

Pragmatic Punitiveness: The Institutionalization of Criminal Domestic Violence Protection Orders

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journals.sagepub.com/home/sls**Veronica L. Horowitz** *University at Buffalo, Buffalo, NY, USA***Ryan Larson, Allison Nobles,
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Abstract

This paper analyzes the implementation of a domestic violence law in Minnesota that, in 2006, made the violation of a Domestic Abuse No-Contact Order a felony-level offense. Since this legal change, the rate of conviction for Domestic Abuse No-Contact Order felonies skyrocketed with stark racial disparities among Black and Native American residents, relative to Whites. Analysis of case files reveals that Domestic Abuse No-Contact Order convictions result from a range of behaviors, from seemingly mutual contact between the defendant and protected party to serious physical violence. We argue that the Domestic Abuse No-Contact Order law facilitates pragmatic punitiveness for legal actors. It is easier for prosecutors to demonstrate contact occurred than to prove domestic assault. Yet, the penalty for a Domestic Abuse No-Contact Order is as severe as the penalties for other domestic abuse-related crimes in Minnesota. Thus, the Domestic Abuse No-Contact Order law enables prosecutors to respond forcefully to domestic violence while avoiding additional burdens on their time and resources.

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Introduction

Criminal justice in the United States became increasingly punitive from the 1970s to the 2000s. This development included substantial changes to sentencing practices, resulting in mandatory minimums, truth in sentencing, and the elimination of parole (Garland, 2001). States and the federal government increased penalties across the board—for drug, property, and violent crimes, and for first time and repeat offenses alike. During this period, domestic violence policy and practice also became more retributive. Prosecutors played a pivotal role in this agenda, benefiting and gaining power from many of these changes (Pfaff, 2017; Simon, 2007; Zimring, 2020).

At the height of the tough-on-crime era (1980s–1990s), new policies toward domestic violence proliferated. While scholars have studied mandatory arrest, pro-arrest, and no-drop policies (i.e. Dixon, 2008; Nichols, 2014), the implementation of criminal domestic violence protection orders (which forbid contact between alleged perpetrators and alleged victims, resulting in criminal convictions when violated) represents a relatively new and underexplored topic. Like similar punitive domestic violence policies, these laws constrain legal actors' discretion, escalate punishment, and restrict victims' participation in the process. This paper analyzes findings from the first empirical study of this domestic violence policy¹.

Specifically, we analyze a statutory amendment that Minnesota implemented in 2006, which created a felony conviction for violating Domestic Assault No-Contact Orders (DANCO). This legal change led to a surge in felony convictions, imposed disproportionately on persons of color. Recognizing the key role of the prosecutor in procuring these convictions, we examine several questions about this new felony law. Are rises in DANCO felonies due to prosecutors seeing more physically violent cases? Or do prosecutors use their discretion to severely punish a wider range of conduct under the label of domestic abuse? Based on an exploratory analysis of 100 DANCO cases in Ramsey County, Minnesota, we find that DANCO felonies result from myriad incidents: some violent and nonconsensual, and many seemingly nonviolent and consensual. We conclude that this law has become a tool of *pragmatic punitiveness* that prosecutors use to demonstrate a commitment to punitive justice, and to efficiently and quickly secure convictions.

Background: Trends and Explanation of the DANCO Felony

DANCO mandate no contact or communication between the “protectee” and the defendant, much like civil protection orders. But unlike civil protection orders where protectees initiate civil order proceedings, the criminal court imposes DANCOs, which take effect immediately. Two types of DANCOs can be ordered: pretrial DANCOs issued following an indictment and remaining in effect until case resolution and probationary DANCOs,

imposed at conviction and remaining for the duration of a defendant's sentence. The DANCO felony emerged from a statutory revision. In 2006 Minnesota amended 518B.01(22), "the Domestic Abuse Act," adding the violation of a DANCO to the list of offenses that could be enhanced to a three-strikes felony. The statute reads:

"A domestic abuse no contact order is an order issued by a court against a defendant in a criminal proceeding or a juvenile offender in a delinquency proceeding for (1) domestic abuse... (2) harassment or stalking... (3) violation of an order for protection... (4) violation of a prior domestic abuse no contact order (629.75, 2006)."

Notably, DANCOs existed prior to 2006—but violating these orders was previously categorized as a gross misdemeanor. Now, if defendants violate either DANCO—and have two or more previous convictions for "qualifying domestic violence related offenses" (QDVRO) within 10 years, the DANCO violation can be charged as a new felony. This DANCO felony carries a sentence of not more than 5 years in prison with a maximum fine of \$10,000.

The predicate QDVRO convictions that can trigger a DANCO felony enhancement may be misdemeanors, gross misdemeanors, or felonies and enhancement is not contingent on the previous crimes being committed against the same victim. Thus, if an individual with a misdemeanor domestic violence conviction violates a DANCO (or commits another QDVRO), the court may enhance the DANCO (or QDVRO) to a gross misdemeanor. If the individual subsequently violates a DANCO, the court may issue a felony conviction.

In the years following enactment of the revised law, felony DANCO convictions grew steadily. To provide context for this study, we present descriptive data from the Minnesota Sentencing Guidelines Commission to illustrate trends since the law took effect. Figure 1 shows the rate of felony convictions for a series of domestic assault-related offenses from 2006 to 2015. In 2007, the rate of DANCO felony convictions relative to other domestic assault-related crimes was low. In the following 4 years, the rate of DANCO convictions skyrocketed. After a slight decline in 2012 and 2013, the DANCO conviction rate continued to rise. Moreover, these convictions disproportionately impact racial minorities (Figure 2). Blacks and Native Americans are overrepresented among persons convicted of these felonies, and these disparities worsen over time.

Our study focuses on Ramsey County. Figures 3 and 4 show the trends of DANCO felony rates and racial disproportionality in convictions in Ramsey County largely reflect the state of Minnesota. As shown in Figure 3, the DANCO felony conviction rate rose more sharply in Ramsey County than in the state overall, surpassing all other domestic assault-related convictions in 2012. Blacks and Native Americans are overrepresented among persons convicted of DANCO felonies in Ramsey County (Figure 4). One notable difference is that the highest rate of DANCO convictions among Native Americans in Ramsey County was in 2013, with a sizeable decline in subsequent years.

In Ramsey County, it has become standard practice for judges to issue DANCO orders after a domestic abuse-related arrest. Prosecutors and judges initiate DANCO proceedings, and they are not required to solicit input from the protectee. In 2013, an interdisciplinary working group developed a manual, Guidelines and Procedures for Domestic

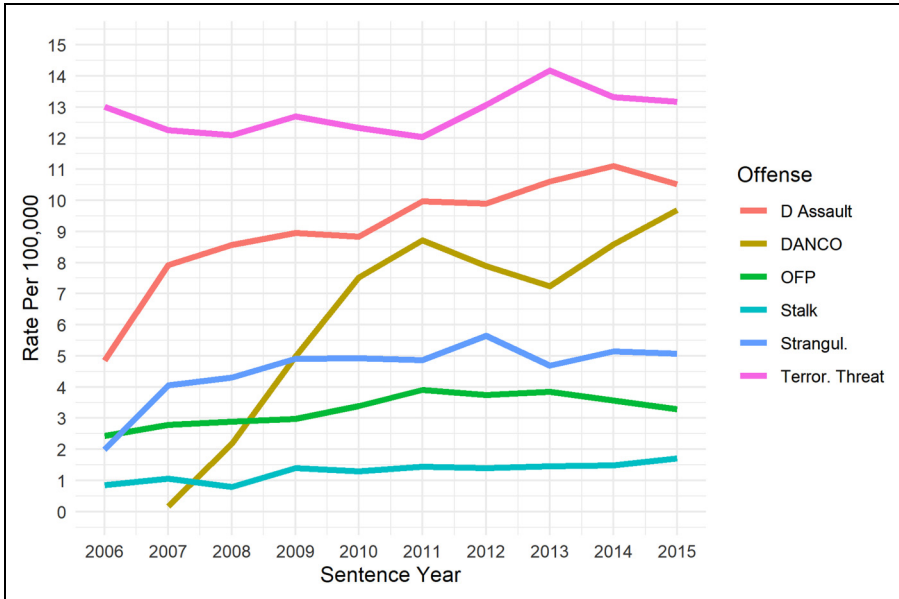


Figure 1. Minnesota felony rates by type.

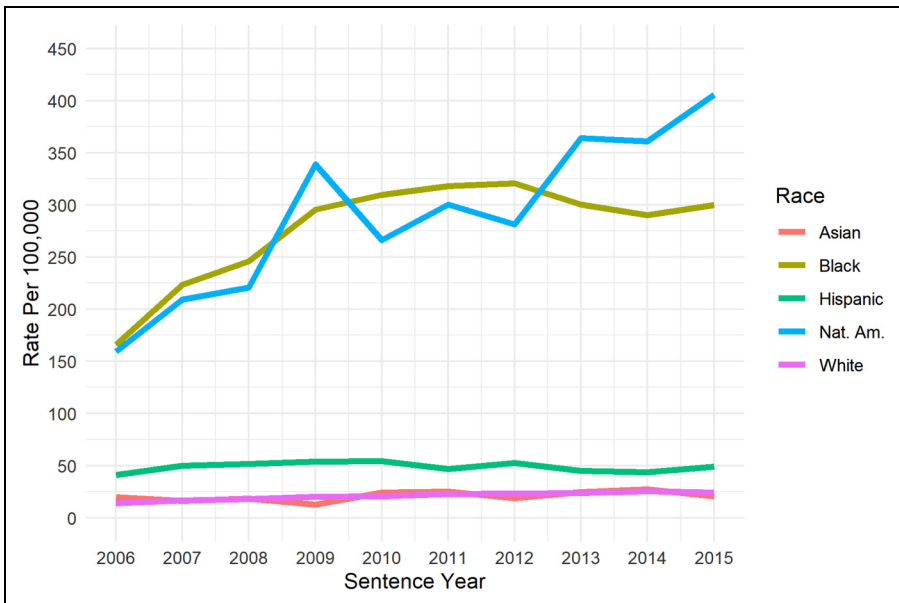


Figure 2. Minnesota DANCO felony rates by type.
DANCO: Domestic Abuse No-Contact Order.

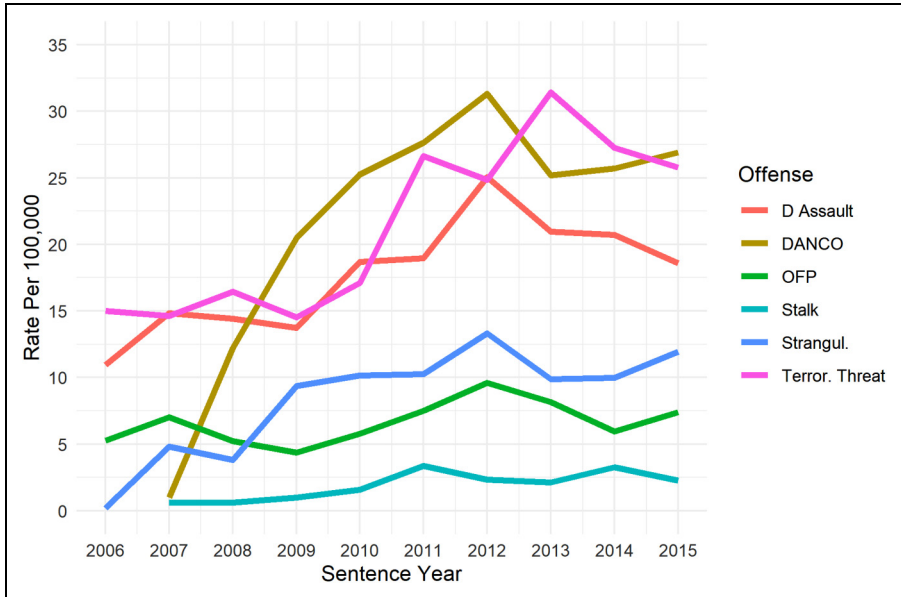


Figure 3. Ramsey felony rates by type.

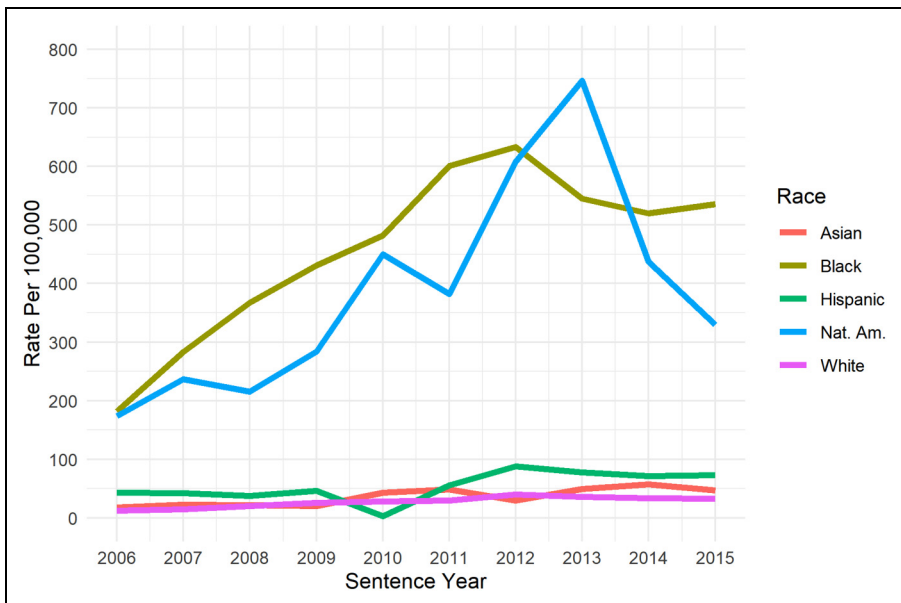


Figure 4. Ramsey county DANCO felony rates by type. DANCO: Domestic Abuse No-Contact Order.

Abuse-Related Criminal Cases, to guide practice in Ramsey County criminal court (2013: p. 22). The manual articulates the presumption for prosecutors to request DANCOs whenever there is a domestic violence-related offense. Although the presiding judge is instructed to listen to victims' input and take their concerns into consideration, the manual states: "Unless exceptional circumstances exist, judges should issue a DANCO in any domestic abuse-related case" (2013, p. 22). The guidelines continue, with no caveats, "On behalf of the state, prosecutors should request a DANCO." When considering a DANCO order, prosecutors are to consider defendants' prior record, information from police reports, bail evaluations, risk assessments, and victim information (a confidential form victims may fill out).

We emphasize that DANCO orders that courts impose are distinct from DANCO felony convictions. The two are related, because DANCO court orders set the stage for the DANCO felony convictions, resulting from violations of these orders. Prosecutors maintain broad discretion on whether to pursue charges when individuals violate DANCO orders. Our analysis focuses on cases in which prosecutors successfully obtained DANCO felony convictions.

Getting "Tough" on Domestic Violence: Carceral Feminism

Minnesota's DANCO felony law developed as part of a national movement to crack down on domestic abusers. Feminist anti-violence movements underwent substantial institutionalization during the 1980s (Richie, 2012). State responses to domestic abuse that emerged during this period constitute what Bernstein terms "carceral feminism" (2012). Law (2014) characterizes this approach as aiming to solve the problem of violence against women through increased policing, prosecution, and incarceration. Carceral feminists have advocated "punitive systems of control as the best motivational deterrents for men's bad behaviors" (Bernstein, 2010, 58). Researchers have documented collaboration between law enforcement institutions and sexual assault and domestic violence activists, shaping the aims and goals of feminist advocacy (Bumiller, 2009; Coker, 2001; Gottschalk, 2006; Richie, 2012; Weiss, 2020).

Thus, the carceral feminist strategy developed through the efforts of feminist activists who sought to bring attention to the previously ignored issue of violence against women. Seeking professional legitimacy and resources, advocates formed alliances with law enforcement organizations (Gottschalk, 2006; Weiss, 2020). Some activists expressed misgivings (Black feminists in particular) about the growing collaboration with crime control agents, because these alliances focused heavily on criminalization (Crenshaw, 1991, 2011; Gustafson, 2011). The history of organizations comprised of Black feminists, lesbian and queer women, and cross-class coalitions reveals that much counter-activism in the 70s and 80s did resist the carceral feminist impetus due to apprehensions that prisons breed violence and punitive policies fail to address the underlying causes of violence against women (Thuma, 2019). Ultimately, however, the dominant feminist movement did not heed these concerns (Davis, 1981; Schechter, 1982).

Mainstream feminist anti-violence advocates and law enforcement organizations established an effective lobby that strengthened criminal codes concerning domestic violence and sexual assault. Initial victories strengthened collaborative relationships between

carceral feminists and crime control agents. In 1994, coalition successfully advocated for the passage of the landmark Violence Against Women Act (VAWA), creating new funding within the Department of Justice focused on domestic abuse-related crimes, such as intimate partner violence (Kim, 2020). The VAWA increased resources for police and prosecutors to target domestic violence. The law reinforced the view that domestic violence required swift and consistent law enforcement responses (Kim, 2020; Seghetti and Bjelopera, 2012). Such responses magnified the power of police and prosecutors while facilitating increasingly harsh responses to domestic violence (Gruber, 2020). Advocates shifted focus from structural inequalities and victim empowerment to individualistic policy responses dependent on alliances with state institutions (Bumiller, 2009; Soss et al., 2011). Validating the concerns expressed by Black and queer feminist activists, this strategy reduced resources allocated to the most disadvantaged victims (Gruber, 2020).

Carceral Feminist Policies. Scholars describe mandatory policies, such as mandatory arrest and no-drop prosecution, as archetypical carceral feminist responses to domestic violence. Mandatory arrest requires that officers make an arrest if they find credible evidence that domestic abuse occurred, regardless of the alleged victim's wishes. No-drop prosecution compels prosecutors to pursue criminal charges against a defendant even if the alleged victim is unwilling to participate in the prosecution. Both "mandatory policies" (Coker, 2001) seek to limit the discretion of legal actors in domestic violence cases (Goodmark, 2009). These routinized policies do not consider that victims may not want their partners arrested because they fear potential retaliation, mistrust the legal system, or do not want their partners to experience collateral consequences from a conviction (Coker, 2001; Dixon, 2008; Nichols, 2014; Suk, 2009). In addition, mandatory policies and practices facilitate the state's control of victims (and their intimate relationships) justified on the premise that victimization renders women incapable of making proper decisions (Piehowski, 2020).

DANCOs are closely related to both mandatory policies in that DANCO felony convictions do not require protectees' cooperation or involvement in criminal proceedings, and issuance and enforcement of a DANCO generally occur regardless of the protectee's wishes and without their cooperation. Implemented mechanistically, DANCO orders (and resulting convictions for violations) potentially increase the presence of state control in victims' lives. Importantly, DANCOs differ from other mandatory policies because they do not curtail the discretion of legal actors. Feminist scholars argue that policies like Minnesota's DANCO law have other effects that may disadvantage women who have been victims of domestic abuse. Goodmark (2009) argues that these laws assume women/victims are powerless, timid, and manipulable, thereby reinforcing the state's tendency to act paternalistically on victims' behalf. Discounting people's desires "for their own good" can produce "legal cynicism" (Sampson and Bartusch, 1998), reducing the likelihood that victims will cooperate with state authorities in the future. Moreover, these laws bolster the interests of the state, increasing its reach into the lives of citizens. The introduction of the 2003 Sexual Offenses Act in the United Kingdom, for example, facilitated the state's ability to promote its moral authority, seeking to shape the sexual behaviors of citizens through intervening in ways the state previously had no influence

(Phoenix and Oerton, 2005). Scholars similarly argue that carceral feminist policies in the US extend the reach of the state into the lives of victims and their families (Piehowski, 2020; Suk, 2009). Minnesota's DANCO law is a prime example, giving the state the authority to control the intimate relationships between adults, most often seeking to sever them, thereby altering the structure of the households and families.

Prosecutorial Discretion

During the 1980s and 1990s, legislators passed "tough on crime" laws that enhanced the power of prosecutors. The general shift from indeterminate to determinate sentencing (exemplified by mandatory minimums) transformed discretionary authority from judges to prosecutors. As prosecutors gained discretionary authority in the courts, they came to play a key role in the growth of incarceration through decisions to pursue custodial sanctions of increasing length (Pfaff, 2017). As Zimring (2020) explains, prosecutors' preferences in conjunction with their power had a strong impact on penal practice due to the punitive preferences they tend to hold. Prosecutor's inclinations are harsher in America than in other western countries and escalated during the punitive turn (Pfaff, 2017; Zimring, 2020) alongside expanding carceral feminist responses to domestic violence. Yet, this intensifying severity of state responses introduced a key tension into courts: there is pressure to prosecute to the full extent of the law, yet the increasing numbers of defendants in court strain county and state resources. Simply put, prosecutors face the challenge of prosecuting more cases with limited resources.

Unsurprisingly, research demonstrates prosecutorial discretion is shaped by practical concerns of efficiency (Albonetti, 1987; Albonetti and Hepburn, 1996; Beichner and Spohn, 2005). Prosecutor's decisions are influenced by both the quantity and quality of their evidence (Albonetti, 1987). For instance, Beichner and Spohn (2005) find prosecutors' decisions to pursue sexual assault cases were tied to the amount of evidence they had in a case. Victim credibility has also been shown to be a determining factor in prosecutor's decisions to pursue or dismiss sexual assault cases (Frohmann, 1991). Uncertainty around the ability to obtain a conviction at a jury trial similarly impacts prosecutor's decisions to pursue charges (Albonetti, 1987). This line of research indicates that prosecutors may subordinate ideals of protecting public safety to the practical difficulties of pursuing cases that are less winnable at trial. Faced with burgeoning caseloads, prosecutors may seek to maximize their efficiency, prioritizing cases with greater odds of victory.

However, prosecutorial decisions are also shaped by the level of perceived violence, and history of the person charged. Gilboy (1984) for instance, found that the severity of a homicide guides prosecutorial decisions to reinstate charges. Beichner and Spohn (2005) found victim injury and use of a weapon impact prosecutors' charging decision in sexual assault cases. Similarly, the instrument used in the crime and offenses against the same victim, increases the likelihood that prosecutors will file domestic violence charges (Schmidt and Steury, 1989). Also, in cases of domestic violence, the defendants' criminal record and victim injury affect prosecutors' charging decisions (Henning and Feder, 2005; Schmidt and Steury, 1989). Similarly, Ulmer et al. (2007) find that a defendant's criminal history and the gravity of the current offense affect decisions to pursue

mandatory sentences. True to its logic, carceral feminism helps create an environment in which many actions can be classified as “violent” or as reflective of history of domestic abuse, while placing demands on prosecutors to address such single acts retributively.

Yet in practical, evidentiary terms, domestic violence can be challenging to prosecute. Victims often have personal ties to the defendant and may not cooperate (Boivin and Leclerc, 2016; Dawson and Dinovitzer, 2001). Legal scholars posit that victim cooperation in domestic violence prosecution became increasingly critical as a result of the 2004 Supreme Court decision in *Crawford v. Washington*, which required cross-examination for the admission of prior testimonial statements into evidence from no longer available witnesses (*Crawford v. Washington*, 2004) 541 U.S. 36 (Fine, 2006). In brief, prosecutors face substantial public and political pressure to prosecute domestic violence cases. At the same time, however, achieving guilty verdicts in these cases may be difficult. Carceral feminism creates a legal culture in which prosecuting domestic violence becomes a high priority, and DANCO (and similar laws) help to resolve these practical and evidentiary tensions that such a culture generates.

The Current Study

Aside from the sharp growth and racial disparities in DANCO felony, we know very little about the implementation of this carceral feminist policy. To our knowledge, this is the first empirical analysis of this policy. Our key research questions are: What factors lead to DANCO convictions? Do DANCOs accompany other simultaneous convictions? If so, under what conditions? We selected Ramsey County as our site because trends in DANCO felony convictions generally reflect those of the rest of the state with one caveat: there are more DANCO felony convictions issued in Ramsey than in any other county and Ramsey includes Minnesota’s second largest city. Additionally, a member of the research team had a working relationship with the Ramsey County Public Defender’s Office (PDO) facilitating access to detailed case data.

Data Sources

Our primary data source is a set of detailed case files on all persons convicted of DANCO felonies whose cases were handled by the PDO from 2006 to mid-2014, 435 in total. All were prosecuted by the Ramsey County Attorney’s office, with nearly 30 different Ramsey County Justices presiding over convictions and sentencing. Our findings speak only to defendants/cases that were handled by public defenders (not private attorneys or those without counsel) constituting 87% of DANCO felony convictions in Ramsey County during the study period.

The case files provided us with rich comprehensive data on the implementation of the new DANCO felony in Ramsey County, including all available court documents (i.e. charges filed, bail, and detention orders) police reports for incidents generating DANCO felony convictions, and the underlying offenses predicated the felony enhancement. The PDO provided demographic information (e.g. age, race, sex, employment, education) for each defendant, collected prior to initial bail hearings.

Although our records contained comprehensive information on gross misdemeanor and felony offenses, information on misdemeanors was less complete and often missing. Since our focus is DANCO felonies, details on misdemeanors were not central to our research. We supplemented case files with publicly available information, such as offense levels and dates from the Minnesota Court Information System. Data derived from police reports is also publicly available upon request (through the Minnesota Data Practices Act (2005)) permitting us to receive an Institutional Review Board exemption for this project. However, to maintain the confidentiality of defendants and protectees, we use pseudonyms for both. Lastly, we conducted informational interviews with the former Ramsey County Chief Public Defender and a high-level Ramsey County prosecutor to supplement and contextualize our findings.

Methodology

We developed a coding scheme to translate individual DANCO case files into an analytic dataset. We sought to capture potential factors that affect prosecutorial considerations in DANCO cases. Due to the centrality of violence in this study, we aimed to capture a wide range of violence that may occur in domestic violence-related incidents. To begin the process, each member of the research team took ten case files (case files represented an individual with a DANCO felony conviction and at least two underlying domestic violence-related offenses) and independently created an initial list of codes. Next, we met as a group, discussed all codes, and constructed a codebook containing discrete quantitative measures and open-ended codes (described in greater detail in the measures section²).

We selected a simple random sample of 100 files, divided them equally (20/person), and coded in group meetings to discuss questions that emerged during the process; this strategy increased the validity and consistency of our codes. Our data were stored in a shared Excel spreadsheet, with each row representing one indictment or set of indictments (DANCO felony or underlying offenses), not one individual. Our 100 defendants comprised 438 indicted cases with 145 DANCO felony charges (many had multiple DANCO felony charges).

Measures

Legal Measures. We included several measures capturing legal aspects of each case: offense level (e.g. misdemeanor, gross misdemeanor, felony); bail amount; charged offense(s); disposition(s); documenting all offenses as originally charged and convicted. We included dates of alleged conduct, sentencing, and DANCO violations (in cases with multiple DANCO violations, we recorded the most recent).

Incident and Protectee. We included the “contact type” eliciting a DANCO violation (e.g. phone calls, texts, presence in a car with the protectee during a traffic stop, etc.) and coded “police awareness” to capture how the police became aware of prohibited contact (e.g. protectee reported to police, jail staff detected phone contact, police present for unrelated matter). For DANCO cases, we created a binary measure indicating whether we saw evidence indicating the contact resulting in a DANCO violation was seemingly “mutual”

(the police report explicitly indicated the protectee consented to contact despite the DANCO). Because we did not interview protectees, we cannot conclude if contact was consensual. However, our aim was not to evaluate the “true” nature of the contact, but to understand if felony DANCOs occurred in cases with evidence (police reports) suggesting the underlying contact was mutual. We captured this with both a dichotomous variable indicating yes/no of evidence of mutuality and with an open code to record the evidence from which we reached this conclusion. Lastly, we coded the relationship between the defendant and protectee, differentiating between intimate partners, children, and other relations; the majority (over 96%) involved a current or former intimate partner.

Measures of Violence. Violence can take many forms, and we coded accordingly. Indicators of violence typically came from police reports justifying formal legal charges. Each of our four types of violence was coded as its own dichotomous variable, these measures included: 1. “Threat,” indicating any verbal, written, direct, or implied threat of violence that occurred during the incident. 2. “Non-physical force,” including both verbal threats and some actions (defendant blocking an exit/hiding a cell phone to prevent calling for help). 3. “Physical force,” denoting any physical violence, such as pushing, hitting, punching, or strangling. 4. “Physical injury,” signifying any substantiation of injury (i.e. documentation of red marks, bruises, scratches, or cuts). We also recorded physical injury with an open code, noting the specific evidence of physical injury described.

Findings

Our exploratory analysis reveals that a range of circumstances triggers DANCO felony convictions. We interpret our data as preliminary evidence that prosecutors employ what we describe as *pragmatic punitiveness* when seeking DANCO convictions. Prosecutors show a commitment to punitiveness by pursuing felony convictions for incidents involving both violent and nonviolent (even seemingly consensual) behavior. But they also exhibit pragmatism by pursuing indictments for the violation of a DANCO, rather than seeking additional indictments in cases with documented evidence that violence occurred. We organize these findings into two sections, indications of prosecutorial punitiveness then potential indications of prosecutorial pragmatism.

Before presenting these findings, we provide descriptive information for our defendant sample (Table 1). We divide the sample into non-DANCO felony offenses and DANCO felony offenses, showing little difference between the two. Our sample was predominantly Black (about 65%), then White (23%); other races comprised a small portion. The grossly disproportionate portion of Black defendants in our sample reflects the racial disparities in DANCOs across the state. The lack of Native American individuals in our sample despite their overrepresentation in DANCO cases in both the state and county is a result of their very small proportion (about 1%) of the population in the county. Nearly all defendants (99%) were male. The majority (about 80%) was unemployed prior to their DANCO charges, and the mean level of education was less than a high school diploma. The case files of the 100 defendants in our sample contained

Table 1. Descriptives.

	Non-DANCO		DANCO		Total	
	Number	Percent	Number	Percent	Number	Percent
Race						
Asian	18	6.2	8	5.5	26	6
Black	185	63.8	96	66.2	281	64.6
Hispanic	16	5.5	9	6.2	25	5.7
Native American	2	0.7	1	0.7	3	0.7
White	69	23.8	31	21.4	100	23
Total	290	100	145	100	435	100
Sex						
Male	288	99.3	142	97.9	430	98.9
Female	2	0.7	3	2.1	5	1.1
Total	290	100	145	100	435	100
Employed						
No	228	78.6	114	78.6	342	78.6
Yes	62	21.4	31	21.4	93	21.4
Total	290	100	145	100	435	100
Education						
Mean (SD)	288	11.66 (1.40)	144	11.51 (1.47)	432	11.62 (1.42)
Total	290		145		435	

DANCO: Domestic Abuse No-Contact Order.

indictment information for the 435 domestic abuse-related offenses with which they had been charged, including 145 felony DANCOs (some had multiple DANCO felony charges).

Prosecutorial Punitiveness

Violence and its Absence. Table 2 shows the presence of violence indicated in incidents triggering DANCO felonies. This data suggests that prosecutors pursued DANCO felonies for incidents involving violence *and* those without any indication of violence. We define violence here as any occurrence of one of the four forms of violence we recorded. In Table 2, we show these measures of violence separately. While we differentiate them in the table, most of the instances coded as nonphysical force included threats. Instances of physical injury were coded as physical force. In 41.38% of DANCO felonies, evidence of violence was documented, but in most DANCO cases (58.62%) it was not. In these cases—where violence and threat of force are absent—we posit the pursuit of DANCO felonies is expressly punitive.

Mutual Contact. Our coding also revealed that in a substantial portion of DANCO felony cases, the contact between the defendant and “protectee” triggering the felony appeared to result from mutually desired interactions (57 cases, 39.31%). For clarity, we provide two illustrative examples of encounters we coded as “mutual” below.

Table 2. The presence of violence in DANCO felony charges.

	None	Threat	Nonphysical force	Physical force	Physical injury	All simultaneous
N	85	30	39	36	24	8
%	58.62	20.69	26.9	25.17	17.39	13.33

Note: While the total number of DANCO felonies is 145, these numbers do not total 145 because some cases included multiple forms of violence.

DANCO: Domestic Abuse No-Contact Order.

George, a 35-year-old Black male with an Associate's degree, received a felony DANCO for calling his partner, Shelly, from jail. In this case, contact was detected by officers in the local jail who periodically listen to calls of people in custody. For such a call to occur, the person who answers must proactively accept the call; he or she can choose to reject the call and block future calls from the individual. As written in the police report: "George called Shelly 'Baby.' Shelly called him 'honey.' Shelly then shared details with George that she was about to be evicted from their home." In this case, Shelly and George seemed to mutually participate in the contact—George made the call and Shelly accepted it.

While we do not know Shelly's reason for accepting the call, our analysis is concerned primarily with the evidence prosecutors draw on when deciding to pursue felony DANCOs. In George's case, the prosecutor sought a felony conviction for an incident with no indication of violence toward the protectee and no possibility of immediate physical violence (because George was incarcerated).

Our second example of mutual contact shows how DANCO felonies can occur during seemingly mundane activities. John, an unemployed White man in his late 20s, was sitting in his girlfriend Miranda's car at a gas station when he was arrested. The police saw and recognized John and knew there was a no-contact order against him, so they ran Miranda's license plates. When they saw Miranda exit the store and get into the car, they confronted John. John told the police he and Miranda planned to ask the court to cancel the DANCO at their hearing later that month. Miranda, in her early 30s at the time, told the officers her son was in the hospital, and she needed John for emotional support. She also told them she was helping John find a new apartment away from his cousin, with whom he resided at the time and who according to Miranda, encouraged John's drinking.

This incident suggests that both parties, John (the defendant) and Miranda (the protectee) mutually participated in the contact—as indicated by Miranda's statement to the police about "needing John for emotional support." Miranda's statement about her son also depicts a common theme that emerged in cases of mutual contact: both parties justify violating the DANCO order to care for children.

George and John's cases reveal variation in cases of seemingly mutual contact and cases lacking indicators of violence against the protectee. In both cases, prosecutors obtained DANCO felony convictions for behavior that would not constitute a felony, and may not even be criminal, were it not for the DANCO. We posit that the prosecutor's decision pursue felonies in such cases was decidedly punitive.

Table 3. Police awareness and contact type.

Type of contact	Frequency	Percent
Phone Call	6	4.26
Protectee home	88	62.41
Vehicle	14	9.93
Text	1	0.71
Proximity	2	1.42
Third Party	1	0.71
Another Location	14	9.93
Multiple Types	5	3.55
Call and Text	2	1.42
Call from Jail	5	3.55
Mail from Jail	1	0.71
Defendant Home	2	1.42
Missing	4	
Total	141	
Police Became Aware	Frequency	Percentage
Traffic Stop	10	7.3
Protectee Contacts Police	42	30.66
Child Contacts Police	3	2.19
Other Present Called	8	5.84
Neighbor Called	10	7.3
Other Called	9	6.57
PO/Police Stop for Other Reasons	13	9.49
Mail (Jail)	7	5.11
Came on Another Call	8	5.84
Unclear/Dispatched	20	14.6
Caught in Public	5	3.65
Protectee Parents Called	2	1.46
Missing	8	
Total	137	

Police Awareness. We see additional support of prosecutorial commitment to punitiveness by examining how police became aware of contact and the types/locations in which contact occurred (Table 3). In nearly a third of cases (30.66%), the protectee contacted police, suggesting that the protectee did not want contact. Yet, in about the same percent of cases (31.39%), police awareness stemmed from mundane activities such as finding the defendant and protectee together during a routine traffic stop, seeing the two in public or at a residence, or monitoring phone calls from jails. The fact that the protectee (and others) did not contact the police does not prove the protectee wanted contact with the defendant, or that no violence occurred; but in many of these cases, there was evidence that the protectee initiated or consented to contact.

Comparing Violent Histories. Our claim that prosecutors pursue DANCO felonies punitively is further supported by comparing prior violence histories of defendants whose DANCO convictions stemmed from nonviolent (and mutual) contact to those

Table 4. *T*-tests comparing past violence for DANCO felony conviction incidents.

	Violent incident and/or non-mutual contact			Nonviolent incident and mutual contact			t-value	P
	N	Mean	SD	N	Mean	SD		
Threat	99.00	0.81	1.03	50.00	0.62	0.75	1.15	0.25
Nonphysical Force	99.00	1.02	1.05	50.00	0.92	0.75	0.60	0.55
Physical Force	99.00	1.24	1.06	50.00	1.16	1.02	0.45	0.65
Physical Injury	99.00	0.87	1.00	50.00	0.76	0.74	0.68	0.50
Additive Violence	99.00	3.94	3.57	50.00	3.36	2.75	1.01	0.32

DANCO: Domestic Abuse No-Contact Order.

whose DANCO felonies stemmed from a violent incident (or non-mutual contact). In other words, if the defendants who received a DANCO felony during an incident involving nonviolent mutual contact had more extreme histories of violence than those who received DANCO felonies for incidents involving violent and/or non-mutual contact, this could provide an alternative explanation for our findings. Prosecutors seeking felony convictions for nonviolent mutual contact could be trying to prevent future violence, rather than merely pursuing a punitive agenda.

However, this is not the case. We investigate this question using independent samples *t*-tests (assuming equal variance among groups) and compare the histories of prior violence for defendants whose DANCO felony conviction resulted from an incident without evidence of violence *and* with mutual contact to defendants whose DANCO felony convictions stemmed from incidents involving violence and/or non-mutual contact (Table 4). Two conclusions can be drawn from this analysis. First, there was no significant difference in any form of violence (or in the accumulation of past violence) between these two groups. Second, for each measure of violence, the group who received a DANCO conviction with evidence of nonviolent mutual contact exhibited less violence in their histories than those who had evidence of violent contact in their current DANCO felony offense.

Prosecutorial Pragmatism

Additional Charges. Next, we provide support for our second claim: that prosecutors act pragmatically by pursuing felony DANCO convictions rather than pursuing *all* potential convictions or more serious convictions in incidents involving violence. If prosecutors were solely committed to punitiveness, in line with a carceral feminist approach, we would expect them to pursue felony DANCO violations *and* simultaneous convictions for alleged violent assaults. We would also expect they would seek the most severe charges possible for domestic violence-related incidents. This is not what our data indicate. Here we focus on the 60 cases in which a defendant was charged with a DANCO felony for an incident involving violence. In this subset of cases, we explore the presence (and absence) of additional indictments and convictions for additional offenses charged simultaneously with DANCO felonies.

Table 5. Additional filed charges in cases involving violence.

Simultaneous indictments						
Offense	Convicted		Dismissed		Total	
	Number	Percent	Number	Percent	Number	Percent
Strangulation	2	13.33	3	10.00	5	11.11
Violating OFP	1	6.67	8	26.67	9	20.00
Domestic Assault	7	46.67	14	46.67	21	46.67
Terroristic Threats	2	13.33	3	10.00	5	11.11
Disorderly Conduct	1	6.67	0	0.00	1	2.22
Malicious Punishment of a Child	1	6.67	0	0.00	1	2.22
Attempted Violation of DANCO	1	6.67	0	0.00	1	2.22
Burglary	0	0.00	2	6.67	2	4.44
Total	15	100.00	30	100	45	100.00
Simultaneous convictions						
DANCO Felony Conviction						
Other Felony Convictions						
	No		No	Yes	Total	
			0 (0.00%)	45 (95.74%)	45 (75%)	
	Yes		13 (100%)	2 (4.25%)	15 (25%)	
	Total		13 (100%)	47 (100%)	60 (100%)	

DANCO: Domestic Abuse No-Contact Order.

Table 5 shows the vast majority (95.75%) of DANCO felony cases that involved violence resulted in a single conviction. In most of these cases, prosecutors only pursued—and secured—a DANCO conviction (75%). This occurred even though of the 60 cases that included evidence of violence, over three-fourths (45) of the defendants were initially charged with multiple offenses (DANCO violation and another crime) stemming from the incident. That prosecutor’s chose to pursue only one conviction in such violent cases further supports our argument that prosecutorial decisions are guided by considerations of efficiency. Accordingly, in most (66%) of these cases, non-DANCO charges were dismissed. The most common offense dismissed in favor of a DANCO felony was domestic assault (46.67%) followed by violation of an order for protection (26.67%).

Violence and DANCO Only. We provide the example of Robert and Julia to depict this phenomenon more clearly (violent contact triggering additional indictments, but only a DANCO felony conviction). Robert, a 25-year-old Black male, was arrested twice for allegations of abuse against his partner, Julia, and violating an attendant DANCO. In the first incident, Robert allegedly grabbed Julia by the throat, slammed her to the ground, and kicked her in the face. Police took pictures of the victim’s swollen lip, scratches on her neck and chest, and cuts on her hands and nose. For this,

Robert was charged with two felony DANCOs and one felony domestic assault. However, despite the evidence of violence the prosecution offered a plea bargain to Robert and dismissed everything but one DANCO felony.

A few months later, Robert was rearrested for similar allegations (e.g. punching Julia in the stomach, taking her phone, and forcing her to undress for him)³ and police again documented evidence of physical injuries. From this second incident, Robert was charged with violating an OFP, three DANCO felonies, and one felony domestic assault. Yet again, Robert took a plea bargain in which he received a second DANCO felony with all other charges dismissed.

Dismissals and Pleas. Conversely, in about a quarter (24.42%) of cases of DANCO felony charges involving violence the defendant was convicted of a non-DANCO offense, but in most of these (13 of 15) cases, the initially charged DANCO felony was then dismissed by the prosecutor. This means the defendant was convicted of another offense instead of—rather than in addition—a DANCO violation. Of the 15 non-DANCO convictions that resulted from these violent incidents, most were for domestic assault (46.67%). In only two cases was a defendant simultaneously convicted of *both* a DANCO felony and another felony (both were cases that resulted in simultaneous DANCO and Domestic Assault felony convictions).

Prosecutors rarely pursue multiple convictions for incidents involving non-DANCO felonies, providing further evidence that their decisions are not purely punitive. After all, none of the crimes from which non-DANCO convictions resulted in violent incidents (i.e. strangulation, domestic assault, or terroristic threats) could have occurred without prohibited contact between the defendant and the protectee also occurring. Thus, if the state were seeking to prosecute domestic violence as punitively as possible, we would expect these defendants convicted of non-DANCO offenses to receive accompanying DANCO felony convictions. Yet, prosecutors habitually settle cases through plea bargaining (rather than trials) and use the dismissal of additional charges to incentivize defendants to plead guilty, a seemingly pragmatic choice to avoid trial.

Overall, our results indicate that prosecutors seek DANCO felony convictions for pragmatic—not just punitive—purposes. It is practical for prosecutors to seek DANCO convictions over other offenses, such as domestic assault, because DANCOs are easier to prove; prosecutors need only demonstrate the defendant and protectee had contact. Additionally, DANCO felony convictions carry maximum sentences equal to or more severe than most other Minnesota domestic violence felonies. The penalties for felony domestic assault and DANCO felonies are both a maximum of 5 years in prison and a \$10,000 fine, while felony strangulation, carries a maximum sentence of 3 years in prison and a fine of \$20,000 (629.75, 2006; Minnesota Statutes, 2017). By pursuing DANCO felony convictions, (and not additional convictions) prosecutors can achieve pragmatic ends (e.g. reducing time spent on cases) while also showing they are “tough” on domestic violence.

Discussion

This paper uses unique case-level data to analyze the implementation of a groundbreaking criminal domestic violence protection order policy. Since the 2006 passage of

Minnesota's DANCO law, these convictions have skyrocketed, with extreme racial disparities in conviction rates. Our analysis of a random sample of 100 DANCO felony defendants in Ramsey County suggests the state employs the DANCO statute to criminalize all contact between defendants and protectees, including contact that police reports describe as consensual, if not initiated by the protectee. But the state also seeks convictions for violations of DANCOs in cases where there is evidence of a DANCO violation *and* a domestic assault. In these cases, the state typically pursues only a DANCO conviction. Thus, we found that DANCO felonies tend to stem from both cases with evidence of violence and those without.

To explain these findings, we use the concept *pragmatic punitiveness*. Prosecutors pursue DANCO violations pragmatically because it is far easier to prove that a person violated a no-contact order than demonstrate that a defendant committed a violent assault. The increased difficulty prosecutors face in trying domestic violence-related offenses in light of the *Crawford* decision may help explain why DANCOs has become a convenient tool for prosecutors; they do not need victim consent or testimony to prove a DANCO violation. Moreover, as a Minnesota defense attorney explained in an interview with Minnesota Public Radio, "the attractiveness of a DANCO for the prosecution is that once imposed it carries separate criminal penalties that could exceed the ones that exist for the underlying case for which it was issued" (Gunderson, 2012). So, in addition to being a convenient tool for prosecutors, the DANCO law is staunchly punitive.

Hence, prosecutors offer DANCO felony conviction pleas to defendants charged with multiple indictments, many of which carry equal or shorter penalties than the DANCO conviction. Getting a plea for a DANCO violation is a win-win for prosecutors, counting as a conviction and lightening their caseload. Judges likely support prosecutors pursuing the plea (rather than trying to prove other domestic assault allegations) to relieve pressure on their dockets. Defense attorneys may also back prosecutors' decisions to go after the DANCO violation to ease their own caseloads and protect their clients from getting convicted of the DANCO *and* a second felony. In short, our data suggest that the DANCO law functions, in part, to secure easy convictions, benefiting the main players in the "courtroom workgroup," all of whom are interested in quickly disposing of cases, especially in counties with heavy caseloads, like Ramsey (Metcalf, 2016). In this respect, our analysis highlights *organizational convenience*—a pattern of practice that helps actors achieve organizational goals.

Importantly, frequent opportunities for prosecutors to secure DANCO felony convictions are enabled by the pro forma practice of courts routinely imposing DANCO orders on defendants. Our interviews with Ramsey County lawyers and the District Guidelines for Ramsey County indicate that prosecutors regularly ask for DANCOs and judges grant them as a matter of course. As the former Ramsey County Chief Public Defender explained, "there still is a fairly strong presumption that they're going to grant a DANCO in most cases, and often it's just the court's sort of conservative concern that if something happens, they're off the hook.... they're going to err on the side of safety and caution." Similarly, a Ramsey County prosecutor acknowledged, "We try to incorporate listening to the victim's wishes.... But I know that nobody wants to make a mistake, but often times those DANCOs are done routinely... it's really complicated, but we don't want to make a mistake, often times, people in the system, their worst nightmare is if they ask for something or do something and then somebody ends up dead."

This rote implementation is *politically convenient*: By consistently handing out DANCOs, judges and prosecutors insulate themselves from political blowback. As elected officials, judges and district attorneys fear upsetting constituencies (such as domestic violence advocates with extensive “moral capital”) that may oppose them politically (Berry, 2015; Tonry, 2004). Routine imposition of DANCO orders serves to protect risk-averse criminal justice actors from potential criticism while simultaneously providing increased opportunities for prosecutors to secure DANCO felony convictions.

As the expansion of DANCO felony convictions demonstrates, court actors have become reliant on the DANCO law. The law has become firmly institutionalized—i.e. “it has become taken for granted by members of a social group as efficacious and necessary” (Berger and Luckmann, 1966; Tolbert and Zucker, 1996, 179). Embedded within an organization (the court) and the larger criminal justice field, court actors assume that the policy “works”—that it protects victims from domestic assault. There is a strong possibility that the law has in fact shielded protectees from further abuse. However, our analysis shows that it also may punish people for non-abusive, consensual behavior, sometimes initiated by the protectee. Protectees’ and defendants’ lives are often densely intertwined and a DANCO can cause serious disruption, especially when couples depend on each other for housing, income, childcare, or transportation. In instances of long-term cohabitation, it seems plausible that DANCOs may also impede an unmarried protectee from securing benefits (i.e. healthcare, benefits, and child visitation) should the relationship dissolve (Bowman, 2004). Ultimately, the DANCO law operates like other carceral feminist policies such as mandatory arrest and sentencing laws, limiting individualized assessments of defendants, discounting circumstances surrounding violations, and ostensibly ignoring (or not eliciting) the perspectives of victims/protectees while the power and reach of the state expand into the lives of predominately poor people of color. We illustrate clear racial disparities in the imposition of this felony, but we do not unpack how discretionary decisions in DANCO cases are shaped by race; we hope that future scholarship will pursue this line of inquiry.

A growing number of states, including California, Washington, and New York, have enacted legislation mandating criminal (rather than civil) protection orders for domestic violence-related offenses. This study provides a first step in understanding the implementation of criminal protection orders, laying the groundwork for future scholarship to explore other dimensions of these orders and their impacts. We hope scholars continue to analyze criminal domestic assault no-contact orders in Minnesota and elsewhere. Because of the carceral feminist assumption that punitive approaches to domestic violence reduce victimization, criminal justice practitioners and researchers may not think to critically evaluate DANCO and similar policies. Moreover, given the political influence of crime victim and domestic violence interest groups (Gottschalk, 2006; Page, 2011), court actors and scholars alike may view questioning these policies as risky. We maintain that it is essential to continually reflect on the operations and consequences of legal practices—especially once they become taken-for-granted and viewed as “common sense.”

Conclusion

The institutionalization of Minnesota’s DANCO law is part of a larger trend in domestic violence policy that includes mandatory arrest, no-drop prosecution, and policies banning

mediation (Coker, 2001; Goodmark, 2009, 43). Although the DANCO law is not technically mandatory, court actors seem to act *as if* it is—judges routinely give out DANCO orders and prosecutors regularly seek felony violations. As Goodmark (2009, 28) explains, “These policies come from a well-meaning place—the desire to protect women who have been battered from further intimidation and violence, from their own inability to invoke the legal system given their fear of retaliation from their abusers.” This policy agenda, she adds, was “born of advocates’ experiences with a legal system that often failed to safeguard the rights and needs of women who have been battered and their belief that mandatory interventions are instrumental in ensuring that the system treats cases of domestic violence seriously.”

Although well intentioned, evidence that these policies reduce victimization is mixed. Evaluative research on mandatory arrest policies is instructive. After a 1984 pilot study of mandatory arrest in Minneapolis yielded modest decreases in recidivism, the National Institute of Justice (NIJ) funded additional experiments in five other US cities. Importantly, the initial results were not replicated when the experiment was conducted in areas of greater socioeconomic and racial diversity. In reviewing this NIJ study data, Sherman et al. (1992) concluded that arrest actually increased the rate of recidivism for unemployed and unmarried men. Similarly, research on universal or no-drop prosecution techniques does not demonstrate any decreases in repeat offending. A 2008 study comparing the prosecution strategies of the Bronx and Brooklyn boroughs of New York City found no difference in recidivism rates between the universal filing policy of Brooklyn and the “victim-centered” approach of the Bronx (Davis et al., 2008). To date, there are no evaluation studies of Minnesota’s DANCO law; therefore, we do not know if it “works” to reduce domestic violence.

Criminal no-contact order laws also escalate criminalization. True to the carceral feminist ethos, they criminalize behavior (including seemingly consensual contact) the state previously ignored or, allegedly, treated too leniently (Bernstein, 2010). We have shown that convictions for DANCO violations have risen steadily, and conviction rates for Black and Native Americans are especially high. As scholarship on the consequences of a criminal record show, felony convictions deepen social disadvantage (Pager, 2003; Stewart and Uggen, 2020). Clear (2009) persuasively argues that major growth of criminalization and incarceration negatively affects whole communities, not just individuals. And, most relevant for our analysis, marking a DANCO violator with a criminal record (or an additional mark on their record) may have deleterious consequences for protectees. A DANCO felony can lead to loss of employment, earnings, or housing, generating economic or other hardships for both the protectee and the convicted individual. Given the prevalence and institutionalization of DANCO-like laws, it is imperative to keep these issues at the fore of scholarly and popular debate.

In highlighting possible unintended, negative consequences of criminal domestic violence no-contact orders, we do not advocate taking a relaxed approach to assaultive behavior. Instead, we encourage researchers, policymakers, and criminal justice professionals to consider the varied ways in which policies like the DANCO law may disempower victims and alleged victims (who are disproportionately marginalized women), exacerbate racial disparities in the criminal justice system, and contribute to social inequality. What’s more, prosecutorial strategies are not the only way for the state to

address domestic violence. Indeed, conversations are beginning to change around safety and domestic violence responses, with prominent domestic violence and sexual assault groups rethinking their advocacy strategies. In Minnesota, for instance, the largest coalition of domestic violence service providers, Violence-Free Minnesota, has announced that they will no longer support the expansion of the criminal legal system (Shannon, 2020). There is hope, then, that changes in practice may follow.


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Notes

1. Suk (2009) provides a comprehensive legal analysis of developments in the US law pertaining to criminal no-contact orders, grounded in empirical evidence.
2. The term "protectee" refers to the person's role in the DANCO order. We do not use "victim" because it implies that all protectees have suffered victimization. While the defendant must have at least two prior misdemeanor offenses to trigger the DANCO felony, these offenses need not be committed against the same individual. DANCOs issued pretrial could trigger a DANCO felony even if the charges upon which the DANCO was issued are subsequently dismissed.
3. Minnesota statute lists many QDVROs, including terroristic threats, domestic assault, harassment, violating an order for protection, and murder.
4. We use the Minnesota Sentencing Guidelines data to examine rates of DANCO felonies for Ramsey County and the state. We use county-level and state-level American Community Survey data from 2006 to 2015 to calculate rates of DANCO felonies and five Qualifying Domestic Violence-Related Offenses (e.g. Domestic Assault, Violation of Order for Protection, Stalking, Domestic Assault by Strangulation, and Terroristic Threats). To depict prevalence of DANCOs, we graph rates of felony convictions for DANCOs and these other common QDVROs. We calculate the annual rates using the following formula:

$$\frac{\text{Rate}}{100,000} = \frac{\# \text{ Offenses}}{\text{ACS Estimated Population}} * 100,000$$

5. The Second Judicial District Violence Coordinating Council, like others throughout Minnesota, was formed on recommendation of the 1993 Minnesota Conference on Family Violence and the Courts. The council is comprised of an interdisciplinary workgroup of all involved agencies including the Minnesota bench and works to improve Ramsey County's handling of domestic violence cases. This manual was developed specifically for the Second Judicial District of Minnesota and applies to Ramsey County.

6. Our case files were an analysis of secondary data, our interviews were with professionals regarding their professional role, and the remaining data were collected from publicly available sources.
7. Complete codebook is shown in Appendix A.
8. In addition, we attempted to identify the trajectories of violence over time for those who received a DANCO felony. We sought to identify patterns in cases where DANCOs resulted from incidents with versus without violence. However, this analysis did not unearth identifiable patterns, further indicating that prosecutorial punitiveness, not the offense, is a key driver of felony DANCO convictions.
9. We coded Robert taking Julia's phone and forcing her to undress for him both as examples of physical force.
10. See Sherman (2006) on "moral capital".
11. PEN § 136.2, California Code, Penal Code § (2014).
12. Domestic Violence-Official Response, 10.99.040 Revised Washington Code § Duties of court-No-contact order (2015).
13. Protection for Victims of Family Offenses, CPL § 530.12 Criminal Procedure Law § (2015).

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