

Gwen's Law

Hearing Analysis:

Orleans Parish



Introduction

In 2017, “Gwen’s Law” (CCRP 313) came into effect in Louisiana, which allows for contradictory bail hearings to be held for any “individuals held in custody that were charged with domestic abuse battery, violation of protective orders, stalking, or any felony offense involving the use or threatened use of force or a deadly weapon upon the defendant’s family member..., upon the defendant’s household member..., or upon the defendant’s dating partner.” Gwen’s Law hearings can be ordered by judges or magistrates or upon request from District Attorney’s offices and provide judges or magistrates time to review factors regarding defendant histories and records to determine if the “defendant should not be admitted to bail, upon proof by clear and convincing evidence either that the defendant might flee, or that the defendant poses an imminent danger to any other person or the community.” Additionally under Gwen’s law, “upon motion of the prosecuting attorney, the judge or magistrate may order the temporary detention of a person in custody who is charged with the commission of an offense, for a period of not more than five days, exclusive of weekends and legal holidays, pending the conducting of a contradictory bail hearing.” Further, if bail is granted, the judge or magistrate shall consider, as a condition of bail, a requirement that the defendant wear an electronic monitoring device and be placed under active electronic monitoring and house arrest.

Gwen’s Law hearings and the temporary detention of the person in custody can be crucial for supporting survivors and preventing future harm. This time period can allow survivors space to plan for safety, potentially leave a household they shared with the person in custody, and connect to domestic violence advocates and resources. It can also allow prosecuting attorneys time to speak with the victim and discuss their concerns prior to the Gwen’s Law hearing being held.

Despite Gwen’s Law being a state regulation, there is wide variability in its use across parishes. In 2022, Orleans and Jefferson Parishes had a similar number of domestic violence incidents that met criteria for application of the law, but had vastly different numbers of hearings: 1611 Gwen’s Law hearings in Jefferson¹ compared to 35 in Orleans. Because domestic violence is a significant contributor to violent injury and death and given the disparities in Gwen’s Law hearings, the New Orleans Health Department (NOHD) began evaluating the use of this tool in order to analyze process and outcomes.

¹ Jefferson Parish District Attorney’s Office, 2023.

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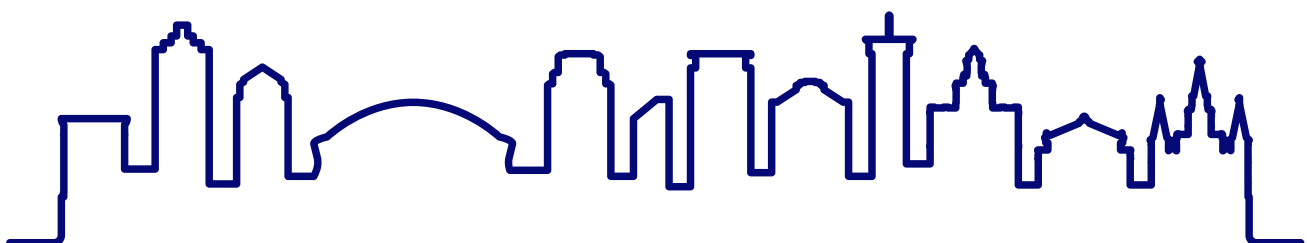


Methods

In 2023, NOHD obtained a list of cases from Orleans Parish Criminal District Court in which Gwen's Law hearings were held, compiled through the use of a query of OPCDC records that noted "Gwen's Law hearing" in the minutes. NOHD conducted a deeper dive into the court records related to these cases by reviewing Orleans Parish Sheriff's Office "Docket Master" records. All data was coded using information gleaned during the August-September 2023 analysis period, meaning some cases may have updates to their status that were not captured. Data was collected solely based on court record information, and due to recording inconsistencies, some information was not available or may be inaccurate. Finally, due to the manual data entry required, there may have been clerical errors during various parts of the analysis.

Analysis

OPCDC records show 98 cases in which Gwen's Law hearings were ordered by the court or requested by prosecution between December 23, 2022 through August 22, 2023. During that same time period, 779 individuals were arrested for domestic abuse aggravated assault, aggravated assault of a dating partner, domestic abuse battery, battery of a dating partner, stalking, or violation of protection order charges² – all of which could have been eligible for hearings. This indicates that only 12.6% of cases in which individuals arrested for those charges were referred for Gwen's Law. In comparison, during this time period, Jefferson Parish had 1202 arrests for domestic violence and violations of protective orders and held 1172 hearings¹ or 97.5%.

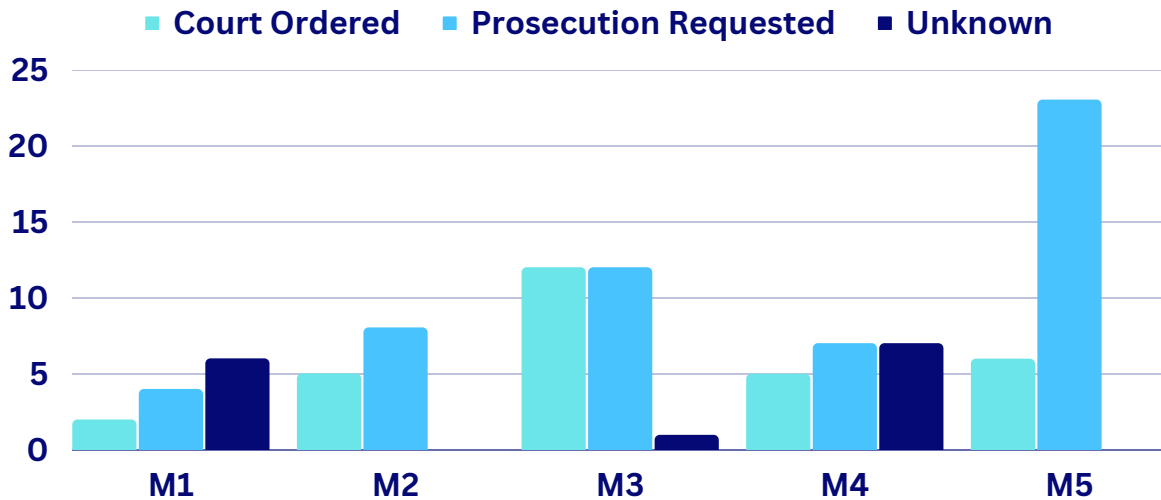


² New Orleans Police Department, Analytics Unit, 2023.

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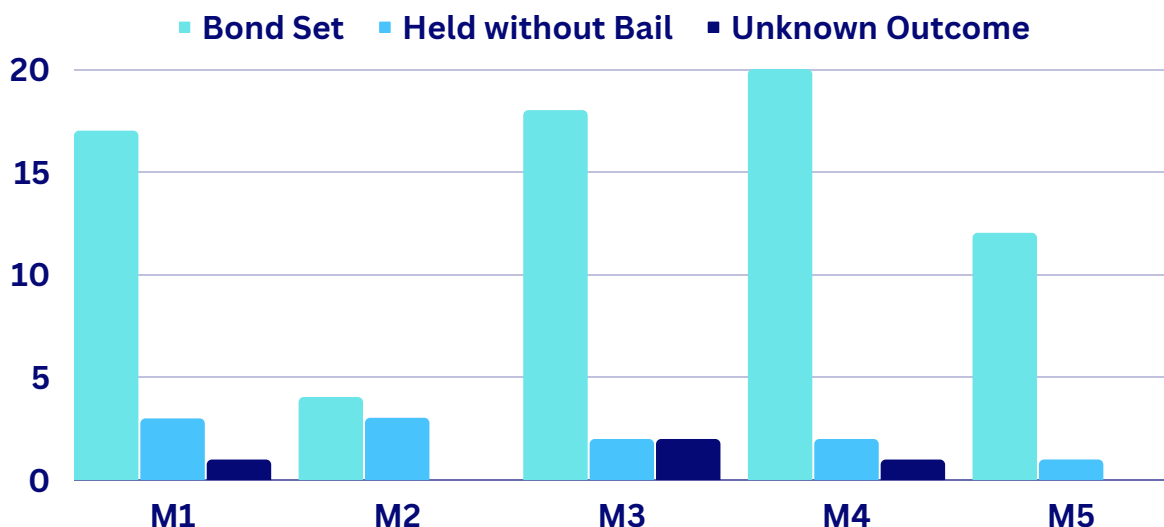


Initial Hearing in Which a Gwen's Law Hearing Was Ordered by the Court or Requested by Prosecution



Gwen's Law hearings can be requested by prosecution or ordered independently by judges. During the time period of study, the Orleans Parish District Attorney's Office requested Gwen's Law hearings in 55% of cases while the Court ordered Gwen's Law hearings in 31% of cases. Court records do not indicate who initiated the Gwen's Law hearing in 14% of cases.

Gwen's Law Hearing Outcomes



Gwen's Law Hearing Analysis: Orleans Parish



Of the 86 Gwen's Law hearings that were held, 83% resulted in bond being set for an individual compared to 13% of cases in which an individual was held without bail. In 69% of cases in which the outcome of the Gwen's Law hearing was that a bond was set, the individual was ordered to GPS electronic monitoring.

In 76% of cases, a Stay Away Order was put in place. In 55% of cases, it was noted that the defendant was informed about prohibitions related to possessing or owning a firearm. In 4 cases the defendant stated they did own a firearm and were informed of the procedures they needed to take to relinquish their firearm. In 49% of cases, it was noted that the individual was ordered to Domestic Violence Monitoring Court.

Conclusion

In Orleans Parish, from January - August 2023 Gwen's Law hearings were held in only a small fraction of eligible arrests. This is in direct contrast to neighboring, Jefferson Parish, which held 1172 Gwen's Law hearings during this same time period. Of the 779 individuals arrested on eligible charges, 111 were charged with strangulation and 29 individuals were charged with possession of a firearm by a person prohibited from possessing a firearm. Both strangulation and the presence of firearms represent high risk of future harm and lethality to the survivor; Gwen's Law hearings and the temporary detention of the person in custody can be crucial for supporting survivors and preventing future harm. They can also provide time for prosecution to speak with the survivor so that they can communicate any concerns related to stay away orders, an individual's potential bond setting, and the potential need for electronic ankle monitoring. This also allows survivors time to safety plan with advocates and determine the best next steps to improve their immediate safety.

When all available regulatory tools and survivor protections are not utilized in domestic violence cases, victims lose faith in the criminal justice system and are at great risk of harm. NOHD recommends that Orleans Parish criminal justice partners work with Jefferson Parish criminal justice partners to replicate Gwen's Law protocols in order to enhance hearing processes with the goal of increasing the number of Gwen's Law hearings being held in New Orleans and preventing future injuries and deaths.