the plaintiff. One would expect that result in the ex parte orders because, by definition, the defendant is not present at the hearing. Accordingly, among the 172 ex parte orders in which the judge addressed custody, the plaintiff explicitly received temporary custody in 165 of the cases, and the judge ordered the defendant to stay away from the minor children in the remaining 7, implicitly giving the plaintiff primary physical custody. But the same result followed in the ten-day hearings. Among the ten-day orders, in the 46 cases in which the judge also addressed custody, the judge explicitly ordered temporary custody to the plaintiff in 45 of the cases; the judge ordered joint physical custody in the other case, which involved a hearing that concluded with a consent judgment.

b. How Much Detail on Custody?

To deal with custody in a family with domestic violence, we know that orders addressing custody should be specific. The statutes that encourage judges to address custody in domestic violence court also suggest this specificity, urging the court to make provisions for matters such as the exchange of the child, the terms of supervised visitation, and the use of alcohol or controlled substances during visitation or for twenty-four hours before the exchange of the child.¹⁷³ Likewise, both national¹⁷⁴ and state¹⁷⁵ best practices manuals urge the domestic violence judge who awards custody to recognize that families with domestic violence need custody orders specially drafted with the conflict that has plagued the family in mind. As explained in the *North Carolina Domestic Violence Best Practices Guide for District Court Judges*:

173. N.C. GEN. STAT. § 50B-3(a1)(3) (2011).

174. See generally SACK, *supra* note 111 (articulating a model for courts comprehensively to address the issues of families dealing with domestic violence).

175. N.C. ADMIN. OFFICE OF THE COURTS, NORTH CAROLINA DOMESTIC VIOLENCE BEST PRACTICES GUIDE FOR DISTRICT COURT JUDGES 47–48 (2012) (discussing issues to consider when deciding whether to grant visitation and deciding visitation terms). See also the benchcard that the North Carolina Administrative Office of the Courts gave to all district court judges encouraging the judges to address custody in domestic violence court. KELLIE MYERS, N.C. ADMIN. OFFICE OF THE COURTS, JUDICIAL STRATEGIES FOR DOMESTIC VIOLENCE COURTS BENCHCARD 2 (2012), available at <http://www.nccourts.org/Citizens/CPrograms/Victims/Documents/dvbp-benchcard.pdf>.

When temporary custody is granted, it is important to be specific and detailed in describing allowable contact, including the exchange of children or any other types of communication regarding the children. Not addressing the issue opens the door for harassment; for the children to be caught in the middle and possibly used as a means to threaten and abuse the victim; and for parties to misunderstand the behavior that is prohibited by the order.¹⁷⁶

In our study, however, the orders addressing custody had few details, especially the *ex parte* order. The *ex parte* form facilitates certain additional findings about custody by enabling the judge to check a box beside the text that addresses custody. For example, Box 7 allows the judge to check a box that finds that the defendant should stay away from the child, that the defendant should return the child to the plaintiff, or that the defendant should not remove the child from the plaintiff.¹⁷⁷ By checking a different box, the judge may award temporary custody to the plaintiff;¹⁷⁸ by checking yet another box, the judge may order the defendant not to remove the child from the plaintiff.¹⁷⁹ On the other hand, by checking a different box, the judge may allow the defendant contact with the child.¹⁸⁰ The judge is not limited to box checking, however. In three places on the form for the *ex parte* order, there is space for the judge to elaborate on terms for custody and visitation; the placement of the spaces indicates where specific detail is especially important. For example, Box 8 of the additional findings¹⁸¹ and Box 11 of the order¹⁸² both relate to contact with the child, and lines beneath both boxes indicate that provisions for contact need specific detail. The last box on the order, more generally, provides spaces for anything else the judge wishes to address.¹⁸³

The *ex parte* form, however, has not resulted in specific details on custody. Among the 172 *ex parte* orders in which the judge addressed custody, 128 of them (74%) had no specific details on custody, just checked boxes. The boxes most often checked included Box 7 of the additional findings where the judge finds that the defendant should stay away from the child¹⁸⁴ and which implicitly orders temporary physical custody to the plaintiff; and Box 10 of the

176. N.C. ADMIN. OFFICE OF THE COURTS, *supra* note 175, at 48. For an example of provisions to include on local forms, see *id.* at 48–50. For a sample visitation worksheet, see *id.* at 113.

177. See *infra* Appendix III, p. 2 “Additional Findings” Box 7.

178. See *infra* Appendix III, p. 3 “Order” Box 10.

179. See *infra* Appendix III, p. 3 “Order” Box 10c.

180. See *infra* Appendix III, p. 3 “Order” Box 11.

181. See *infra* Appendix III, p. 2 “Additional Findings” Box 8.

182. See *infra* Appendix III, p. 3 “Order” Box 11.

183. See *infra* Appendix III, p. 4 “Order” Box 15.

184. See *infra* Appendix III, p. 2 “Additional Findings” Box 7.

order where the judge explicitly awards temporary custody to the plaintiff.¹⁸⁵

That means that among the 172 *ex parte* orders in which the judge addressed custody, only 44 of them provided any specific details on custody. And, in fact, most of the handwritten notes under the boxes merely reiterate the direction in the box—for example, underscoring that the defendant is to have no contact with the child. A few of the notes referred to supervised visitation, either generally or with a few details on how the visitation was to be supervised. A smaller number referred to the need for an additional hearing or the input of another agency, and a still smaller number referred to an agreement on custody. Table 9 summarizes the specific details, organizing them by the topic to which they related and the subject matter of the box under which they appeared (either “Defendant’s contact” or “Other”) and giving the number of orders in which they appeared.

TABLE 9: SPECIFIC DETAIL ON CUSTODY IN EX PARTE ORDERS

Topic of specific detail	Subject of box under which detail appeared	
	Defendant’s contact	Other
No contact	21/44	4/44
Supervised visitation with specifics	8/44	
Supervised visitation, no specifics	1/44	
Need for additional hearing or other agency input		5/44
Reference to other agreement	1/44	

As one would expect, the ten-day orders were different. The forty-six ten-day orders addressing custody all had some specific details on the Temporary Custody Addendum. The addendum provides spaces for specific detail. First, in Box 4 of the findings, the judge can add details on the best interests of the child and safety.¹⁸⁶ Then, in Box 2 of the order, the judge can add details on several things: whether visitation should be supervised, and if so, how; whether visitation should be unsupervised, and if so, the location, frequency, and length of visitation; transportation of the child and the place of visitation; and any other restrictions.¹⁸⁷ Table 10 summarizes the specific details, organizing them by the topic to

185. See *infra* Appendix III, p. 3 “Order” Box 10.

186. See *infra* Appendix IV, p. 6 “Findings” Box 4.

187. See *infra* Appendix IV, p. 6 “Order” Box 2.

which they related and the subject matter of the box under which they appeared, and giving the number of orders in which they appeared.

TABLE 10: SPECIFIC DETAIL ON CUSTODY IN THE TEMPORARY CUSTODY ADDENDA OF TEN-DAY ORDERS

Kind of restriction	Subject matter of box under which detail appeared				
	General observations on custody and safety	Restrictions on visitation	Starting place for exchange	Concluding place for exchange	Other restrictions
Parties have agreed	6/46				
Referral to other court or agency	3/46				3/46
Custody to third party	1/46	1/46			
Contact or visitation through third party		4/46			
Supervised visitation – with specifics		8/46			8/46
Supervised visitation – without specifics		4/46			4/46
Third party residence			3/46		
Designated public place			3/46	4/46	
Designated time/day			1/46	1/46	5/46
Plaintiff's residence			1/46	1/46	
Defendant's residence			1/46		
Third party residence				4/46	
May not remove child from state				1/46	

Because these orders need to be specific,¹⁸⁸ and because the ten-day order may last up to a year,¹⁸⁹ one would expect significant detail. While all of the ten-day orders had some specific detail, a number of them provided nothing in the way of safety. Several depended on the parties' agreement or directed the parties to use another court or agency. Too many of them provided for visitation without specifics. Other orders contemplated that the parties would come in contact with each other by providing for an exchange of the child at a certain day and time with no other restrictions or providing for an exchange of the child at one party's residence with no other restrictions.

D. Actions Subsequent to the 2006 Civil Domestic Violence Action: Life in the Emergency Room

A dramatic part of our study unfolded as we tracked various cohorts of our population for five years after the 2006 domestic violence action. The data collected in this process proved the aptness of the emergency room label for domestic violence court as the people in our population returned again and again to domestic violence court to allege violence in their families. The data also suggest that the violence in these families is real. We know that judges have been reluctant to address custody in domestic violence court in part due to their suspicions that parties had filed complaints in domestic violence court not because violence was a part of their families but because these plaintiffs wanted to have a judge address custody in the more pro se friendly, less expensive setting of domestic violence court. Contrary to these suspicions, the data indicate violence in many of these families over a sustained period of time, manifesting itself in different forms. While these families often returned to domestic violence court, they were also often in criminal court—in actions in which one member was a complaining witness against the other, alleging a variety of violent crimes for which there were many convictions.

Our population consisted of all the people who appeared in the 339 civil domestic violence cases in 2006 in which custody was also in issue. From that population we identified three different cohorts. One larger group that we subdivided included the people in the 133 cases that concluded with a ten-day order granting the protective order. Those 133 cases, of course, involved 266 people who appeared as either plaintiffs or defendants. All of these 266 people became part of Cohort 1. For reasons explained below, we further subdivided the 266 people in Cohort 1 into "Cohort 1A Custody," for the 92 people in the 46 cases in which the judge addressed custody

188. See *supra* note 172 and accompanying text.

189. N.C. GEN. STAT. § 50B-3(a1)(4) (2011).

in the ten-day order, and “Cohort 1B No Custody,” for the 174 people in the 87 cases in which the judge granted the ten-day order but did not address custody.

We derived the final cohort, Cohort 2, from the people in the 91 *ex parte* cases in which the judge granted the protective order and addressed custody but which did not conclude in a ten-day order. This third cohort involved the 182 people who were either plaintiffs or defendants in these 91 *ex parte* only cases.

We tracked the 448 people in Cohorts 1A, 1B, and 2 for five years—from the time of their appearance in the 2006 civil domestic action until December 2011. With access provided by the North Carolina AOC, we determined whether any of the people in these three cohorts appeared in civil or criminal records anywhere in North Carolina. For the people who did not, we checked to make sure that they continued to reside in North Carolina, and all of them did. If they failed to appear in these records, in other words, it was not because they no longer resided in North Carolina.

For this study, we have reported only a fraction of all the subsequent actions in which the three cohorts were involved. We did this for several reasons. First, we have reported only subsequent civil and criminal actions alleging violence in the families involved in the 2006 study. For the subsequent criminal actions, for example, we have reported the criminal actions in which the defendant in the criminal action was either the plaintiff or defendant in the 2006 civil domestic action *and* in which the other party in the 2006 action was the complaining witness in the subsequent criminal action. In other words, all of these subsequent criminal actions allege violence between the adults in the 2006 civil action within five years of the civil action.

Second, we excluded many criminal actions in which our cohorts were involved because, for many of them, the data did not give the identity of the complaining witness. Because the records did not include the identity of a child, we also have not included the many subsequent criminal actions involving a member of one of our cohorts where the alleged victim was a child. So in this fraction of the subsequent criminal actions involving the adults in our population, we know that the defendant in the subsequent criminal action was one of the adults in the 2006 civil action for a protective order and the complaining witness was the other party to the same action. In these subsequent criminal actions, we see the members of our cohorts charged with violations of domestic violence protective orders, violations of other court orders, assaults, kidnappings, communicating threats, thefts, and domestic trespasses—allegations of significant family violence. Even reporting a fraction of the subsequent criminal actions, the charts of the three cohorts reveal that many of the people in these three cohorts appeared in many subsequent criminal actions alleging violence in the family.

Third, we limited the subsequent civil actions we reported in this study to civil actions under Chapter 50B between the two people in the 2006 civil domestic action. Like the criminal actions, the 50B actions reflect only a fraction of the civil actions subsequent to the 2006 civil domestic violence action in which the members of our cohorts were involved. These omitted civil actions (which we will analyze in articles to follow) include all the subsequent family court proceedings for custody and child support and subsequent proceedings for alimony and equitable distribution between the parties who were married. The omitted civil actions also include a wide range of civil actions by creditors of the people in our cohorts. In later studies, we will analyze the relationship, if any, of what happens in domestic violence court to these other kinds of subsequent criminal and civil actions.

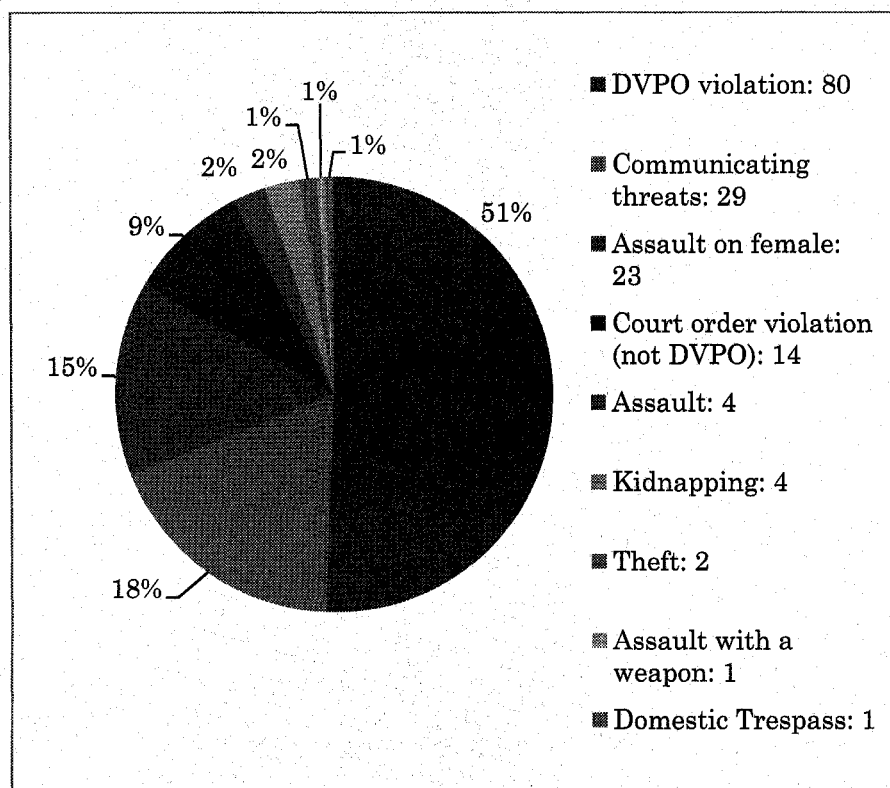
Limiting ourselves, at least for this part of our study, to subsequent criminal and civil actions alleging violence between the adults in the 2006 population, we divided the 448 people into Cohorts 1A, 1B, and 2. We devised these groups to see if an order addressing custody in a ten-day order, Cohort 1A, appeared to be associated with fewer subsequent actions alleging family violence, at least as measured by the cohort's appearance in certain kinds of subsequent civil and criminal actions. For that reason, we grouped the 92 plaintiffs and defendants in the 46 cases where the judge addressed custody in a ten-day order into Cohort 1A so that we could compare them with the 174 plaintiffs and defendants in the 87 cases where the judge entered a ten-day order without addressing custody, Cohort 1B. We also grouped the 182 plaintiffs and defendants in the 91 cases which concluded with *ex parte* orders addressing custody and not with ten-day orders. In other words, for these people in Cohort 2, the judge addressed custody in an order that expired at the end of ten days. We wanted to see if the results showed fewer actions related to subsequent family violence in Cohort 1A than in Cohorts 1B or 2 because the court addressed custody in the ten-day order only in Cohort 1A.

Before comparing the experiences of Cohorts 1A, 1B, and 2, we should note that the sheer number of subsequent actions is staggering. While these subsequent actions reflect only a fraction of the subsequent actions involving the three cohorts, the 448 people in the total of these three cohorts were involved in 552 subsequent criminal and civil actions alleging violence with their partner in the five years after they appeared in the 2006 civil domestic violence action. The subsequent actions were divided between 158 criminal actions and 394 civil actions.

As explained above, we limited the subsequent civil actions to those in which one of the parties in the 2006 civil domestic action filed a subsequent action for a 50B order against the other party—a total of 394 actions. We limited the subsequent criminal actions to

those in which the defendant was a party to the 2006 civil action for a DVPO and the complaining witness in the subsequent criminal action was the other party in the 2006 civil action for a DVPO. Even so, there were 158 subsequent criminal actions, alleging nine different crimes. Most of the 158 subsequent criminal actions alleged violations of DVPOs—80 of them (63.5%). The next most frequent subsequent criminal action alleged communicating threats, followed by actions alleging assaults on a female, violations of court orders other than protective orders, assaults with and without a weapon, kidnappings, thefts, and domestic trespasses. The court order violations other than violations of DVPOs alleged probation violations and contempt proceedings for alleged violations of orders other than DVPOs, but including no contact orders. Figure 1 breaks down the subsequent criminal actions by type.

FIGURE 1: SUBSEQUENT CRIMINAL ACTIONS ALLEGING FAMILY VIOLENCE



In the criminal actions, there was an overall conviction rate of 41%. In the civil actions, the judge granted the protective order in 225 of the cases (57%). Table 11 indicates the conviction rates in subsequent criminal actions and the order rates in the subsequent

civil actions. These numbers, conviction rates, and order rates substantiate real, significant amounts of violence in these families.

TABLE 11: CONVICTION AND ORDER RATES IN SUBSEQUENT ACTIONS

Criminal actions (n=158)	Numbers and percentages of convictions		Civil actions (n=394)	Numbers and percentage of orders	
DVPO violation	35/80	44%	Domestic violence	225/394	57%
Communicating threats	11/29	38%			
Assault on female	12/23	52%			
Court order violation (not DVPO)	2/14	14%			
Assault	2/4	50%			
Kidnapping	3/4	75%			
Theft	1/2	50%			
Assault with weapon	1/1	100%			
Domestic trespass	0/1	0%			

As explained above, we devised three cohorts. Tables 12,¹⁹⁰ 13,¹⁹¹ and 14,¹⁹² published separately online, reflect the experiences of these three cohorts, as reflected in subsequent criminal actions alleging violence in the family and in subsequent civil actions under Chapter 50B.

These tables reveal that in Cohort 1A, in which the judge granted the ten-day order and addressed custody, there were subsequent actions alleging violence, either civil or criminal, in 17 of the 46 cases (37%). In Cohort 1B, in which the judge granted the ten-day order but did not address custody, there were subsequent actions in 26 of the 87 cases (30%). In Cohort 2, in which the judge granted the ex parte order addressing custody but did not enter a ten-day order, there were subsequent actions in 37 of the 91 cases (41%). By these numbers, entering the ten-day order seems to be

190. Suzanne Reynolds & Ralph Peeples, *When Petitioners Seek Custody in Domestic Violence Court and Why We Should Take Them Seriously*, tbl.12, WAKE FOREST L. REV., http://wakeforestlawreview.com/wp-content/uploads/2012/11/Reynolds_Peeples_Tables_12-14.pdf (last visited Nov. 26, 2012).

191. *Id.* at tbl.13.

192. *Id.* at tbl.14.

associated with fewer allegations of subsequent violence (Cohorts 1A and 1B as compared to Cohort 2). Although Cohort 1B had fewer allegations of subsequent violence than Cohort 1A, at least as reflected in these records, addressing custody or not in the ten-day order (Cohort 1A as compared to 1B) seems not to bear as much of a correlation to fewer allegations of subsequent violence as not entering a ten-day order (Cohorts 1A and 1B compared to Cohort 2). Table 15 illustrates this experience.

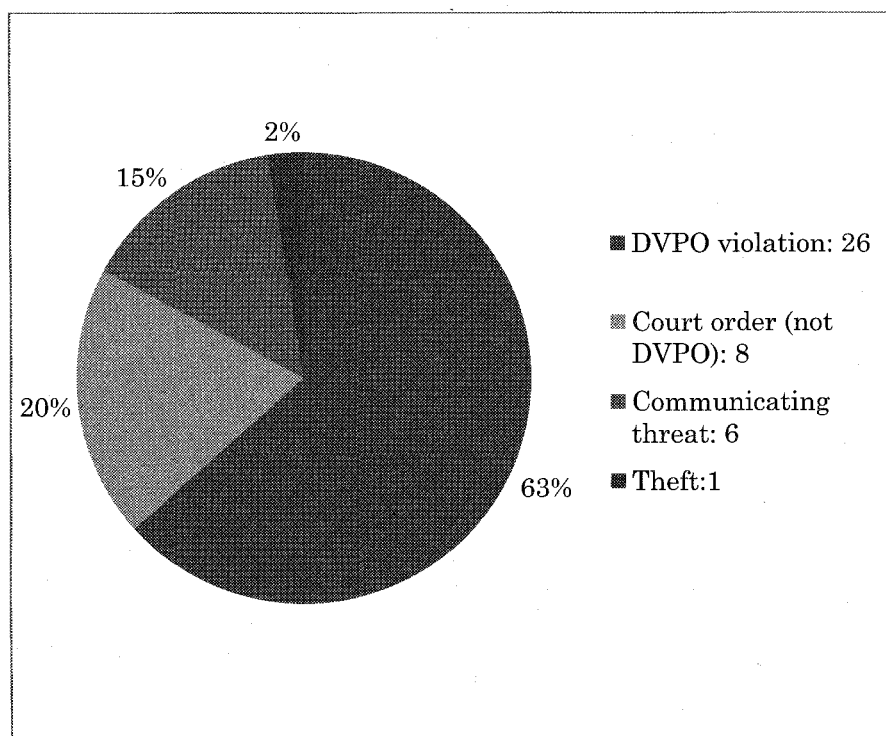
TABLE 15: 2006 CASES WITH SUBSEQUENT ACTIONS ALLEGING VIOLENCE IN THE FAMILY

Cohorts	Numbers and percentages of families and kind of actions in each cohort			
	Numbers	Percentages	Subsequent Criminal	Subsequent Civil
Cohort 1A	17/46	37%	41/158	52/394
Cohort 1B	26/87	30%	54/158	101/394
Cohort 2	37/91	41%	63/158	241/394

These numbers suggest that addressing custody did not correlate with fewer allegations of subsequent family violence. A couple of observations and additional comparisons are in order, however. In the first place, the orders addressing custody did so without much detail. Perhaps it is unrealistic to think that custody orders that do very little to address safety issues would have any impact on subsequent conduct related to violence. For example, these orders gave very few directions on the exercise of visitation—a setting fraught with danger in families with violence. It should come as no surprise, then, that these orders addressing custody do not have much impact on later experiences alleging violence. Second, as explained above, there are many more subsequent criminal and civil actions involving these parties, and including at least some of them in later studies may yield more insights. Third, it is worth noting that entering ten-day orders does seem to correlate with fewer allegations of subsequent family violence. When the judge entered the ten-day order, which happened in Cohorts 1A and 1B, there were fewer charges of subsequent criminal conduct related to violence and fewer subsequent actions for a 50B: among Cohort 1A, only 37% of the cases involved these subsequent actions, and in Cohort 1B, only 30% involved such subsequent actions. Cohort 2, on the other hand, in which there was an *ex parte* order but no ten-day order, had subsequent actions alleging violence between the parties in 41% of the cases.

Also, distinguishing among the types of actions alleging subsequent family violence bears more study. In Cohort 1A, most of the criminal actions involving subsequent family violence appeared in actions alleging violations of DVPOs and other court orders—probation violations and contempt of other kinds of orders, including no contact orders. As Figure 2 illustrates, 83% of the 41 subsequent criminal actions allege violations of either a DVPO or another court order.

FIGURE 2: KINDS OF SUBSEQUENT CRIMINAL ACTIONS IN COHORT 1A



These criminal actions, alleging a violation of a court order, do not necessarily involve an allegation of subsequent violent conduct. Certainly the violation of a protective order might involve a failure to stay away from the plaintiff, for example, without a violent incident. Likewise, the violation of a probation order, for example, might involve the use of drugs, without a violent incident.

On the other hand, the 54 allegations of subsequent family violence in Cohort 1B and 63 allegations of subsequent family violence in Cohort 2 appeared not only in criminal actions alleging violations of an order but in criminal actions necessarily alleging a subsequent violent incident: assaults on a female; assaults with and without a weapon; kidnapping; and communicating threats. Figures 3 and 4 illustrate these distinctions.

FIGURE 3: KINDS OF SUBSEQUENT CRIMINAL ACTIONS IN COHORT 1B

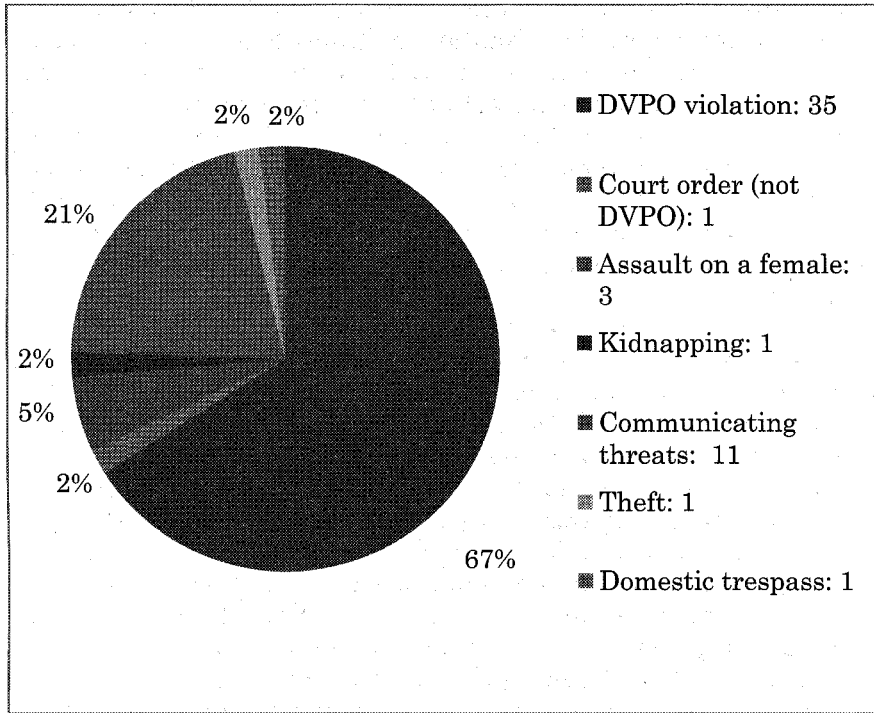
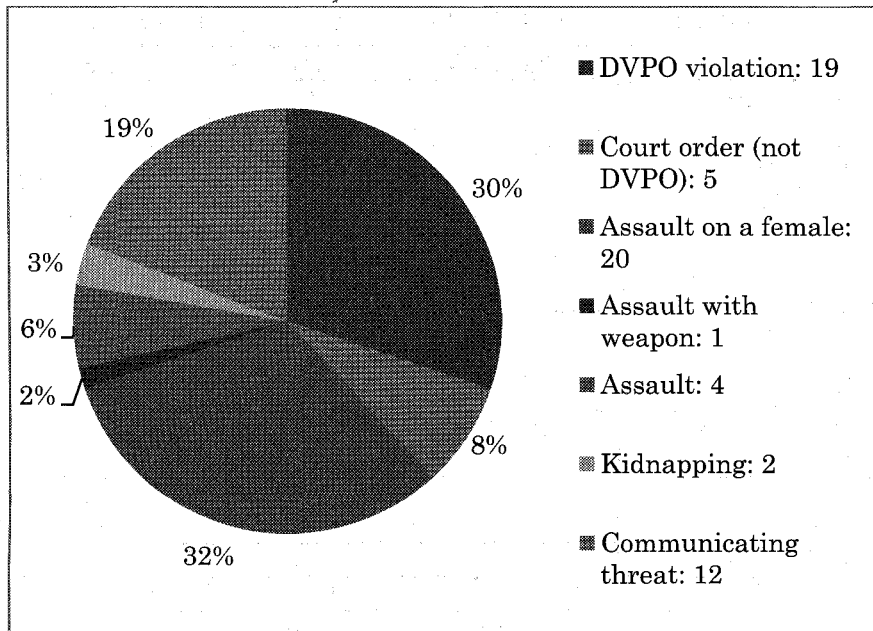


FIGURE 4: KINDS OF SUBSEQUENT CRIMINAL ACTIONS IN COHORT 2



The difference in kinds of subsequent criminal actions is more distinct between Cohorts 1A and 1B on the one hand, compared to Cohort 2 on the other. The families in Cohort 2 came back to court more often with allegations of violence and with substantial conviction rates, especially for actions other than violation of a court order. These numbers indicate that there is indeed violence in the lives of the people in these cases in which the plaintiffs have asked for a protective order that addresses custody and that failure to enter an order other than an *ex parte* order is associated with subsequent actions in which judges have found much of the alleged violence to be real.

Table 16 summarizes the rather remarkable experiences of these three cohorts. The first entry, "Criminal, DV," summarizes the criminal actions alleging violence in the family: violations of DVPOs, court order violations other than a violation of domestic violence protection order, assault on a female, assault with a weapon, assault, kidnapping, communicating threats, theft, and domestic trespass. In each category, for each cohort, the number reflects the average number of that type of subsequent action for each 2006 case in which that kind of subsequent action occurred. For example, for the violation of a DVPO, in Cohort 1A the average number of subsequent actions per 2006 case was 3.71. In Cohort 1B, the average number of subsequent actions per 2006 case was 2.33. In Cohort 2, the average number of subsequent actions per 2006 case was 1.62.

TABLE 16: ACTIONS ALLEGING VIOLENCE IN THE FAMILY

	Cohort 1A	Cohort 1B	Cohort 2
Criminal, DV (all cases combined)	2.27	1.93	1.62
DVPO Violation	3.71	2.33	1.73
Court Order Violation (not DVPO)	1.33	1	1.25
Assault on Female	0	1.5	2
Assault with Weapon	0	0	1
Assault	0	0	1
Kidnapping/False Imprisonment	0	2	1
Communicating Threats	1.5	1.57	1.71
Theft Related	1	1	0
Domestic Trespass	0	1	0
Civil, DV (all cases combined)	5.78	5.94	7.33

Table 16 supports the relationship described above that ten-day orders addressing custody have some relationship with fewer subsequent actions that clearly allege violence. For Cohort 1A, there are higher averages per 2006 case for subsequent actions alleging violations of court orders, but lower averages for assaults, kidnapping, and communicating threats. The highest averages for subsequent actions that clearly allege violence appear in Cohort 2. For Cohort 2, there are lower averages per 2006 case for subsequent actions alleging violations of court orders, but higher averages for assaults, kidnapping, and communicating threats. Some of the numbers are too small to draw many conclusions, and, at this stage of the analysis, we can only suggest relationships and associations. But the data suggest an association between ten-day orders addressing custody and fewer subsequent actions clearly alleging violence and between ex parte orders only and more subsequent actions clearly alleging violence.

III. IMPLICATIONS OF THE STUDY

In many ways, the data from this study suggest areas for further research. Some of the data are incomplete. For example, we were not able to identify the judges in all the ex parte and ten-day orders in our study. We expected that there might be some results that could be explained by the identity of the judge entering the order, but for too many of the orders, we could not determine which judge had signed the order. Even so, as we suspected, for the signed orders, some judges who entered either an ex parte or ten-day order in our population always also addressed custody. On the other hand, some judges who entered either an ex parte or ten-day order in our population never addressed custody. Later studies should pursue these correlations.

Also, there are other categories of data that we have yet to explore. For example, we know that before the data enable us to draw too many associations, we need to know something about the violence in these families *before* the 2006 civil action for a protective order. If the experience of violence in our population differed significantly in kind or degree before the 2006 action, then we need to take those differences into account in quantifying their experiences after the 2006 action. Even with the data that we have yet to gather and analyze, the data we have analyzed lead to a number of observations.

A. *It's Not Just About Custody, and the Violence Is Real*

The data are strong support for the conclusion that this population was not manufacturing claims of violence in order to get the judge to address the real issue—custody. In the first place, if our estimates are correct about how many of the filings involved a

minor child between the parties, then in only about fifty-nine percent of those cases did the plaintiff ask for an order addressing custody.¹⁹³ Also, there are significant numbers of subsequent actions related to violence in these families, with conviction rates and order rates that underscore real violence.¹⁹⁴

B. The Pressure of Time Keeps the Judge from Entering Effective Orders Addressing Custody

The way in which the judges addressed custody leads inescapably to the conclusion that time pressures keep the judges from rendering effective custody orders. In so many of the orders addressing custody, the judge did no more than check a box. While the statutes and best practices manuals urge judges to incorporate safety features in any custody order in a family with violence, many of these orders addressing custody gave no specifics directed towards safety.¹⁹⁵ Even the ones with specifics addressed only part of an issue—for example, specifying supervised visitation without specifying how it was to be supervised, or naming the parties' residences as the place for exchange of the child without putting in place any safety features for that exchange. In addition, the heavy reliance on forms—necessary, but problematic—encourages the routine checking of only a few boxes. For a number of the cases, the results seemed to depend as much on which boxes the plaintiffs had checked as they did on what the plaintiffs had alleged.¹⁹⁶

C. Judges Are Still Reluctant to Enter Orders Addressing Custody

One obvious conclusion from the study is that judges in domestic violence court continue to be reluctant to enter orders addressing custody. Consistently, the allegation of a pending proceeding for assault on a female led to the entry of either an ex parte or a ten-day order, especially one addressing custody.¹⁹⁷ While this conclusion suggests that judges are distinguishing among cases, it also suggests that judges rely on the existence of other proceedings before they feel confident about the allegations before them.

Even more dramatically, judges were much more likely to enter orders addressing custody if these orders were going to expire in a very short period of time. Despite the stringent findings required for ex parte orders of custody, judges were much more likely to address custody in ex parte orders than they were in ten-day

193. *See supra* Part II.B.

194. *See supra* Table 11.

195. *See supra* Tables 9–10.

196. *See supra* Part II.C.2.c.

197. *See supra* Part II.C.2.b.

orders.¹⁹⁸ This disparity suggests that judges continue to question the validity of temporary custody orders in the longer-lived order, despite the best efforts of legislation and best practices manuals.

D. The Data May Indicate That Addressing Custody in the Protective Order Correlates to Fewer Subsequent Actions Alleging Subsequent Violent Incidents

Certainly, the finding that an order addressing custody may be related to fewer actions alleging subsequent acts of violence deserves follow up—perhaps more so than any other finding of the study. In the charts distinguishing among the kinds of subsequent criminal actions in the three cohorts, the data indicate that the subsequent actions for Cohort 1A, the plaintiffs with ten-day orders addressing custody, disproportionately consist of court order violations, which do not necessarily involve allegations of subsequent violent incidents. In Cohorts 1B and 2, involving plaintiffs with ten-day orders not addressing custody or involving plaintiffs with ex parte orders only, there are more subsequent actions that allege subsequent incidents of violence and fewer allegations related to court order violations. If further study reveals that the subsequent court order violations in Cohort 1A did not involve allegations of subsequent violent incidents, these data might indeed support the association of ten-day orders addressing custody with less subsequent family violence.

CONCLUSION

This study involved a close look at the orders addressing custody in domestic violence court in 2006, relatively shortly after the passage of legislation urging judges to pay attention to custody as they addressed the plaintiff's request for a protective order. Perhaps the legislation had not had time to have the impact that the reformers had hoped.

Even so, the data suggest that we should redouble our efforts to encourage domestic violence courts to address custody. In the first place, so many families with violence end up in domestic violence court—the law's emergency room. The trend towards parties in family law cases appearing without a lawyer shows no sign of abating, and the pro se friendly nature of domestic violence court ensures that domestic violence court is where families with violence will continue to go.

There is reason to hope that, as judges in domestic violence court become more accustomed to addressing custody, they will not only address custody but will do so in more detail. Certainly best practice manuals will continue to devise checklists that facilitate the

198. See *supra* Part II.C.1.

entry of orders addressing safety concerns. There is reason to think that, just as judges have relied on the current forms, they will eventually embrace forms that make it easier to spell out the terms of the custody order and easier to address the real safety concerns.

One observation about the data deserves significant attention. We chose the Twenty-First Judicial District, in part, because of the presence of the CLC. In 2006, the year from which our data were derived, the CLC had been in existence only a short time. Of the 339 cases in our study, the CLC was involved in only 12 of them, and even fewer of those appeared in any of our three cohorts. But in the few in which the CLC was involved, there were almost no subsequent actions alleging subsequent violent incidents in the family. The numbers were too small to draw any conclusions—except that the use of the custody GAL deserves much more attention.

If the use of the custody GAL is indeed related to less subsequent violence in the family, then that conclusion should lead to expanding the use of GALs in domestic violence court. That conclusion would suggest that we do more of what the Wingspread Conference suggested¹⁹⁹: differentiating among families experiencing domestic violence, with a custody GAL assigned to the most troubled families, and screening and triage, with a custody GAL assigned to the most intractable of conflicts.

In short, the findings of this study have tantalized us with the possibility that addressing custody in domestic violence court is associated with fewer incidents of subsequent violence in the family. Though the numbers are too small to draw any conclusions, the data, at least, have suggested that there may be methods and processes that would not only encourage judges to address custody but also to address it in more detail. The prospects of decreasing subsequent violent incidents for families with children are not only tantalizing but also a moral imperative.

199. See *supra* note 97 and accompanying text.

APPENDIX I: COMPLAINT AND MOTION FOR DOMESTIC VIOLENCE PROTECTIVE ORDER

STATE OF NORTH CAROLINA			File No. _____ In The General Court Of Justice District Court Division
County _____			COMPLAINT AND MOTION FOR DOMESTIC VIOLENCE PROTECTIVE ORDER <small>G.S. 52B-1, -2, -3, -4</small>
Name Of Plaintiff (Person Filing Complaint)		VERSUS	
Name And Address Of Defendant (Person Accused Of Abuse)			

(Check only boxes that apply and fill in blanks. Additional sheets may be attached.)

1. I live in _____ County, North Carolina.
2. The defendant and I
 - are married. are divorced.
 - are persons of the opposite sex who are not married but live together or have lived together.
 - have a child in common.
 - are parent and child or grandparent and grandchild.
 - are current or former household members.
 - are persons of the opposite sex who are in or have been in a dating relationship.
3. There is is not another court proceeding between the defendant and me pending in this or any other state.
(List county, date and what kind of proceeding, if applicable.)

4. The defendant has attempted to cause or has intentionally caused me bodily injury; or has placed me or a member of my family or household in fear of imminent serious bodily injury or in fear of continued harassment that rises to such a level as to inflict substantial emotional distress; or has committed a sexual offense against me in that: *(Give specific dates and describe in detail what happened.)*

5. The defendant has attempted to cause or has intentionally caused bodily injury to the child(ren) living with me or in my custody; has placed my child(ren) in fear of imminent serious bodily injury or in fear of continued harassment that rises to such a level as to inflict substantial emotional distress; or has committed a sexual offense against the child(ren) in that: *(Give specific dates and describe in detail what happened.)*

6. I believe there is danger of serious and immediate injury to me or my child(ren).
7. *(Check this box if you ask for temporary child custody.)* The defendant and I are the parents of the following child(ren) under the age of eighteen.

A COPY OF "AFFIDAVIT AS TO STATUS OF MINOR CHILD" (ADC-CV-608) MUST BE ATTACHED FOR EACH CHILD.

Name	Sex	Date Of Birth	Name	Sex	Date Of Birth

(Over)

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- 8. (Fill in the blank if you are asking for temporary child custody) The minor child(ren) (stated in No 7, above) is exposed to a substantial risk of physical or emotional injury or sexual abuse in that: (Describe in detail what happened that created a risk of physical or emotional injury or sexual abuse.)

- 9. The defendant has firearms and ammunition as described below. has a permit to purchase a firearm. and has a permit to carry a concealed weapon. (Describe all firearms, ammunition, gun permits and give identifying number(s) if known, and indicate where defendant keeps firearms and gun permits.)

- 10. The defendant has used or threatened to use a deadly weapon against me or minor child(ren) in my custody or has a pattern of prior conduct involving the use or threatened use of violence with a firearm against any persons in that (give specific dates and describe in detail what happened)

- 11. The defendant has made threats to commit suicide in that (give specific dates and describe in detail what happened)

Because Of The Acts Of Domestic Violence By The Defendant, I Am Requesting That The Court Give Me The Following Relief:
(Check only boxes that apply.)

- 1. I want emergency relief.
- 2. Since there is a danger of acts of domestic violence against me or my child(ren), I want an Ex Parte Order before notice of a hearing is given to the defendant.
- 3. I want the Court to order the defendant not to assault, threaten, abuse, follow, harass or interfere with me and my child(ren).
- 4. I want possession of our residence at the address listed below, and I want the defendant to move from and not return to the residence.

Address Of Residence
- 5. I want the Court to order the eviction of the defendant from the residence listed above and I want assistance in returning to the residence.
- 6. I want possession of the personal property such as clothing and household goods in the residence listed above except for the defendant's personal clothing, toiletries and tools of trade.
- 7. I want the defendant to be ordered not to come on or about:

<input type="checkbox"/> (a) my residence.	<input type="checkbox"/> (b) any place where I am receiving temporary shelter.
<input type="checkbox"/> (c) the place where I work.	<input type="checkbox"/> (d) the child(ren)'s school.
<input type="checkbox"/> (e) the place where the child(ren) receives day care.	<input type="checkbox"/> (f) the place where I go to school.
<input type="checkbox"/> (g) Other: (name other places)	

VERSUS		File No.
Name Of Defendant		
<input type="checkbox"/> 8. I want the defendant to be ordered to have no contact with me. <input type="checkbox"/> 9. I want possession and use of the following vehicle: <div style="border: 1px solid black; height: 20px; margin: 2px 0;"></div> <input type="checkbox"/> 10. I want <u>temporary</u> custody of our minor child(ren) listed in this Complaint. I understand that I must file a separate child custody action for permanent custody. <input type="checkbox"/> 11. I want the defendant to be ordered to make payments for the support of our minor child(ren), as required by law, but I understand it is only <u>temporary</u> and that I must file a separate child support action for regular, permanent child support. <input type="checkbox"/> 12. I want the Court to prohibit the defendant from possessing or purchasing a firearm. <input type="checkbox"/> 13. I want the Court to order the defendant to surrender to the sheriff his/her firearms, ammunition, and gun permits to purchase a firearm and carry a concealed weapon. <input type="checkbox"/> 14. I want the defendant to be ordered to attend an abuser treatment program. <input type="checkbox"/> 15. I want the defendant to be ordered to provide me and the child(ren) suitable alternative housing. <input type="checkbox"/> 16. I want the defendant to be ordered to make payments for my support as required by law, but I understand it is only <u>temporary</u> , and that I must file a separate action for regular permanent spousal support. <input type="checkbox"/> 17. Other: (specify)		
Date	Signature Of Plaintiff (Person Filing Complaint)	
VERIFICATION		
I, the undersigned, being first duly sworn, say that I am the plaintiff in this action; that I have read the Complaint and Motion; that the matters and things alleged in the Complaint and Motion are true except as to those things alleged upon information and belief and as to those I believe them to be true and accurate.		
SWORN AND SUBSCRIBED TO BEFORE ME		Date
Date	Signature	Signature Of Plaintiff
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk of Superior Court <input type="checkbox"/> Designated Magistrate	Name Of Plaintiff (Type Or Print)
SEAL <input type="checkbox"/> Notary	Date My Commission Expires	
<div style="font-size: x-small; margin-top: 50px;">AOC-CV-303, Rev. 12/04, Page 3 of 3 © 2004 Administrative Office of the Courts</div>		

APPENDIX II: AFFIDAVIT AS TO STATUS OF MINOR CHILD

STATE OF NORTH CAROLINA		Court File No. _____																											
_____ County		In The General Court Of Justice District Court Division																											
Name And Address Of Plaintiff		AFFIDAVIT AS TO STATUS OF MINOR CHILD																											
VERSUS																													
Name And Address Of Defendant		B.S. 50A-9																											
		Name Of Minor Child _____ Date Of Birth _____ Birthplace _____																											
I, the undersigned affiant, being first duly sworn, say that during the past five (5) years the above named minor child has lived as follows:																													
<table border="1" style="width:100%; border-collapse: collapse; font-size: x-small;"> <thead> <tr> <th colspan="2">Period Of Residence</th> <th rowspan="2">Address</th> <th rowspan="2">Name Of Person Lived With</th> <th rowspan="2">Present Address Of Person</th> </tr> <tr> <th>From</th> <th>To</th> </tr> </thead> <tbody> <tr> <td></td> <td style="text-align: center;">Present</td> <td></td> <td></td> <td></td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>			Period Of Residence		Address	Name Of Person Lived With	Present Address Of Person	From	To		Present																		
Period Of Residence		Address	Name Of Person Lived With	Present Address Of Person																									
From	To																												
	Present																												
I further say that: (Check those that apply)																													
<input type="checkbox"/> I have participated in litigation concerning the custody of the above named child.																													
Capacity As Participant	Date Of Action	Name And Address Of Court																											
Details																													
<input type="checkbox"/> I have information of a custody proceeding concerning the above named child pending in a court in this or another state.																													
Name And Address Of Court		Details																											
<input type="checkbox"/> I know of a person as listed below, who has physical custody or claims to have custody or visitation rights with respect to the above named child.																													
Name And Address Of Person		<input type="checkbox"/> Physical Custody <input type="checkbox"/> Claimed Custody <input type="checkbox"/> Visitation Rights																											
SWORN AND SUBSCRIBED TO BEFORE ME																													
Date	Signature Of Person Authorized To Administer Oaths	Signature Of Affiant																											
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court		Name Of Affiant (Type Or Print)																											
SEAL <input type="checkbox"/> Notary	Date Commission Expires	Relationship To Above Named Child																											
AOC-CV-609, Rev. 6/2000 © 2000 Administrative Office of the Courts																													

APPENDIX III: EX PARTE DOMESTIC VIOLENCE ORDER OF PROTECTION

Case No. <input style="width: 100%;" type="text"/> Court General Court of Justice District Court Division County <input style="width: 100%;" type="text"/> NORTH CAROLINA	EX PARTE DOMESTIC VIOLENCE ORDER OF PROTECTION <small>G.S. 52B-2, -3, -3.1</small>															
PETITIONER/PLAINTIFF <input style="width: 100%; height: 20px;" type="text"/> <small>First Middle Last</small>	PETITIONER/PLAINTIFF IDENTIFIERS <input style="width: 100%; height: 20px;" type="text"/> <small>Date Of Birth Of Petitioner</small>															
And/or on behalf of minor family member(s): (List Name And DOB) <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 80%; height: 20px;"></td><td style="width: 20%; height: 20px;"></td></tr> <tr><td style="height: 20px;"></td><td style="height: 20px;"></td></tr> <tr><td style="height: 20px;"></td><td style="height: 20px;"></td></tr> </table>							Other Protected Persons/DOB: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 80%; height: 20px;"></td><td style="width: 20%; height: 20px;"></td></tr> <tr><td style="height: 20px;"></td><td style="height: 20px;"></td></tr> <tr><td style="height: 20px;"></td><td style="height: 20px;"></td></tr> </table>									
VERSUS																
RESPONDENT/DEFENDANT <input style="width: 100%; height: 20px;" type="text"/> <small>First Middle Last</small> Relationship to Petitioner: <input type="checkbox"/> spouse <input type="checkbox"/> former spouse <input type="checkbox"/> unmarried, of opposite sex, currently or formerly living together <input type="checkbox"/> unmarried, have a child in common <input type="checkbox"/> of opposite sex, currently or formerly in dating relationship <input type="checkbox"/> current or former household member <input type="checkbox"/> parent <input type="checkbox"/> grandparent <input type="checkbox"/> child <input type="checkbox"/> grandchild Respondent's/Defendant's Address <div style="border: 1px solid black; height: 40px; width: 100%; margin-top: 5px;"></div>	RESPONDENT/DEFENDANT IDENTIFIERS <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Sex</td> <td style="width: 15%;">Race</td> <td style="width: 15%;">DOB</td> <td style="width: 15%;">HT</td> <td style="width: 15%;">WT</td> </tr> <tr> <td>Eyes</td> <td>Hair</td> <td colspan="3">Social Security Number</td> </tr> <tr> <td colspan="2">Drivers License No.</td> <td>State</td> <td colspan="2">Expiration Date</td> </tr> </table> Distinguishing Features <div style="border: 1px solid black; height: 60px; width: 100%; margin-top: 5px;"></div>	Sex	Race	DOB	HT	WT	Eyes	Hair	Social Security Number			Drivers License No.		State	Expiration Date	
Sex	Race	DOB	HT	WT												
Eyes	Hair	Social Security Number														
Drivers License No.		State	Expiration Date													
CAUTION: <input type="checkbox"/> Weapon Involved																
THE COURT HEREBY FINDS THAT: This matter was heard by the undersigned <input type="checkbox"/> district court judge. <input type="checkbox"/> magistrate. The court has jurisdiction over the subject matter. Additional findings of this order are set forth on Page 2.																
THE COURT HEREBY ORDERS THAT: <input type="checkbox"/> The above named Respondent/Defendant shall not commit any further acts of abuse or make any threats of abuse. <input type="checkbox"/> The above named Respondent/Defendant shall have no contact with the Petitioner/Plaintiff. No contact includes any defendant-initiated contact, direct or indirect, by means such as telephone, personal contact, email, pager, gift-giving or telefacsimile machine. (05) Additional terms of this order are as set forth on Pages 3 and 4. The terms of this order shall be effective until <input style="width: 50px;" type="text"/> <input style="width: 50px;" type="text"/> . <input style="width: 50px;" type="text"/>																
WARNINGS TO THE RESPONDENT/DEFENDANT: This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, and any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262). This order will be enforced anywhere in North Carolina. Only the Court can change this order. The plaintiff cannot give you permission to violate this order. See additional warnings on Page 4.																
<small>AOC-CV-304, Page 1 of 5, Rev. 2/06 © 2006 Administrative Office of the Courts</small>																

(Over)

ADDITIONAL FINDINGS

1. As indicated by the check block under Respondent/Defendant's name on Page 1, the parties are or have been in a personal relationship.
2. That on (date of most recent conduct) _____, the defendant
 - a. attempted to cause intentionally caused bodily injury to the plaintiff the child(ren) living with or in the custody of the plaintiff
 - b. placed in fear of imminent serious bodily injury the plaintiff a member of the plaintiff's family a member of the plaintiff's household
 - c. placed in fear of continued harassment that rises to such a level as to inflict substantial emotional distress the plaintiff a member of plaintiff's family a member of plaintiff's household
 - d. committed an act defined in G.S. 14- 27.2 (1st deg. rape) 27.3 (2nd deg. rape) 27.4 (1st deg. sexual off.) 27.5 (2nd deg. sexual off.) 27.5A (sexual battery) 27.7 (sexual activity by substitute parent) against the plaintiff a child(ren) living with or in the custody of the plaintiff by _____
(describe defendant's conduct)
3. The defendant is in possession of, owns or has access to firearms, ammunition, and gun permits described below. (Describe all firearms, ammunition, gun permits and give identifying number(s) if known, and indicate where defendant keeps firearms)
4. The defendant
 - a. used threatened to use a deadly weapon against the plaintiff minor child(ren) residing with or in the custody of the plaintiff
 - b. has a pattern of prior conduct involving the use threatened use of violence with a firearm against persons
 - c. made threats to seriously injure or kill the plaintiff minor child(ren) residing with or in the custody of the plaintiff
 - d. made threats to commit suicide
 - e. inflicted serious injuries upon the plaintiff minor child(ren) residing with or in the custody of the plaintiff in that (state facts): _____
5. The parties are the parents of the following child(ren) under the age of eighteen (18). The child(ren) are presently in the physical custody of the plaintiff. defendant. The plaintiff has submitted an "Affidavit As To The Status Of The Minor Child."
NOTE TO JUDGE: A copy of AOC-CV-609 for each child must be attached to the order.

Name	Sex	Date Of Birth	Name	Sex	Date Of Birth
6. The minor child(ren) is exposed to a substantial risk of physical or emotional injury or sexual abuse in that: _____
7. It is in the best interest of and necessary for the safety of the minor child(ren) that defendant stay away from the minor child(ren) that the defendant return the minor child(ren) to plaintiff and that the defendant not remove the minor child(ren) from plaintiff in that: _____
8. (Check block only if plaintiff is entitled to physical care of child.) It is in the best interest of the minor child(ren) that defendant have contact with the minor child(ren) in that: _____
9. The defendant plaintiff is presently in possession of the parties' residence at _____

Name Of Defendant	File No.
-------------------	----------

10. The defendant plaintiff is presently in possession of the parties' vehicle. (describe vehicle)

11. Other: (specify)

12. (for magistrate only) This matter was heard at a time when the district court was not in session and a district court judge was not available and would not be available for a period of four or more hours.

CONCLUSIONS

Based on these facts, the Court makes the following conclusions of law:

1. The defendant has committed acts of domestic violence against the plaintiff.

2. The defendant has committed acts of domestic violence against the minor child(ren) residing with or in the custody of the plaintiff.

3. It clearly appears that there is a danger of acts of domestic violence against the plaintiff. minor child(ren). (G.S. 50B-2(c))

4. The minor child(ren) is exposed to a substantial risk of physical injury. emotional injury. sexual abuse. (G.S. 50B-2(c))

5. The Court has jurisdiction under the Uniform Child Custody Jurisdiction And Enforcement Act.

6. It is in the best interest of and necessary for the safety of the minor child(ren) that the defendant, stay away from the minor child(ren), (and) return the minor child(ren) to the physical care of the plaintiff. (and) not remove the minor from the physical care of the plaintiff.

7. The defendant's conduct requires that he/she surrender all firearms, ammunition and gun permits. (G.S. 50B-3.1)

8. The plaintiff has failed to prove grounds for ex parte relief.

ORDER

It is ORDERED that:

1. the defendant shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace or other means), or interfere with the plaintiff. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. [01]

2. the defendant shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace or other means), or interfere with the minor child(ren) residing with or in the custody of the plaintiff. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. [01]

3. the defendant shall not threaten a member of the plaintiff's family or household. [02]

4. the plaintiff is granted possession of, and the defendant is excluded from, the parties' residence described above and all personal property located in the residence except for the defendant's personal clothing, toiletries and tools of trade. [03]

5. any law enforcement agency with jurisdiction shall evict the defendant from the residence and shall assist the plaintiff in returning to the residence. [03]

6. the plaintiff [03] defendant [03] is entitled to get personal clothing, toiletries, and tools of trade from the parties' residence. A law enforcement officer shall assist the plaintiff defendant in returning to the residence to get these items.

7. the defendant shall stay away from the plaintiff's residence or any place where the plaintiff receives temporary shelter. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. [04]

8. the defendant shall stay away from the following places:

<input type="checkbox"/> (a) the place where the plaintiff works. [04]	<input type="checkbox"/> (b) any school(s) the child(ren) attend. [04]
<input type="checkbox"/> (c) the place where the child(ren) receives day care. [04]	<input type="checkbox"/> (d) the plaintiff's school. [04]
<input type="checkbox"/> (e) Other: (name other places) [04]	

The sheriff must deliver a copy of this order to the principal or the principal's designee at the following school(s): (name schools)

9. the plaintiff is granted possession and use of the vehicle described in Block No. 10 of the Findings on Page 3. [08]

10. The plaintiff is awarded temporary custody of the minor child(ren). (Check any of a, b, or c that apply.)

a. and the defendant is ordered to stay away from the minor child(ren).

b. and the defendant is ordered to immediately return the minor child(ren) to the care of the plaintiff.

c. and the defendant is ordered not to remove the minor child(ren) from the care of the plaintiff.

11. (If No. 10 is checked and you are allowing visitation to defendant) The defendant is allowed the following contact with the minor child(ren):

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12. the defendant is prohibited from possessing, owning or receiving [07] purchasing a firearm for the effective period of this Order [07] and the defendant's concealed handgun permit is suspended for the effective period of this Order. [08]
 The defendant is a law enforcement officer/member of the armed services and may may not possess or use a firearm for official use.

13. the defendant surrender to the Sheriff serving this order the firearms, ammunition, and gun permits described in Number 3 of the Findings on Page 2 of this Order and any other firearms and ammunition in the defendant's care, custody, possession, ownership or control. **NOTE TO DEFENDANT:** You must surrender these items to the serving officer at the time this Order is served on you. If the weapons cannot be surrendered at that time, you must surrender them to the sheriff within 34 hours at the time and place specified by the sheriff. Failure to surrender the weapons and permits as ordered or possessing, owning, purchasing, or receiving a firearm, ammunition or permits to purchase or carry concealed firearms after being ordered not to possess firearms, ammunition or permits is a crime. See "Notice To Parties: To The Defendant" on page 4 of this Order for information regarding the penalty for these crimes and instructions on how to request return of surrendered weapons.

14. the request for Ex Parte Order is denied.

15. Other (specify) [06]

Date	Signature	<input type="checkbox"/> District Court Judge <input type="checkbox"/> Designated Magistrate
------	-----------	---

NOTE TO PLAINTIFF: If the judge signs this Order and gives it to you, take it to the Clerk's office immediately. If the magistrate signs this Order and gives it to you, follow the magistrate's directions.

NOTE TO CLERK: Give or mail a copy of this Order to the plaintiff and to the appropriate local law enforcement agency. Send copies to sheriff with Notice Of Hearing, Complaint and Summons for service on defendant. Send extra copies to the sheriff if required to deliver copy(ies) to the child(ren)'s school.

NOTICE TO PARTIES

TO THE DEFENDANT:

1. If this Order prohibits you from possessing, owning, receiving or purchasing a firearm and you violate or attempt to violate that provision, you may be charged with a Class H felony pursuant to North Carolina G.S. 14-268.8 and may be imprisoned for up to 30 months.
2. If you have been ordered to surrender firearms, ammunition, and gun permits and you fail to surrender them as required by this Order, or if you failed to disclose to the Court all information requested about possession of these items or provide false information about any of these items you may be charged with a Class H felony and may be imprisoned for up to 30 months. If you surrendered your firearms, ammunition, and permits, you may file a motion for the return of weapons with the clerk of court in the county in which this Order was entered when the protective order is no longer in effect, except if at the time this Order expires criminal charges, in either state or federal court, are pending against you alleged to have been committed against the person who is protected by this order, you may not file for return of the firearms until final disposition of the criminal charges. The form motion, "Motion For Return Of Weapons Surrendered Under Domestic Violence Order" AOC-CV-319, is available from the clerk of court's office. The motion must be filed not later than 90 days after the expiration of the Order that requires you to surrender the firearms or if you have pending criminal charges alleged to have been committed against the person who is protected by the domestic violence protection order, the motion must be filed not later than 90 days after final disposition of the criminal charges. At the time you file the motion, the clerk will schedule a hearing before the district court for a judge to determine whether to return the weapons to you. The sheriff cannot return your weapons unless the Court orders the sheriff to do so. You must pay the sheriff's storage fee before the sheriff returns your weapons. If you fail to file a motion for return of the weapons within 90 days after the expiration of this Order, or the final disposition of criminal charges pending at the time this Order expired, or if you fail to pay the storage fees within 30 days after the Court enters an order to return your weapons, the sheriff may seek an order from the Court to dispose of your weapons.

TO THE PLAINTIFF:

1. You should keep a copy of this order on you at all times and should make copies to give to your friends and family. If you move to another county or state, you may wish to give a copy to the law enforcement agency where you move, but you are not required to do so.
2. The court or judge is the only one that can make changes to this order. If you wish to change any of the terms of this order, you must come back into court to have the judge modify the order.
3. If the defendant violates any provision of this order, you may call a law enforcement officer or go to a magistrate to charge the defendant with the crime of violating a protective order. You also may go to the Clerk of Court's office in the county where the protective order was issued and ask to fill out form AOC-CV-307, Motion For Order To Show Cause Domestic Violence Protective Order, to have an order issued for the defendant to appear before a district court judge to be held in contempt for violating the order.

CERTIFICATION

I certify this order is a true copy.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk of Superior Court	<input type="checkbox"/> Assistant CSC
------	--------------------	---	--

<small>Name Of Defendant</small>	<small>File No.</small>
RETURN OF SERVICE	
<p>NOTE: To be used when Magistrate issues ex parte protective order and order will be served on defendant separate from the complaint and civil summons. If complaint and summons are served with order, return on summons covers order.</p>	
<p>I certify that this Ex Parte Domestic Violence Order of Protection was received and served as follows:</p>	
<small>Date Served</small>	<small>Time Served</small> <input type="checkbox"/> AM <input type="checkbox"/> PM
<small>Name Of Defendant</small>	
<input type="checkbox"/> By delivering to the defendant named above a copy of the order.	
<input type="checkbox"/> By leaving a copy of the order at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.	
<small>Name And Address Of Person With Whom Copies Left</small> <div style="border: 1px solid black; height: 40px; width: 100%;"></div>	
<input type="checkbox"/> Other manner of service on the defendant (specify)	
<input type="checkbox"/> Defendant WAS NOT served for the following reason.	
<small>Date Received</small>	<small>Signature Of Deputy Sheriff Making Return</small>
<small>Date Of Return</small>	<small>Name Of Sheriff (Type Or Print)</small>
	<small>County Of Sheriff</small>

APPENDIX IV: DOMESTIC VIOLENCE ORDER OF PROTECTION AND TEMPORARY CHILD CUSTODY ADDENDUM

Case No. <input style="width: 100%;" type="text"/> Court General Court of Justice District Court Division County <input style="width: 100%;" type="text"/> NORTH CAROLINA	DOMESTIC VIOLENCE ORDER OF PROTECTION <input type="checkbox"/> CONSENT ORDER <small>G.S. 50B-2, -3, -3.1</small>																														
PETITIONER/PLAINTIFF <input style="width: 100%;" type="text"/> <small>First Middle Last</small>	PETITIONER/PLAINTIFF IDENTIFIERS <input style="width: 100%;" type="text"/> <small>Date Of Birth Of Petitioner</small>																														
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VERSUS																															
RESPONDENT/DEFENDANT <input style="width: 100%;" type="text"/> <small>First Middle Last</small> Relationship to Petitioner: <input type="checkbox"/> spouse <input type="checkbox"/> former spouse <input type="checkbox"/> unmarried, of opposite sex, currently or formerly living together <input type="checkbox"/> unmarried, have a child in common <input type="checkbox"/> of opposite sex, currently or formerly in dating relationship <input type="checkbox"/> current or former household member <input type="checkbox"/> parent <input type="checkbox"/> grandparent <input type="checkbox"/> child <input type="checkbox"/> grandchild <div style="border: 1px solid black; height: 40px; width: 100%;"></div>	RESPONDENT/DEFENDANT IDENTIFIERS <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 15%;">Sex</th> <th style="width: 15%;">Race</th> <th style="width: 15%;">DOB</th> <th style="width: 15%;">HT</th> <th style="width: 15%;">WT</th> </tr> <tr> <td style="height: 20px;"></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <th colspan="2">Eyes</th> <th colspan="3">Hair</th> </tr> <tr> <td colspan="2" style="height: 20px;"></td> <td colspan="3"></td> </tr> <tr> <th colspan="2">Drivers License No.</th> <th>State</th> <th colspan="2">Expiration Date</th> </tr> <tr> <td colspan="2" style="height: 20px;"></td> <td></td> <td colspan="2"></td> </tr> </table> Distinguishing Features <div style="border: 1px solid black; height: 60px; width: 100%;"></div>	Sex	Race	DOB	HT	WT						Eyes		Hair								Drivers License No.		State	Expiration Date						
Sex	Race	DOB	HT	WT																											
Eyes		Hair																													
Drivers License No.		State	Expiration Date																												
CAUTION: <input type="checkbox"/> Weapon Involved																															
THE COURT HEREBY FINDS THAT: This matter was heard by the undersigned district court judge, the court has jurisdiction over the parties and subject matter, and the Respondent/Defendant has been provided with reasonable notice and opportunity to be heard. Additional findings of this order are set forth on Page 2.																															
THE COURT HEREBY ORDERS THAT: <input type="checkbox"/> The above named Respondent/Defendant shall not commit any further acts of abuse or make any threats of abuse. <input type="checkbox"/> The above named Respondent/Defendant shall have no contact with the Petitioner/Plaintiff. No contact includes any defendant-initiated contact, direct or indirect, by means such as telephone, personal contact, email, pager, gift-giving or telefacsimile machine. [05] Additional terms of this order are as set forth on Pages 3 and 4. The terms of this order shall be effective until <input style="width: 50px;" type="text"/> <input style="width: 50px;" type="text"/> . <input style="width: 50px;" type="text"/>																															
WARNINGS TO THE RESPONDENT/DEFENDANT: This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, and any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262). Federal law makes it a crime for you to possess, transport, ship or receive any firearm or ammunition while this order is in effect even if this order does not prohibit you from possessing firearms. (18 U.S.C. Section 922(g)(8)). This order will be enforced anywhere in North Carolina. Only the Court can change this order. The plaintiff cannot give you permission to violate this order. See additional warnings on Page 4.																															
<small>ADC-CV-308, Page 1 of 4, Rev. 2/06 © 2006 Administrative Office of the Courts</small>																															
<small>(Over)</small>																															

ADDITIONAL FINDINGS

1. Present at the hearing were: the plaintiff, represented by _____
 the defendant, represented by _____

2. As indicated by the check block under Respondent/Defendant's name on Page 1, the parties are or have been in a personal relationship.

3. On (date of most recent contact) _____, the defendant

a. attempted to cause intentionally caused bodily injury to the plaintiff a minor child(ren) in the custody of the plaintiff

b. placed in fear of imminent serious bodily injury the plaintiff a member of the plaintiff's family
 a member of the plaintiff's household

c. placed in fear of continued harassment that rises to such a level as to inflict substantial emotional distress
 the plaintiff a member of plaintiff's family a member of plaintiff's household

d. committed an act defined in G.S. 14- _____ 27.2 (1st deg. rape) 27.3 (2nd deg. rape) 27.4 (1st deg. sexual off.)
 27.5 (2nd deg. sexual off.) 27.5A (sexual battery) 27.7 (sexual activity by substitute parent) against the
 plaintiff child(ren) living with or in the custody of the plaintiff
 by (describe defendant's conduct)

4. The defendant is in possession of, owns or has access to firearms, ammunition, and gun permits described below. (Describe all firearms, ammunition, gun permits and give identifying number(s) if known, and indicate where defendant keeps firearms.)

5. The defendant

a. used threatened to use a deadly weapon against the plaintiff minor child(ren) residing with or in the custody of the plaintiff

b. has a pattern of prior conduct involving the use threatened use of violence with a firearm against persons

c. made threats to seriously injure or kill the plaintiff minor child(ren) residing with or in the custody of the plaintiff

d. made threats to commit suicide

e. inflicted serious injuries upon the plaintiff minor child(ren) residing with or in the custody of the plaintiff in that (state facts)

6. The defendant plaintiff is presently in possession of the parties' residence at _____

7. The defendant plaintiff is presently in possession of the parties' vehicle described below: _____

8. Other: (specify) _____

CONCLUSIONS

Based on these facts, the Court makes the following conclusions of law:

1. The defendant has committed acts of domestic violence against the plaintiff.

2. The defendant has committed acts of domestic violence against the minor child(ren) residing with or in the custody of the plaintiff.

3. There is danger of serious and immediate injury to the plaintiff. minor child(ren). (G.S. 50B-2(b))

Name Of Defendant	File No.
<input type="checkbox"/> 4. The defendant's conduct requires that he/she surrender all firearms, ammunition and gun permits. (G.S. 50.B-3.1)	
<input type="checkbox"/> 5. The plaintiff has failed to prove grounds for issuance of a domestic violence protective order.	
ORDER	
It is ORDERED that:	
<input type="checkbox"/> 1. the defendant shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace or other means), or interfere with the plaintiff. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. [01]	
<input type="checkbox"/> 2. the defendant shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace or other means), or interfere with the minor child(ren) residing with or in the custody of the plaintiff. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. [01]	
<input type="checkbox"/> 3. the defendant shall not threaten a member of the plaintiff's family or household. [02]	
<input type="checkbox"/> 4. the plaintiff is granted possession of, and the defendant is excluded from, the parties' residence described above and all personal property located in the residence except for the defendant's personal clothing, toiletries and tools of trade. [03]	
<input type="checkbox"/> 5. any law enforcement agency with jurisdiction shall evict the defendant from the residence and shall assist the plaintiff in returning to the residence. [06]	
<input type="checkbox"/> 6. the <input type="checkbox"/> plaintiff [06] <input type="checkbox"/> defendant [06] is entitled to get personal clothing, toiletries, and tools of trade from the parties' residence. A law enforcement officer shall assist the <input type="checkbox"/> plaintiff <input type="checkbox"/> defendant in returning to the residence to get these items.	
<input type="checkbox"/> 7. the defendant shall stay away from the plaintiff's residence or any place where the plaintiff receives temporary shelter. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. [04]	
<input type="checkbox"/> 8. the defendant shall stay away from the following places:	
<input type="checkbox"/> (a) the place where the plaintiff works. [04]	<input type="checkbox"/> (b) any school(s) the child(ren) attend. [04]
<input type="checkbox"/> (c) the place where the child(ren) receives day care. [04]	<input type="checkbox"/> (d) the plaintiff's school. [04]
<input type="checkbox"/> (e) Other: (name other places) [04]	
The sheriff must deliver a copy of this order to the principal or principal's designee at the following school(s): (name schools)	
<input type="checkbox"/> 9. the plaintiff is granted possession and use of the vehicle described in Block 7 on Page 2. [06]	
<input type="checkbox"/> 10. the defendant is ordered to make payments to the plaintiff for support of the minor child(ren) as required by law. [08]	
<input type="checkbox"/> 11. the defendant is prohibited from <input type="checkbox"/> possessing, owning or receiving [07] <input type="checkbox"/> purchasing a firearm for the effective period of this Order [07] <input type="checkbox"/> and the defendant's concealed handgun permit is suspended for the effective period of this Order. [08]	
<input type="checkbox"/> The defendant is a law enforcement officer/member of the armed services and <input type="checkbox"/> may <input type="checkbox"/> may not possess or use a firearm for official use.	
<input type="checkbox"/> 12. the defendant surrender to the Sheriff serving this order the firearms, ammunition, gun permits described in block No. 4 of the Findings on Page 2 of this Order and any other firearms and ammunition in the defendant's care, custody, possession, ownership or control. NOTE TO DEFENDANT: You must surrender these items at the time the sheriff serves this Order on you. If the weapons cannot be surrendered at that time, you must surrender them to the sheriff within 24 hours of the time and place specified by the sheriff. Failure to surrender the weapons and permits as ordered or possessing, owning, purchasing, or receiving a firearm, ammunition or permits to purchase or carry concealed firearms after being ordered not to possess firearms, ammunition or permits is a crime. See "Notice To Parties: To The Defendant" on Page 4 of this Order for information regarding the penalty for these crimes and instructions on how to request return of surrendered weapons.	
<input type="checkbox"/> 13. the defendant shall attend and complete an abuser treatment program offered by the following agency, which is approved by the Domestic Violence Commission: [08]	
<input type="checkbox"/> 14. Other: (specify) [06]	
<input type="checkbox"/> 15. this action is dismissed and as of this date any ex parte order issued in this case is null and void.	

TEMPORARY CUSTODY

"Temporary Child Custody Addendum To Domestic Violence Protective Order," AOC-CV-306A, is attached and incorporated into this Order.

FOR CONSENT JUDGMENTS ONLY

Each of us enters into this Consent Order knowingly, freely, and voluntarily. The defendant understands that in consenting to this Order all of the consequences set out in the Notice to Parties and Warnings to Respondent/Defendant in this Order apply.

Date	Signature Of Plaintiff	Date	Signature Of Defendant
SIGNATURE OF JUDGE			
Date	Name Of District Court Judge (Type Or Print)	Signature Of District Court Judge	

NOTICE TO PARTIES

TO THE DEFENDANT:

1. If this Order prohibits you from possessing, owning, receiving or purchasing a firearm and you violate or attempt to violate that provision, you may be charged with a Class H felony pursuant to North Carolina G.S. 14-269.8 and may be imprisoned for up to 30 months.
2. If you have been ordered to surrender your firearms, ammunition, and gun permits and you fail to surrender them as required by this Order, or if you failed to disclose to the Court all information requested about possession of these items, or provided false information to the Court about any of these items you may be charged with a Class H felony and may be imprisoned for up to 30 months. If you surrendered your firearms, ammunition, and permits, you may file a motion for the return of weapons with the clerk of court in the county in which this Order was entered when the protective order is no longer in effect, except if at the time this Order expires criminal charges, in either state or federal court, are pending against you alleged to have been committed against the person who is protected by this order, you may not file for return of the firearms until final disposition of the criminal charges. The form motion, "Motion For Return Of Weapons Surrendered Under Domestic Violence Order" AOC-CV-319, is available from the clerk of court's office. The motion must be filed not later than 90 days after the expiration of the Order that required you to surrender the firearms or if you have pending criminal charges alleged to have been committed against the person who is protected by the domestic violence protection order, the motion must be filed not later than 90 days after final disposition of the criminal charges. At the time you file the motion, the clerk will schedule a hearing before the district court for a judge to determine whether to return the surrendered weapons to you. The sheriff cannot return your weapons unless the Court orders the sheriff to do so. You must pay the sheriff's storage fee before the sheriff returns your weapon. If you fail to file a motion for return of the weapons within 90 days after the expiration of this Order, or the final disposition of criminal charges pending at the time this Order expired, or if you fail to pay the storage fees within 30 days after the Court enters an order to return your weapons, the sheriff may seek an order from the Court to dispose of your weapons.

TO THE PLAINTIFF:

1. You should keep a copy of this protective order on you at all times and should make copies to give to your friends and family. If you move to another county or state, you may wish to give a copy to the law enforcement agency where you move, but you are not required to do so.
2. The court or judge is the only one that can make changes to this order. If you wish to change any of the terms of this order, you must come back into court to have the judge modify the order.
3. If the defendant violates any provision of this order, you may call a law enforcement officer or go to a magistrate to charge the defendant with the crime of violating a protective order. You also may go to the Clerk of Court's office in the county where the protective order was issued and ask to fill out form AOC-CV-307, Motion For Order To Show Cause Domestic Violence Protection Order, to have an order issued for the defendant to appear before a district court judge to be held in contempt for violating the order.

CERTIFICATE OF SERVICE WHEN DEFENDANT NOT PRESENT AT HEARING

I certify that this Order and Notice to Parties has been served on the defendant named by depositing a copy in a post-paid, properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date	Signature	<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC
		<input type="checkbox"/> Clerk Of Superior Court	<input type="checkbox"/> Other

CERTIFICATION

I certify this order is a true copy.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC
		<input type="checkbox"/> Clerk Of Superior Court	

NOTE TO CLERK: A copy of this Order shall be mailed or given to each party, to your sheriff, and to the police department of the plaintiff's residence, if any. Send extra copies to the sheriff if required to deliver copy(ies) to child(ren)'s school.