Civil Protection Orders:

A Guide for Improving Practice

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Civil Protection Orders:
A Guide for Improving Practice

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PREFACE

In 1994, Congress passed the Violence Against Women Act (VAWA), comprehensive legislation designed to address the problem of abuse against women in its various forms. Implementation of the measures contained in VAWA has improved the lives of millions of women in the 16 years since its enactment. One small but formidable element is VAWA's requirement of "full faith and credit for protection orders," namely that a protection order issued in one jurisdiction must be accorded full faith and credit in others and enforced as though issued in the enforcing jurisdiction. What seemed to be a straightforward concept turned out to be more complex and compelled a multi-faceted, comprehensive approach to implementation. Many initiatives were undertaken, including this guide's predecessor.

In 2005, the Family Violence Department (FVD) of the National Council of Juvenile and Family Court Judges (NCJFCJ) published *A Guide for Effective Issuance & Enforcement of Protection Orders*, which came to be known as the *Burgundy Book* because of the color of its cover. This project was a partnership with the Office on Violence Against Women (OVW), U.S. Department of Justice and the National Center on Full Faith and Credit. The *Burgundy Book* sought to advance implementation of the VAWA Full Faith and Credit provision by addressing the greatest impediments: inconsistent and often ineffective issuance, service, and enforcement of protection orders. The *Burgundy Book* was developed as a comprehensive guide to address those issues.

Thousands of copies of the *Burgundy Book* have been distributed to judges, advocates, law enforcement officers, prosecutors, and attorneys, in this country and abroad, and hundreds of trainings undertaken to

educate professionals about appropriate issuance and enforcement of protection orders. However, since the *Burgundy Book* was originally published, Congress passed the Violence Against Women Act of 2005, which clarified and strengthened the Full Faith and Credit provision. States have similarly responded with more nuanced legislation. Also, the explosion in technology provides opportunities for more efficient practice, while opening up new ways in which perpetrators can survey and stalk their victims.

During 2009, the FVD and OVW reconvened some of the country's finest experts on full faith and credit (many of whom served on the original *Burgundy Book* committee) to re-examine the *Burgundy Book.* As with the original committee, the group consisted of approximately 25 professionals drawn from the judiciary, law enforcement, advocates, civil attorneys, and prosecutors.

The group worked together to evaluate what was most useful about the original *Burgundy Book,* areas where the law had changed and, thus, guidance needed to be revised or augmented, and ideas for better integrating the individual disciplines' sections into one cohesive document. With an eye toward creating greater continuity throughout, the committee abandoned the Principles and Strategies format of the original *Burgundy Book* in favor of crafting what we now refer to as the Common Ground. The Common Ground reflects the essential values and practices that all of the professions represented agreed are essential to a strong and vibrant protection order process.

Because each profession is unique in its roles and responsibilities, the sections were updated to include information designed by and for that profession. The committee also recognized that there were some subjects where additional substantive information would be useful to professionals to assist them with fulfilling their roles. Thus, at the end of the new document is a section on Issues in Focus.

This work has culminated in *Civil Protection Orders: A Guide for Improving Practice,* otherwise called the *CPO Guide.* The reader has the option of using the new guide as a whole, i.e., the sum of its parts: the Introduction, Common Ground, five discipline-specific chapters, and the Issues in Focus, or using it "cafeteria-style," namely in parts as the reader may wish. For example, the reader might want to consult the

Introduction, the reader's own discipline section, and one or more Issues in Focus, but not the entire document. However, because the committee believes a coherent civil protection order system relies upon the interplay and interdependence of each profession's work, we encourage everyone to become familiar with the entire document. We believe this will both help the reader do a better job within his or her own profession and better equip the reader to participate as a member of a larger process designed, in the final analysis, to provide safety to all members of our broad and diverse communities.

Two caveats are in order. First, because the field of protection orders has grown immeasurably since the original publication, the committee felt this document should focus on civil protection orders only. The original *Burgundy Book* has references to criminal orders, and while some of the strategies offered in this document could easily be transferred to the criminal system, we do not want the reader to have the impression that this document is intended for the criminal justice system. Such a document is yet to be produced.

Second, this document is designed to provide best practices for the specific professions and the system as a whole. Although some communities, for various reasons, may not be in a position to implement all of the practice strategies, the overarching values are universal and provide needed guidance.

The committee worked tirelessly during 2009 to produce the new *CPO Guide.* They met in person three times and had numerous conference calls. We thank them immensely. Each brought extraordinary talent and a willingness to listen, be challenged, and to create the most useful document we could imagine. In producing this book, they modeled what we hope to see among professionals across the country. OVW and NCJFCJ are honored to have been able to work with all of them.

This *CPO Guide* is dedicated to the thousands of victims and children whom we serve.

Civil Protection Orders:

A Guide for Improving Practice

Introduction

Each year, many of the millions of women[1] who are battered by their partners look to the civil protection order system as a way to stop the abuse. In the act of seeking protection, a victim is putting her trust and safety in the hands of numerous professionals: from the advocates and attorneys who explain the system and assist the victim in obtaining an order; to the judge who crafts an order appropriate to the victim's unique needs; to the law enforcement officers who serve and enforce the order; and to the prosecutor who prosecutes violations. Anywhere along that complex chain, a victim can find that the promise of the civil protection order system is either kept, or broken. *Civil Protection Orders: A Guide for Improving Practice*[2] (herein *CPO Guide*) provides guidance for professionals working to ensure that the promise of the civil protection order system is realized.

The Threat of Domestic Violence

Domestic violence poses a serious threat to women's physical, mental, spiritual, and emotional well-being. Current estimates suggest that one in four women will experience domestic violence in her lifetime.[3] Domestic violence costs the nation an estimated $5 to $10 billion annually in direct medical and mental health care services and lost productivity.[4]

The risk of experiencing violence increases significantly both during and after separation.[5] Because a victim's move to separate signals an impending loss of control, a perpetrator often escalates tactics to exert abusive power and control and may punish the victim through threats,

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[1] Although both men and women can be victims of domestic violence, the majority of victims of abuse and coercive control are women. Therefore, this guide uses gendered terms. However, the values and strategies would apply equally where the victim is male. *See* Bureau of Justice Statistics, U.S. Dep't of Justice, Family Violence Statistics: Including Statistics on Strangers and Acquaintances 1 (2005), http://bjs.ojp.usdoj.gov/content/pub/pdf/fvs02.pdf (finding that females were 84 percent of spouse abuse victims and 86 percent of victims of abuse by a boyfriend or girlfriend and that males were 83 percent of spouse murderers and 75 percent of murderers who killed a boyfriend or girlfriend).

[2] The *CPO Guide* is an evolution of the *Guide for Effective Issuance & Enforcement of Protection Orders* (informally called the *Burgundy Book*) published in 2005, which was the culmination of a multi-year, multi-phase project that explored effective issuance and enforcement of protection orders.

[3] TK Logan, Lisa Shannon & Robert Walker, *Protective Orders: Questions and Conundrums*, 7 Trauma, Violence & Abuse 175, 177 (2006) (finding that "the percentage of women who will experience partner violence victimization is far greater than the percentage of women who experience breast cancer").

[4] Family Violence Prevention Fund, The Facts on Domestic Violence, http://www.endabuse.org/content/action_center/detail/754.

[5] Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089, 1092 (2003).

other acts of violence, or child abduction. Not only are victims who separate from perpetrators of domestic violence significantly more likely to be abused,[6] they are also at an increased risk for intimate partner homicide.[7]

Civil Protection Orders: The Promise of Safety

More than 40 years ago, Pennsylvania became the first state to enact comprehensive legislation allowing victims of domestic violence to obtain civil protection orders.[8] Since then, all 50 states, the District of Columbia, all United States territories, and many tribes have committed to safeguarding victims of domestic violence and their children by offering this civil remedy. Federal legislation strengthened those protections by requiring states, tribes, and territories to accord full faith and credit to protection orders issued in foreign jurisdictions.[9] Today, civil protection orders are the predominant legal remedy victims use to extricate themselves from the violence.[10]

Victims often choose the civil protection order process because it provides them with needed alternatives to the criminal justice system and to shelters that require them to leave their homes.[11] In the civil protection order system, victims can seek, and courts can grant, orders that enjoin respondents from contacting, harming, harassing, or stalking them. A court may also order that a victim retain physical and legal custody of her children while providing additional safeguards such as

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[6] Patricia Tjaden & Nancy Thoennes, Nat'l Inst. of Justice, Extent, Nature, and Consequences of Intimate Partner Violence: Findings From the National Violence Against Women Survey 42 (2000) (finding that "married women who lived apart from their husbands were nearly four times more likely to report that their husbands had raped, physically assaulted, and/or stalked them than were women who lived with their husbands").

[7] Campbell et al., *supra* note 5.

[8] Matthew J. Carlson, Susan D. Harris & George W. Holden, *Protective Orders and Domestic Violence: Risk Factors for Re-Abuse*, 14 J. Fam. Violence 205 (1999) (finding that while two states had protection order legislation prior to Pennsylvania's 1976 Protection from Abuse Act, this act was a landmark in terms of scope of protection).

[9] 18 U.S.C. § 2265 (West 2009).

[10] Sally F. Goldfarb, *Re-conceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship*, 29 Cardozo L. Rev. 1487, 1503-04 (2008).

[11] Logan, Shannon & Walker, *supra* note 3, at 181.

supervised visitation or exchange.[12] Additionally, a respondent may be ordered to vacate the home, thus instilling in the victim a renewed sense of safety and security. Further, courts can provide an array of economic provisions, including requiring the respondent to pay restitution, child support, or provide other economic remedies. And, unlike the criminal justice system, the civil protection order system provides victims flexibility in meeting their specific needs[13] and more control over the process and outcome.

The protection order system's overarching goal of safety[14] is achieved for many of the approximately 1.2 million victims of intimate partner rape, stalking, or physical assault who receive protection orders annually.[15] Studies reveal that between 30 percent and 77 percent of victims report that the process and act of receiving the order ends the violence.[16] For many successful petitioners, the temporary or emergency order was all that was needed: "the most common reason for not returning for a permanent order was that the respondent had stopped bothering the petitioner, which suggests that being the subject of the court's attention can influence the perpetrator's behavior."[17] Even when perpetrators violate protection orders, the orders are still effective at decreasing the severity and frequency of the violence and the fear of harm for the majority of victims.[18]

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[12] For examples, see N.C. Gen. Stat. Ann. § 50B-3(a)(13) (West 2009) (allowing any additional prohibitions or requirements the court deems necessary to protect any party or any minor child); Mich. Comp. Laws Ann. § 600.2950(1)(j) (West 2009) (interpreting *Brandt v. Brandt*, 645 N.W. 2d. 327, 329 (2002) to allow custody arrangements as part of the catch-all provision). *See generally* Allie Meiers, *Comment: Civil Orders of Protection: A Tool to Keep Children Safe*, 19 J. Am. Acad. Matrim. L. 373, 381 (2005) (stating that "A civil order of protection has many benefits to children and their parents who are subjected to abuse.... '[C]atch-all provisions' allow the civil courts broad discretion to effectively deal with removing the respondent/abuser from the home, protection of property, attorney's fees, and providing child custody, support and visitation arrangements").

[13] Logan et al., The Kentucky Civil Protection Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, and Costs 5 (2009).

[14] Carolyne R. Dilgard, *Crossing the Line: The Interstate Implications of Issuing and Enforcing Domestic Violence Protection Orders: An Examination of New Jersey*, 35 Rutgers L.J. 253, n. 8 (2003).

[15] Senator Joseph R. Biden, Jr., Subcommittee on Crime, Corrections, and Victims' Rights, Ten Years of Extraordinary Progress: The Violence Against Women Act 18 (2004).

[16] TK Logan & Robert Walker, *Civil Protective Order Outcomes Violations and Perceptions of Effectiveness*, 24 J. Interpersonal Violence 675, 677 (2009).

[17] Susan L. Keilitz et al., Nat'l Ctr. for State Courts, Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence (Pub. No. R-201) (1997).

[18] Logan & Walker, *supra* note 16, at 687.

In addition to increasing safety for victims, protection orders and the process of petitioning can contribute to a victim's sense of autonomy.[19] The protection order "becomes an announcement that the abused woman refuses to 'take it' anymore and is acting on her own behalf."[20] Studies show that the majority of petitioners would seek protection orders again, even though some of those petitioners' requests were denied and others had their orders violated.[21] For many of these petitioners, the process of reaching out for assistance and initiating change was a step toward independence.[22]

Despite the fact that protection orders work to empower the victim and stop the violence for many, the ability of the system to protect victims can be impeded by barriers in both service and enforcement. Women can face significant challenges when accessing the protection order system that go unrecognized or unaddressed by many professionals.[23] For example, professionals may lack familiarity with statutory eligibility requirements for civil protection orders. If a victim is told she does not meet the requirements, when in fact she does, "it could be the first and last time [she] petitions for a protective order."[24] Even when a victim receives effective assistance, inconsistent enforcement may increase the danger by emboldening perpetrators and creating a false sense of security in the victim.[25] One source found that "[u]nequivocal standardized enforcement of court orders is imperative if protective orders are to be taken seriously by the offenders they attempt to restrain."[26] To this day, around the country, victims cannot rely on that unequivocal response.

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[19] Goldfarb, *supra* note 10, at 1514-15 (sharing the following victim perspective: "After so long of just taking it and taking it[,] I needed to be able to show myself as much as show him that I was tired of being a victim").

[20] Judith McFarlane et al., *Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women,* 94 Am. J. Pub. Health 613, 617 (2004).

[21] Goldfarb, *supra* note 10, at 1510-18.

[22] *Id.*

[23] Logan et al., *supra* note 13, at 9; *see also* Logan, Shannon & Walker, *supra* note 3, at 183 (finding three predominant accessibility limitations "eligibility criteria, bureaucracy, and lack of response and/or enforcement by criminal justice officials").

[24] Logan, Shannon & Walker, *supra* note 3, at 184.

[25] Logan et al., *supra* note 13, at 156 (finding that "if offenders learn there are no consequences to [protection order] violations but victims take the risk of reporting violations, offenders may retaliate. Thus, reported violations with no consequences likely further increases risk to victims"); *see also* Judy L. Postmus, *Challenging the Negative Assumptions Surrounding Civil Protection Orders: A Guide for Advocates,* 22 Affilia 347, 353 (2007) (asserting that "the biggest challenge to the effectiveness of restraining orders lies in the poor enforcement when an abuser violates the order").

[26] U.S. Dep't of Justice, Enforcement of Protective Orders, Legal Series Bulletin #4 (2002), http://www.ncjrs.gov/ovc_archives/bulletins/legalseries/bulletin4/welcome.html.

Therefore, victims may refrain from seeking justice system intervention if they believe perpetrators can violate orders with impunity.[27]

What makes the difference for those whose protection orders are successful in ending the violence and those whose orders are not? Many things. Perpetrators are likely to violate orders, unless there are strong disincentives.[28] Victims need direct services designed to support them and account for their practical, as well as their legal, needs.[29] Another key component of success is the presence of an integrated and consistent protection order system that coordinates issuing, serving, and enforcing court orders. Not only will an integrated and competent system promote victim safety and help save lives, it can also save states millions of dollars.[30]

Civil Protection Orders: A Guide for Improving Practice

Recognizing the need to promote effective issuance, service, and enforcement of protection orders, the National Council of Juvenile and Family Court Judges (NCJFCJ), in partnership with the U.S. Department of Justice's Office on Violence Against Women (OVW) and the National Center on Protection Orders and Full Faith and Credit (NCPOFFC),[31] replicated aspects of the *Burgundy Book* development process in 2009 to create an updated, more streamlined guide. This publication, *Civil Protection Orders: A Guide for Improving Practice (CPO Guide)*, is designed to increase the capacity of communities to issue, serve, and enforce protection orders more effectively and to enhance the safety of and protection for victims of domestic violence and their children. In so doing, the *CPO Guide* is intended to provide a fundamental understanding of the values and practices necessary for a more effective civil protection order system.

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[27] Logan & Walker, *supra* note 16, at 687.

[28] Carolyn Williams, *Not Everyone Will "Get It" Until We Do: Advocating for an Indefinite Order of Protection in Arizona*, 40 Ariz. St. L.J. 371, 377 (2008).

[29] Jane C. Murphy, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 Am. U. J. Gender Soc. Pol'y & L. 499, 514 (2003).

[30] Logan et al., *supra* note 13, at 149 (finding, based on a cost extrapolation, that "protective orders save the state [Kentucky] $85 million for a one-year period, which is likely a conservative estimate").

[31] The NCPOFFC is a project of the Battered Women's Justice Project and provides problem-solving technical assistance and support to individuals, advocates, attorneys, and law enforcement to facilitate implementation of the full faith and credit provision of the Violence Against Women Act.

The *CPO Guide* is built on eight essential values that underpin an effective protection order system: safety, autonomy, accessibility, competence, reliability, collaboration, culture and diversity, and community engagement. It acknowledges that improving outcomes requires professionals and systems as a whole to engage with victims and communities in ways that support and advance these values.

The *CPO Guide* has three main sections:

Common Ground: To develop the Common Ground, the multi-disciplinary committee of experts spent a significant amount of time identifying and committing to the overarching values and identifying those practices that each profession has a role in implementing. It is the committee's belief that these values are universal to professionals in the civil protection order system and that these values must be embraced fully for the system to function effectively.

The Common Ground sets forth the gold standard for professionals. The committee recognizes that not all jurisdictions have laws, policies, or resources in place to implement every strategy. The Common Ground's values and practices, nonetheless, provide a guiding framework for significantly improving practice.

Discipline-Specific Chapters: Each day in this country, professionals throughout the system are called upon to engage in the life-saving practice of domestic violence intervention and prevention. While these professionals can approach their work with the same guiding values, each profession has its own role and mandates in implementing an effective protection order system. The *CPO Guide* acknowledges those unique roles and provides guidance specific to advocates, attorneys, judges and court personnel, law enforcement officers and commanders, and prosecutors. These chapters focus on strategies each discipline can use while operating under the same Guiding Values.

Issues in Focus: A third component of the *CPO Guide,* Issues in Focus, provides a brief introductory discussion of three areas critical to effective implementation of the values and strategies found in the *CPO Guide:* Firearms, Military Issues, and Technology. Focusing interventions in each of these areas requires specific knowledge that is useful to all professions and can help improve practice and promote safety.

Common Ground

The central purpose of the civil protection order system is to protect individuals from harm.

SAFETY

For victims of domestic violence, safety is the most important consideration in accessing the civil protection order system. Yet, the very act of seeking a protection order or its enforcement may put victims at risk for increased violence. Given the evolving dangerousness and lethality factors associated with separating or seeking help, victim safety requires an ongoing assessment of risk, orders that prioritize the safety of victims and children, and reliable enforcement of those orders.

Professionals can encourage victims to seek protection throughout the process by instilling in them confidence that the system will issue, serve, and enforce protection orders that deter violence or threats of violence. Through each stage of the process, professionals promote victim safety by engaging with victims to assess risk and respond appropriately when safety is compromised. Also, because perpetrators of domestic violence can pose a danger to system professionals and the community as a whole, an effective protection order system builds in policies and practices that account for those risks.

UNIVERSAL STRATEGIES FOR SAFETY:

1 Determine the dangerousness and lethality in each case.

Each professional in the system is responsible for working to prevent harm, which requires exploring and understanding the risk factors in each case. Conversations about risk should focus on the victim's perceptions regarding her and her children's safety and include a discussion about the effect the protection order process may have on the victim's safety.[1] In assessing for risk, professionals should pay particular attention to dangerousness indicators such as whether perpetrators are engaging in stalking behaviors[2] or have access to firearms.[3]

2 Facilitate issuance of protection orders that provide the broadest relief allowable under state or tribal law and as requested by the petitioner.

A carefully crafted protection order responds to the needs of each victim and is more likely to be enforced in its entirety. Victim safety depends on both the presence of social, economic, psychological, and emotional security and the absence of physical and sexual violence.

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[1] Jacquelyn C. Campbell et al., *Assessing Risk Factors for Intimate Partner Homicide,* 250 Nat'l Inst. Just. J. 14 (2003).

[2] Logan et al., The Kentucky Civil Protection Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, and Costs (2009) at 7 (finding as part of the main conclusions of the study that "stalking plays a significant yet unrecognized role in ongoing violence and protective order violations, fear of future harm, and distress due to the abuse for victims").

[3] Johns Hopkins University Ctr. for Gun Policy and Research, Firearms and Intimate Partner Violence – Fact Sheet (2003) (finding in part that "[c]ompared to homes without guns, the presence of guns in the home is associated with a 3-fold increased homicide risk within the home. The risk … is 20 times higher when previous domestic violence exists").

❸ Facilitate prompt service and enforcement of those orders.

When civil protection orders are not consistently enforced, perpetrators may be emboldened rather than deterred in their violence. Having a protection order that is not consistently enforced can, in effect, give a victim a false sense of security and increase the safety risks for her. Protection orders promote safety best when they can be enforced within the issuing jurisdiction and across jurisdictions, including tribal, state, military, and maritime boundaries. Professionals who are knowledgeable about barriers to enforcement can develop ways to eliminate those barriers.[4]

❹ Consider the impact of child custody.

For many victims of domestic violence, children are central in the decision to stay or leave an abusive relationship.[5] Given the impact of domestic violence on children,[6] the overlap of domestic violence and child maltreatment,[7] and the degree to which perpetrators use children to control and threaten victims, professionals should act to protect children as well as victims throughout the protection order process.[8] A protection order process that prioritizes safety addresses child custody, visitation, and support.

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[4] Logan et al., *supra* note 2.

[5] Lyndal Khaw & Jennifer L. Hardesty, *Theorizing the Process of Leaving: Turning Points and Trajectories in the Stages of Change,* 56 Fam. Rel. 413, 416 (2007) (finding that "research suggests that … children are an important factor of consideration. Studies have shown that children greatly influence their mothers' decisions to leave abusive relationships …, particularly when the effects of violence on the children become visible").

[6] Unicef Child Protection Section, Behind Closed Doors: The Impact of Domestic Violence on Children (2006).

[7] Numerous studies have focused on the issue of "overlap" or co-occurrence of domestic violence and child maltreatment. A 2008 review of the research literature found that "while rates of overlap between domestic violence and child physical abuse fluctuate between studies … by a range of 45–70%, there is nonetheless agreement that the presence of domestic abuse is a risk factor for child physical abuse." Stephanie Holt, Helen Buckley & Sadhbh Whelan, *The Impact of Exposure to Domestic Violence on Children and Young People: A Review of the Literature,* 32 Child Abuse & Neglect 797, 800 (2008).

[8] Pamela Whitney & Lonna Davis, Child Abuse and *Domestic Violence in Massachusetts: Can Practice Be Integrated in a Public Child Welfare Setting?,* 4 Child Maltreatment 158, 165 (1999) (summarizing this connection eloquently, finding that "the best interests of children are inextricably linked to the best interests of their mothers").

❺ Maintain victim confidentiality throughout the process.

A perpetrator may use information obtained through the protection order process to abuse the victim. Therefore, a system focused on victim safety should establish procedures at every level to protect victim information and limit the collection of identifying data to that which is necessary.[9]

❻ Consider safety concerns from a broad perspective that includes victims, communities, and system professionals.

Domestic violence affects not only the lives of the individuals involved, but also the safety of system professionals and others within the larger community. Therefore, professionals throughout the protection order system should incorporate strategies that integrate a broad safety plan into policies at every level.

[9] *See generally* Kristen Driskell, *Identity Confidentiality for Women Fleeing Domestic Violence*, 20 Hastings Women's L.J. 129 (2009); Nat'l Council Juv. & Fam. Ct. Judges [hereinafter NCJFCJ] , 9-15 Legis. Update (2002-2010) (tracking domestic violence legislation on a yearly basis and finding it noteworthy that every year since 2002, at least a half dozen states have developed legislation to protect some aspect of victim confidentiality).

The civil protection order system affords each victim the right to obtain relief tailored to her needs and remains petitioner-driven throughout the process.

AUTONOMY

Seeking a protection order represents a victim's choice to be free from violence and make determinations based on her own sense of well-being. An effective protection order system is designed to ensure that each victim can choose how and when to access the system, what relief to request, and when to exit the system. The voluntary nature of this process centralizes the victim's autonomy.

By supporting the victim in her choices, professionals are more likely to provide meaningful guidance and protection that meet the victim's actual needs. In this petitioner-driven process, professionals promote victim autonomy by deferring to the victim's decision-making process.

UNIVERSAL STRATEGIES FOR AUTONOMY:

1 Examine with each victim her needs and assist her in making informed decisions.

Professionals are able to tailor orders appropriately only when they listen to each victim and ensure that her needs inform the process. This requires that professionals present each victim with options and individualized information, and then allow her to choose her best course of action. It also requires that each professional keep the lines of communication and assistance open regardless of whether the professional agrees with a victim's decisions.

2 Inform victims about different kinds of protection orders and assist victims in obtaining and enforcing the types of orders they choose.

There are several types of protection orders; broadly, a civil protection order is "any injunction, restraining order, or any other order"[10] issued by a civil court for the purpose of preventing violence. No single response is appropriate for all victims. By taking the time to educate a victim about the strengths and weaknesses of each potential response and helping her obtain the relief she needs, professionals empower a victim to work toward achieving her desired outcome.

[10] 18 U.S.C. § 2266(5) (West 2009).

❸ Help victims with their efforts to relocate.

For some victims, breaking free and living free from domestic violence requires that they relocate. Yet, relocating can be very complicated legally and financially. Professionals can assist victims by providing them with information and support so they can make choices that take into consideration the challenges and benefits of relocation.

❹ Avoid policies that punish victims.

A victim may be discouraged from seeking help by policies that limit the number of orders she may request or create barriers for reapplication. In most instances, the victim knows better than anyone else about her safety needs,[11] even if some of her choices appear counterintuitive to professionals in the system. Policies that punish a victim's choices undermine the purpose of the system, especially policies that penalize victims for "violations" of protection orders.

[11] Lauren Bennett Cattaneo, Margret E. Bell, Lisa A. Goodman & Mary Ann Dutton, *Intimate Partner Violence Victims' Accuracy in Assessing their Risk of Re-abuse*, 22 J. Fam. Violence 429 (2007).

The civil protection order system is open, available, and barrier free.

ACCESSIBILITY

An accessible system welcomes the victim, facilitates her participation, and enables her to obtain those services she needs and to which she is entitled. By contrast, barriers and gaps in services expose the victim to further risk of abuse.

The rule of law in a democratic society is defined by a justice system that is available and receptive to all members of the public; accessibility is a hallmark of the civil protection order process. An open and usable process engages victims and structures the mechanisms of obtaining, modifying, or terminating a civil protection order in a way that enhances victim safety and promotes efficiency. Professionals can open up the process by demystifying it, removing systemic barriers, and reducing the elements that complicate seeking protection.

UNIVERSAL STRATEGIES FOR ACCESSIBILITY:

1 Ensure timely access to advocacy and protection that is based on an integrated system response.[12]

When a victim attempts to use the system and finds that she cannot or that she has used the "wrong door," she might not make further attempts. The system also puts a victim in danger when it requires that she try "multiple doors" in order to obtain comprehensive protection. A system that has continuous, 24-hour access and linked services decreases the burden on the victim.

2 Develop policies and protocols that prioritize access to protection orders by establishing specific strategies to guide each discipline's practice.

Because access barriers may change over time, professionals improve the system response by reviewing policies and protocols on a regular basis, at a minimum annually, addressing identified barriers, and communicating changes to staff immediately.

[12] Judy L. Postmus et al., *Women's Experiences of Violence and Seeking Help*, 15 Violence Against Women 852, 864-865 (2009).

❸ Identify and eliminate physical, attitudinal, and language barriers.

Systems have cultures that influence who uses the systems and how. Physical impediments, attitudes of exclusion, and language barriers send messages about who can and should seek safety and may discourage others from doing so. Professionals can engage in system evaluations like process walk-throughs, court watches, and ethnographic studies to identify barriers and ensure universal, unfettered access.

❹ Increase the petitioner's safety and the respondent's compliance by helping both parties fully understand the protection order.

A protection order is more effective and equitable when both the petitioner and the respondent understand the provisions in the order and the implications of those provisions for their everyday lives.

❺ Prioritize and streamline service of process and enforcement mechanisms.

An accessible system serves and enforces its orders in a timely and efficient manner. A full text state protection order registry or database and participation in the National Crime Information Center Protection Order File Database can help the process of service and enforcement by providing ready access to necessary information.

The civil protection order system has an obligation to provide capable assistance and respond appropriately to the unique challenges of each victim seeking issuance and enforcement of civil protection orders.

COMPETENCE

For victims of domestic violence, seeking help through the protection order process means putting their safety in the hands of the professionals who serve as stewards of their profession and of the system as a whole. When the system and professionals within it operate with a high degree of competence, victims are more likely to receive the safety and support needed.

The ethical obligations of each profession establish a minimum degree of competence. Yet, each professional has the potential to work beyond that minimum standard and act as a catalyst for promoting an expansive model of justice.

UNIVERSAL STRATEGIES FOR COMPETENCE:

1 Dedicate time to talk with victims so the response is appropriately tailored.

For many victims, professionals may be the first, and often only, source of information about services and relief available to them. Because a professional's knowledge may play a pivotal role in a victim's safety,[13] it is important for professionals throughout the system to know and communicate to victims how the protection order process works and the resources available in the community.

2 Be a resource for victims and have knowledge about the array of services available.

Discuss with each victim her options, the system, and professional responsibilities and limitations within the system. The scope of an appropriate response to a victim will be particular to her situation. Professionals who understand the full range of legal relief available to victims through the protection order system, as well as the system's limits and alternatives, are better able to provide effective and comprehensive assistance.

[13] Logan et al., *supra* note 2, at 91 (finding in one of the studies that on average 1 in 4 women accessing the protection order system felt that a lack of knowledge was a significant obstacle for them in obtaining a civil protection order).

❸ Expand expertise by receiving ongoing training in the dynamics of domestic violence, firearms restrictions, full faith and credit, and other issues related to protection order issuance and enforcement.

Victims request protection orders for a variety of reasons, and they receive orders that operate in a variety of ways and settings. Professionals need specialized knowledge in a broad range of subjects to be able to provide capable and appropriate assistance. They also gain competency by keeping current with new and emerging practices and strategies.

❹ Explore the impact of technology, both as a tool for increased efficiency in the system and as a tool perpetrators can use to harm victims.

Competent professionals understand the way technology can simplify and increase the efficacy of issuing, serving, and enforcing protection orders. Competent professionals also understand how perpetrators can use technology as a tool of power and control and, thus, can and should guard against its misuse.

The procedures of the civil protection order system and the protection orders issued are implemented consistently and dependably.

RELIABILITY

Victims put their trust in the civil protection order system, and when the system fails to provide reliable issuance and enforcement of protection orders, it exposes victims to risk and uncertainty. Violence is likely to continue or increase where enforcement is unpredictable and unreliable.[14]

Professionals need to be confident that their interdependent efforts will lead to predictable outcomes because protection orders reduce violence only if they are routinely recognized and enforced. Reliability enhances the integrity and credibility of the system.

[14] *Id.* at 76 (finding in one of the studies that "when there are no consequences for partner violence, even when victims ask the courts for help, the effects [of the violence] are compounded").

UNIVERSAL STRATEGIES FOR RELIABILITY:

❶ Develop policies that establish and maintain specific strategies to guide each discipline's practice around civil protection orders.

Standardized policies increase consistency, predictability, accountability, and safe and effective interventions. Professionals should use policies and protocols as vehicles for building the skills and culture necessary for collaborative work and improving outcomes for victims.

❷ Ensure interlocking protocols among different parts of the system to enhance consistent implementation.

Each professional in the system has a responsibility to the process, yet no one person is responsible for making sure that the civil protection order system works. By working together, within and across disciplines, professionals make sure that the system, as a whole, maintains responsibility for victim safety and system reliability.

❸ Focus on dependability of enforcement, including the enforcement of foreign civil protection orders.

Dependable enforcement is central to victim safety and perpetrator accountability and helps ensure that the protection order is not a hollow document, but rather a commitment on behalf of the system to support and protect. Professionals can improve the enforceability and portability of civil protection orders by developing clear full faith and credit policies.

❹ Maintain comprehensive and readily accessible data about qualifying orders, including emergency and *ex parte* orders.

Well-maintained databases provide professionals ready access to information for a variety of enforcement purposes and can make the job of enforcement easier. Particularly, databases can be pivotal in providing foreign jurisdictions access to important information necessary for consistent and reliable enforcement. Professionals should strive for round-the-clock access to these critical data.

The civil protection order system best protects individuals when there is cooperation on shared goals and strategies.

COLLABORATION

A victim needs and deserves to have confidence that everyone in the civil protection order system is working together to keep her safe. By working in concert with one another, professionals in the system provide victims a response that is unified, cohesive, reliable, and interactive.

When professionals work in concert toward shared goals, the system is more accountable and communities are better able to support and assist victims.[15] Collaborative efforts are also more likely to generate improvements to the civil protection order process through comprehensive system change.

[15] *Id*. at 161-162.

UNIVERSAL STRATEGIES FOR COLLABORATION:

1 Identify and institutionalize opportunities for cross-system dialogue and collaboration to promote consistency and thoroughness in issuance, service, and enforcement.

Collaboration enables service providers to understand the roles and mandates of one another, to establish and rely on coordinated protocols, and to work together for a more seamless and consistent protection order process. To that end, professionals throughout the system should create and institutionalize opportunities for collaboration among professionals working in state, tribal, federal, and military organizations and agencies.

2 Treat collaboration as a process of co-creation and co-evolution.

Some of the barriers to issuance, service, and enforcement will change over time. Professionals throughout the system need to create written policies and collaborative relationships that allow for regular review, continual evaluation, and ongoing development. Changes in partnership, roles, and responsibilities need to be communicated to staff immediately.

❸ Design and implement cross-training programs on effective protection order systems and violence prevention that bring together service providers.

A common understanding of the dynamics of domestic violence and dangers involved in the protection order system allows service providers to explore problem-solving opportunities together.

❹ Work beyond the civil protection order process to create a more just response to victims of domestic violence.

Victims are often involved in a number of systems simultaneously. Collaborative efforts that include these other systems, such as child support, can have a positive impact on the victim's broad safety needs. Collaboration can improve a victim's well-being and can forward the goal of enhancing victim safety and autonomy.

An effective civil protection order system reflects the diversity of the community and responds to the specific needs, strengths, and circumstances of the litigants.

CULTURE AND DIVERSITY

Culture[16] is central to how victims organize their experience. It influences what victims define as a problem; how they address problems; the remedies they seek; and how they view interventions. A system that is responsive to victims' diverse needs and cultural context addresses issues such as rural concerns, same-sex partnership challenges, language barriers, and concerns related to physical or mental ability levels.

Every professional has biases and beliefs that influence his or her relationship and communication with others. Professionals can better help victims by identifying these biases and beliefs, understanding the role of culture, and remaining sensitive to the uniqueness of each victim's experience. When the response accounts for culture and diversity, barriers can be identified, relevant and effective protection can be provided, and safety can be enhanced.

[16] Culture throughout this document is meant to include more than race or ethic background. *See generally* Sujata Warrier, Family Violence Prevention Fund, Culture Handbook (2005) (stating that "[c]ulture is not just about norms and values about particular racial or ethnic groups. It is about how the norms and values of a particular group are expressed or thought about in different ways depending upon the socio-economic position, their immigration status or sexual orientation or any number of other axes").

UNIVERSAL STRATEGIES FOR CULTURE AND DIVERSITY:

1 Help build victims' trust in the civil protection order system by working to understand and eliminate impediments and biases.

For a response to be appropriate, it must be informed by a victim's individual situation. Professionals should learn to recognize and reject pre-existing beliefs and biases; focus on understanding the information provided within the context at hand; and engage with each victim in a manner that is culturally sensitive.

2 Take time to explore the way the system communicates cultural beliefs and limitations.

Valuing culture and diversity requires that professionals examine the culture of the institutions for which they work and their own cultural history.[17] Systems can promote culture and diversity in hiring, promotion, and other internal policies and through these choices make important statements of inclusion and welcome to victims and the larger community.

[17] *Id.* at 10-11.

❸ Develop and maintain relationships with diverse community groups.

Individuals and organizations that are sensitive to victims' diverse needs and experiences can act as resources for professionals. Working with members of diverse community groups to develop support and communication is essential to promoting safety and accountability and building zero tolerance for violence. Seeking feedback from members of diverse community groups regarding their experiences and suggestions for improvement enables professionals to increase the effectiveness of their services.

❹ Understand that valuing culture and diversity requires an eagerness to learn and continual assessment.

Professionals should seek additional education on the complex definition and nature of culture and how culture and diversity shape victims' experiences and impact their decision-making. It is important to work with experts to assess the challenges that diverse individuals or groups may face resulting from physical, social, cultural, or economic barriers.

GUIDING VALUE

Connected, engaged, and knowledgeable communities enhance the effectiveness of the civil protection order system.

COMMUNITY ENGAGEMENT

A victim is more likely to receive effective and appropriate help when the community surrounds her with the support and services she needs to be safe and secure. The more a community is aware of the violence within it and strives to coordinate its protective response, the more victims and the community, as a whole, are protected from violence.

Community support aids and empowers professionals in their issuance and enforcement of orders. Protection orders are more effective when communities are engaged and committed to keeping victims safe. Professionals can develop more proactive safety measures when working in conjunction with the community, including working to create a community intolerant of violence.

UNIVERSAL STRATEGIES FOR COMMUNITY ENGAGEMENT:

1. **Collaborate with community members to enhance their ability to be proactive in safety and to raise their awareness of protection order relief.**

   Work with those in the community who may be aware of women in danger. These individuals may include: neighbors, healthcare professionals, faith-based leaders, union members, pharmacists, employers, beauty parlor owners, fitness center staff, junior league members, fraternal organization members, school teachers, and daycare providers.

2. **Explore models of sustainability for promising community collaboration programs and investigate opportunities for holistic, non-crisis-driven involvement.**

   These models depend on connecting with the community both locally and nationally to identify needs and strengths, resources, and funding opportunities.

❸ Work with the media, including print, radio, television, and the blogosphere, to educate community members about domestic violence and civil protection orders.

Promote accurate and sensitive coverage of domestic violence cases that corresponds with the current state of research and knowledge. In doing so, remember many of the messages will ultimately reach victims and perpetrators and may influence victims' responses to, and perpetrators' uses of, violence.

❹ Create opportunities for open dialogues with communities that facilitate both an understanding of domestic violence and civil protection orders and an opportunity for feedback.

Service providers who participate in community dialogues, like town hall meetings and coordinated community response teams, develop community buy-in for promoting safety. These dialogues may also highlight local issues related to protective or risk factors in the community that professionals would otherwise not know.

❺ Treat domestic violence as a public health concern.

Domestic violence threatens the safety and well-being of all family members. The professional response to domestic violence should be informed by the actual scope of danger that it poses.

ADVOCATES
Introduction

Advocacy for victims[1] is essential to an effective civil protection order system.[2] Advocates are in a unique position both to help individual victims of abuse navigate the complex protection order system safely and to promote systemic change that improves responses for victims, their families, and the community.

This section is written *by advocates* to provide useful guidance *for advocates* in their work to protect victims of abuse more effectively. The section considers key strategies advocates can employ in working with victims and professionals.

What specific roles can advocates play in the effective issuance and enforcement of civil protection orders?

Advocates support the victim.

Unlike any other professional in the protection order system, the advocate's primary duty is to support victims of domestic violence. This essential role requires that advocates engage in thoughtful

[1] Although many advocates refer to battered women as survivors, the dominant term used across the civil protection order system for battered women is victim, because the system is based on a showing of vulnerability to future harm. Therefore, since the *CPO Guide* seeks to use consistent terms throughout, battered women will be referred to as victims and batterers as perpetrators throughout.

[2] Rachel Callanan, *My Lips Are Sealed: The Need for a Testimonial Privilege and Confidentiality for Victim-Advocates*, 18 Hamline J. Pub. L. & Pol'y 226, 226 (1996) (quoting a survivor: "going to court [as a domestic abuse survivor] is like a rape, and without a legal advocate, it's like a rape with a weapon").

conversation with each victim and honor her wishes, without regard to whether the advocate agrees with the victim's choices.[3] In doing so, the advocate becomes part of the victim's efforts to restore her position of autonomy and independence.

Advocates are the primary source of information and resources for victims.

Advocates can identify the questions, concerns, and needs unique to an individual victim by maintaining a close relationship with her. They are an essential source of knowledge about the various resources, both legal and non-legal, available to victims in their communities. Effective advocacy requires that the advocate be a key part of the victim's team, working with her to connect her to the system and the larger community.

Advocates can help victims obtain competent legal representation and navigate the legal system.

High-quality advocacy combined with competent civil legal representation constitute a powerful team supporting a victim.[4] Advocates often are the best source of information about which attorneys in the community have substantive current knowledge of a range of protection order issues including, but not limited to, custody, housing, immigration, cultural issues, gender identity, and stalking. Advocates support the victim's legal cases by sharing with other professionals their insights into victims' lives and the dynamics of domestic violence. However, it is important for non-attorney advocates to respect the role division and not engage in the practice of law.[5]

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[3] Loretta M. Frederick, Battered Women's Justice Project, Effective Advocacy on Behalf of Battered Women 3, http://www.bwjp.org/articles/article-list.aspx?id=4; Jill Davies, Greater Hartford Legal Assistance Inc., An Approach to Legal Advocacy of Individual Battered Women 16-17 (1997), http://www.bwjp.org/articles/article-list.aspx?id=4.

[4] Judy L. Postmus, *Challenging the Negative Assumptions Surrounding Civil Protection Orders: A Guide for Advocates*, 22 Affilia 347, 354 (2007).

[5] Kristine C. Lizdas & Sandra L. Murphy, Battered Women's Justice Project, Domestic Violence Advocates and the Unauthorized Practice of Law (2009), http://www.bwjp.org/articles/article-list.aspx?id=4; Michael Smalz, *The Role of Domestic Violence Victim Advocates in our Legal System*, For the Record (2005) at 6.

Advocates collaborate with others in the community to improve issuance and enforcement of civil protection orders.

Advocates are well-positioned to evaluate the efficacy of the protection order system and to press for needed improvements. Their intensive work with victims enables advocates to view and assess the system from a victim's perspective. In addition, they gain a comprehensive understanding of the protection order process through their work within various aspects of the system. Because this lens gives advocates a unique insight into gaps and barriers in the system, they can suggest improvements for the entire process.

PRACTICE STRATEGIES

Strategy #1: Engage with the Victim

- **Ensure that each victim has opportunities to participate in conversations with an advocate and with others in the system.**
  - Ensure that interpreters and other necessary accessibility resources are available when appropriate.
  - Take ample time to assess and provide for the needs of individuals who require accommodations and ensure that these needs are provided for throughout the process.
- **Approach conversations with victims with an open mind, acknowledging and accepting that not all victims will want protection orders or other traditional system-based help.**
  - Dedicate the time necessary to identify each victim's needs and to ask follow-up questions.
  - Listen for safety considerations that might be affected by the issuance of a protection order.
- **Educate each victim about the protection order process and explore with her the range of options available.**
  - Explain what a protection order is, the impact the protection order can have on the individual, and the potential consequences if the respondent violates the protection order. Discuss these issues in a way that is clear, comprehensive, and realistically reflects current practice in the community.
  - Ask questions about each victim's specific community to help identify concerns that may be particularly relevant in a victim's community and to help her decide whether and how to use the protection order system for relief.

- Discuss the differences between the civil system and the criminal system.

- Discuss the range of options available after a protection order has been issued including modifying a protection order, requesting restricted contact, dismissing a protection order, and reapplying for a protection order in the future.

- Explain the various confidentiality and ethical rules for the different professionals that a victim is likely to encounter[6] and whether any of these professionals are mandated reporters of child abuse.[7]

- Explore the range of legal and community options available and the potential beneficial and adverse consequences so the victim can make informed decisions.

- **Help the victim frame her own personal life circumstances and consider how that context is impacted by the violence, the help she is seeking, and the available options.**

  - Gain a full understanding about the victim, recognizing that her context includes, but is not limited to, cultural identity, history with the perpetrator or other abusive individuals, feelings toward the perpetrator, the presence of children, the likely response of family members, economic position and needs, religious beliefs and constraints, previous interaction with the legal system, and resources in the community.[8]

  - Explore whether the perpetrator has filed for a civil protection order against the victim and, if so, develop strategies with the victim that take into account the risks of any such order.

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[6] *See* Julie Kunce Field et al., Battered Women's Justice Project, Confidentiality: An Advocate's Guide (2007), http://www.bwjp.org/articles/article-list.aspx?id=4; *see also* A.B.A. Comm'n on Domestic Violence, Advocate Confidentiality Laws (2007), http://www.abanet.org/domviol/statutorysummarycharts.html.

[7] *See* A.B.A. Comm'n on Domestic Violence, Mandatory Reporting of Child Abuse (2009), http://www.abanet.org/domviol/statutorysummarycharts.html.

[8] Postmus, *supra* note 4, at 354.

- **Help each victim identify the remedies she feels are appropriate and gather the information necessary to help her obtain that relief.**
  - Review with each victim her economic needs and consider those provisions designed to restore her economically.
  - Identify potential provisions regarding custody and visitation.
  - Discuss ways to document evidence and the kind of files that might be useful, including stalking logs and other documentation.
  - Consider ways that the victim can gather information safely.
  - Explore how she may present evidence to the court if she is not represented.
  - Help the victim understand that evidence given to law enforcement or the courts may be shared with the respondent and may be available to the public as a part of the court record.
- **Inform the victim of ways she can keep information confidential.**
  - Remind the victim that a protection order is a public document and discuss options for using a confidential address or having the address withheld on court documents, if the victim has safety concerns about the respondent knowing her address or location.
- **Be aware of how a victim may perceive an advocate's tone and body language. If a victim senses judgment or disapproval, she may not seek support from advocates in the future.**
  - Regardless of a victim's decisions during the process, provide information and keep lines of communication open to create a safe and supportive environment.

PRACTICE STRATEGIES

Strategy #2:
Engage in Ongoing Safety Planning

- **Engage in conversations with the victim to develop detailed, flexible, and practical safety plans.**[9]
  - Ask the victim to identify areas of risk and safety strategies she has used before and incorporate this information into the safety plan.[10]
  - Remain open throughout safety discussions even when the victim identifies strategies that may appear counterintuitive or dangerous.
  - Conduct safety planning on a regular basis and work with victims to re-evaluate and revise plans when necessary.
- **Develop with each victim a tailored list of the benefits and concerns about obtaining a protection order.**
  - Ask the victim if she has petitioned for a civil protection order before and discuss with her the outcome of previous petitions or orders.
- **Develop safety strategies that are specific to the victim.**
  - Include a victim's children, other family members, and pets in the plan.
  - Create plans that include strategies focused on both the time period before the protection order is served and the time period after service.

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[9] The National Center on Domestic and Sexual Violence has a bibliography of sources that can help advocates working with victims on safety planning, which is available at http://www.ncdsv.org/publications_safetyplans.html.

[10] Lauren Bennett Cattaneo, Margret E. Bell, Lisa A. Goodman & Mary Ann Dutton, *Intimate Partner Violence Victims' Accuracy in Assessing their Risk of Re-abuse*, 22 J. Fam. Violence 429 (2007) (stating that "Two facts in particular underscore the importance of increasing our understanding of victim risk assessments. First, victims choose certain courses of action based on their assessments of how much danger they are in. Second, taking these assessments into account is often a key component of counseling victims or making system-related decisions").

- Discuss safety risks and strategies beyond the protection order process.

- Brainstorm a list of potential allies in the victim's community who are willing to help her stay safe, including supportive friends, family, faith communities, colleagues, neighbors, and others.

- **Discuss the respondent's abuse or stalking behaviors that occurred during the relationship and that may occur or increase after an order is issued.[11] Include a discussion of stalking logs and evidence collection.[12]**

  - Account for potential stalking behaviors in safety plans.

- **Include in the safety plan steps the victim can take if the respondent violates the protection order.**

- **Address safety issues regarding firearms and the removal of firearms with victims.**

  - Ask about the presence of weapons during the intake interview and document answers on the intake information form.

  - Explain the impact of a protection order on a respondent's rights to firearms and explore with the victim how the prohibitions may affect the respondent's reaction to the protection order.

  - Assess with the victim the potential benefits and safety risks of informing the court, prosecutors, and law enforcement officers if she knows or suspects that the respondent possesses weapons including firearms, both before and after issuance of the protection order.

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[11] *See* A.B.A. Comm'n on Domestic Violence, Civil Protection Orders: Stalking/Harassment (2009), http://www.abanet.org/domviol/statutorysummarycharts.html (providing a chart of stalking/harassment civil protection order laws by state).

[12] For more information on this topic, see the log developed by the Stalking Resource Center at http://www.ncvc.org/src/main.aspx?dbID=DB_IncidentandBehaviorLog(goodone)759.

- **Provide information to victims regarding the benefits and challenges of relocating within the state or to another state.**[13]
  - Inform the victim of the impact of relocation on court filings and enforcement.
  - Talk about the impact on custody and visitation provisions if the victim relocates before, during, or after the protection order process.[14]
  - Discuss stalking and safety issues if the respondent knows or discovers her new location.
- **Cultivate an understanding of federal laws on protection orders, especially those related to interstate enforcement, firearms, and stalking, and familiarize victims with how these laws are implemented throughout the states.**[15]

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[13] For more information on this topic, contact the Legal Resource Center on Violence Against Women at http://www.lrcvaw.org/.

[14] For example, a victim may face potential legal ramifications for relocating with children, particularly if she does not inform the respondent of her new location. Exemptions or defenses may be available under state parental kidnapping and custodial interference laws for victims of domestic violence, and it may be necessary to help victims find competent legal representation for these complex issues. *See generally* Catherine F. Klein, Leslye E. Orloff & Hema Sarangapani, *Border Crossings: Understanding the Civil, Criminal, and Immigration Implications for Battered Women Fleeing Across State Lines with Their Children,* 39 Fam. L.Q. 109, 122 (2005) (explaining that "[w]hen prosecution under a parental kidnapping or custodial interference statute is brought against a victim of domestic violence, she may have statutory and common law exceptions or defenses available to her. Generally, the common law defense of 'necessity' or 'choice of evils' is defined as a justification defense for a person who acts in an emergency that he or she did not create and who commits a harm that is less severe than the harm that would have occurred but for the person's actions"). For more information on this topic, contact the National Clearinghouse for the Defense of Battered Women at http://www.ncdbw.org/.

[15] *See* Stalking Res. Ctr., Stalking Laws, http://www.ncvc.org/src/main.aspx?dbID=DB_Register204 and the Nat'l Ctr. for Protection Orders and Full Faith and Credit, http://www.bwjp.org/publications.aspx.

PRACTICE STRATEGIES

Strategy #3: Help the Victim Obtain a Comprehensive Order

- **Connect the victim with appropriate and effective legal and community resources.**
  - Help the victim find an attorney with expertise in domestic violence and protection orders.
  - Arrange for resource providers to come to her whenever possible rather than asking the victim to travel.
- **Be physically present with the victim throughout court proceedings whenever possible.**[16]
  - When it is not possible to be present with the victim, explore options with other professionals to help ensure the victim has the support of an advocate available. Video conferencing with a victim in a way that protects the confidentiality of that communication is an example of an alternative approach.

[16] Many state statutes permit advocates to attend court hearings. *See, e.g.*, 750 Ill. Comp. Stat. Ann. 60/205 (West 2009) (permitting advocates to attend civil protection order proceedings, sit at counsel table, and confer with the victim and permitting advocates to attend and confer with the victim at criminal proceedings); Wash. Rev. Code Ann. § 70.123.020 (West 2009) (defining a legal advocate's role to include attending court proceedings).

- **Explore with the victim the advantages and disadvantages of a consent or stipulated order.**
  - Explain the consequences of stipulating to a mutual restraining order. Under most circumstances, mutual orders are discouraged due to their consequences related to firearms, custody, employment, and difficulties with enforcement.[17] *Note: The mutual orders referred to here are those issued in one petition, and not two orders issued through cross-petition.*[18]
  - Be aware of state and federal consequences related to interstate enforcement, firearms, employment, and custody.[19]
- **Discuss the advantages and disadvantages of obtaining an order with a finding of abuse and explain the option to request a specific finding of abuse in a consent order.**
- **Prepare the victim to advocate in court for a protection order that provides for her basic needs.**
  - Describe the types of relief available in addition to safety provisions, which may include financial support, property allocation, and restitution for medical expenses and property damage as a result of the abuse when appropriate.
  - Encourage victims to seek physical and legal custody and visitation provisions that are in accordance with the victim's wishes and account for the children's safety.

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[17] *See generally* Joan Zorza, *What is Wrong with Mutual Orders of Protection?*, 1 Fam. & Intimate Partner Violence Q. 127 (2008).

[18] Nat'l Ctr. on Protection Orders and Full Faith and Credit [hereinafter NCPOFFC], An Advocate's Guide to Full Faith and Credit for Protection Orders: Assisting Survivors with Enforcement Across Jurisdictional Lines (2010) (discussing 18 U.S.C. § 2265(c), which contains special provisions limiting interstate enforcement of mutual orders, including that these orders "should be enforced only against the respondent and not the petitioner, unless the respondent cross-filed a separate, written pleading, complaint, or petition for a protection order and the issuing court made specific findings that both parties abused each other and were therefore entitled to protection from further abuse").

[19] Id.

- **Work with attorneys and others to create clear and specific terms of the protection order.**
  - Promote provisions that expressly prohibit the use, attempted use, or threat of physical force.
  - Explore additional relief options which may include provisions related to custody, prohibitions against stalking, firearm prohibitions, orders to return documents (such as passports and vehicle titles) or keys, and prohibitions against communication with the victim, including through the use of technology.
- **Discuss the terms with victims so they understand the provisions included in the protection order.**

PRACTICE STRATEGIES

Strategy #4: Assist in Service and Enforcement

- **Make sure law enforcement and prosecutors are aware of the victim's wishes and elevate the victim's voice in the service and enforcement process.**

- **Keep in touch and communicate with the victim throughout the process of service and enforcement.**

- **Provide safety planning around issues raised by service.**

- **Consider ways the victim can help law enforcement serve the protection order so it is safe for the victim and professionals.**[20]
  - Determine with the victim if she has information to share that could expedite service or reduce safety risks during service.

- **Encourage law enforcement to notify the victim and the courts promptly after an order has been served.**
  - Advocate for the development of an automatic victim notification system if one does not exist in the community.

- **Advise victims to obtain several certified copies of the order.**
  - Brainstorm with the victim places she may want to keep copies of the protection order, such as whether she wants to give copies to her friends, family, employer, or her children's schools or day care providers.

- **Know the enforcement mechanisms including civil contempt, criminal contempt, and criminal charges, and discuss them with the victim after her order is issued.**

[20] Postmus, *supra* note 4, at 354 (stating that "advocates must work closely with law enforcement personnel, and the victims, to develop a wide array of creative strategies for locating the abusers").

- **Provide assistance to victims during criminal enforcement proceedings.**
  - Advocate with prosecutors on behalf of the victim during criminal enforcement proceedings.[21]
  - Help victims collect information and evidence regarding violations.
- **Collaborate with federal victim-witness specialists in order to work together to enhance victim safety and the prosecution of federal crimes of domestic violence and stalking.**
- **Facilitate enforcement of protection orders across jurisdictional boundaries.**
  - Work with victims who may need their protection order enforced in another jurisdiction to help them become familiar with the laws and procedures of that jurisdiction.
  - Help victims connect with advocates in the enforcing jurisdiction who can explain the enforcing jurisdiction's laws and procedures and provide information regarding registration of orders.[22]
  - Provide victims with copies of the Full Faith and Credit provision to carry with the protection order and encourage them to keep copies of both with them at all times.[23]
  - Remind victims to keep an extra copy of the protection order, the federal statute, and any other relevant statutes or information in a safe, confidential location.

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[21] David A. Ford, Violence Against Women: Synthesis of Research for Prosecutors 13-14 (2003), http://www.ncjrs.gov/App/publications/Abstract.aspx?id=199660; *see also* American Prosecutors Research Inst., Domestic Violence: Prosecutors Take the Lead 8-10 (1997), http://www.ndaa.org/publications.html.

[22] NCPOFFC, *supra* note 18 (explaining that registration is optional under VAWA and state enabling laws).

[23] NCPOFFC, Increasing your Safety: Full Faith and Credit for Protection Orders (2010) (helping victims understand the full faith and credit provision of the Violence Against Women Act).

PRACTICE STRATEGIES

Strategy #5: Collaborate with Professionals and Other Community Members

- **Work with organizations and community groups to create partnerships designed to support victims and improve system efforts.**
  - Become familiar with the community's resources, including key services and professionals outside the protection order system who are available to help victims.[24]
  - Identify community groups that have been historically or systematically excluded and find ways to draw these groups into the process.
  - Educate the community by engaging media, schools, faith-based organizations, and workplaces.
- **Educate professionals on ways to issue and enforce orders that are empowering to victims.**
  - Include victim perspectives in collaborative discussions with other professionals.
  - Implement regular cross-training for advocates and other professionals on the dynamics of domestic violence, the role of system professionals, and a wide range of topics such as firearms laws and full faith and credit.

[24] Judy L. Postmus et al., *Women's Experiences of Violence and Seeking Help*, 15 Violence Against Women 852, 864-865 (2009).

- **Work with the state domestic violence coalition, courts, and other relevant professionals to standardize protection order forms and develop or enhance statewide databases.**
  - Encourage courts to adopt a standardized cover page[25] for protection orders that clearly details the Full Faith and Credit provision and firearms prohibitions.
  - Routinely review the relevance and purpose of forms and other data systems to reduce the unnecessary collection of identifying or sensitive information.
- **Encourage agencies involved in the protection order process to develop policies specific to domestic violence cases; these policies should include assigning a designated contact person who can monitor each case.**
- **Build relationships with a broad range of law enforcement units such as the domestic violence unit, technology unit, and special victims unit.**
- **Work with judges, court clerks, prosecutors, and law enforcement to develop a coordinated, community-wide response for enforcing protection orders.**
  - Discuss with law enforcement officers the importance of enforcing facially valid protection orders.[26]
  - Discourage written and unwritten policies that penalize victims for seeking to modify or terminate orders to permit contact or reconciliation with the perpetrator.

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[25] For more information on *Project Passport*, a project of the National Center for State Courts, that has developed and worked with states to implement such a cover page, visit http://www.ncsc.org or call (800) 616-6160.

[26] U.S. Dep't of Justice, Enforcement of Protective Orders, Legal Series Bulletin #4 (2002), http://www.ojp.usdoj.gov/ovc/publications/bulletins/legalseries/bulletin4/welcome.html.

- **Work with attorneys to develop a handbook for advocates regarding privilege and confidentiality issues.**[27]

- **Work with other professionals to create mechanisms for feedback so that professionals can learn about gaps and barriers, assess and eliminate bias, and improve access.**

  - Participate in "walk throughs" to experience every stage of the protection order process and gain an understanding of a victim's experience with the system.

  - Participate in fatality review boards or safety audits that seek to identify and resolve problems with civil protection order procedures.[28]

  - Organize focus group discussions with victims where victims are encouraged to share their perceptions of the strengths, weaknesses, and possible biases of the protection order system.

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[27] *See, e.g.*, Loretta Fredrick, The Battered Women's Justice Project, Confidentiality and Information Sharing Concerns for Advocates.

[28] See Praxis International, Safety Audit Home, http://www.praxisinternational.org/safety.aspx.

CIVIL ATTORNEYS

Introduction

Often the most helpful resource for victims seeking civil protection orders is effective legal representation.[1] Informed civil attorneys provide their clients with legal advocacy and advice that can be pivotal in a victim's ability to protect herself and her children. Comprehensive legal representation not only increases safety, it also increases the probability that the relief granted ultimately supports a victim's overall security and well-being.[2]

This section is written *by civil attorneys* to provide useful guidance *for civil attorneys* who seek to protect victims of abuse more effectively. The section highlights key strategies civil attorneys can employ to ensure their clients receive the full range of relief that civil protection orders can provide.

What specific roles do civil attorneys play in the effective issuance and enforcement of civil protection orders?

Civil attorneys assist victims with articulating the abuse perpetrated against them, identifying the potential risks in their situations, protecting themselves and their children, and safeguarding their economic stability.

Attorneys provide assistance and advice to victims who are navigating a complex system while experiencing the trauma of abuse. Attorneys with a

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[1] Amy Farmer & Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 Contemp. Econ. Pol'y 158 (2003) (finding that effective legal representation is the most determinative factor in whether victims are able to escape domestic violence).

[2] Catherine Klein & Leslye Orloff, *Civil Protection Orders*, in The Impact of Domestic Violence on Your Legal Practice 200 (2nd ed. 2004).

full understanding of domestic violence will be better able to assist their client in assessing whether a civil protection order is in her best interest and in securing an order with remedies that effectively match her needs and support her autonomy and safety.[3] In addition to discussing civil protection orders with the client, attorneys can help identify additional resources designed to address the range of issues caused by the violence in the victim's life.

Civil attorneys facilitate the victim's progress through the justice system.

Civil attorneys provide their clients with an understanding of how the process works and a reasonable assessment of what the courts are likely to provide. Attorneys who take the time to understand the individualized needs and concerns of each client can draft comprehensive petitions and proposed orders for the court that help ensure the order issued protects the victim.

Civil attorneys play a key role in the implementation of orders and their enforcement.

Civil attorneys can work with court personnel to ensure civil protection orders reach the relevant law enforcement agencies and are duly entered into appropriate databases. They inform their clients of the steps to be taken if a violation occurs. Often, effective enforcement will require that attorneys actively advocate with law enforcement agencies and the courts when a violation occurs to ensure that the order is enforced.

Civil attorneys play a key role in collaborative efforts.

Civil attorneys are in an ideal position to unite other stakeholders in the protection order process because they are involved in the process from application through enforcement. As civil attorneys become aware of problems within the system, they can be powerful advocates for change by engaging in collaborative efforts to improve the civil protection order process. In many jurisdictions, attorneys also link with advocates to ensure that victims have access to a full range of legal and advocacy services.

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[3] 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 (2008).

PRACTICE STRATEGIES

Strategy #1:
Incorporate an Understanding of Domestic Violence

- **Seek ongoing training on domestic violence and become knowledgeable of behaviors that pose higher risk for victims, such as stalking and sexual abuse.**[4]

- **Educate yourself about the effects of exposure to violence on children and the effects of coercive and controlling behaviors on parenting.**

- **Develop the expertise necessary to provide competent assistance to victims of domestic violence and establish relationships with local and national resources that can provide assistance on individual cases.**
    - Identify a mentor in the field who can provide valuable advice or perspective.

- **Participate in "walk throughs" to experience every stage of the protection order process and gain an understanding of a victim's experience with the system.**

[4] Jacquelyn C. Campbell et al., *Assessing Risk Factors for Intimate Partner Homicide*, 250 Nat'l Inst. Just. J. 14 (2003).

- **Recognize that your representation and your client's involvement in the legal process may expose her to risk[5] and strategize with your client about how best to ensure that she is protected from further abuse.**
  - Obtain training on safety planning and conduct ongoing safety planning with clients who are victims of domestic violence.
  - Refer clients to local advocates for ongoing safety planning and other assistance if advocacy services are available.
  - Identify safe procedures to maintain contact with your client and other witnesses, addressing such things as how messages are to be communicated, if mail or email can be sent safely, and where you can meet safely.
  - Talk with your client about how the respondent may react to her seeking representation, being mindful that when a victim moves to separate from an abuser, she is often at increased risk.[6]
  - Ask your client if she has petitioned for a civil protection order before and discuss with her the outcome of previous petitions or orders.
  - Explore with your client the physical arrangements necessary to reduce intimidation during court appearances.
  - Safety plan for yourself as a part of the discussion of how the respondent may react to your client seeking representation.

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[5] Deborah Goelman, *Safety Planning, in* The Impact of Domestic Violence on Your Legal Practice 44 (Margaret B. Drew et al. eds., 2nd ed. 2004) (as adapted by Donna Mathews).

[6] Patricia Tjaden & Nancy Thoennes, Nat'l Inst. of Justice, Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey 37 (2000).

- **Explore the safety of potential custody and visitation arrangements with your client.**
  - Ask about your client's wishes regarding custody and visitation.
  - Determine with your client how the actions of the respondent affect the children, how his abusive behaviors impact his ability to parent,[7] and assess his capacity to parent safely in the future.
  - Explore your client's parenting history and the impact of the violence on her ability to function in general and as a parent.
  - Find out if there is a supervised visitation center in your community and identify its strengths and challenges, and its adherence to best practices in domestic violence cases.[8] Visit the center and learn exactly what services it provides.
- **Remember, your client makes the decisions. It is your job to ensure those decisions are well informed.**

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[7] Lundy Bancroft & Jay Silverman, The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics (2002). This book generally illustrates for professionals how domestic violence affects the relationships between intimate partners and each partner's relationship with their children. One important focus of this resource is examining how perpetrators parent both during the relationship and during separation.

[8] Office on Violence Against Women, U.S. Dep't of Justice, The Guiding Principles of the Safe Havens: Supervised Visitation and Safe Exchange Grant Program (2007).

PRACTICE STRATEGIES

Strategy #2:
Base Legal Advocacy on the Client's Needs, Concerns, and Circumstances

- **Develop a comprehensive understanding of each client's individual needs and concerns.**
  - Inquire about your client's preferred outcomes and explain if and how a civil protection order responds to her needs.
  - Remember that a civil protection order may not be the most appropriate tool and that the decision to obtain a protection order belongs to your client.
  - Discuss alternative or additional forms of relief.
  - Take time to assess and provide for the needs of clients who require accommodations, such as those with limited English proficiency or a physical disability. Make sure other professionals are aware of and address these needs throughout the process.
  - Determine the existence of other court orders that could create conflicts.
- **Explore the available legal and community options, including potential beneficial and adverse consequences.**
  - Begin discussions with an understanding that a protection order may not be the most safe and effective remedy.
  - Work with clients who choose to obtain a protection order to design orders that provide complete protection.

- Consider whether your client's safety would be enhanced by including provisions related to custody in the protection order[9] and discuss the advantages and disadvantages of such provisions. *Note: In some states, custody provisions may not be available in protection orders.*[10]

- Explain to your client the duration of custody provisions if available.

- Discuss with clients which forms of relief to pursue in an order based upon their needs and the advantages and disadvantages of each form of relief.

- Examine with your client the advantages and disadvantages of a consent or stipulated order.

- Consider the consequences of stipulating to a mutual restraining order. Under most circumstances, mutual orders are discouraged due to their consequences related to firearms, custody, employment, and difficulties with enforcement.[11] *Note: The mutual orders referred to here are those issued through one petition, and not orders issued through cross-petition.*[12]

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[9] A.B.A. Comm'n on Domestic Violence, Chapter One: An Overview of Domestic Violence, in The Domestic Violence Civil Law Manual: Protection Orders and Family Law Cases: Third Edition 4 (2007) (stating that "fear for the safety of the children while in the batterer's care may lead the victim to remain in the relationship or reconcile with the abuser after an initial separation"). *See also* Paula Whitney & Lonna Davis, *Child Abuse and Domestic Violence in Massachusetts: Can Practice Be Integrated in a Public Child Welfare Setting?,* 4 Child Maltreatment 158, 165 (1999) (summarizing this connection eloquently, finding that "the best interests of children are inextricably linked to the best interests of their mothers").

[10] *See, e.g.,* Okla. Stat. Ann. tit. 22 §§ 60.3, 60.2, and 60.4 (West 2009); Wis. Stat. Ann. §§ 813.12 - 813.122 (West 2009).

[11] *See generally* Joan Zorza, *What is Wrong with Mutual Orders of Protection?,* 1 Fam. & Intimate Partner Violence Q. 127 (2008).

[12] Nat'l Ctr. on Protection Orders and Full Faith and Credit [hereinafter NCPOFFC], An Advocate's Guide to Full Faith and Credit for Protection Orders: Assisting Survivors with Enforcement Across Jurisdictional Lines (2010) (discussing 18 U.S.C. § 2265(c), which contains special provisions limiting interstate enforcement of mutual orders, including that these orders "should be enforced only against the respondent and not the petitioner, unless the respondent cross-filed a separate, written pleading, complaint or petition for a protection order and the issuing court made specific findings that both parties abused each other and were therefore entitled to protection from further abuse").

- **Conduct ongoing comprehensive safety planning that is sensitive to evolving risks.**
  - Work with advocates to help create a safety plan that is comprehensive and sensitive to indications of dangerousness.
  - Assist clients in tailoring safety planning to the various stages of protection order proceedings as different risks are presented.
  - Refer clients to advocacy organizations to continue safety planning after issuance of the order.
- **Discuss the benefits and challenges of relocation with your client if she is considering moving or has moved.**
  - Explain interstate issues to clients with children, including how jurisdictional laws such as the Uniform Child Custody Jurisdiction Act (UCCJA), the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the Parental Kidnapping Prevention Act (PKPA), and the Violence Against Women Act's (VAWA) Full Faith and Credit provision affect their ability to relocate legally.[13]
- **Remember, relocation with children raises complex legal issues and, at times, serious risks. For assistance, contact the Legal Resource Center on Violence Against Women.**[14]

[13] For a brief review of these issues, see Catherine F. Klein, Leslye E. Orloff & Hema Sarangapani, *Border Crossings: Understanding the Civil, Criminal, and Immigration Implications for Battered Women Fleeing Across State Lines with Their Children,* 39 Fam. L.Q. 109, 122 (2005).

[14] http://www.lrcvaw.org/ or call (301) 270-1550.

PRACTICE STRATEGIES

Strategy #3:
Draft Petitions and Proposed Orders Specific to the Relief Desired by the Client

- **Draft petitions and proposed orders that provide comprehensive protection from violence and secure the relief that your client needs to move forward.**
  - Present contextual information to facilitate the judge's understanding of your client's petition and the relief sought.
  - Request the broadest relief allowed and desired in the temporary protection order, phrased specifically enough to ensure enforcement.
  - Use the catch-all statutory provision in protection orders to include relief that might otherwise be omitted.
  - Clearly articulate the specific conduct of the respondent within statutory definitions of domestic violence that justifies the relief requested. Where permitted, seek additional relief in the final protection order when circumstances have changed since the temporary protection order was granted. *Note: The court may limit relief in the final protection order to that requested in the petition.*

- **Help your client articulate economic losses or anticipated economic jeopardy in the protection order pleadings.**
  - Help your client review her economic needs and those provisions necessary to restore her economic independence.
  - Explore whether the respondent has damaged, destroyed, or disposed of your client's physical goods and request appropriate types of restitution.
  - Consider provisions related to housing, transportation, employment, health care, insurance, or child care that may be appropriate.

- **Craft petitions and proposed protection orders that include provisions for custody and visitation.**
  - Request that the petitioner retain the children's passports and birth certificates when she has concerns or fears regarding child abduction.
  - Request that the court limit access or visitation if your client asserts that visitation will pose a danger, including risk of abduction, to the children or the client.
  - Request supervised visitation when desired by your client, whether at a supervised visitation center or with a third party.
  - Request custody and visitation provisions that specifically address the type of custody (legal, physical, or both) and visitation arrangements sought, including whether the visitation or exchange is to be supervised and the place, time, and length of stay.
  - Discuss the custody provisions with your client and help her understand the implications of different kinds of custody arrangements.
- **Submit a draft protection order to the court that includes the necessary information and the plenary relief sought.**
  - Include numerical identifiers (such as social security numbers, dates of birth, and vehicle identification) and other information necessary for service of the order on the respondent and for entry of the order into state and federal databases.
  - Advocate for the adoption by the courts of a uniform recognizable first page, in accordance with the recommendations of *Project Passport* of the National Center for State Courts.[15]

[15] For more information on *Project Passport*, a project of the National Center for State Courts, visit http://www.ncsc.org or call (800) 616-6160.

PRACTICE STRATEGIES

Strategy #4:
Prepare Thoroughly to Provide Effective Trial Advocacy

- **Develop and be prepared to provide evidence to prove the case and justify the relief requested.**

- **Inform the court of issues related to weapons that the victim wants addressed.**
  - Advise the court of the presence and dangerousness of firearms if your client has requested that they be removed and retained.
  - Request that the court order the respondent to relinquish firearms, ammunition, and other weapons to law enforcement agencies within a specific time frame if authorized by state law or the inherent authority of the court.
  - Ask the court to provide notice to the respondent on applicable federal and state firearms prohibitions.[16]
  - Ask that the respondent be required to provide proof of relinquishment to the court in the form of a receipt or affidavit from the accepting party or agency.
  - Request that the court or law enforcement agency notify your client of the surrender of the weapons.

[16] Under the Violence Against Women Act 2005, STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program (STOP Program) all state and subgrantees that are units of local government must certify that their courts have policies and practices to provide notification to domestic violence offenders regarding federal, state, or local laws addressing firearms and domestic violence. 42 U.S.C. § 3796gg-4(e) (West 2009). *See also* NCJFCJ, Full Faith and Credit: A Passport to Safety, A Judge's Bench Card (VAWA 2005 edition, 2010) (suggesting that the following language may be useful to include in civil protection orders: "[a]s a result of this order, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition pursuant to federal law under 18 U.S.C. § 922(g)(8) and/or state, tribal, territorial, or local law. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney").

- Request that the court schedule a hearing upon an application by the respondent for return of the weapons, provide notice to your client, and afford your client the opportunity to be heard.[17]

- **Introduce evidence that establishes economic abuse and financial control, including interference with your client's public benefits, employment, education, banking accounts, credit ratings, or credit use.**

- **Provide information about the impact of domestic violence on children and the need to limit or suspend visitation with the respondent, including evidence of historical parenting patterns relevant to custody and visitation provisions, and the risk posed to your client and her children by access and visitation.**

- **Request that the proceedings be recorded to allow review if disagreements arise regarding the provisions of the order and to establish a record for appeal.**

- **Ask the court to make a finding of abuse so that the issue of abuse is *res judicata,* provided your client wants such a finding.**

- **Object to any conflicting provisions either within the protection order or with another existing court order.**

- **Work with the judge, when other orders are already in place, to address any conflict between these and the terms of the protection order before it is entered.**

- **Request judicial communication, with an opportunity to make arguments before decisions are made, when related proceedings have begun or orders have been entered in other courts.**

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[17] Some jurisdictions specify such a procedure. *See, e.g.*, Cal. Fam. Code § 6389(g) (West 2009); N.C. Gen. Stat. Ann. § 50B-3.1 (West 2009); New Hampshire's Protocol 14-18 through 14-24, http://www.courts.state.nh.us/district/protocols/dv/c14.pdf. If your state has not adopted these procedures, advocate for their adoption and inclusion in court protocols.

PRACTICE STRATEGIES

Strategy #5:
Assist with Service of Civil Protection Orders

- **Discuss the process of serving protection orders with your client and identify and address service of process concerns.**
- **Provide safety planning around issues raised by service.**
- **Work with your client to ensure she is notified of law enforcement and court action related to the order.**
- **Make sure that your client does not bear any cost related to the filing, issuance, registration, service, or enforcement of her protection order.**[18]
- **Take steps to ensure that the order has been served and entered into relevant databases and transmitted to the National Crime Information Center Protection Order File (NCIC POF) Database.**
- **Work with other professionals to expedite and improve service of protection orders.**

[18] Under the Violence Against Women Act, STOP Formula and Grants to Encourage Arrest Policies and Enforcement of Protection Orders Programs state grantees and tribal and local units of government receiving funds must certify that their laws, policies, and practices do not require victims to bear the costs associated with the filing, issuance, registration, or service of a protection order to protect a victim of domestic violence, sexual assault, or stalking or a petition for such a protection order. 42 U.S.C. §§ 3796gg-5(a) and 3796hh(c)(4) (West 2009). For more information, see the program description at http://www.ovw.usdoj.gov/stop_grant_desc.htm. In addition, many states have statutes prohibiting fees for filing protection orders or related actions.

PRACTICE STRATEGIES

Strategy #6:
Assist with Enforcement of Civil Protection Orders

- **Make sure your client's voice is heard in the enforcement process and that law enforcement and prosecutors are aware of her wishes.**
- **Understand the enforcement mechanisms in your community, including civil contempt, criminal contempt, and criminal charges.**
- **Consider filing a civil contempt motion for harassment if a respondent files repeated frivolous motions that require numerous court appearances by you and your client.**[19]
- **Seek enforcement through civil contempt or criminal charges for violations, including violations of economic, custody, and visitation provisions.**
- **Contact law enforcement officers when a respondent violates protection order provisions if attempts by the victim to contact officers have been unsuccessful. Ask law enforcement officers to collect evidence that would support a protection order enforcement proceeding.**
- **Work with prosecutors, with your client's consent, and provide official records that include admissions of abuse or violations by the respondent.**

[19] *See Jancuk v. Jancuk*, 2004 WL 550785 (Ohio App. 2004) (former husband's conduct resulted in a sentence of contempt for his irrelevant and frivolous filings, leading the court to conclude that "[h]is filings serve merely to harass another party to the proceeding and bear no relevance to the divorce proceeding").

- **Educate yourself about full faith and credit issues related to inter-jurisdictional enforcement of protection orders.**
  - Work with attorneys, advocates, and law enforcement officers in other jurisdictions to help your client get her protection order enforced in other jurisdictions, particularly when the protection order contains custody provisions, for which obtaining interstate enforcement by law enforcement is difficult.
  - Identify allies to contact for assistance in enforcing protection orders criminally, both at the state and federal level, when initial responders fail to take such cases seriously.
  - Be aware that cross-jurisdictional violations of protection orders (such as phone calls and emails) are enforceable both in the issuing and enforcing jurisdictions and that federal crimes may be implicated.[20]
- **Work with state authorities and tribal authorities to ensure that state courts understand that they must enforce tribal protection orders.**

[20] 18 U.S.C. §§ 2262, 2265, and 2266 (West 2009). *See also* NCPOFFC, *supra* note 12 (providing details on several federal crimes including interstate domestic violence, interstate stalking, and interstate violation of a protection order).

PRACTICE STRATEGIES

Strategy #7:
Work in Partnership with Community and Criminal Justice Agencies to Promote Accessible and Effective Protection Order Relief

- **Participate in trainings for community members about domestic violence, civil protection order laws, and available resources.**

- **Engage in local efforts that review policies and protocols within the civil protection order process and promote victim-centered strategies.**

- **Work with state domestic violence coalitions to develop a brief bank.**
    - Share *amicus* briefs and recent protection order cases that have statewide or nationwide impact.

- **Participate in fatality review boards[21] or safety audits[22] that seek to identify and resolve problems with civil protection order procedures.**

- **Develop relationships with local media that can be used to promote a better understanding of domestic violence and the role of civil protection orders in safeguarding victims.**

- **Identify and work with national technical assistance providers that can assist you with specific challenges.[23]**

- **Participate in efforts to improve and revise court forms and processes related to the protection order system.**

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[21] Neil Websdale, Judge Michael Town & Byron Johnson, *Domestic Violence Fatality Reviews: From a Culture of Blame to a Culture of Safety*, 50 Juv. & Fam. L. J. 61, 70-71 (1999). For additional resources, contact The National Domestic Violence Fatality Review Initiative at http://www.ndvfri.org.

[22] For a brief overview of the safety audit process, see Ellen Pence & Dorothy Smith, Nat'l Inst. of Justice and Office on Violence Against Women, The Safety and Accountability Audit (2004). For additional resources see Praxis International, Safety Audit Home, http://www.praxisinternational.org/safety.aspx.

[23] National technical assistance providers include: The Battered Women's Justice Project available at 800-903-0111, The Resource Center on Domestic Violence: Child Protection and Custody available at 800-527-3223, and The Legal Resource Center on Violence Against Women available at (301) 270-1550.

COURTS AND JUDICIARY

Introduction

Courts and the judiciary have a unique and central role in issuing and enforcing domestic violence civil protection orders. Unlike the other professions, judges have both adjudicative and administrative responsibilities; and unlike other professions, judges have these responsibilities not just for one side or the other, but for all persons who come before them. Accordingly, courts have an overriding responsibility to be neutral, treat all persons equally, offer full access to court resources, and ensure that all parties are afforded full constitutional due process when adjudicating cases. However, once judicial findings have been made, the court's role expands to ensure that the necessary remedial steps are taken to provide safety and restoration for individuals who have been victimized.

This section is written *by judges* to provide useful guidance *for judges* who are working to improve the issuance and enforcement of civil protection orders. The section considers the key strategies judges can employ to protect victims, their families, and their communities while remaining neutral through the adjudicatory process.

What specific roles do judges play in the effective issuance and enforcement of civil protection orders?

Judges guarantee equal justice for each individual.

Judges have an overriding responsibility to be neutral and must avoid even the appearance of partiality or favoritism in the adjudication of each case that comes before them. The judicial role in guaranteeing that all

persons are treated equally, offered full access to resources,[1] and afforded full constitutional due process is central to the justice system. Maintaining the delicate balance of impartiality during the adjudication of each case allows all parties a fair hearing.

Judges enhance victim safety.

Courts must remain vigilant regarding the potential danger inherent in domestic violence cases and take appropriate steps to protect the physical safety of petitioners when they come to court. Furthermore, if there is a finding of abuse, then it is imperative that the court take seriously the responsibility of protecting the victim of domestic violence from further abuse. Following adjudication, the court is at liberty to exercise its broad authority to craft an order tailored to the particular needs of the victim and her children.

Judges help make the courts accessible to all individuals.

All individuals, regardless of background, must have full and equal access to the justice system. Judges have the responsibility of ensuring that courts are accessible[2] in all respects, including physically and linguistically, and that all members of the public, regardless of background, feel welcomed and aided when they come to court. All litigants are entitled to a fair and even-handed justice system.

Judges are a catalyst for collaboration.

Judges play a key role in overseeing continuous improvement of service to the public. Judicial responsibility includes ensuring that the court system works in collaboration with other professions to see that orders are properly implemented and enforced. Judges can help ensure that court orders are understood fully and that offenders are held accountable for their actions by coordinating with agencies that serve and enter orders, by monitoring firearms relinquishment, and by providing other assistance.

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[1] Paula Hannaford-Agor, *Helping the Pro Se Litigant: A Changing Landscape*, 39 Ct. Rev. 11, 13 (Winter 2003).

[2] *Tennessee v. Lane*, 541 U.S. 509 (2004) (finding that the right to access the courts is fundamental and protected by the Due Process Clause of the 14th Amendment).

PRACTICE STRATEGIES

Strategy #1:
Provide a Safe and Welcoming Environment

- **Ensure court personnel are trained to provide information about the court process and community resources, including legal representation and access to advocates.**[3]

- **Inform litigants of the processes to obtain and enforce orders, along with an explanation of the relief that is available.**
  - Develop an informational brochure, website, or video and provide information in languages that reflect those spoken in the community.
  - Ensure that interpreters are available to meet the language needs of victims.

- **Offer to contact an advocate each time a petitioner comes to court if one is not on-site and available.**

[3] Some state statutes specifically permit advocates to attend court hearings. *See, e.g.*, 750 Ill. Comp. Stat. Ann. 60/205 (West 2009) (permitting advocates to sit at counsel table and confer with the victim at civil court proceedings and to accompany and confer with the victim at criminal proceedings); Wash. Rev. Code Ann. § 70.123.020 (West 2009) (providing a definition of legal advocates that includes their role in attending court proceedings).

- **Review existing security procedures to ensure that the courthouse environs are safe for victims, including courtrooms, lobbies, and parking areas.**
  - Make courts safe and accessible to victims by providing separate waiting areas and allowing application by telephone, video, electronic means, and fax when appropriate.[4]
  - Explore measures that can help protect victims from respondents, such as allowing victims to leave hearings before respondents or having bailiffs accompany victims to their cars following hearings.
- **Develop safeguards to protect the confidentiality of petitioners' information. Provide private meeting space, inform petitioners of the court's confidentiality provisions, and keep the petitioner's address confidential if so requested.**
- **Explore the appropriateness of a "one-stop-shop" with proper confidentiality safeguards for safety planning, housing assistance, child support, counseling, and civil legal assistance so that victims may access services when needed.**[5]

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[4] Many state statutes mandate safe waiting areas at the courthouse. *See, e.g.*, Minn. Stat. Ann. § 611A.034 (West 2009) (requiring separate waiting areas for victims from defendants and their families and witnesses; if one is not available, the court shall provide other safeguards to minimize the victim's contact with the defendant); Tenn. Code Ann. § 40-38-102 (West 2009) (without requiring additional funds or construction, victims shall be provided with separate waiting areas from the defendant or the defendant's witnesses during all stages of the judicial process).

[5] TK Logan et al., The Kentucky Civil Protection Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, and Costs (2009) (finding that high proportions of women in both rural and urban jurisdictions "mentioned the difficulty in navigating the system as a barrier to obtaining a protective order").

PRACTICE STRATEGIES

Strategy #2:

Issue Civil Protection Orders that Provide the Broadest Relief Available and Requested

- **Collaborate with victim advocates and attorneys to ensure that victims have effective assistance, including legal representation, in court.**[6]

- **Establish a process whereby risk is assessed**[7] **throughout the proceedings to ensure that the victim's safety is addressed.**[8]

- **Inquire about what relief the victim is seeking and ensure that she understands the various forms of relief that are available.**

- **Tailor the order to meet the needs of individual victims.**

- **Issue no contact orders that are clear about the distance from which the respondent must stay away from the petitioner or locations where the respondent may not be.**

  - Recognize the need for flexibility in circumstances where the parties may request limited (including telephonic or electronic) contact for purposes of exchanging children, discussing other pending cases, or in limited circumstances when the parties need to be present in the same facility or at the same event and alternative arrangements are not feasible.

  - Prioritize the safety of the petitioner in crafting these provisions.

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[6] Amy Farmer & Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 Contemp. Econ. Pol'y 158 (2003) (finding that effective legal representation is the most determinative factor in whether victims are able to escape domestic violence).

[7] *See, e.g.*, The Gender Fairness Implementation Committee of the Minnesota State Supreme Court, Domestic Violence Risk Assessment Bench Guide (2009), http://www.wunrn.com/news/2010/03_10/03_29_10/032910_domestic.htm. *See also* Jacquelyn C. Campbell, Johns Hopkins University, School of Nursing, Danger Assessment (2004), http://www.dangerassessment.org/WebApplication1/pages/da/.

[8] Logan et al., *supra* note 5, at 90 (finding for example, that petitioners reported "having to sit or stand so close to the [respondent] before and during the hearing and how the [respondent] was allowed to try to intimidate the victim through words or stares during the hearing process").

- **Order economic relief such as child support and maintenance when allowed and appropriate.**
  - Order economic relief in the form of rent or mortgage payments if the respondent is ordered to vacate the residence.[9] Order that the respondent surrender all keys to the petitioner and not interfere with the utilities to the home.
  - Order economic relief to assist the victim in relocating if the circumstances warrant.
  - Order restitution for out-of-pocket and other financial losses, including missed work for court dates.
- **Prohibit the respondent from removing documents issued in the name of either the petitioner or her minor children. These items include documents such as drivers' licenses, social security cards, passports, visas, and immigration papers.**
  - Order the respondent to surrender these documents if he has already removed them.
- **Order a respondent who is a law enforcement officer to refrain from using departmental resources or knowledge to intimidate, harass, or stalk the petitioner.**
- **Order the surrender of firearms and ammunition when appropriate.**

[9] Victims of domestic violence may also be protected in their lease agreements through a variety of statutory or other means. *See, e.g.,* Ariz. Rev. Stat. Ann. § 33-1315 (West 2009) (prohibiting provisions in rental agreements that agree to waive or limit a tenant's rights to summon a peace officer); R.I. Gen. Laws § 34-37-1 (West 2009) (prohibiting landlords from discriminating against a tenant or applicant for housing solely on the basis that she is or has been or is threatened with being a victim of domestic violence or seeking a protection order).

PRACTICE STRATEGIES

Strategy #3:
Explain Orally and on the Record the Provisions of the Civil Protection Order

- **Explain with specificity each provision of the protection order, including the Full Faith and Credit provision, enforcement procedures, and consequences of violation under state and federal law.**

- **Ensure that the judicial colloquy includes notifying respondents about the applicable federal and state firearms restrictions.**[10]

- **Create a video explaining the civil protection order process and the potential requirements of such orders as an additional resource for the public.**

- **Suggest that petitioners with children give copies of the order to schools or day care providers as appropriate.**

- **Provide both the petitioner and respondent with copies of the order. If the respondent is not present at the hearing, mail or serve the order as appropriate under state law.**

- **Explain to both parties that the orders will be accessible by law enforcement across the country and are enforceable in all jurisdictions.**

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[10] Under the Violence Against Women Act 2005, STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program (STOP Program) all state and subgrantees that are units of local government must certify that their courts have policies and practices to provide notification to domestic violence offenders regarding federal, state, or local laws addressing firearms and domestic violence. 42 U.S.C. § 3796gg-4(e) (West 2009). *See also* NCJFCJ, Full Faith and Credit: A Passport to Safety, A Judge's Bench Card (VAWA 2005 edition, 2010) (suggesting that the following language may be useful to include in civil protection orders:"[a]s a result of this order, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition pursuant to federal law under 18 U.S.C. § 922(g)(8) and/or state, tribal, territorial, or local law. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney"); Amy Karan & Helen Stampalia, *Domestic Violence and Firearms: A Deadly Combination The Juxtaposition of Federal and Florida Laws*, 79 Fla. Bar J. 79 (2005).

- **Ask if either party has questions. It is important to ensure both have a clear understanding of what the court has ordered so that the petitioner will know what relief is provided, and the respondent will have clear notice of prohibited and required conduct.**

- **Encourage advocates to review orders with petitioners following hearings. Sometimes victims are too upset or reluctant to ask questions in court. It is helpful if an advocate can assist the victim with understanding the relief that has been ordered.**

- **Explain the process for modifying, extending, or vacating the order if the petitioner later wishes to do so.**

  - Offer the petitioner the opportunity to consult with an advocate to discuss safety issues and other alternatives prior to modifying or dismissing protection orders.

  - Explain to a petitioner who wishes to withdraw her petition that she is always welcome to seek a new order if the violence or threat of violence resumes after dismissal, modification, or termination of the order.

PRACTICE STRATEGIES

Strategy #4:
Craft Orders Carefully with Regard to Custody, Visitation, and Support

- **Include provisions for custody and visitation only after it is clear that the respondent is the father of the children. If the respondent questions his paternity, order that testing occur before addressing custody and visitation and before any contact is allowed unless specifically requested by the petitioner.**

- **Safeguard victims and children by crafting careful orders with regard to custody, visitation, and support.**
  - Indicate on the order the jurisdictional basis for the custody, visitation, and support provisions.[11]

- **Order supervised visitation or exchange when necessary.**
  - Craft orders that do not endanger the victim or children by simply defaulting to unsupervised visits.
  - Develop check-off boxes and fill-in forms for visitation provisions that allow specificity, ease, and efficiency, while ensuring there is sufficient space to accommodate detailed terms.
  - Become familiar with the local supervised visitation center if one is available. Visit the center and be prepared to provide information about its services at civil protection order hearings.
  - Give the visitation center additional information on the parties and their children such as intake forms, petitions, or court referral forms when possible.[12]

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[11] NCJFCJ, *supra* note 10.

[12] Office on Violence Against Women, U.S. Dep't of Justice, The Guiding Principles of the Safe Havens: Supervised Visitation and Safe Exchange Grant program (2007).

- **Make provisions for situations in which the supervised visitation center is not accepting clients or refuses a particular case.**

- **Be cautious about allowing family members to supervise visitation, both for their safety and the safety of the children.**

  - Recognize that an abusive partner may pose a threat to the victim's family or the children.

  - Recognize that the petitioner's or the respondent's family may disagree with the court's findings and, if permitted to supervise, may allow the respondent access the court did not permit.

- **Require third-party supervisors (aside from the center) to be in court to accept responsibility for supervising visits; suspend visitation until the third party can appear in court.**

- **State clearly the consequences for the respondent's failure to attend visitation as scheduled and of the respondent's inappropriate behavior during visitation.**

PRACTICE STRATEGIES

Strategy #5: Ensure Proper and Timely Service of *Ex Parte* Protection Orders and Notice of Final Orders

- **Ensure that the order is delivered to the appropriate law enforcement agency for service on the respondent.**
  - Avoid making the victim responsible for service given the safety risks involved.
  - Recognize that if the respondent is on probation, the most appropriate law enforcement officer may be the probation officer.
  - Advise petitioners they may use private service agencies for service of orders, where permitted under state law, but ensure that it is the court that coordinates service, not the victim.
- **Ensure that victims are not charged fees for filing protection orders or for service of process.**[13]
- **Include a standing order from the court with the petition that details the consequences of violating the protection order.**
- **Establish an automated system of victim notification regarding service of the order, when and if the respondent was ordered to relinquish firearms, and all hearing dates.**

[13] Under the Violence Against Women Act, STOP Formula and Grants to Encourage Arrest Policies and Enforcement of Protection Orders Programs state grantees and tribal and local units of government receiving funds must certify that their laws, policies, and practices do not require victims to bear the costs associated with the filing, issuance, registration, or service of a protection order to protect a victim of domestic violence, sexual assault, or stalking or a petition for such a protection order. 42 U.S.C. §§ 3796gg-5(a) and 3796hh(c)(4) (West 2009). In addition, many states have statutes prohibiting fees for filing protection orders or related actions.

- **Contact the state STOP (Services, Training, Officers, and Prosecutors) VAWA (Violence Against Women Act) Coordinator for assistance with serving out-of-state orders to ensure fees are not charged.**[14]

- **Ensure prompt service of final protection orders if required by state law.**[15]

  - Take appropriate steps to ensure that the respondent receives a copy of the final order, consistent with state law.

  - Work with the federal partners concerning ways to address interstate service issues to ensure that final orders may be enforced in the event the respondent does not attend the final hearing.

[14] Contacts for each state are available at http://www.ovw.usdoj.gov/stop-contactlist.htm.

[15] Logan et al., *supra* note 5, at 9.

PRACTICE STRATEGIES

Strategy #6:
Issue Civil Protection Orders in a Manner that Facilitates Interstate Enforcement and Enforce Foreign Orders

- **Develop uniform statewide forms and a uniform cover page to facilitate inter-jurisdictional enforcement.**[16]
- **Ensure that orders are entered promptly into the National Crime Information Center Protection Order File (NCIC POF) Database.**
- **Issue and enforce protection orders consistent with the Full Faith and Credit provision of the Violence Against Women Act (VAWA) (18 U.S.C. §§ 2265 and 2266).**
- **Use and adhere to the guidelines of *Full Faith and Credit: A Passport to Safety, A Judge's Bench Card.***[17]
- **Provide respondents notice and the opportunity to be heard; note that this has been done on the face of the protection order.**
- **Refrain from issuing orders that restrain a petitioner's conduct, and refrain from using language that accuses a victim of violating her own protection order.**

[16] For more information on *Project Passport*, a project of the National Center for State Courts, visit http://www.ncsc.org or call (800) 616-6160.

[17] NCJFCJ, *supra* note 10.

- **Refrain from issuing mutual protection orders.** ***Note: The mutual orders referred to here are those issued through one petition, and not orders issued through cross-petition.***[18]

- **Include contact information for the issuing court on protection orders.**

- **Include applicable state law citations in the protection order.**

- **Determine, prior to the hearing, whether there are any other orders in effect that may conflict with the provisions of the protection order.**

  - Accept faxes or electronic transmissions of foreign orders as verified copies, when requested to conduct a hearing to enforce a foreign order. Follow up with originals or certified copies as appropriate.

  - Make contact with the issuing court to resolve any concerns regarding the currency or validity of an existing order, whether used within or outside the state, and advise the parties that you have done so.

  - If there are conflicting orders, modify either order, if necessary and there is legal authority to do so, to give the respondent only one set of mandates and to alleviate conflicting or confusing provisions.[19]

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[18] *Id.* (informing courts that mutual orders, which provide relief against the original petitioner as well as the respondent, are fully enforceable against the respondent and that provisions against the petitioner are not entitled to interstate/tribal enforcement unless (a) a cross or counter petition, complaint, or other written pleading was filed by the respondent seeking such a protection order and (b) the court made specific findings that each party was entitled to such an order).

[19] *See People v. Stiles*, 779 N.E.2d 397 (Ill. App. 2002) (stating that the defendant fraudulently obtained an order of protection against his girlfriend after being notified that she had obtained one against him, resulting in conflicting orders and holding that the existence of the second order in no way voided the initial order).

PRACTICE STRATEGIES

Strategy #7: Enforce Civil Protection Orders in a Manner that Improves Victim Safety and Perpetrator Accountability

- **Prioritize the enforcement of each valid civil protection order issued in your jurisdiction.**
  - Work with advocates and attorneys to try to ensure that victims have effective assistance available at hearings for violations.
  - Include a letter from the court with the protection order that details the consequences of violating the order.
  - Establish a mechanism for monitoring compliance with firearms relinquishment orders.
  - Enforce temporary or *ex parte* orders if a respondent with notice of the order commits a violation. The court may find that the respondent was sufficiently aware of a temporary or *ex parte* protection order if the evidence suggests that the respondent knew of the order through means other than service even if the order was not served.[20]

[20] *See, e.g., MacDonald v. State*, 997 P.2d 1187 (Alaska App. 2000) (finding that actual knowledge is sufficient for a violation of a protection order; no personal service was effected).

- **Use judicial sanctions and incentives to influence respondent behavior and promote compliance.**
  - Ensure that provisions in one civil protection order do not conflict with provisions found in a different court order applicable to the petitioner and respondent.
  - Use civil and criminal contempt proceedings, where permitted by state law, to compel respondent compliance.[21]
  - Consider modifying orders in response to violations.
  - Evaluate the electronic monitoring options available and consider whether this technology would promote safety and reduce violations.[22]
- **Recognize that a petitioner cannot violate her own protection order because the terms of the order should direct the actions of only the respondent.**
- **Use various methods to determine the validity and, where necessary, to clarify the provisions of foreign orders.**
  - Do not require that the victim register or file notice of the order as a prerequisite for enforcement of a valid protection order from another jurisdiction.[23]
  - Search the NCIC POF Database to see if the order has been registered.

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[21] Michigan Judicial Inst., *Chapter 8: Enforcing Personal Protection Orders, in* Domestic Violence Benchbook: A Guide to Civil and Criminal Proceedings—Third Edition (2004) (providing a detailed example using contempt proceedings).

[22] *See generally* Peter R. Ibarra & Edna Erez, *Victim-centric Diversion? The Electronic Monitoring of Domestic Violence Cases,* 23 Behav. Sci. Law 259 (2005).

[23] Such registration is not required under 18 U.S.C. § 2265(d) (2) (West 2009). *See also* NCJFCJ, *supra* note 10.

- Presume foreign protection orders are valid and contact the court that issued the order, if necessary, to clarify ambiguities, verify validity, and establish service.[24]

- Request that the person seeking enforcement of the order present relevant evidence to support the order's validity, if other methods fail.

- **Enforce the terms of the foreign order, even if your jurisdiction (the enforcing court) lacks authority to order such terms.**[25]

  - Use the enforcement procedures of your jurisdiction when enforcing a foreign protection order.

  - Enforce the terms in the order as written by the issuing court.

  - Note that the issuing court determines who is restrained, the duration of the restraint, the relief that is available, and the conduct that is prohibited or required, while the enforcing court uses its enforcement procedures to enforce the terms of the protection order as it is written by the issuing court.

- **Enforce custody and visitation provisions to the same degree and through the same mechanisms as no contact or stay away provisions.**

- **Inform the issuing court of the disposition of any enforcement proceeding by filing a copy of the order with the issuing court.**

[24] NCJFCJ, *supra* note 10.

[25] *Id.*

PRACTICE STRATEGIES

Strategy #8: Conduct Regular Compliance Review Hearings[26]

- **Schedule regular compliance review hearings at the time of issuance of the final protection order.**
  - Use judicial hearing officers and retired judges to conduct compliance review hearings if dockets are too large.
  - Indicate who is required to attend hearings, in addition to the respondent, including batterers' intervention program personnel and supervised visitation center personnel.
- **Prepare a pre-set compliance review form so judges may check off with a high degree of specificity what will be reviewed at the compliance hearing.**

[26] Vera Inst. of Justice, Enhancing Responses to Domestic Violence: Judicial Review Hearings: Keeping Courts on the Case 3 (2006) (finding "[o]ne of the most powerful expressions of care for victim safety is assuring [sic] that offenders are in compliance with court orders").

- **Conduct compliance review hearings with the respondent on issues contained in the protection order including, but not limited to, no contact, visitation, economic restitution, and firearms surrender.**
  - Work with advocates to schedule hearings that will not compromise a victim's safety.
  - Provide victims with notice of compliance review hearings. Recognize that a victim's safety risk is elevated at court hearings, including compliance review hearings, whether or not she is required to attend.
  - Conduct compliance review hearings on no-contact provisions only when the victim is not the sole source of information for the court and is not needed at the hearing.
  - Ensure that the respondent understands that the review is for protection order compliance only and not a mechanism to modify or vacate orders.

PRACTICE STRATEGIES

Strategy #9: Create Safe Practices and Policies for Firearms[27]

- **Maintain continuing judicial education on state and federal firearms laws.**[28]

- **Ensure that judges understand and enter orders in conformity with both state and federal law.**

- **Ensure protection order forms prominently include state and federal firearms restrictions.**

- **Inquire as to the presence and location of firearms, including those possessed by family members or friends who may give the respondent direct or indirect access to firearms and ammunition. When appropriate, notify such persons of their liability for third-party transfers of firearms and ammunition.**[29]

- **Ensure that the protection order includes appropriate provisions for surrender in every case when state or federal law bars a respondent from possessing firearms and ammunition.**

  - Be clear and precise as to when, where, and how they shall be surrendered.

  - Consider requiring the surrender of gun permits and licenses, especially if these allow for purchases without a background check.[30]

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[27] *See generally* Darren Mitchell & Susan Carbon, *Firearms and Domestic Violence: A Primer for Judges*, 39 Ct. Rev. 32 (Summer 2002), *available at* http://aja.ncsc.dni.us/htdocs/publications-courtreview.htm. *See also* NCJFCJ, *supra* note 10.

[28] For a more focused discussion of firearms prohibitions, please review the Issues in Focus: Firearms section of this *CPO Guide*.

[29] 18 U.S.C. §§ 922(d)(8) and (d)(9) (West 2009). *See also Id.*

[30] *See, e.g.*, 18 U.S.C. § 922(t)(3)(A) (West 2009).

- **Notify respondents orally of firearms restrictions consistent with state, tribal, and federal law.**[31]
  - Inform respondents, when applicable, that possession or attempted possession of a firearm or ammunition may be a crime under federal law and may also be a crime under state law.
  - Establish a mechanism for monitoring respondents' surrender or relinquishment of firearms and ammunition.
  - Conduct a compliance review hearing; and, if the respondent fails to appear, issue a bench warrant.[32]
- **Coordinate with law enforcement personnel to determine what agency should be the repository for firearms and ammunition surrendered by respondents of protection orders.**

[31] *See, e.g.,* 18 U.S.C. § 922(g)(8) (West 2009).

[32] Andrew R. Klein, Nat'l Ctr. on Protection Orders and Full Faith and Credit, Enforcing Domestic Violence Firearm Prohibitions: A Report on Promising Practices 39 (Mary B. Malefyt Seighman ed., 2006).

PRACTICE STRATEGIES

Strategy #10: Collaborate with other Professionals

- **Take advantage of the unique position of the judiciary by finding opportunities for judicial leadership and participation in collaborative efforts.**

- **Collaborate with other justice system participants, including military authorities, state, federal and tribal prosecutors, defense attorneys, and law enforcement officers, to ensure a reliable and consistent process for issuing and enforcing protection orders.**

- **Work with other professionals to develop a protection order registry and require prompt entry of protection orders into relevant registries including NCIC POF Database.**

- **Develop court watch or self-evaluation programs internally or externally to monitor court progress, identify problems, and provide feedback on problem areas.**

- **Participate in fatality review boards or safety audits that seek to identify and resolve problems with civil protection order procedures.**[33]

- **Participate in "walk throughs" to experience the protection order process from a litigant's perspective and gain an understanding of a litigant's experience with the system.**

[33] *See generally* Neil Websdale, Judge Michael Town & Byron Johnson, *Domestic Violence Fatality Reviews: From a Culture of Blame to a Culture of Safety,* 50 Juv. & Fam. L. J. 61 (1999); *see also* Praxis International, Safety Audit Home, http://www.praxisinternational.org/safety.aspx.

LAW ENFORCEMENT

Introduction

Law enforcement officers are often the first line of protection in cases of abuse. As such, their response can send profound messages to victims, children, and perpetrators about how the community and the legal system will respond to the violence.[1] A victim's willingness to seek assistance in the future or to follow through with criminal prosecution may, in large part, be determined by her interactions with officers.

This section is written *by law enforcement officers* to provide useful guidance *for law enforcement officers* who are working to protect victims of abuse more effectively. The section considers key strategies law enforcement officers can employ to ensure that victim and officer safety is paramount throughout the process and to promote improved enforcement of civil protection orders. The strategies recognize and address the unique roles of both responding officers and department leadership.

What specific roles do law enforcement officers play in the effective issuance and enforcement of civil protection orders?

[1] Leonard Karp & Laura C. Belleau, *Federal Law and Domestic Violence: The Legacy of the Violence Against Women Act*, 16 J. Am. Acad. Matrim. L. 173 (1999).

Law enforcement officers increase victim safety through effective service of the protection order.

Officers promote victim safety by ensuring that protection orders are served promptly and that victims are notified of service promptly.[2] Effective service requires more than a timely response; officers hold respondents accountable for their violence by informing respondents fully about the protection order process, detailing the consequences of violations, and confiscating firearms and other weapons. Officers who fulfill these responsibilities send the message that domestic violence will not be tolerated and, in doing so, increase the safety not only of the victim, but also of the community as a whole.

Law enforcement officers promote safety through weapons seizure.

The link between the presence of and access to firearms and domestic violence homicide is well established.[3] Congress and state legislatures have recognized this link and addressed it by adopting laws relating to weapons prohibitions for perpetrators of domestic violence. Law enforcement officers are in a position to give effect to these laws by seizing weapons pursuant to a warrant, court order, incident to arrest, through the plain view exception, or if the weapons are evidence of a crime.[4]

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[2] Logan et al., The Kentucky Civil Protection Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, and Costs 90 (2009).

[3] L. J. Paulozzi et al., Ctrs. Disease Control & Prevention, Surveillance for Homicide Among Intimate Partners—United States, 1981–1998, 50 Morbidity and Mortality Weekly Report Surveillance Summaries 1 (2001), http://cdc.gov/mmwr/preview/mmwrhtml/ss5003a1.htm.

[4] *Id.* at 9.

Law enforcement officers increase the reliability of the system by enforcing violations of protection orders.

Inconsistent and incomplete enforcement of civil protection orders reinforces the perpetrator's perceptions that his actions are appropriate and the victim's perceptions that she is helpless to stop the violence. Law enforcement officers send the opposite message through effective enforcement.[5] Officers can increase safety by focusing on strategies to facilitate full and timely enforcement of civil protection orders.

Law enforcement officers are a catalyst for collaboration.

Law enforcement officers are frontline responders whose experiences with crisis situations give them insight that can help other professionals in their efforts to improve the issuance and enforcement of protection orders.[6] Department leadership can signal to responding officers and the public that protection order enforcement is important to public safety and is a priority through collaborative efforts and by creating departments that are open to change.

Law enforcement officers prioritize safety for themselves.

Law enforcement officers respond to individuals in crisis situations. In doing so, they put their own lives at risk. They have the right to access reliable information that is critical to assessing the dangerousness of the situation.[7] Department leaders can institutionalize some of the practices in this section as a way of protecting the officers under their leadership.

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[5] U.S. Dep't of Justice, Enforcement of Protective Orders, Legal Series Bulletin #4 (2002), http://www.ojp.usdoj.gov/ovc/publications/bulletins/legalseries/bulletin4/welcome.html.

[6] Andrew R. Klein, Nat'l Ctr. on Protection Orders and Full Faith and Credit [hereinafter NCPOFFC], Enforcing Domestic Violence Firearm Prohibitions: A Report on Promising Practices (Mary B. Malefyt Seighman ed., 2006), available at http://www.fullfaithandcredit.org/publications.aspx.

[7] *Id.*

PRACTICE STRATEGIES

Strategy #1: Prioritize Safety for Victims of Domestic Violence

Strategies for Responding Officers

- **Inform the victim at the scene of a domestic violence or stalking incident about the various types of protection orders available.**[8]
  - Create a resource card to distribute at the scene of an alleged domestic violence crime in languages represented in the community.
- **Inform the victim of the possible danger of remaining in the home and advise the victim to develop a safety plan when she is in a safe and secure location.**
- **Discuss with the victim safe and reliable ways to follow up with her.**
- **Notify an advocate about the domestic violence incident so the advocate can speak with the victim immediately.**
  - Document the contact with the advocate in the police report.
- **Seek opportunities to consult with prosecutors during domestic violence case preparation, including protection order violations and stalking cases.**

[8] 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, 1534 (2008).

Strategies for Department Leaders

- **Elevate the status of domestic violence specialist officers by, for example, giving domestic violence unit officers the same titles, office space, cars, and equipment as their colleagues in other units, and including them in larger cases such as homicides that involve domestic violence.**

- **Develop protocols that address officer-involved domestic violence, including officers subject to protection orders.**

  - Adopt the International Association of Chiefs of Police (IACP) model policies on police officer-involved domestic violence cases and protection order issues.[9]

  - Ensure that an officer subject to a protection order does not use department resources, such as access to registries, to harass or intimidate the victim.

  - Mandate that officers who are subject to protection orders notify the department.

- **Develop and regularly update police forms, policies, and protocols to reflect changes in the law and best practices.**

- **Update agency personnel and volunteers on changes.**

[9] Int'l Ass'n of Chiefs of Police, Domestic Violence by Police Officers Model Policy (2003).

PRACTICE STRATEGIES

Strategy #2: Serve Orders Effectively

Strategies for Responding Officers

- **Gather and review detailed background information to facilitate service and to improve officer and victim safety.**
  - Conduct a dangerousness assessment with the petitioner in preparation for service and inquire about the respondent's habits and regular meeting places.[10]
  - Ask the respondent for as many numerical identifiers as possible, which are needed to enter the order into the National Crime Information Center Protection Order File (NCIC POF) Database and state and local registries.[11]
  - Check the respondent's criminal history for warrants, convictions, and firearms licenses or permits prior to serving a protection order.
- **Treat information gathered about a petitioner throughout the process confidentially and do not release her information outside of the required professionals.**
  - Treat information regarding a petitioner's location or how to contact her with particular care.
- **Establish a procedure for conducting follow-up calls to the petitioner when initial attempts to serve the protection order have been unsuccessful.**

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[10] *See generally* The Lethality Assessment Protocol-The Maryland Model. A brochure detailing the program is available at http://www.mnadv.org/MNADV%20LAP%20Brochure.pdf. Harvard University's Ash Institute recognized Maryland's program as one of the top 50 Innovations in American Government programs in 2008. The program is based on the work by Jacquelyn C. Campbell, Johns Hopkins University, School of Nursing, Danger Assessment (2004), http://www.dangerassessment.org/WebApplication1/pages/da/.

[11] Numerical identifiers include social security number; date of birth; vehicle identification number and make; model and year of car; driver's license number, including the state and expiration date; and addresses and phone numbers for both home and business.

- **Document each service attempt and the results to help other professionals understand the history of the case quickly.**
  - Include dates and times in the documentation.
  - Enter return of service documentation immediately into state registries and databases.
- **Serve faxed or electronic copies of protection orders (including foreign orders) in lieu of the original if it is necessary and permitted under state law.**
- **Serve the respondent with the petitioner's copy, if she has a copy of the unserved protection order, and give the petitioner your business card with the case number of the protection order.**
- **Include a letter from the court when serving a protection order that details the consequences of violating the order.**
- **Document the respondent's behavior during service, including statements and nonverbal signals that indicate a potential elevated threat to the victim.**
- **Share observations of respondent's behavior with the appropriate people, such as the victim, an advocate, and the prosecutor.**
- **File the return of service immediately with the court to ensure entry into the appropriate databases.**
- **Notify the victim promptly after service.**
  - Inform her of the respondent's reaction to service so she may address any new safety issues.

Strategies for Department Leaders

- **Make service of protection orders a priority for law enforcement agencies.**
  - Acquire the technology to update status information from officer vehicles. Once acquired, technology that connects officers to state and national protection order databases can be used in additional ways to facilitate service and enforcement.

- **Utilize available officers to serve protection orders as soon as possible, even if there is a specialized domestic violence unit.**

- **Develop policies to promote service on the day the order is issued.**
  - Institute procedures to ensure that if service is unsuccessful, further attempts will be made as quickly as possible.

- **Explore alternative internal staffing ideas that enable timely service of protection orders.**
  - Allow officers to modify their schedules in order to serve during evening hours and weekends.

- **Identify individuals outside the department who can serve protection orders promptly and provide appropriate training to ensure that each individual serves orders appropriately.**
  - Deputize U.S. Marshals, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) officers, and probation officers to accomplish service where appropriate.
  - Use correctional officers for service of incarcerated respondents.
  - Enlist the help of private process servers who may serve orders on a *pro bono* basis, if permitted under state law, and develop procedures for victim notification of service in these situations.

- **Identify agencies involved in serving intrastate and interstate protection orders and develop a relationship with these agencies.**
- **Work with agencies that serve orders to eliminate any fees for service of civil protection orders.**[12]
- **Ensure that your own department does not seek fees or mileage for foreign protection order service.**

[12] Under the Violence Against Women Act, STOP Formula and Grants to Encourage Arrest Policies and Enforcement of Protection Orders Programs state grantees and tribal and local units of government receiving funds must certify that their laws, policies, and practices do not require victims to bear the costs associated with the filing, issuance, registration, or service of a protection order to protect a victim of domestic violence, sexual assault, or stalking or a petition for such a protection order. 42 U.S.C. §§ 3796gg-5(a) and 3796hh(c)(4) (West 2009). In addition, many states have statutes prohibiting fees for filing protection orders or related actions.

PRACTICE STRATEGIES

Strategy #3: Support Effective Seizure of Firearms and Ammunition

Strategies for Responding Officers

- **Attempt to verify the existence of firearms through dispatch and mobile data terminals, call history, prior experience with the parties, and firearm registries while en route to the scene.**

- **Make inquiries as to the presence and location of firearms after arrest and separation of the parties.**[13]
  - Ask the victim about her property rights to firearms.
  - If the firearms are mutual property, ask the victim if she wants to surrender them voluntarily to police for safekeeping, sale, or disposal.
  - Refer the victim to an advocate for safety planning[14] as firearms and firearms surrender or seizure may create significant safety risks.

- **Seize firearms and ammunition in a respondent's possession when serving protection orders, as permitted under state or federal law.**
  - Ask probation officers to schedule a meeting with the respondent outside of the home or consider asking probation officers to check the probationer's home for firearms.

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[13] *See generally* Int'l Ass'n of Chiefs of Police, Taking a Stand: Reducing Gun Violence in Our Communities 16-17 (2007), available at http://www.theiacp.org/PublicationsGuides/ResearchCenter/NationalPolicySummits/CMSDetail/tabid/398/Default.aspx?id=893 (finding that in cases of domestic violence firearms can be particularly dangerous and that "[f]irst responders should be required (and trained) to ask victims and batterers about the presence of firearms in the home"). *See also* Int'l. Ass'n of Chiefs of Police, Protecting Victims of Domestic Violence: A Law Enforcement Officer's Guide to Enforcing Orders of Protection Nationwide 8 (2006).

[14] Johns Hopkins University Ctr. for Gun Policy and Research, Firearms and Intimate Partner Violence – Fact Sheet (2003), http://www.jhsph.edu/gunpolicy/IPV_firearms2.pdf (finding in part that "[c]ompared to homes without guns, the presence of guns in the home is associated with a 3-fold increased homicide risk within the home. The risk… is 20 times higher when previous domestic violence exists").

- **Inform the respondent fully about restrictions on firearms and ammunition.**
  - Notify the respondent that he must relinquish the firearms he owns, whether or not they are in his possession, where required to do so by state law.
  - Inform the respondent that if he relocates to a home where firearms and ammunition are present, he may be violating the protection order.
  - Inform the respondent about the legal concepts of actual and constructive possession[15] and make sure he understands that it is his responsibility to comply with firearm prohibitions.
- **Identify if firearms have been transferred before an officer's arrival and explain to the third party that transferring the firearms back to the respondent may be illegal.**[16]
- **Ensure that the third party is eligible to take possession of the firearms prior to releasing the firearms to the party.**
  - Research the background of third parties to check for felonies, misdemeanor crimes of domestic violence, protection orders, and other disqualifiers.
  - Turn the firearms into official property storage and do the above checks before release.

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[15] *See generally* Black's Law Dictionary 488 (Brian A. Garner ed., 1996) (defining constructive possession as "control or dominion over a property without actual possession or custody"). A line of federal cases also establishes that a person may be considered to have constructive possession of a firearm if the person has control, ownership, or dominion over the firearm itself. *See, e.g., U.S. v. Kelly,* 594 F.3d 1010 (8th Cir. 2010), *U.S. v. Miller,* 560 F.3d 751 (8th Cir. 2009), *U.S. v. Abumayyaleh,* 530 F.3d 641 (8th Cir. 2008). For more information about restrictions on firearms, please review the Issues in Focus: Firearms section of this *CPO Guide.*

[16] 18 U.S.C. §§ 922(d)(8) and (d)(9) (West 2009).

- **Ensure weapons are not returned until appropriate.**
  - Work with the courts to require the respondent to obtain a court order authorizing the return of any seized firearms.
  - Notify the petitioner when the respondent requests the return of firearms and before returning firearms or other weapons to the respondent.
  - Require a notice period prior to releasing a firearm to a third party or respondent after the protection order expires. This allows time to do checks, notify the petitioner, and make sure there are no pending cases.

Strategies for Department Leaders

- **Develop procedures for securing voluntary relinquishment of firearms and seizing firearms in accordance with state laws and in consultation with local prosecutors.**
- **Remove duty weapons and ammunition from officers who are subject to protection orders[17] and remove weapons permanently from officers who have been convicted of a qualifying misdemeanor crime of domestic violence.[18] This includes positions that would come into contact with firearms and ammunition such as range officers, property officers, and training officers. Law enforcement should also make note that state laws and policies may be more restrictive than the federal law.**
- **Develop policies that require compliance with and support for federal firearm provisions and refer appropriate cases to federal agencies.**

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[17] Pursuant to 18 U.S.C. §§ 922 (g)(8) (West 2009), persons subject to a qualifying protection order are prohibited from possessing firearms and ammunition. However, this prohibition does not apply to official use of firearms by certain federal, state, and local government employees (including military or law enforcement personnel) while on duty under 18 U.S.C. § 925(a)(1) (West 2009), but does apply to personal firearms owned by those covered by the official use exemption. For more information on the official use exemption, please review the Issues in Focus: Firearms section of this *CPO Guide*.

[18] There is no official use exemption for federal, state, and local government employees (including military or law enforcement personnel) who have been convicted of a qualifying misdemeanor crime of domestic violence. 18 U.S.C. § 925(a)(1) (West 2009).

- **Develop storage procedures for confiscated weapons.**
  - Make arrangements to store seized weapons, either at the law enforcement agency or with an off-site licensed storage facility.
  - Assess storage fees to the respondent, if permitted by state law.
- **Require the respondent and any third-party transferee to sign an informational form that gives notice about transfer prohibitions under federal and state law.**
- **Develop department policy limiting third-party transfers on the scene in order to prioritize the necessary background check of the transferee.**
- **Seek cross-deputization of local law enforcement with federal agencies, such as U.S. marshals, to enable local law enforcement to seize firearms according to federal law.**
- **Refer cases to federal agencies within the required time frames,[19] thereby making additional use of federal and state authority to seize firearms and prosecute resulting cases.**

[19] *See* U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, Federal Firearm Forfeiture and Domestic Violence. For a copy of this publication contact the NCJFCJ at (800) 527-3223 and for more information about federal firearms time frames and regulations, contact your local ATF office by calling (800) 800-3855 or visiting http://www.atf.gov/field/.

PRACTICE STRATEGIES

Strategy #4: Prioritize Effective Enforcement

Strategies for Responding Officers

- **Arrest for protection order violations when the respondent has constructive knowledge of the protection order, unless state law requires verification of service.**
  - Consult various sources to verify the issuance of a protection order including, but not limited to, NCIC POF Database, local or state registries and databases, issuing courts, and the involved parties.
  - Use all available means to determine whether the protection order was served on the respondent, including asking the respondent if he was served with or knows of the protection order.
  - Serve the respondent and notify the appropriate agency and the victim that service was completed.
- **Enforce the protection order if it is valid on its face.**[20]
- **Arrest for violations of the protection order, including custody violations, in accordance with the laws, policies, and procedures of the jurisdiction where the violation occurred.**[21]

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[20] Mary Malefyt Seighman & David R. Thomas, Nat'l Ctr. on Protection Orders and Full Faith and Credit, Model Law Enforcement Policy: Serving and Enforcing Protection Orders & Seizing Firearms in Domestic Violence Cases 13 (2005), http://www.bwjp.org/articles/article-list.aspx?id=34 (noting that orders are facially valid and should be enforced if: (1) the order is still in effect, as evidenced by the fact that the order is a non-expiring order, the expiration date has not yet passed, or the order contains the date on which the order was issued, which is prior to the date when enforcement is sought; (2) the order has the names of the parties and the names are the same as the names of the parties involved in the current incident; (3) the order contains the name of the issuing court or other authority that issued that order; (4) the order has indicia of appropriate authority, which may include, for example, a stamp, signature, or seal; and (5) the order specifies terms and conditions against the respondent).

[21] 18 U.S.C. § 2265(a).

- **Enforce custody provisions in out-of-state and tribal orders even if your state statutes do not provide for awards of temporary child custody within protection orders.**
  - Help the victim enforce child support orders by referring her to the appropriate court or victim advocacy agency.[22]
  - Give the victim referrals to appropriate agencies such as advocacy groups or legal aid in cases when your state law does not allow you to arrest the respondent for custody violations, or you are not capable of taking custody of the children because they are not on the scene or their whereabouts are unknown.
  - Consider arresting the respondent for parental kidnapping or interference with custody, if applicable.
  - Work directly with other applicable jurisdictions when enforcing custody provisions in protection orders.
- **Examine the context and history of the abuse in parental kidnapping cases.**[23]
- **Do not leave the scene without referring the victim to available resources, including victim advocacy and immediate safety planning, whether an arrest is made or not.**
  - Advise the victim where she can go for legal assistance.
  - Refer the victim to sources of assistance that can help with civil and criminal contempt proceedings arising out of offenses that do not qualify as criminal violations of a protection order.
  - Use interpreters as needed, including those for the hearing impaired, when interviewing victims and perpetrators and when giving them information on how to obtain additional assistance.

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[22] Int'l Ass'n of Chiefs of Police, Protecting Victims of Domestic Violence: A Law Enforcement Officer's Guide to Enforcing Orders of Protection Nationwide 9 (2006).

[23] Deborah Goelman, Lisa Laura & Sue Osthoff, *Parental Kidnapping and Domestic Violence, in* The Impact of Domestic Violence on Your Legal Practice: A Lawyer's Handbook (Margaret B. Drew et al. eds., 2nd ed. 2004).

- **Document violations of protection orders that may not constitute an arrestable offense and give the victim a certified copy of the report if possible.**

- **Build a stalking or sexual assault case when appropriate.**[24]

- **Recognize that individual violations may be part of a larger pattern of stalking; responding appropriately to stalking behavior is fundamental to domestic violence prevention and the enforcement of protection order violations.**[25]

- **Explore with the victim ways that law enforcement can help increase her safety.**
    - Welfare checks are an option that law enforcement can explore with the victim; however, in order to conduct such checks, the victim should give informed and continual consent.

Strategies for Department Leaders

- **Develop protocols that clearly direct officers to arrest respondents for probable cause violations of protection orders as required or permitted under state law.**

- **Develop protocols for prompt service of related arrest warrants.**

- **Facilitate officer access to databases and registries so that they can obtain the full text of protection orders and the status of service 24 hours a day.**

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[24] Logan et al., *supra* note 2, at 7.

[25] Nat'l Ctr. for Victims of Crime, *Protective Order Violations - Stalking in Disguise*, 4 The Source 3 (2004) (stating that "[m]ultiple violations of protective orders are stalking. Law enforcement and prosecutors who understand this connection are better equipped to investigate the context of violations, assess the danger, and prevent serious harm to stalking victims who have sought protective orders").

- **Design protocols that require officers to make prompt attempts to locate and arrest the respondent for a protection order violation when the respondent has fled the scene and to obtain a warrant for arrest if the respondent is not found.**
  - Require officers to follow up with service of the warrant and notification to the petitioner of service or arrest.

- **Develop protocols to guide officers in assisting victims with enforcement of protection orders from other jurisdictions, including options regarding registration of protection orders if desired by victims, though this registration is not required under the Violence Against Women Act (VAWA).**

- **Adopt policies and protocols regarding enforcement of foreign, tribal, and military protection orders.**
  - Obtain and make available to officers copies of the *Model Law Enforcement Policy: Serving and Enforcing Protection Orders & Seizing Firearms in Domestic Violence Cases.*[26]

- **Develop procedures that allow law enforcement officers to attend bail hearings or otherwise communicate recommendations for conditions of bail for a protection order violation.**
  - Consider faxing the designated prosecutor the information needed for bail or bond if it is not contained in the police report.

[26] Seighman & Thomas, *supra* note 20.

PRACTICE STRATEGIES

Strategy #5: Enforce Additional Criminal Offenses Concurrently

Strategies for Responding Officers

- **Identify and investigate other arrestable offenses.**
  - Pay particular attention to those actions that may constitute an offense related to custody or stalking recognizing that individual violations may be part of a larger pattern of stalking.[27]
  - Arrest the perpetrator if probable cause exists of another offense and the officer has arrest authority, regardless whether an order is found to exist.
  - Consult available sources such as NCIC POF Database and other warrant databases to determine the existence of outstanding warrants.
  - Consult appropriate databases to determine the perpetrator's probation and parole status, or the existence of deferred prosecution agreements, bail or bond, or concealed weapon permits.
- **Document in the incident report admissions by the respondent regarding violations of protection order provisions that do not constitute arrestable offenses.**
- **Provide the victim with access to and copies of the incident report.**
- **Check for outstanding protection orders during contacts with the public. This can be done automatically through a number of databases by having the system automatically check such things as outstanding warrants, protection orders served and unserved, and concealed weapon permits.**

[27] Nat'l Ctr. for Victims of Crime, *supra* note 25.

PRACTICE STRATEGIES

Strategy #6: Participate in Community Collaboration

Strategies for Department Leaders

- **Participate in training opportunities on cultural competency and incorporate relevant cultural information into service and enforcement procedures.**

- **Strive to have your department reflect the culture of your community in its hiring practices.**

- **Coordinate joint training with other law enforcement agencies, including campus, tribal, and federal law enforcement, U.S. Attorneys' offices, and state attorneys' general offices on laws and issues related to domestic violence, including firearms and the federal domestic violence crimes.**

- **Develop and regularly update police forms, policies, and protocols to reflect changes in the law and best practices.**
  - Update agency personnel and volunteers on changes.

- **Work with courts and prosecutors to clarify how terms and conditions of protection orders can be crafted to enhance enforceability.**

- **Participate with other professionals in the development and modification of protection order-related jurisdictional forms such as those for proof of service.**

- **Grant courts access to the National Law Enforcement Telecommunication System (NLETS).**[28]

[28] For more information on this program, see http://www.nlets.org/.

- **Work with the media, including print, radio, television, and the blogosphere, to educate community members about domestic violence and civil protection orders.**

- **Collaborate and coordinate with other community members involved in responding to and preventing domestic violence.**
  - Pay particular attention to the needs of underserved populations.
  - Establish routine, cross-facilitated, multi-disciplinary training and information sharing for community stakeholders on protection order issues.

- **Design protocols with advocates that support the presence of victim advocates at the scene.**

- **Learn about VAWA and other implications of domestic violence faced by immigrant victims and work with immigration attorneys to improve responses to immigrant victims of domestic violence.**[29]

- **Designate law enforcement officers to represent the department on local domestic violence taskforces, and ensure that they have access to and support from those with decision-making authority.**

[29] Immigrant victims may be afraid to report abuse because they are afraid of deportation or other legal repercussions. However, some laws exist to protect immigrant victims. For example, the Violence Against Women Act provides that in some cases victims of domestic violence who are the child, parent, or current or former spouse of a United States citizen or a permanent resident who has abused them may be eligible to apply for permanent residency themselves. Victims may also be eligible for U visas. For more information, see http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=b85c3e4d77d73210VgnVCM100000082ca60aRCRD&vgnextchannel=b85c3e4d77d73210VgnVCM100000082ca60aRCRD.

- **Develop relationships with the regional offices of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and the U.S. Attorneys' offices prior to any particular incident.**
  - Develop a relationship with the local Assistant United States Attorney (AUSA) who handles domestic violence-related cases and related firearms cases for your jurisdiction.
  - Seek advice from the AUSA on procedures and guidelines for meeting the required elements of the federal crimes.
  - Meet the ATF and FBI agents with whom the AUSA regularly works.
  - Include the AUSA, ATF, and FBI agents in ongoing training, roll calls, and academy trainings.

PROSECUTORS
Introduction

Prosecutors are a key component in an effective civil protection order system, primarily through their role in enforcement. Prosecutors assist victims by working with advocates, attorneys, law enforcement, corrections personnel, community partners, and judges to promote safety and perpetrator accountability.[1]

This section is written *by prosecutors* to provide useful guidance *for prosecutors* who are working toward the successful enforcement of civil protection orders in the criminal justice system. The information in this section addresses specific issues in each stage of the criminal prosecution of civil protection order violations. While much of the information may also apply to criminal protection orders, this section discusses ways prosecutors can enhance the effectiveness of civil orders.

What specific roles do prosecutors play in the effective issuance and enforcement of civil protection orders?

Prosecutors protect the integrity of civil protection orders by prosecuting violations.

When prosecutors hold perpetrators criminally accountable for their abusive behaviors, their efforts help ensure that the myth that a protection order is "just a piece of paper"[2] does not become a reality.

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[1] Erin L. Han, *Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases*, 23 B.C. Third World L.J. 159, 161 (2003) (stating that "without the cooperation and activism of police officers, prosecutors, and judges, the state sends a message to would-be perpetrators and victims that battering is condoned by the state and that it will be permitted without repercussion").

[2] Nat'l Ctr. for Victims of Crime, *Protective Order Violations - Stalking in Disguise*, 4 *The Source* 3 (2004), *available at* http://www.ncvc.org.

Prosecutors represent the commitment of the criminal justice system to assist victims of abuse.

Prosecutors play a crucial role in ensuring that victims are heard, feel respected, and are welcome to participate in the criminal justice system. Obtaining a civil protection order can be a daunting endeavor.[3] The very existence of a protection order signifies that a victim has acted to safeguard herself from abuse. A prosecutor becomes involved when that order and that effort have failed to stop the abuse. Pursuing the enforcement of the civil protection order in the criminal justice system requires renewed effort from a victim who has been re-abused despite system involvement; it requires her to believe that further involvement will help where initial steps have failed. A prosecutor's interaction with a victim can shape how she experiences the criminal justice system and her ability to participate in that system.

Prosecutors collaborate with other professionals to create a bridge between the civil and criminal systems.

The issuance of a civil protection order occurs outside the criminal arena; therefore, prosecutors may feel that the policies and practices around issuance are outside their purview. However, because the issuance and service of a protection order directly impact prosecutors' ability to prosecute violations of the order, prosecutors need to be invested fully in the entire civil protection order process. Working collaboratively with other professionals in the process can help ensure orders will be successful.

Prosecutors can, in some jurisdictions, participate in the issuance of orders.

In a few jurisdictions, prosecutors may participate actively in the process of the issuance of certain kinds of civil protection orders. However, because prosecutors in most jurisdictions participate only in the enforcement of these orders, this section will focus on strategies related to traditional prosecutorial roles.[4]

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[3] *Judy L. Postmus, Challenging the Negative Assumptions Surrounding Civil Protection Orders: A Guide for Advocates*, 22 Afflia 347, 350 (2007).

[4] If your jurisdiction allows for participation in the civil process, please review the Civil Attorneys section of this *CPO Guide*.

PRACTICE STRATEGIES

Strategy #1: Prioritize the Safety of Victims

- **Treat violations of protection orders with a heightened awareness of safety.**
  - Remember that a judicial officer has already made a finding of abuse, and the violation is in contradiction of a court order.

- **Ensure that victim safety is the paramount concern when making charging decisions.**
  - Consider safety resources available for the victim before charging.
  - Make creative use of special prosecutorial tools, including, for example, no contact bond conditions, conditional release, and conditions on punishment.
  - Whenever possible, vertically prosecute cases to reduce victim trauma, improve conviction rates, and provide enhanced consistency.
  - Keep victims informed throughout the criminal court process.

- **Develop knowledge of the dynamics of domestic violence and indicators of dangerousness and lethality.** [5]
  - Prioritize training opportunities on the dynamics of domestic violence and the breadth of the impact that the violence has on victims, their children, and their communities.
  - Form relationships with advocates who can help victims negotiate the criminal system and work with advocates to make sure assistance includes support for the victim's economic, social, and emotional needs.

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[5] Nat'l Ctr. on Protection Orders and Full Faith and Credit [hereinafter NCPOFFC], A Prosecutor's Guide to Full Faith and Credit for Protection Orders: Protecting Victims of Domestic Violence (2010). *See also* Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study,* 93 Am. J. Pub. Health 1089 (2003).

- Recognize that victims may be unable or unwilling to assist in the prosecution of protection order violations for many reasons.[6]

- Create opportunities to weave lethality factors and research into your courtroom arguments.

- Know that access to firearms heightens risk.

- **Assess the dangerousness of the situation and discuss the options with the victim.**[7]

  - Discuss with the victim her concerns and safety plans.

  - Inquire into any plans to relocate and discuss the enforcement of interstate violations. If the victim has children, refer her to an attorney who can advise her regarding interstate custody issues.

  - Discuss with the victim the range of options that are available to protect her safety including safety checks, posted security officers, and victim relocation.

  - Pay particular attention to stalking behavior and its links to lethality.[8]

  - Notify the victim that upon expiration of a civil protection order the respondent may be able to possess firearms legally.

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[6] Postmus, *supra* note 3, at 350-51 (setting forth barriers such as fear of perpetrator retribution, barriers within the system, inability to find child care or work coverage, and lack of time and emotional resources).

[7] Johns Hopkins University Ctr. for Gun Policy and Research, Firearms and Intimate Partner Violence – Fact Sheet (2003), http://www.jhsph.edu/gunpolicy/IPV_firearms2.pdf (finding in part that "[c]ompared to homes without guns, the presence of guns in the home is associated with a 3-fold increased homicide risk within the home. The risk... is 20 times higher when previous domestic violence exists").

[8] Judith McFarlane et al., *Intimate Partner Stalking and Femicide: Urgent Implications for Women's Safety,* 20 Behav. Sci. & L. 51 (2002); Judith McFarlane et al., *Stalking and Intimate Partner Femicide,* 3 Homicide Studies 300 (1999).

- **Build trust with the victim and respect the trust that is built.**
  - Tailor your communications with the victim and help ensure that she understands the proceedings and feels welcomed to participate in the process.
  - Communicate in a place where the victim feels safe and able to speak freely, ensuring that the respondent is not present.
  - Acknowledge the importance of the victim in the process and attempt to understand her perspective.
  - Understand and support those victims who choose not to cooperate in moving the case forward to full prosecution and enforcement.
- **Be aware that information-seeking may threaten a victim's actual or perceived sense of safety.**
  - Discuss with the victim the necessity of obtaining requested information.
  - Safety plan with the victim around information sharing.
  - Be careful not to disclose the victim's whereabouts unless the victim consents to the disclosure, it is necessary, and it can be done safely.
- **Be proactive in assisting the victim.**
  - Understand the victim's limitations emotionally, psychologically, or educationally.
  - Maintain an updated checklist of resources.

- **Provide victims an opportunity to give input at critical stages of criminal justice proceedings, including issuance of charges, plea negotiations, and sentencing recommendations.**[9]
  - Discuss with victims the option, when appropriate, to pursue a federal case.
  - Consider this option when federal stalking or firearms offenses occur.[10]
- **Explore the impact of technology both as a tool for increased efficiency in the system and as a tool for batterers to abuse their victims. Competent prosecutors understand the way perpetrators can use technology to control or threaten their victims.**[11]
- **Communicate with the court about the context of the abuse during enforcement proceedings.**
  - Convey to the court both the victim's wishes and the prosecutor's recommendation.
  - Provide the court information about risk factors identified by lethality and dangerousness assessments.
- **Follow up on a violation case after conviction and sentencing.**
  - Establish a mechanism to notify the victim of the perpetrator's release after disposition of the case.

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[9] All states permit victim impact statements at sentencing; many states permit such statements at other stages of criminal proceedings. For general information regarding laws relating to victim impact statements, see Nat'l Ctr. for Victims of Crime, Victim Impact Statements, http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32515.

[10] NCPOFFC, *supra* note 5.

[11] For more information about the impact of technology, please review the Issues in Focus: Technology section of this *CPO Guide*.

PRACTICE STRATEGIES

Strategy #2:
Prioritize the Safety of the Community

- **Recognize that violations of protection orders may impact the safety of your community.**
  - Understand the danger that protection order violations pose to children and other members of the victim's household or extended family.
  - Recognize the broader impact of the domestic violence on community members' sense of safety.

- **Open up a dialogue with the community that facilitates participation by the community in enforcement.**
  - Familiarize yourself with your community's resources, including key services and professionals available to victims.
  - Create community partnerships to support efforts to improve the enforcement of protection orders.
  - Educate individuals who may interact with victims, including co-workers, employers, neighbors, teachers, and other community members, about how to document violations of protection orders.
  - Convene focus groups with members of the community and solicit the community members to help identify barriers to enforcement.
  - Encourage community members to participate in safety efforts.
  - Identify community groups which have been historically or systematically excluded and find ways to draw these groups into the process.

- **Help disseminate information about protection orders through a variety of venues.**
  - Include details on issuance and enforcement of civil protection orders.
  - Consider community prosecution units to provide information to individuals and communities.
  - Collaborate with diverse members of the community to promote education about protection orders.
- **Develop expertise and share information about federal domestic violence, stalking, and firearms crimes.**

PRACTICE STRATEGIES

Strategy #3:
Hold Perpetrators Accountable for Violations of Civil Protection Orders

- **Prosecute violations of protection orders proactively.**
  - Be aware that some perpetrators are apt to misuse the civil protection order process and the criminal process to harm victims.
  - Maximize the use of evidence from the civil process to meet the burden of proof.
  - Review civil protection orders for a showing of abuse or imminent fear of abuse.
  - Introduce the civil protection order as evidence at trial.
  - Discuss with the victim seeking prohibitions on bail or conditions of release orders that prohibit contacting the victim, leaving the jurisdiction, and possessing firearms.
- **Prosecute criminal offenses that occur in conjunction with the violation of a civil protection order.**[12]
  - Discuss with victims the usefulness of documenting violations of custody or visitation provisions within protection orders.
  - Consider the efficacy of charging the respondent for seemingly *de minimis* violations of custody and visitation provisions within protection orders, such as repeatedly returning children late after visitation, to deter escalating behavior.

[12] David A. Ford & Susan Breall, Violence Against Women: Synthesis of Research for Prosecutors 22 (2000), http://www.ncjrs.gov/App/publications/Abstract.aspx?id=199660; American Prosecutors Research Inst., Domestic Violence: Prosecutors Take the Lead 13 (1997), *available at* http://www.ndaa.org/publications.html.

- Include in the charging document any violations of state or local firearms prohibitions.

- Collaborate with federal counterparts to determine the best forum for prosecutions.

- **Prosecute for violation of foreign protection orders.**[13]

  - Verify the terms or status of unclear out-of-state or tribal protection orders by accessing the issuing jurisdiction's registry or the National Crime Information Center Protection Order File (NCIC POF) Database or by contacting law enforcement or the court in the issuing jurisdiction.

  - Use your own state statutes when charging violations of protection orders issued from other states or tribes.[14]

  - Prepare a *prima facie* case of the foreign order's enforceability, which may require obtaining records from the issuing court if the order does not adequately recite the full faith and credit requirements.

- **Prosecute respondents when they fail to comply with protection order provisions regarding firearms.**

- **Examine the context and history of the abuse in parental kidnapping cases.**[15]

  - Evaluate the impact of a perpetrator's use of violence on children[16] and make decisions that will protect children and adult victims.

  - Charge perpetrators with parental kidnapping or custodial interference if they violate custody provisions within protection orders.

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[13] NCPOFFC, *supra* note 5.

[14] Ford & Breall, *supra* note 12.

[15] Deborah Goelman, Lisa Laura & Sue Osthoff, *Parental Kidnapping and Domestic Violence, in* The Impact of Domestic Violence on Your Legal Practice: A Lawyer's Handbook (Margaret B. Drew et al. eds., 2nd ed. 2004).

[16] Lundy Bancroft & Jay Silverman, The Batterer as Parent: Addressing the Impact of Family Violence on Family Dynamics (2002).

- **Know the exceptions and defenses to parental kidnapping charges for victims of abuse and share this information with law enforcement.**[17]
  - Educate law enforcement so they will not arrest victimized parents who are exempt under the law.
  - Drop charges when a victimized parent is arrested and concern for her own safety or that of her children was the motivation behind her attempt to relocate.[18]
  - Permit children to remain in a refuge state with the victimized parent.
- **Maximize the tools available in the criminal court to hold the perpetrator accountable.**
  - Provide information to the court about the specific risks the perpetrator poses and the kinds of safeguards and resources that are necessary.
- **Help victims amend civil protection orders that were violated, but found by the court to be deficient or vague.**
- **Request that the court set regular compliance review hearings for the perpetrator as a part of probation and parole at the final disposition of the criminal case.**

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[17] For more information, see generally Nat'l Clearinghouse for the Defense of Battered Women, The Impact of Parental Kidnapping Laws and Practice on Domestic Violence Survivors (2005). The National Clearinghouse for the Defense of Battered Women is available to assist professionals at http://www.ncdbw.org/index.htm.

[18] Some state parental kidnapping/custodial interference statutes explicitly include exemptions or defenses in domestic violence situations. For information about state parental kidnapping laws, see resources for attorneys at the National Center for Missing & Exploited Children's website at http://www.missingkids.com.

PRACTICE STRATEGIES

Strategy #4
Collaborate with Professionals and other Community Members

- **Coordinate with law enforcement officers to promote arrests of respondents who violate protection orders.**
  - Work with law enforcement to ensure that they can and do share information about service of process so that prosecutors can meet the burden of proving the respondent's knowledge of the order.
  - Educate officers on what evidence they can collect that will help build an effective case for prosecution even without the victim's testimony.
  - Assist law enforcement in establishing uniform policies and procedures regarding a consistent response to protection order violations.
  - Act as a resource for law enforcement officers regarding protection order and firearms laws.
- **Anticipate full faith and credit issues and develop the relationships necessary to prosecute cross-jurisdictional violations.**
  - Communicate with other state and federal partners in cases of interstate violations.
  - Coordinate with tribal prosecutors to ensure accountability for respondents who violate state court protection orders on tribal lands or tribal protection orders outside of tribal lands.
  - Coordinate with military staff to ensure prosecution of protection order violations on military installations.[19]

[19] For more information about protection orders on or near military installations, please review the Issues in Focus: Military section of this *CPO Guide*.

- **Assist court personnel to revise protection order forms.**
  - Collaborate with the courts to provide information on what data can be on the face of the protection order to assist prosecution of violations.[20]
  - Include the elements necessary to make the federal firearms laws applicable.
  - Engage in discussions about the elements that simplify enforcement and invite the courts to these discussions when possible.
  - Create documents in languages represented in your community that inform victims about protection orders, including full faith and credit and custody information.[21]
- **Inform other professionals about federal domestic violence, stalking, and firearms crimes.**
  - Open a dialogue with U.S. Attorneys' offices to develop protocols for referral and triage of appropriate cases and to provide support for federal prosecution.
- **Collaborate and share information with professionals to keep current on civil protection order policies and procedures.**
  - Improve issuance by educating other professionals about the minimum requirements for enforcement of penalties for violations of civil protection orders.

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[20] NCPOFFC, *supra* note 5.

[21] NCPOFFC, Increasing your Safety: Full Faith and Credit for Protection Orders (2010) (serving as an example of a document that helps victims understand the Full Faith and Credit provision of the Violence Against Women Act).

ISSUE IN FOCUS: Firearms

FIREARM[1] LAWS

Under what circumstances do federal and state laws prohibit the possession of firearms by a person restrained by a civil protection order?

18 U.S.C. § 922(g)(8) prohibits the possession of a firearm by any person who is subject to certain court orders. The order must contain conditions that restrain the respondent from harassing, stalking, or threatening an intimate partner of the respondent or child of the intimate partner or respondent, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child. The order must include a finding that the respondent represents a credible threat to the physical safety of the intimate partner or child, or explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury. The order qualifies for the prohibition only if issued after a hearing of which the respondent received actual notice and at which the respondent had an opportunity to participate. Many states have revised their protection order forms to ensure compliance with the federal requirements and a large number issued nationally qualify under 18 U.S.C. § 922(g)(8).

[1] This document uses the term "firearm[s]" throughout, but the federal law and most state laws in this area address both firearms and ammunition. In addition, the terms "firearm" and "ammunition" are defined broadly under federal law, see 18 U.S.C. §§ 921(a)(3) and (a)(17)(A) (West 2009).

Federal law does allow one class of respondents an exemption from this prohibition. The prohibition does not apply to official use of firearms by certain federal, state, and local government employees (including military or law enforcement personnel) while on duty ("official use exemption," 18 U.S.C. § 925(a)(1)). The prohibition still applies to personal firearms owned by those covered by the official use exemption.

18 U.S.C. § 922(d)(8) makes it unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person is subject to a court order which meets the above requirements. This limitation on sale or disposal includes licensed gun dealers, private sellers, judges, police officers, neighbors, friends, relatives, and anyone else who knows or has reason to believe that someone is prohibited from possessing a firearm under federal law.

Some states have laws prohibiting possession of firearms by a person restrained by a civil protection order.[2] It is important for professionals to understand their own state laws on firearm restrictions. Although both state and federal law can apply to the same person, following the most restrictive law available will help minimize the risk to the victim.

[2] *See, e.g.*, Cal. Fam. Code § 6389(a) (West 2009) (restricting a person subject to a protection order from owning, possessing, purchasing, or receiving a firearm); Del. Code Ann. tit. 11, § 1448(a) (West 2009); Me. Rev. Stat. Ann. tit. 15, § 393(1)(D) (West 2009). *See also* Andrew R. Klein, Nat'l Ctr. on Protection orders and Full Faith and Credit [hereinafter NCPOFFC], Enforcing Domestic Violence Firearm Prohibitions: A Report on Promising Practices 8-9 (Mary B. Malefyt Seighman ed., 2006), *available at* http://www.fullfaithandcredit.org/publications.aspx.

LOCATING FIREARMS

What can law enforcement agencies do to ensure that officers responding to domestic violence calls routinely inquire about the presence of firearms or the respondent's access to firearms generally? What can other professionals do to help locate firearms?

Clear, specific directives to responding officers in departmental protocols or standard operating procedures will help to ensure that officers ask about firearms and respond appropriately, including seizing firearms where authorized. An effective protocol or standard operating procedure specifies the role of dispatchers, communication personnel, and responding officers in making firearm inquiries. By directing dispatcher and communications personnel to ask questions about firearms these policies can provide necessary safety information to responding officers. Safety is similarly protected by protocols that direct responding officers to ask adults on the scene about the presence of and access to firearms and set forth the responsibilities of officers serving protection orders regarding firearms.[3] Advocates, prosecutors, and courts share in the duty to ask victims and respondents about the presence of and access to firearms. Information gathering regarding access to firearms at the initial stages of the protection order process helps to identify situations early in which orders to surrender firearms may be necessary. Policies and protocols that require advocates, prosecutors, and courts to ask firearms questions help ensure that necessary safety information is developed early. Also, by specifying the appropriate response when firearms present a potential threat in an individual case, these protocols improve the consistency of the response from professionals.

[3] For an example of a model law enforcement protocol incorporating these and additional elements, see NCPOFFC, Model Law Enforcement Policy: Serving and Enforcing Protection Orders and Seizing Firearms in Domestic Violence Cases (2005) (for copies please contact the NCPOFFC at (800) 903-0111, ext. 2). For information on innovative law enforcement programs, including one implemented by an agency responsible for service of protection orders, see Klein, *supra* note 2. For additional examples, please contact the National Council of Juvenile and Family Court Judges [hereinafter NCJFCJ] at (800) 572-3223.

How does the court find out at the temporary stage if the respondent has access to firearms (including whether the respondent has access because he or she is a law enforcement officer or member of the military)?

One strategy for obtaining this information is by including questions about firearms access in the petition and related forms completed by the petitioner. A complementary or alternative approach, taken by the Miami-Dade County Domestic Violence Court, is to require respondents to complete a "Sworn Statement of Possession of Firearms and/or Ammunition," in which the respondent affirms whether or not he possesses firearms and provides specific identifying information regarding any firearms possessed. In response, the court issues an order to surrender the firearms upon issuance of a protection order and monitors compliance through a process that includes requiring the respondent to provide a receipt showing that the guns have been surrendered to law enforcement.

SEIZURE AND CONTROL OF FIREARMS

Do local law enforcement officers have the authority to seize firearms from a respondent at the time a temporary protection order is served?

It depends on state law. State law regulates an officer's authority to seize firearms at the time a protection order is served. Only a small number of states specifically authorize officers to seize firearms at the time of service (or authorize courts to include a search warrant and order seizure of firearms at the time of service).[4]

Seizure decisions are guided by a number of criteria: the nature of the call, the history of the respondent, and state law. For example, officers can gather important information about the respondent by completing a criminal history check prior to serving an order.

[4] Cal. Penal Code § 1524 (West 2009) and N.J. Stat. Ann. 2C: 25-28(j) (West 2009) (authorizing courts to issue search and seizure warrants for firearms pursuant to service of a protection order); Mass. Gen. Laws Ann. ch. 209A, § 3b (West 2009) (allowing law enforcement to "immediately take possession of all firearms upon serving a protection order").

This check may uncover an existing protection order or a previous conviction for a qualifying misdemeanor crime of domestic violence that may prohibit the respondent from possessing firearms. Under such circumstances, state law may authorize officers to seize the firearms and to arrest the respondent.

If the firearm constitutes evidence of a crime, arguably including federal crimes such as the firearms prohibition in 18 U.S.C. § 922(g)(8),[5] law enforcement officers most likely have the authority to seize the firearm as contraband. Departments that maintain the firearm during the pendency of any criminal investigation and court proceeding, or until it is turned over to the appropriate federal authorities, protect important evidence for prosecution purposes and help support victim safety.

Federal law does not provide authority for seizure at the time of service of a temporary or *ex parte* order, because 18 U.S.C. § 922(g)(8) requires an opportunity for the respondent to be heard before the federal prohibition applies.

Under what authority can firearms be seized when serving orders from foreign jurisdictions?

General full faith and credit principles direct that the enforcing jurisdiction apply its own enforcement procedures. Thus, under the full faith and credit provision, if service is made in a state in which officers are authorized or mandated to seize firearms upon service of a protection order, the serving officers follow the law in their state and act pursuant to that state's seizure law, even when serving orders from other jurisdictions. However, if no such seizure authority exists in the serving state, if the issuing jurisdiction directs serving officers to seize firearms, officers serving the order cannot seize the firearms.

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[5] The question of what local law enforcement duties are regarding the enforcement of federal laws is an issue pursuant to the Tenth Amendment of the U.S. Constitution. For example, case law suggests that local law enforcement may not be required to enforce federal crimes where there is no state law criminalizing the behavior. *See generally U.S v. Meade,* 175 F. 3d 215 (1999) (holding "section 922(g)(8) is totally devoid of Tenth Amendment implications"); U.S. v. Visnich, 65 F. Supp. 2d. 669 (1999) (holding "section 922(g) does nothing more than subject a specified class of persons to potential federal criminal liability"); *U.S. v. Jones,* 231 F. 3d. 508 (2000) (holding "at issue here is a federal criminal statute to be implemented by federal authorities; it does not attempt to force the states or state officers to enact or enforce any federal regulation"). However, the federal government may attach fiscal incentives to encourage state promotion of federal legislation (*see South Dakota v. Dole,* 483 U.S. 203 (1987)); therefore, states and local agencies may have put into place enforcement policies in support of federal provisions that impose enforcement obligations on officers.

If the directive to seize firearms is part of a search and seizure warrant from the issuing state court, there is no authority for law enforcement in any other state to search for and seize firearms pursuant to the order. Officers would need to obtain a new search warrant from a court in the serving jurisdiction, unless one of the exceptions to the search warrant requirement is applicable.

Can local law enforcement officers search a residence for firearms upon the consent from one of the tenants/homeowners? Do all tenants/homeowners need to consent? What if one party involved says yes and another says no?

It depends upon the facts surrounding the consent. The United States Supreme Court has held that where one of the co-occupants is physically present at the scene and expressly refuses to consent, even in the face of another co-occupant's consent, a warrantless search is unreasonable and invalid as to the refusing co-occupant.[6] Although the decision was not in response to a firearms issue, the precedent applies to consent for searches broadly.

A different rule applies, however, to the situation in which only one of the co-occupants is present at the time consent is given. Under those circumstances, if the co-occupant present at the dwelling consents to the search, law enforcement may conduct a search of the areas that the consenting co-occupant uses exclusively or in common with another co-occupant. The other co-occupant cannot later attack the validity of the search by insisting that he would not have consented to the search had he been present.

If officers cannot conduct a search by consent because a co-occupant is present and objects to the search, they may still be able to secure firearms by obtaining a search warrant if probable cause exists to search for and seize firearms.

[6] *Georgia v. Randolph*, 547 U.S. 103 (2006).

Can local law enforcement officers seize firearms for safekeeping while investigating a report of domestic violence? How long can firearms be kept?

It depends upon state law. This practice, though commonly employed by law enforcement agencies, generally is not in statutes, regulations, or departmental policies or protocols. Typically, seizing and temporarily storing firearms for safekeeping occurs when officers perceive that an individual's possession of firearms may be a hazard to the possessor or to others.

A law enforcement policy manual developed by the North Carolina Governor's Crime Commission provides an example of a directive to seize firearms for safekeeping in the context of domestic violence. "If there is a firearm in the abuser's possession, which in the officer's judgment puts the victim at risk, the officer should seize the firearm for safekeeping. Firearms may be seized for safekeeping, whether or not an arrest is effected."[7]

It may also be possible for judges to include such a directive for law enforcement to seize firearms under the state protection order code's "catch-all" provision (e.g., "any other relief the court determines necessary to protect the petitioner and other household members"), but there is no published case law addressing the propriety of doing so.

Attorneys general or other authorities who oversee the work of law enforcement agencies provide important guidance on this issue. These authorities can help law enforcement by determining whether state law or other authority permits seizure of firearms for safekeeping in domestic violence. If so, these authorities can work with all relevant agencies to develop protocols that call for such seizure in appropriate cases and specify the governing procedures, time limits, etc.

Can courts order seizure of licenses or permits as well as the firearms?

Yes, if your state law allows the seizure. In some states, courts are required or authorized to suspend or order surrender of firearms

[7] *See* Violence Against Women Committee, N.C. Governor's Crime Comm., Domestic Violence: Best Practices for Law Enforcement Response (1998), *available at* http://www.ncgccd.org/pubs/dvproto.pdf.

permits and licenses upon issuance of a protection order. In states lacking such authority, it may be possible for courts to use "catch-all" provisions (e.g., "any other relief the court determines necessary to protect the petitioner and other household members") to order the surrender of permits and licenses, although to date there are no court decisions addressing this question.

It is especially important to require surrender of a firearms license and permit. In many cases, the holder does not undergo a criminal background check when purchasing a new firearm while the license or permit is in effect.[8]

As is the case with the firearms themselves, the authority of law enforcement to seize permits and licenses depends on state law. States, such as New York[9] and Massachusetts,[10] mandate suspension or revocation of licenses and permits while orders are in effect. In Texas[11] and Washington,[12] if a court has ordered relinquishment or suspension, then the court may order seizure of licenses and permits when its orders are violated.

Can local law enforcement officers accept firearms turned over by a victim who is afraid that her partner may harm her?

Yes, but it depends upon state law. As previously discussed, law enforcement agencies generally are authorized to take firearms temporarily for safe keeping, even absent an arrest, to protect the victim and others. Also, agencies may be able to accept firearms under voluntary relinquishment policies, especially if the victim has an ownership interest in the firearm (e.g., it is marital property). Obtaining a legal opinion from the appropriate authorities regarding law enforcement's authority on this issue will help ensure that officers are in compliance with state law.

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8 18 U.S.C. § 922 (t)(3)(A).

9 N.Y. Dom. Rel. Law § 252(9) (West 2009).

10 Mass. Gen. Laws Ann. ch. 140, §§ 129B(1) and 131(d) (West 2009).

11 Tex. Fam. Code Ann. § 85.022(d) (West 2009).

12 Wash. Rev. Code Ann. § 9.41.800(4) (West 2009).

STORAGE AND RELEASE

How can jurisdictions store surrendered or seized firearms?

One effective way to alleviate potential storage problems is by the use of private, bonded storage facilities. Respondents surrender the firearms directly to the private storage facility (or the facility collects them from the agency) and the facility collects payment from the owner for the storage of the firearms. California,[13] Massachusetts,[14] New Hampshire,[15] and North Carolina[16] have passed legislation that allows for the collection of storage fees from offenders who have been required to surrender their firearms. Other communities also have devised creative solutions, including the use of decommissioned armories and other buildings.

What steps should a court or law enforcement agency take to release firearms to a respondent after a protection order has expired?

Some states' statutes[17] or court rules[18] may specify a procedure for the return of firearms after expiration of a civil protection order. Even absent such specific requirements, courts can adopt a return mechanism that safeguards victims and prevents release of firearms to persons prohibited from possessing firearms under state or federal law.

New Hampshire provides an effective model that includes the following elements:[19]

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[13] Cal. Civ. Proc. Code § 527.9 (West 2009).

[14] Mass. Gen. Laws Ann. ch. 140, § 129D (West 2009).

[15] N.H Rev. Stat. Ann. § 173-B: 5 (West 2009).

[16] N.C. Gen. Stat.Ann § 50B-3.1 (West 2009).

[17] *See, e.g.,* Cal. Fam. Code. § 6389 (g) (West 2009); N.C. Gen. Stat. Ann. § 50B-3.1(West 2009).

[18] *See generally* New Hampshire's Protocol 14-18 through 14-24 further discussed herein, http://www.courts.state.nh.us/district/protocols/dv/c14.pdf.

[19] Judicial Branch Family Division & District Court, State of New Hampshire, Domestic Violence Protocols (2008), http://www.courts.state.nh.us/district/protocols/dv/c14.pdf.

- Before any firearms may be returned, the court must conduct a hearing, with notice to the victim, the defendant, and the relevant law enforcement agency currently in possession of the firearms.
- The defendant is required to complete a Motion and Affidavit for Return of Firearms, which requires the defendant to attest that the defendant knows of no reason why he or she is not entitled to return of such weapons.
- The Department of Safety runs a records check[20] to determine whether there is any reason the firearms should not be returned, including the existence of any orders of protection on behalf of a different victim and qualifying misdemeanor crimes of domestic violence or any other disqualifier.
- All parties have the opportunity to participate at the hearing if desired, although such participation is not required except for the defendant.
- If any disqualifier is found, the defendant has the opportunity to rebut the evidence at a hearing.
- If no reason to deny return is discerned, the court issues an order authorizing the return of the firearms.
- If the court identifies a disqualifier, the court issues an order denying the requested return.

Can a family member, friend, or other third party with a valid license to possess a firearm take possession of a respondent's firearms?

Yes, but certain transfers may be illegal or pose safety risks. For example, transfer of firearms to friends, family, and other third persons is unlawful if state or federal law prohibits the third party from possessing firearms or if the third party allows the prohibited respondent to have access to the firearms (sometimes referred to as "constructive possession" by the prohibited person).[21] Therefore, professionals can benefit from policies that seek to minimize the risks involved in firearms transfers.

[20] 18 U.S.C. § 534 (f)(1).

[21] The federal Gun Control Act specifically criminalizes knowingly transferring a firearm to a person subject to state or federal prohibitions, see 18 U.S.C. §§ 922(d)(8) and (d)(9) (West 2009).

The following policies can help ensure that transfers comply with the law and do not endanger the victim:

- Courts and law enforcement require both the transferee and the respondent to sign an acknowledgment form prior to facilitating a firearm transfer.
- As a court order, this form may be enforced through the court's contempt powers.
- The acknowledgement form specifies that the transferee:
  - Is not subject to any state or federal firearms prohibitions;
  - Will not allow the prohibited person access to the firearms; and
  - Understands that knowingly transferring a firearm to a person subject to the federal firearms prohibitions is a violation of federal law.
- Parties should sign the order under penalty of perjury.
- Prior to any transfer, both courts and law enforcement agencies require a criminal background check to ensure that state or federal law does not prohibit the third party from possessing firearms.

Should a respondent have access to firearms, held in police storage, if a judge has authorized the respondent to use those firearms during hunting season?

No. Law enforcement agencies may violate federal law, which includes no exception for hunting rifles, by releasing firearms under these circumstances. 18 U.S.C. § 922(d)(8) prohibits the knowing transfer of a firearm to a prohibited person. Therefore, if the agency provides firearms to a respondent who is prohibited from possessing such weapons under 18 U.S.C. § 922(g)(8) or (9), technically the transfer violates federal law. If law enforcement officers are directed to provide a respondent firearms, they should raise this issue with the appropriate authorities, such as their supervisor or at a domestic violence task force meeting.

Law enforcement officers may also consider contacting the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Division Counsel for their state to request a letter for the respondent, his attorney, and the court with notice of the pertinent provisions of 18 U.S.C. § 922(d) and (g).

Even though a judge may have the discretion under state law to authorize a respondent to possess otherwise prohibited firearms during hunting season, the federal prohibition on firearms possession[22] does not exempt hunting firearms. The respondent would be in violation of the federal law if he possessed firearms while the protection order is in effect.

VIOLATIONS OF PROTECTION ORDERS

What enforcement procedures should law enforcement use if a defendant possesses firearms in violation of a protection order in a jurisdiction outside of the issuing jurisdiction?

The general principles of full faith and credit, as mandated by the Violence Against Women Act's (VAWA) Full Faith and Credit provision, dictate proper procedure. VAWA's Full Faith and Credit provision directs the enforcing state to address violations using the enforcement mechanisms it uses to address violations of protection orders issued by its own courts, including through arrest for a misdemeanor, a contempt action, or seizure of the firearms by law enforcement, where authorized by the enforcing state's laws.

Federal criminal law provides an additional avenue for disarming the respondent and holding him accountable if the possession is in violation of 18 U.S.C. § 922(g)(8). That statute prohibits possession of a firearm - within or outside of the issuing jurisdiction – while a respondent is subject to a protection order that meets the statute's requirements. Because only federal prosecutors can prosecute the respondent in federal court, relationships with federal prosecutors are central in facilitating information sharing and increasing the likelihood of federal prosecutions.

[22] 18 U.S.C. § 922(g)(8) (West 2009).

Can a state or local law enforcement officer arrest a respondent for possession of firearms in violation of the federal prohibitions for persons subject to protection orders or persons who have been convicted of a qualifying misdemeanor crime of domestic violence?

In the vast majority of states, there is no definitive answer to this question. Attorneys general or other authorities who oversee the work of law enforcement agencies provide the necessary guidance for law enforcement to determine when they can legally make arrests and seize firearms pursuant to violations of federal firearm laws.

Several federal court decisions have found that state law enforcement officers may make arrests for violations of federal law provided such arrests are permitted under the state's law. One such decision specifically addresses arrest and seizure of firearms for a violation of the federal firearm prohibitions.[23]

Even when officers may not be able to arrest for a violation of federal law, officers should be encouraged to seize all firearms and provide the ATF with formal notice within 30 days of the seizure.[24]

OFFICERS AS RESPONDENTS

What can courts do to prevent law enforcement personnel who are respondents in domestic violence cases from bringing their firearms to the courthouse?

Courts hearing domestic violence cases can develop and implement courthouse security protocols that, among other things, forbid firearms in the courthouse or include a provision that forbids law enforcement officers appearing as litigants from bringing their service firearms to court. For an example of court security standards that address this and related issues, see Washington State Courthouse Public Safety Standards,

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[23] *United States v. Haskin,* 228 F.3d 151 (2d. Cir. 2000) (finding that officers in Vermont and New York have the authority to arrest and seize firearms based upon violations of federal law).

[24] See http://www.justice.gov/usao/mow/community/psn/firearms.html for a quick reference to federal firearms laws.

WA Board for Judicial Administration, Court Security Committee (2009).[25] In addition, law enforcement agencies can adopt protocols for officers who are perpetrators of domestic violence that include seizing firearms or restricting officers' access to firearms where appropriate.[26]

COLLABORATION WITH FEDERAL COUNTERPARTS

How can a better relationship be developed with federal authorities to help facilitate the effective enforcement of the federal laws related to firearms and domestic violence?

Effective enforcement of the federal firearms prohibitions often requires close collaboration among officials at the local, state, tribal, and federal levels. For example, a local law enforcement officer or prosecutor may have information and evidence necessary to establish a violation of the federal prohibitions, but may not have the necessary jurisdiction. Similarly, a federal agent may have the exclusive jurisdiction over violations but remain unaware of the federal offense. Creating a coordinated approach to addressing domestic violence related firearm offenses, including improving communication and information sharing among relevant agencies at all levels of government, is essential.

Some jurisdictions have succeeded in developing such a coordinated approach among local, state, and federal authorities. In West Virginia, Project Safe Homes applied a close collaborative approach among law enforcement, prosecutors, advocates, and others to disarm domestic violence abusers. Among other strategies, Project Safe Homes employed a public education campaign to enhance its effectiveness.[27]

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25 See http://www.courts.wa.gov/newsinfo/content/pdf/securitystandards.pdf.

26 Int'l Ass'n of Chiefs of Police, Domestic Violence by Police Officers Model Policy (2003), http://www.theiacp.org/tabid/299/Default.aspx?id=1130&v=1.

27 See www.dcjs.wv.gov/SAC/Documents/PSNresults.pdf for more information.

ISSUE IN FOCUS:
Military

ISSUANCE OF PROTECTION ORDERS ON MILITARY PERSONNEL

How do military protective orders[1] differ from civil protection orders? Do military orders provide the same level of protection as civil protection orders?

Military protective orders are orders from a commanding officer to the service member.

Unlike in the civil protection order process, the victim does not seek her own military protective order. Often, the victim makes a report of abuse to the military victim advocate. However, there is no requirement that a victim or a victim advocate initiate the military protective order process or that an investigation occur. Once aware of abuse, a commander may choose to issue a military protective order. Regardless of whether or not the commander decides to issue a military protective order, the victim may still get a civil protection order from the local state court.

[1] This *CPO Guide* uses the term "military protective order" to reflect the language most commonly used by the military. This section of the *CPO Guide* will continue to use the term "civil protection order" to refer to all other non-criminal protection orders issued by a civilian court.

Commanders may issue a military protective order at any time. A commanding officer who issues a military protective order does so without a petition by the victim, without a hearing, and the orders may or may not be in writing. These orders can have provisions similar to civilian protection orders, but they are effective only between the commanding officer and the service member. Therefore, civilian law enforcement cannot enforce military protective orders off the installation, but the military commander may enforce off-installation order violations.

A civil protection order, by contrast, is entitled to enforcement both on and off the installation and it is usually broader in scope. A victim should consider seeking a civil protection order in addition to the military protective order because it is effective on and off the installation, it may last longer, and it often can include firearm, custody, and financial support provisions.

Can a state court issue a civil protection order while the service member serves overseas or in a combat zone?

It depends. Because protection orders are generally issued to protect the petitioner from harm, the petitioner, in most cases, must show that the respondent poses a threat. Some judges will not issue a civil protection order because there is not an emergency; others might continue issuing temporary orders until the service member returns; and others might ask the victim to seek the order closer to the time of the service member's return.

SERVICE OF PROTECTION ORDERS

Can a non-military law enforcement officer enter a military installation and serve a state-issued protection order?

No. On many installations, the non-military officer (or process server) would report to the military police or the provost marshal's office[2] to serve the respondent. A series of steps and communications through the military police or the provost marshal, non-commissioned officers, and the commanding officer must take place to escort the respondent to the provost marshal's office so service can take place. The Department of Defense has established a policy that formal memoranda of understanding be developed between installations and local civilian jurisdictions to allow for the service of these orders.[3]

PROSECUTION OF PROTECTION ORDER VIOLATIONS

Does the military have the ability to prosecute violations of a military protective order that occur off the installation or off other federal property?

Yes. Department of Defense Directive 6400.06 allows the prosecution of such violations. A commander may enforce a military protective order for violations either on or off the installation.[4]

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[2] The provost marshal is the head of the military police on an installation.

[3] *See* Dep't of Defense, Instruction No. 6400.06 at 13 (see section 6.1.5.), *available at* http://www.dtic.mil/whs/directives/corres/pdf/640006p.pdf.

[4] *Id.* at 8 (see section 6.1.2.6.).

Does the military have the ability to prosecute violations of a civil protection order that occur off the installation or off other federal property?

No. The military may prosecute violations of civil protection orders only if a violation occurs on the installation. The Armed Forces Domestic Security Act[5] governs these prosecutions. The victim can pursue a remedy through the state court system as well.

ENFORCEMENT OF MILITARY PROTECTIVE ORDERS BY CIVILIAN OFFICERS

Can a local or state police officer arrest someone for violating a military protective order?

No, because as discussed above, although military orders can have provisions similar to civilian protection orders, they are effective only between the commanding officer and the service member.

However, even though civilian law enforcement officers do not have the authority to arrest for violations of military protective orders, if they are aware of the order, they can contact the issuing commander who may request that the civilian officer remain on the scene until a military officer responds. To facilitate enforcement, law enforcement may enter into memoranda of understanding with command on local installations to establish protocols for these violations. Also, communities with military installations nearby can invite commanders to participate in these collaborative efforts around domestic violence issues to improve enforcement more broadly.[6] In addition, civilian law enforcement can and should arrest for violations of state criminal law that occur in conjunction with the violation of the military order.

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[5] 80 U.S.C. § 1561(a) (West 2009); Dep't of Defense, *supra* note 3, at 9 (see section 6.1.3.) (containing implementation directions for the Armed Forces Domestic Security Act).

[6] Hon. Peter MacDonald & Deborah Tucker, *The War on Violence: Improving the Response to Domestic Violence in the Military,* 54 Juv. & Fam. Ct. J. 121, 125 (2003).

EFFECT OF PROTECTION ORDERS ON MILITARY PERSONNEL AND SPOUSES AND CHILDREN

If a victim seeks a protection order against an abuser, will the abuser be discharged?

Probably not. A protection order alone is not enough to have a service member discharged.

However, a serious act of domestic violence may be sufficient to have the service member discharged. If the military discharges a service member because of an act of domestic violence, the victim may qualify for transitional compensation.

Transitional compensation for victims is provided for under 10 U.S.C. § 1059. The law provides compensation for dependents of a service member who separate from the service member because of domestic or child abuse. The transitional compensation is available for at least a year and may be available for up to three years. Victims who want to separate from an abusive service member may want to discuss 10 U.S.C. § 1059 with a military victim advocate so that they get information and access to this important compensation.

Can service members possess a service firearm when subject to a protection order?

Yes. A civil protection order or a military protective order does not prohibit a service member from possessing a service-issued firearm.

However, a service member subject to a civil protection order cannot possess personally owned firearms. If the respondent lives on a military installation, military personnel would have to search for and seize the personal firearm(s). The petitioner should note any personally held firearms in the civilian protection order petition.

Are there other collateral consequences if a civil protection order or military protective order is issued against a service member?

It depends. A service member is issued military housing. If the protection order, civil or military, restrains the service member from having contact with the victim, the service member will likely be removed to the barracks. Since a service member is no longer living in the home, the dependent spouse and any children are usually given 30 days to vacate the home and would have to leave the installation. It is important for the victim to consult with a military victim advocate to understand fully the collateral consequences.

However, if the victim is a service member and the abuser is a civilian then the commanding officer may require the service member to live in the barracks until the abuser leaves the installation. Barring a civilian abusive spouse from an installation is difficult, but not impossible, in an emergency. In cases where the abuser is barred, he may leave the installation with the children. Therefore, the victim should consult with a civilian victim advocate about getting a state court civil protection order that includes custody or a stand-alone custody order.

Should a victim who is targeted both on and off a military installation request assistance from authorities on the military installation or obtain a protection order from a judge in the county where the violence and threats are also occurring?

It depends. There are risks and benefits to reporting abuse to a service member's commanding officer and understanding the reality of what might happen on the specific installation is essential. Advocates can help provide necessary guidance about the reality of the particular installation and those in command. An important component of safety planning will involve explaining to a victim the difference between making a restricted or unrestricted report, as well as the limits of confidentiality.[7] In addition to working with military advocates, a victim may also want to work with a civilian domestic violence advocate and pursue a civil protection order in the state system.

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[7] For an explanation of restricted and unrestricted reports and process, see Jane Sadusky, Battered Women's Justice Project, Collaborating for Safety: Coordinating the Military and Civilian Response to Domestic Violence (2010), *available at* http://www.bwjp.org/articles/article-list.aspx?id=30.

ISSUE IN FOCUS: Technology[1]

PROFESSIONALS' USES OF TECHNOLOGY

How can technology improve the protection order system's ability to issue and enforce orders effectively?

There is a range of ways technology can be used to reduce the gaps in issuance, service, and enforcement of civil protection orders.

Databases

Some states[2] have passed legislation creating statewide protection order databases to assist with the enforcement of protection orders. Databases may contain only summary information similar to a card catalog, or the databases may contain the full text of the entire order. Also, the National Crime Information Center Protection Order File (NCIC POF) Database is a national registry for protection orders issued in all 50 states. This database is discussed in depth below.

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[1] For general information on technology and safety, see the National Network to End Domestic Violence's Safe Net Project at http://www.nnedv.org/projects/safetynet.html.

[2] Ind. Code Ann. §§ 5-2-9-5.5 and 5-2-9-6.5 (West 2009); La. Rev. Stat. Ann. § 46:2136.2 (West 2009); Miss. Code Ann. § 93-21-25 (West 2009); W.Va. Code Ann. § 51-1-21 (West 2009).

Professionals can use the protection order database to facilitate both service and enforcement. For example, law enforcement with access to a database with the full text of a protection order can download a copy of the order and serve it immediately if they have contact with a respondent who has been avoiding service. Databases also can facilitate enforcement, particularly by different jurisdictions. Law enforcement can use databases to verify orders and courts can review the terms of an order issued in another jurisdiction.

Electronic Monitoring

States can also use electronic monitoring, or global positioning system (GPS), to enforce civil protection orders more effectively. At least nine states[3] allow this form of monitoring in conjunction with either the issuance or violation of a protection order. The majority of the legislation requires the respondent or defendant to pay for the cost of the monitoring equipment. While this technology does not ensure compliance, it may provide law enforcement and victims an early notice of violation and, in doing so, prevent a tragedy.

Access and Notice

Technology can also make information more readily accessible to victims.[4] Some states and localities are using databases to assist victims with applications for orders and provide online forms that either victims or attorneys can access.[5] Many courts also collect electronic contact information from petitioners and their counsel to alert them to an extension or modification of the protection order or a change in a scheduled hearing date.

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[3] Ark. Code Ann. § 9-15-2017 (West 2009); 725 Ill. Comp. Stat. Ann. 5/110/5 (West 2009); Ind. Code Ann. § 34-26-5-9 (West 2009); N.D. Cent. Code § 14-07.1-19 (West 2009); Ohio Rev. Code Ann. § 2903.214 (West 2009); Okla. Stat. Ann. tit. 22, § 60.17 (West 2009); Tex. Code Crim. Proc. Ann. art. 17.292 (West 2009); Utah Code Ann. § 77-36-5 (West 2009); Wash. Rev. Code Ann. § 26.50.110 (West 2009).

[4] For more information on automated protection order notification services, contact the Mary Byron Project at http://marybyronproject.org/index.html.

[5] *See, e.g.,* the King County Protection Order Advocacy Program's website at http://protectionorder.org/ (providing victims with "a good sense of the protection order process" while not being a "substitute for actually contacting a Protection Order Advocate").

What are some of the challenges in using technology to improve the protection order process?

When employing a technological solution, it is important for professionals to assess the full nature and scope of limitations and the range of remedies available to address them. For example, professionals will want to have a strategy for petitioning for a protection order if the Internet is down and the protection order process is automated using the Internet.

Also, the technology may not always be available and all professionals in the justice system should have a non-technology option for application, issuance, and enforcement of orders. For example, technology improvements require resources beyond the physical technology, such as sufficient staff to design, manage, or support the technology initiatives. Sometimes a low technology and low cost solution, such as faxing, may solve the problem with less staff time and funding expended.

PROTECTION ORDER REGISTRATION DATABASES

If a state creates a statewide protection order registry, which professionals in the justice system should have access to statewide databases?

To be most effective, all professionals in the justice system involved in the issuance, service, and enforcement of protection orders should have access to statewide protection order registries and other justice databases. Registries and databases should include safeguards against misuse by law enforcement perpetrators and other perpetrators who have access to the system.

After service is successfully completed, who gets the affidavit of service and who enters it into a database?

It depends. The process and the system will vary from jurisdiction to jurisdiction. All professionals should become familiar with the system in their jurisdiction.

The best way to ensure accurate and timely data entry of the affidavit of service is for the agency that serves an order to enter the affidavit into the database. The agency should enter the affidavit as close to the time of service as possible, even if service is at night or on a weekend.

What is the NCIC POF Database?

The National Crime Information Center Protection Order File (NCIC POF) Database, as discussed above, is a voluntary national registration system intended to facilitate the enforcement of protection orders and the federal firearm laws. It currently contains protection orders from 48 states and some Indian tribes; however, not all of the current protection orders issued by the courts of the participating states and Indian tribes are contained in the NCIC POF Database for a number of reasons.[6]

How does the NCIC POF Database affect enforcement of civil protection orders?

A civil protection order is a valid order without being entered into NCIC POF Database; however, the database can be a tool to use in verifying that an order is valid. While verification is not required under federal law, it may be necessary under state law or if the order does not appear valid on its face.[7] The NCIC POF Database can greatly assist law enforcement and courts in verifying orders and their provisions.

However, the NCIC POF Database is a tool and not the only means of confirming validity. Orders may be verified by:

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[6] *Id.*

[7] In fact, law enforcement officers may be liable for failure to enforce facially valid orders. Mary Malefyt Seighman & David R. Thomas, Nat'l Ctr. on Protection Orders and Full Faith and Credit, Model Law Enforcement Policy: Serving and Enforcing Protection Orders & Seizing Firearms in Domestic Violence Cases 13 (2005), *available at* http://www.bwjp.org/articles/article-list.aspx?id=34.

- Confirming an order in state and local databases;
- Reviewing the elements of an order in the protection order registries in the issuing jurisdictions;
- Confirming the elements by communicating with the issuing court or with law enforcement in the issuing jurisdiction;
- Reviewing the elements of the order, if previously filed with designated authorities in the enforcing jurisdiction; or
- Drawing upon personal knowledge of the officer or information obtained through interviewing the parties.

The NCIC POF Database can also greatly assist law enforcement in cases where the respondent asserts that, although there may be a valid order, he has not been served the order. Law enforcement with access to the database can note or verify service in the database.

However, a lack of proof of service in NCIC POF Database is not dispositive. If a respondent asserts that there has not been notice or service of the protection order, an officer can:

- Verify the service of the order by contacting the issuing jurisdiction or confirm service by reviewing proof of service supplied by the petitioner;
- Check local or state protection order registries to determine whether there has been service;
- Determine if service is required. Service is not a federal prerequisite for enforcement of a protection order; only notice is required. However, some states have laws that require service of a protection order prior to its enforcement;
- Thoroughly interview both parties to gather more information. Some respondents are able to avoid service for long periods; however, they may have constructive knowledge of the order's existence without actual service of the order on them. If constructive knowledge is sufficient notice in the jurisdiction, the officer should enforce the order; and
- Enforce the order if it is determined the required notice has been accomplished.

RESPONDENTS' USE OF TECHNOLOGY

How do respondents use technology to follow victims and violate orders?

As members of the community increase their use of technology, perpetrators increasingly misuse a wide range of technology tools to contact, threaten, and harm victims. Perpetrators use low technology, like sending harassing emails and posting harassing web comments, to continue to contact a victim.[8] However, they may also use more sophisticated software and hardware to stalk and monitor victims.[9]

Even before a victim has received a protection order, perpetrators may use technology to inhibit a victim's access to help. For example, if a victim uses a website to fill out a protection order form and the perpetrator has installed spyware to monitor a victim's computer activities, the perpetrator may use this knowledge to intimidate the victim.

After a victim has a protection order, a perpetrator can use a range of technology to stalk a victim. A recent article highlighted some of the tactics perpetrators can use:

"[E]veryday more advanced technologic tools make stalking easier and more effective. The increasingly affordable and available variety of phone, surveillance, and computer technologies provide a wide array of dangerous tools for abusers to use to harass, intimidate, and stalk their current and former intimate partners. Some abusers install global positioning systems to track their victim's real-time location with extraordinary accuracy, while others use telephones to leave hundreds of messages in a single day. Other stalkers use technologies like Caller ID during a relationship to monitor their partner's calls and to locate her after she has fled. Still others use online databases, electronic records, and web search engines to locate, track, and harass former partners."[10]

This list is by no means exhaustive, but is illustrative of some of the techniques perpetrators may use to continue their abuse.

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[8] Sarah Tucker et al., *A High-Tech Twist on Abuse*, 3 Fam. Violence Prevention & Health Practice 1 (2005), *available at* http://www.nnedv.org/resources/safetynetdocs/94-a-high-tech-twist-on-abuse.html.

[9] Cindy Southworth & Sarah Tucker, *Technology, Stalking and Domestic Violence*, 76 Miss. L. J. 667 (2007) (analyzing ways perpetrators have used technology to increase surveillance and control of victims).

[10] Tucker et al., *supra* note 8.

Will it be easier for a respondent to track down a petitioner whose contact information is in a protection order database?

It should not be easier for a perpetrator to locate a victim simply because the order is in a database. The Violence Against Women Act (VAWA) prohibits courts from posting protection order information on the Internet that might disclose the identity or location of protected parties.[11]

However, professionals should inform petitioners of what records or elements within a record their jurisdictions consider public information. Often, civil protection orders are public documents and many of the accompanying forms used for service or contact information are stored in the public file. This allows the public, including the perpetrator, to access this information. Victims may prefer to provide the court and law enforcement with safe contact information (perhaps the victim's attorney or a relative) for notification of service or a hearing date change.

Professionals should inform petitioners of state address confidentiality programs (if applicable),[12] and explain that victims may have the right, but are not required, to register an order using a confidential address. Additionally, professionals can inform victims that they are not required to register their order after moving to a new jurisdiction. This is particularly important if the jurisdiction has less comprehensive confidentiality protection than the issuing jurisdiction.

Is a web posting a violation if it is on a personal web page and it relays a message to the petitioner?

Maybe. Depending on the wording of the protection order provisions and the wording of the posting about or to the victim, a respondent may be violating a protection order. It may be a violation even if the victim did not see the posting. For example, by posting a threat on a website a respondent will be in violation of most protection orders. If a victim is concerned that a respondent may threaten harm using technology, the victim might want to request relief in the protection order specifically prohibiting contact and threats in person and through or on any communications medium, including websites.

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[11] 18 U.S.C. § 2265(d)(3).

[12] Adrianna Alfana & Valenda Applegarth, Greater Boston Legal Services and the Safety Net Project, State Address Confidentiality Programs (2007), http://www.ncdsv.org/images/State%20Address%20Confidentiality%20Programs.pdf.

How can professionals respond to perpetrators' technological violations?

Professionals can work together and with victims to develop policies informed by the challenges of documenting technological violations and dedicated to preserving evidence of technological violations.

Cross-training on technology and abuse is important. For example, advocates can work with specialized law enforcement and prosecution units to ensure they understand the ways perpetrators use technology. Law enforcement, prosecutors, and courts can benefit from additional training on technology and access to a technology crime unit.

Evidentiary issues can be particularly challenging. For example, a law enforcement officer needs a court order or subpoena to obtain supporting documentation from a technology service provider. However, because most Internet Service Providers, web and email providers, and telephone carriers keep records only for a limited time, such as a few days or few weeks, law enforcement may want to send a preservation letter immediately to the technology service provider. Professionals can also work with victims to help them document abuse. Advocates, attorneys, and law enforcement can help a victim save and document all original emails, text messages, and online posts or contacts.

Which court has jurisdiction in cases where a protection order is violated via email or web posting if the petitioner lives in one state and the respondent lives in another or sends or posts the information in a third state?

It depends. Law enforcement officers in three locations may have jurisdiction: where the harm occurs (the victim's location); where the harm originates (the respondent's location while committing the violation); or where the order was issued. In addition, because the crime is interstate, the FBI or federal prosecutors could also exercise jurisdiction. It is a federal crime to transmit in interstate or foreign communications any threat to kidnap or injure another person.[13]

[13] 18 U.S.C. § 2261A (2) (West 2009).

GLOSSARY OF FEDERAL AND STATE LAWS

Armed Forces Domestic Security Act

10 U.S.C. § 1561a: This statute requires a civilian order of protection be given the same force and effect on a military installation as such order has within the jurisdiction of the court that issued such order.

Full Faith and Credit for Child Support Orders Act

28 U.S.C. § 1738B: This statute provides generally that the appropriate authorities of each state shall enforce, according to its terms, a child support order made by a court of another state. The Act also sets forth the requirements for child support orders to qualify as enforceable — the court had subject matter and personal jurisdiction, and the contestants had reasonable notice and opportunity to be heard — as well as choice of law and other relevant provisions.

Full Faith and Credit for Protection Orders

18 U.S.C. § 2265: This section states that any protection order issued by the court of one state, Indian tribe, or territory shall be accorded full faith and credit by the court of another state, Indian tribe, or territory and enforced by the court and law enforcement personnel as if it were the order of the enforcing state, Indian tribe, or territory, provided that the court had proper jurisdiction, and that the person against whom the order was sought was given reasonable notice and opportunity to be heard. In the case of *ex parte* orders, notice and opportunity to be heard must be provided within the time required by the state, tribal, or territorial law, and in any event, within a reasonable time so as to protect the respondent's due process rights.

18 U.S.C. § 2266: This section defines the term protection order as (a) any injunction, restraining order, or any other order issued for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection and (b) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to state, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.

Gun Control Act

18 U.S.C. § 922(d)(8): This section states that it is unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person is disqualified under 18 U.S.C. § 922(g)(8).

18 U.S.C. § 922(g)(8): This section applies to persons subject to a "qualifying" state or tribal civil or criminal protection order. It makes it unlawful for such persons, while a protection order is in effect, to: (1) possess a firearm or ammunition; (2) ship or transport firearms or ammunition in interstate or foreign commerce; (3) receive any firearm or ammunition which has been so shipped or transported; or (4) have seized firearms returned. A qualifying protection order is one that is issued after the person subject to the order had actual notice and an opportunity to participate; restrains the person from harassing, stalking, or threatening an intimate partner of the person or a child of such intimate partner or person or restrains the person from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and includes a finding that the person subject to the order represents a credible threat to the physical safety of an intimate partner or child or includes an explicit prohibition against the use, attempted use, or threatened use of physical force against an intimate partner or child which would reasonably be expected to cause bodily harm.

Gun Control Act (Lautenberg Amendment)

18 U.S.C. § 922(d)(9): This section states that it is unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person is disqualified under 18 U.S.C. § 922(g)(9).

18 U.S.C. § 922(g)(9): This section applies to persons convicted of a qualifying misdemeanor crime of domestic violence. It makes it unlawful for such persons to: (1) possess a firearm or ammunition; (2) ship or transport firearms or ammunition in interstate or foreign commerce; (3) receive any firearm or ammunition which has been so shipped or transported; or (4) have seized firearms returned. This prohibition applies to convictions that occurred both before and after September 30, 1996, its date of enactment; carries no official-use exemption for federal, state, or local government employees (including law enforcement or military personnel); and applies to misdemeanor domestic violence convictions by Tribal courts. A qualifying misdemeanor is one that is a misdemeanor under federal, state, or tribal law, has as an element the use or attempted use of physical force or threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim; a person with whom the victim shares a child in common; a person who is cohabitating or has cohabitated with the victim as spouse, parent, or guardian of the victim; or by a person similarly situated to the spouse, parent, or guardian of the victim. "Congress defined 'misdemeanor crime of domestic violence' to include an offense 'committed by' a person who had a specified domestic relationship with the victim, whether or not the misdemeanor statute itself designates the domestic relationship an element of the crime." *U.S. v. Hayes,* 555 U.S. __, 129 S. Ct. 1079 (2009); *see also* 18 U.S.C. § 921(a)(33).

18 U.S.C. § 924 (a)(2): This section establishes that the penalties for violating § 922 subsection (d) or (g) include fines and up to 10 years imprisonment.

Indian Child Welfare Act

25 U.S.C. § 1901 et seq.: The Indian Child Welfare Act (ICWA) is a law that establishes federal standards for the removal of Indian children from their families and grants Indian tribes exclusive jurisdiction in specifically enumerated child custody proceedings, such as foster care or termination of parental rights cases.

Interstate Stalking

18 U.S.C. § 2261A: This statute states that whoever (1) travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, or causes substantial emotional distress to that person, a member of the immediate family of that person, or the spouse or intimate partner of that person; or (2) with the intent (A) to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate, or cause substantial emotional distress to a person in another state or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or (B) to place a person in another state or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of the death of, or serious bodily injury to (i) that person; (ii) a member of the immediate family of that person; or (iii) a spouse or intimate partner of that person; uses the mail, any interactive computer service, or any facility of interstate or foreign commerce to engage in a course of conduct that causes substantial emotional distress to that person or places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described in clauses (i) through (iii) shall be punished as provided in section 2261(B).

18 U.S.C. § 2261B: This statute provides for fines and imprisonment associated with violating 2261(A). According to the sentencing schedule, a person convicted of interstate stalking may be sentenced: for life if the crime results in the death of the victim, for up to 20 years if the victim is disfigured or receives life-threatening injuries, up to 10 years if the victim is seriously injured or if a weapon is used, and up to five years in other cases. The statute also provides that an individual who commits a crime of stalking in violation of a temporary or permanent civil protection order shall be imprisoned for not less than one year.

Interstate Domestic Violence

18 U.S.C. § 2261: This statute states that it is an offense for a person (1) to travel in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or to enter or leave Indian country with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and, in the course of or as a result of such travel, to commit or attempt to commit a crime of violence against that spouse or intimate partner or (2) to cause a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and, in the course of, as a result of, or to facilitate such conduct or travel, to commit or attempt to commit a crime of violence against that spouse or intimate partner.

Interstate Violation of a Protection Order

18 U.S.C. § 2262: This statute states that it is an offense for a person (1) to travel in interstate or foreign commerce, or to enter or leave Indian country, or within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engage in such conduct or (2) to cause another person to travel in interstate or foreign commerce, or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel to engage in conduct that violates the portion of a protection order that

prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued.

Parental Kidnapping Prevention Act

28 U.S.C. § 1738A: The Parental Kidnapping Prevention Act (PKPA) is a full faith and credit law designed to discourage interstate custody conflicts and prevent interstate child abductions. This is a federal law, and it will trump a state law if the state law conflicts with the federal law. The PKPA includes the same jurisdictional bases as the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA); however, unlike the UCCJEA, it does not tell a court when to exercise jurisdiction in a new custody case. Rather, the PKPA tells a court when to honor and enforce a custody determination made in another state, Indian tribe, or territory.

Uniform Child Custody Jurisdiction Act

The Uniform Child Custody Jurisdiction Act (UCCJA) is a uniform state law created in 1968 by the National Conference of Commissioners on Uniform State Laws to promote interstate cooperation in custody matters and was enacted in one form or another by all 50 states. The Act specifies jurisdictional rules for custody determinations. As of July 2010, the UCCJA had been replaced by the newer Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) in all but two states, Massachusetts and Vermont.

Uniform Child Custody Jurisdiction and Enforcement Act

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is a uniform state law regarding jurisdiction in child custody cases drafted by the National Conference of Commissioners on Uniform State Laws. The UCCJEA, where enacted, replaces states' respective versions of the UCCJA and every state legislature, except Massachusetts and Vermont, has enacted the UCCJEA. It specifies which court should decide a custody case, rather than how the court should decide the case. The UCCJEA sets forth five bases for jurisdiction: home state, significant connection, emergency, more appropriate forum and last resort,

prioritizing home state jurisdiction. Except in emergencies, a court may not exercise jurisdiction if a proceeding consistent with the UCCJEA is pending elsewhere. The home state is where the child lived with a parent or a person acting as a parent for at least six months immediately before the filing of the custody action. A state has significant connection if the child and at least one parent have a significant connection with the state and there is substantial evidence available in the state concerning the child's "care, protection, training, and personal relationships." A court may exercise emergency jurisdiction if the child is present in the state and the child has been abandoned, or it is necessary in an emergency to protect the child because the child or a sibling or parent is subjected to or threatened with mistreatment or abuse. Under the UCCJEA, a court can exercise emergency jurisdiction in domestic violence cases where one parent has been abused by the other parent, even if the child has not suffered physical abuse.

More appropriate forum jurisdiction applies when all states having home state jurisdiction or significant connection jurisdiction have declined to exercise jurisdiction in favor of the more appropriate forum state. Last resort jurisdiction applies when no state satisfies the jurisdictional criteria described above.

A court having jurisdiction under one of the jurisdictional bases above may declare itself an inconvenient forum in deference to another state. In determining whether to declare itself an inconvenient forum, a court must consider, as the first of several required factors, whether domestic violence has occurred and is likely to continue, and which state could best protect the parties and the child. Courts must also decline to exercise jurisdiction if one of the parties has "unclean hands," which the UCCJEA calls unjustifiable conduct. That provision would apply where an abuser has illegally taken the child across jurisdictional lines, but the comments to the UCCJEA make it clear that the provision should not be used to penalize domestic violence victims who flee to escape abuse. The UCCJEA contains additional provisions helpful to domestic violence victims.[1]

[1] For more information on the UCCJEA in domestic violence cases, see Deborah Goelman & Darren Mitchell, *Domestic Violence and the UCCJEA*, 61 Juv. & Fam. Ct. J. 1 (2010); Deborah 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 (2004).

Uniform Interstate Family Support Act

The Uniform Interstate Family Support Act (UIFSA) is a jurisdictional statute governing interstate child support cases. It provides long-arm jurisdiction over a child support debtor, even if the debtor is a nonresident, in cases where one party or child resides in the state. The state that issues a support order retains continuing exclusive jurisdiction, provided that one of the parties continues to reside in that state, unless both parties agree to transfer jurisdiction to another state. This Act is designed to ensure that, between states that have adopted the UIFSA, only one support order can be in effect at any given time.

GLOSSARY OF TERMS

Protection Orders: Protection orders are defined by state and federal statutes and generally include orders issued by a civil or criminal court to prevent violence or threats of violence. For the purposes of the *CPO Guide,* protection orders refer to civil protection orders, as distinguished from criminal protection orders.

Communities: The term is used throughout the *CPO Guide* to refer to a group of people joined together by common social, religious, economic, political, professional, or geographic interest.

Effective: The word is used throughout the *CPO Guide* to refer generally to orders that achieve their purpose of protecting victims and their children and providing them with the relief sought. Many recent studies have explored how to define the effectiveness of the order.[2] Studies have tracked different measures of effectiveness, including victims' perceptions, effectiveness in certain communities, and actual incident reduction.

Her/She: The *CPO Guide* refers to the victim as she and the perpetrator as he because research shows that men abuse their female partners much more frequently than women abuse their male partners.[3] In keeping with this finding, the research shows that women seek civil protection orders more frequently than men.[4] For these reasons, the *CPO Guide* uses gendered terminology. When professionals engage with male victims of abuse or victims in same-sex relationships,[5] the values and strategies still apply.

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[2] TK Logan et al., *Factors Associated with Separation and Ongoing Violence Among Women with Civil Protection Orders,* 23 J. Fam. Violence 377, 378 (2008).

[3] *See* Bureau of Justice Statistics, U.S. Dep't of Justice, Family Violence Statistics: Including Statistics on Strangers and Acquaintances 1 (2005), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/fvs02.pdf (finding that females were 84 percent of spouse abuse victims and 86 percent victims of abuse by a boyfriend or girlfriend and that males were 83 percent of spouse murderers and 75 percent of murderers who killed a boyfriend or girlfriend).

[4] TK Logan et al., The Kentucky Civil Protection Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, and costs (2009).

[5] A.B.A., Lesbian, Gay, Bisexual, and Transgender (LGBT) Toolkit for Attorneys, *available at* http://www.abanet.org/irr/enterprise/lgbt/.

Petitioner/Respondent: Consistent with the focus on civil protection orders, the *CPO Guide* refers to the individual who is seeking to or does obtain a civil protection order as a petitioner and the individual restrained by the order as the respondent. These terms may differ slightly by jurisdiction, but the *CPO Guide* attempts to use the most common terminology wherever possible.

Professionals: The *CPO Guide* uses the term professionals to mean individuals who work in some formalized way in the civil protection order system. These individuals may be paid or volunteer, licensed or unlicensed. This term does not imply a specific educational background.

Victim/Perpetrator: Although requirements for obtaining a civil protection order vary across jurisdictions, common to most jurisdictions is that the petitioner show a reasonable threat of imminent harm from the respondent. Petitioners who can make that showing are victims. Because the civil protection order system focuses on a showing of vulnerability to future harm, the *CPO Guide* uses the terms victim and perpetrator.

AT-A-GLANCE: ADVOCATES

Engage with the Victim

- ☐ Approach conversations with each victim with an open mind. Listen to the type of assistance she wants, which may not include a protection order.
- ☐ Inform the victim about the benefits and challenges of the protection order process.
- ☐ Help each victim gather the necessary information that may help her as she proceeds.

Conduct Safety Planning

- ☐ Assist the victim in developing a flexible, practical, and evolving safety plan that accounts for her changing life circumstances.
- ☐ Develop safety strategies that are specific to the individual victim, her children, and any pets both before and after service of the protection order.
- ☐ Brainstorm with the victim a list of potential allies in the community who are willing to help the victim stay safe.

Assist the Victim through the Issuance Process

- ☐ Advocate for comprehensive and tailored relief that includes economic and custody provisions when appropriate.
- ☐ Work with the court to ensure that the terms of the protection order are clear and work with the victim to help ensure she understands the terms.

Support Effective Service and Enforcement

- ☐ Provide safety planning around issues raised by service.
- ☐ Know your community's enforcement mechanisms.

AT-A-GLANCE:* YOUR COMMUNITY

Communicating the Process

- ☐ The following tools are available in numerous languages to help victims understand the civil protection order process in our community:

  _____

  _____

- ☐ The following legal aid resources are available in our community:

  _____

  _____

- ☐ The following websites are useful to victims seeking protection orders in our community:

  _____

  _____

- ☐ The following types of orders are available in our community:

  _____

  _____

Issuance and Service

- ☐ By law, orders must be served within the following period:

  _____

  _____

- ☐ The following agencies or individuals are often used to serve protection orders:

  _____

  _____

Enforcement and Modification

- ☐ The following statutes related to full faith and credit apply in our state:

  _____

  _____

- ☐ The following statutes govern the duration and extension of protection orders:

  _____

  _____

- ☐ The following statutes relate to modification of protection orders:

  _____

  _____

* Advocates can use this form to record the laws, resources, and policies most relevant in their jurisdiction to create a quick reference tool addressing some of the most frequently raised issues in practice.

AT-A-GLANCE: CIVIL ATTORNEYS

Developing a Case

- ☐ Recognize that your representation and your client's involvement in the legal process may expose her to further risk.
- ☐ Discuss your client's preferred outcomes, recognizing that a civil protection order may not be appropriate in every case.
- ☐ Assist each client to develop a comprehensive safety plan.
- ☐ Work with your client to determine her wishes and goals regarding custody and visitation.

Crafting the Petition and Proposed Order

- ☐ Consult with your client throughout preparation, providing information and seeking input.
- ☐ Submit a draft order to the court that includes the necessary information and the relief sought.
- ☐ Use the catch-all statutory provision to include relief that might otherwise be absent from protection order forms or statutes.

In Court

- ☐ Provide information to the court about the specific risks the respondent poses and the kinds of safeguards and resources that are necessary, particularly regarding firearms and custody and visitation arrangements.
- ☐ Ask the court to make a finding of abuse so that the issue of abuse is *res judicata,* provided your client wants such a finding.

Service and Enforcement

- ☐ Discuss the service process with your client. Discuss safety planning to address problems expected from service upon the respondent.
- ☐ Understand the enforcement mechanisms in your community, including contempt and criminal charges.

AT-A-GLANCE:* YOUR COMMUNITY

Developing a Case

☐ The following agencies can provide domestic violence services to victims and help with safety planning:

_____

_____

☐ Custody and visitation provisions in protection orders are governed by the following statutes:

_____

_____

Crafting an Order

☐ The following types of orders are available in this jurisdiction:

_____

_____

☐ The following statutes or case law govern the relief available in *ex parte* protection orders:

_____

_____

☐ The following statutes or case law govern the relief available in permanent protection orders:

_____

_____

In Court

☐ The following statutes or case law provide that the court must make a finding of abuse on the record:

_____

_____

Service and Enforcement

☐ The following statutes or case law govern service of process:

_____

_____

* Attorneys can use this form to record the laws, resources, and policies most relevant in their jurisdiction to create a quick reference tool addressing some of the most frequently raised issues in practice.

- ☐ Establish if the violation is civil or criminal and accord the appropriate due process.

  State Law/Protocol Citation:

  _____

  _____

- ☐ Before allowing any firearms to be returned, request that authorized personnel search the relevant national crime information databases and do not allow the return of seized or relinquished firearms to a respondent who is subject to any state or federal prohibitions.

  State Law/Protocol Citation:

  _____

  _____

- ☐ Conduct regular compliance review hearings.

  State Law/Protocol Citation:

  _____

  _____

- ☐ Use and adhere to the guidelines of *Full Faith and Credit, A Passport to Safety: A Judge's Bench Card*.

  _____

  _____

- ☐ Comply with VAWA's Full Faith and Credit provision (18 U.S.C. § 2265), which requires every jurisdiction in the United States to recognize and enforce valid protection orders. A protection order from another jurisdiction must be afforded a presumption of enforceability if (1) it is not expired, (2) it was issued by a court with jurisdiction, and (3) the respondent has reasonable notice and an opportunity to be heard or will be given notice and an opportunity to be heard within a reasonable time.

  _____

  _____

AT-A-GLANCE:* COURTS AND JUDICIARY YOUR COMMUNITY

ISSUING ORDERS

☐ Clearly specify in the protection order the protected party, the restrained party, the relationship between the parties, and the restrained behavior.

State Law/Protocol Citation:

_____

_____

☐ Provide for the broadest relief allowable under statute, including child custody and support, attorney fees and court costs, and other economic or social restitution.

State Law/Protocol Citation:

_____

_____

☐ Include information on state and federal firearms restrictions. If a respondent is prohibited under state or federal law (i.e., the respondent is a "disqualified person"), issue an order barring possession or control of firearms and ammunition at the final hearing and establish a process to ensure that they are surrendered.

State Law/Protocol Citation:

_____

_____

☐ Explain orally and on the record all orders that are being imposed.

State Law/Protocol Citation:

_____

_____

☐ Schedule regular compliance review hearings.

State Law/Protocol Citation:

_____

_____

* Judges can use this form to record the laws, resources, and policies most relevant in their jurisdiction to create a quick reference tool addressing some of the most frequently raised issues in practice.

AT-A-GLANCE: LAW ENFORCEMENT

Serving Civil Protection Orders

- ☐ Gather and review detailed background information to facilitate service and improve officer safety.
- ☐ Document each service attempt and the results, including dates and times.
- ☐ Immediately enter return of service documentation into state registries and databases.
- ☐ Immediately notify the issuing authority when the respondent receives notice or service, if serving another jurisdiction's protection order.
- ☐ Serve a copy of the protection order and explain the order's restraint provisions and consequences of violating them. Emphasize that it is the respondent's sole responsibility to comply and that any violation may result in immediate arrest.

Firearms and Ammunition

- ☐ Throughout the process, ask the petitioner and respondent separately about the presence and location of firearms and ammunition.
- ☐ Encourage the voluntary relinquishment of firearms and ammunition for safekeeping or, when permitted, seize firearms and ammunition in a respondent's possession.

Enforcing Civil Protection Orders

- ☐ Arrest the respondent for violations of protection orders when the respondent has notice of or has been served with the order. Enforce in accordance with the laws, policies, and procedures of the jurisdiction where the violation occurred. Identify and investigate other arrestable offenses.
- ☐ Remember the petitioner cannot be arrested for any of the restrictions detailed in the protection order.
- ☐ Do not leave the scene without first referring the victim to available resources, including victim advocacy and immediate safety planning, whether an arrest is made or not.

AT-A-GLANCE:* YOUR COMMUNITY

Serving

- ☐ The local, state, and federal databases can be accessed by:

  _____

  _____

- ☐ The local, state, and federal databases require specific information regarding:

  _____

  _____

Firearms

- ☐ In addition to federal law, this jurisdiction prohibits possession and acquisition of a firearm in the case of domestic violence when:

  _____

  _____

- ☐ This jurisdiction allows for seizure of firearms in the case of domestic violence when:

  _____

  _____

- ☐ The following laws provide for the storage of seized or relinquished firearms:

  _____

  _____

- ☐ In addition to federal law, this jurisdiction prohibits transfer of firearms to any other party when:

  _____

  _____

Enforcing

- ☐ The following laws determine when an arrest may occur based on constructive knowledge of the protection order:

  _____

  _____

- ☐ Victims can be referred to the following resources for additional help:

  _____

  _____

* Law enforcement officers and supervisors can use this form to record the laws, resources, and policies most relevant in their jurisdiction to create a quick reference tool addressing some of the most frequently raised issues in practice.

AT-A-GLANCE: PROSECUTORS

Charging

- ☐ Charge a defendant with violating an order and any other applicable crimes, including, if appropriate, violations of state or local firearms prohibitions.
- ☐ Charge a defendant who has violated an order issued by another jurisdiction with the same criminal offenses that apply to violations of orders issued within your jurisdiction.

Preliminary Hearing

- ☐ After consulting with the victim, seek prohibitions on bail or conditions of release orders that prohibit contacting the victim, leaving the jurisdiction, and possessing firearms.
- ☐ Provide the judicial officer with information about risk factors identified by a lethality and dangerousness assessment.

Trial Preparation

- ☐ Consult with the victim throughout preparation, provide information to her and seek her input.
- ☐ Prepare a *prima facie* case of the protection order's enforceability. If the protection order is from another jurisdiction and does not adequately recite the full faith and credit requirements, obtain any necessary records from the issuing court.

Sentencing

- ☐ Provide information to the court about the specific risks the defendant poses and the kinds of safeguards and resources that are necessary.
- ☐ Inform the court of the defendant's criminal history and permit the victim to make an impact or risk statement.

Post-Sentencing Follow Up

- ☐ Ask the court to schedule routine compliance review hearings.
- ☐ Notify the victim prior to the defendant's release and completion of the sentence.

AT-A-GLANCE:* YOUR COMMUNITY

Charging

- ☐ Protection order violations often result in the following additional charges:

  _____

  _____

- ☐ In cases of domestic violence, this jurisdiction prohibits possession or acquisition of a firearm by someone when:

  _____

  _____

Preliminary Hearing

- ☐ According to statute, the following conditions of release can attach:

  _____

  _____

- ☐ The following resources are available to assess dangerousness and lethality:

  _____

  _____

Trial Preparation

- ☐ Ask the victim if she has evidence of the following behavior:

  _____

  _____

Sentencing

- ☐ The following statutes establish aggravating factors for violations:

  _____

  _____

Post-Sentencing Follow Up

- ☐ Follow up with the victim by:

  _____

  _____

* Prosecutors can use this form to record the laws, resources, and policies most relevant in their jurisdiction to create a quick reference tool addressing some of the most frequently raised issues in practice.

NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

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National Council of Juvenile and Family Court Judges
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