A Guide for Effective Issuance & Enforcement of Protection Orders

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While many of the proposed principles and strategies offered in this *Guide* may be implemented through policy shifts and changes in action and practice by the professionals working in this field, many would require legislative action in order to implement the suggested practice. This *Guide* highlights current legislative trends and best practices that have already been passed in various jurisdictions and is not intended to be read as a lobbying tool or effort.

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A Guide for Effective Issuance and Enforcement of Protection Orders

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Introduction to A Guide for Effective Issuance and Enforcement of Protection Orders

For the past 30 years, communities across the country have been making significant advances in addressing domestic violence by implementing strategies designed to keep victims safe and hold perpetrators accountable for their violence. Early efforts in the 1970s focused on establishing safe shelters and passing legislation designed to criminalize domestic violence and to provide for mandatory and presumptive arrest.¹

However, domestic violence remains an insidious societal phenomenon that threatens women's ² physical, mental, spiritual, and emotional well-being. The pervasiveness of domestic violence is clear. Comprehensive research over the years has documented that between one-third and one-half of all women will be assaulted at some point in their lifetime, primarily by intimate partners, including spouses and boyfriends.³ Family violence costs the nation an estimated \$5 to \$10 billion dollars annually in medical expenses, police and court costs, shelters and foster care, sick leave, absenteeism, and employee non-productivity.⁴

The risks of experiencing domestic violence from an abusive partner increase exponentially at and after separation. Because a victim's move to separate from an abusive partner marks for the abuser the loss of control, the abuser often escalates his or her tactics to punish the victim or to attempt to reclaim him or her during the separation process. Women who are separated from their husbands are 25 times more likely to be victimized by spouses than are married women,⁵ a phenomenon often referred to as "separation violence." Sixty-five percent of domestic violence homicide victims had separated from their abusers prior to their deaths.⁶

Legal services attorneys in the late-1970s noted that many of their divorce and custody clients were victims of domestic violence who faced increased levels of violence and coercion as a result of attempting to separate from their abusers.⁷ Their clients needed alternatives to the criminal justice system and to safe shelters that required they leave their homes, as well as

¹ Michelle R. Waul, *Civil Protection Orders: An Opportunity for Intervention with Domestic Violence Victims*, 6 GEO. PUB. POL'Y REV. 51, 53 (2000).

2 Although both women and men may be victims of domestic violence, sexual assault, and stalking, women are the victims of the vast majority of these crimes. According to the Bureau of Justice Statistics, more than 85 percent of violent victimizations by intimate partners between 1993 and 1998 were perpetrated against women. Women are between 13 and 14 times more likely than men to be raped or sexually assaulted; for instance, in 1994, 93 percent of sexual assaults were perpetrated against women. Four of five stalking victims are women. Data on male victimization do not document comparable victimizations and injury levels; do not account for women who act in self-defense; and do not measure financial control, intimidation, and isolation used by perpetrators of domestic violence against women. For these reasons, this publication refers to victims as women and perpetrators as men. However, all victims who seek the issuance or enforcement of protection orders should be given available assistance and relief, regardless of gender.

³ Waul, supra note 1 at 52.

⁴ S. Rep. No. 103-138 (103rd Cong. 1st Sess. 1993) (available at 1993 WL 355617 (Leg. Hist.)).

⁵ Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348), August 1995, p. 4. **6** Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p. 47. *See also* Prepared Statement of Orrin G. Hatch, U.S. Senator, Utah Senate Hearing 103-726, April 13, 1993 ("One violation of a Protective Order may end in the death of the victim.").

⁷ National Council of Juvenile and Family Court Judges, Full Faith and Credit: A Passport to Safety 203 (1997).

access to civil remedies that would shift resources to the victim and enjoin the abusive partner from further abuse. Those attorneys joined with advocates and other professionals to devise the civil protective order system for victims of domestic violence.⁸

In 1976, Pennsylvania became the first state to enact legislation allowing victims of domestic violence to obtain civil orders of protection.⁹ This legislation showed how civil law could be "modified to 'become an ally' or a vehicle for safety, justice, and agency for battered women and children."¹⁰ Now, legislatures in all 50 states, Washington, D.C., and all territories have committed to safeguarding victims of domestic violence and their children by offering these civil tools, while federal law extends that protection throughout the country by mandating inter-jurisdictional enforcement.¹¹

Civil protection orders are designed to enhance victim safety and promote autonomy by restraining the abuser's behavior and providing protective remedies for a victim. Generally, protective orders are used to enjoin perpetrators of domestic violence from contacting, harming, harassing, or stalking their victims. The court may also mandate that the abuser vacate the home, thus instilling in a victim a renewed sense of safety and security. The court may also order that a battered woman retain physical and legal custody of her children while providing additional safeguards such as supervised visitation or exchange. The order may provide for restitution and an array of other economic provisions, such as child support or continuing maintenance of the home. In some jurisdictions, attorney's fees may be awarded.

The overarching goal of protection orders is protecting the victim, not punishing the abuser.¹² That goal is achieved for many of the approximately 1.2 million victims of intimate partner rape, stalking, or physical assault who receive protection orders annually,¹³ who report that the process and act of receiving the orders ends the violence. The majority (72.4 percent) of petitioners in one study reported that they experienced no problems after they received their final orders of protection.¹⁴ Another study found that abused women who obtained protection orders were 80 percent less likely to be assaulted during the year following the abuse than those women without protection orders.¹⁵

⁸ Id

⁹ Andrew Klein, *Re-abuse in a Population of Court-Restrained Male Batterers: Why Restraining Orders Don't Work, in* DO ARRESTS AND RESTRAIN-ING ORDERS WORK? (Eve Buzawa & Carl Buzawa, eds., Sage Publications 1996).

¹⁰ Written communication with Barbara Hart, April 2005.

¹¹ See the full faith and credit provision of the Violence Against Women Act, 18 U.S.C.A. § 2265.

¹² 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).

¹³ Senator Joseph R. Biden, Jr., Subcommittee on Crime, Corrections, and Victims' Rights, *Ten Years of Extraordinary Progress: The Violence Against Women Act*, 18 (2004), *available online at* http://biden.senate.gov/documents/VAWA_Report.pdf. Additionally, since its inception in 1997, the National Crime Information Center protection order file has received nearly 4,000,000 entries. *Id*.

¹⁴ Susan L. Keilitz, Paula J. Hannaford, & Hillery S. Efkeman, National Center for State Courts, Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence, State Ct. J. 19 (1996/1997).

¹⁵ Biden, supra note 13, at 24 (citing Victoria Holt et al., Civil Protection Orders and Risk of Subsequent Police-Reported Violence, 288 J. AM. MED. ASS'N 589 (2002)).

The process of reaching out for assistance and initiating changes can also be beneficial in its own right for victims of domestic violence. At least one study showed that 95 percent of petitioners would seek a protection order again, despite the fact that some of those petitioners' requests were denied. 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 abuser's behavior." 18

Yet, some studies also show that obtaining a protection order is not a guarantee of safety. In one study, almost one-half of petitioners were re-abused by respondents within two years of the issuance of a restraining order.¹⁹ While studies such as this may seem disheartening to system workers, "[r]esearch indicates that vigorous prosecution and significant sanctioning of abusers prevents re-abuse." ²⁰

Because some victims rely so heavily on protection orders as a principal tool for safety during separation, inconsistent enforcement may increase danger by creating a false sense of security at the very time victims face heightened separation violence.²¹ "[Protection] orders are effective only when the restrained party is convinced the order will be enforced. Unequivocal, standardized enforcement of court orders is imperative if protective orders are to be taken seriously by the offenders they attempt to restrain." ²² Additionally, victims may actually refrain from seeking justice system intervention if perpetrators violate orders with impunity.²³ Thus, research concludes that swift and certain sanctions most effectively deter perpetrators.

Given the importance of enforcement to the effectiveness of protective orders, advocates for battered women pushed for federal legislation that would require state and tribal courts to give full faith and credit to protection orders issued in other jurisdictions. The 1994 Violence Against Women Act (VAWA)²⁴ required all states, territories, and tribes to enforce valid orders issued in other jurisdictions as though issued in the enforcing state, territory, or tribe. This full faith and credit legislation was an important step in providing protections for victims who moved between jurisdictions and victims who sought to relocate permanently.

¹⁶ Waul, *supra* note 1 at 57.

¹⁷ Keilitz, supra note 14 at 19.

¹⁸ Id. at 22.

¹⁹ Klein, supra note 9.

²⁰ Sean D. Thueson, Civil Domestic Violence Protection Orders in Wyoming: Do They Protect Victims of Domestic Violence?, 4 WYO. L. REV. 271, 276-77 (2004).

²¹ *Id*

²² U.S. Department of Justice, *Enforcement of Protective Orders, Legal Series Bulletin #4, available online at* http://www.ojp.usdoj.gov/ovc/publications/bulletins/legalseries/bulletin4/welcome.html.

²³ NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE, § 206 commentary (1994).

²⁴ Pub. L. No. 103-322, 108 Stat. 1902-55 (codified in sections of 8 U.S.C., 18 U.S.C., and 42 U.S.C.).

Despite the facts that VAWA and VAWA of 2000 provided full faith and credit to protection orders, and that individual states were passing their own enabling legislation,²⁵ the biggest impediment to full realization of the intent of full faith and credit legislation remained the inconsistent enforcement of protection orders generally. How could agencies effectively enforce foreign orders when they were inconsistently enforcing their own orders?

Recognizing the need to promote enforcement of protection orders as a way to promote victim safety and autonomy, the National Council of Juvenile and Family Court Judges (NCJFCJ), in partnership with the National Center on Full Faith and Credit (NCFFC) (a project of the Pennsylvania Coalition Against Domestic Violence), and the Office on Violence Against Women (OVW), United States Department of Justice, embarked upon a multi-year, multi-disciplinary effort to develop a practical guide for the effective issuance and enforcement of civil protection orders. This publication is the culmination of that work and is designed to increase the capacity of communities to issue and enforce protection orders more effectively and to enhance the safety and protection of battered women and their children not only in the issuing jurisdiction, but in jurisdictions to which they may travel or relocate.

How We Got Here

The Family Violence Department (FVD) of the NCJFCJ and the NCFFC, with support from OVW, sought to develop principles and strategies that will be useful to communities nationwide in developing and implementing their own best practices for protection order issuance and enforcement. The principles and strategies found in this *Guide* are the culmination of a multi-year, multi-phase project to assist domestic violence prevention efforts.

To begin the process, the FVD convened a steering committee that envisioned an ideal protection order process—from issuance through enforcement. The steering committee was comprised of national experts, representing the various disciplines involved in protection order issuance and enforcement. These are the disciplines represented in the *Guide* and include:

Advocates
Civil Attorneys
Courts and Judiciary
Law Enforcement
Prosecutors

The committee, whose task it was to compile the best practices in the field, visualized a community in which all systems were functioning at the highest level and displaying exemplary standards of practice. The committee subsequently chose numerous communities that showed

high standards in at least one arena, some of which they visited and from many of which they drew to highlight best practices. During the site visits, experts examined the community's process of issuing and enforcing protection orders by taking a critical look at the various components within the system and considering whether promising practices in the community could be replicated. The committee continued the process of information-gathering from dozens of communities for the duration of the project and up to the point of publication.

Upon completion of the site visits, the FVD reconvened the national experts making up the steering committee in order to craft recommendations for the best practices of the field. The committee met initially across disciplines to evaluate each discipline's recommendations, and then within disciplines to refine and polish the proposals. The FVD also convened a national summit, inviting additional leaders of their respective fields to examine more thoroughly issues about which the committee needed additional guidance on emerging issues in the field. Finally, the FVD convened a meeting targeting specifically custody, visitation, and support provisions in protection orders, resulting in highly concentrated strategies on these difficult issues. As a result of this intensive, long-term work and the experts' practiced and experienced guidance, this publication represents a synthesis of the nation's leading thinking in this area and offers a comprehensive guide for communities in issuing and enforcing protection orders.

How to Use This Guide

This *Guide* is designed to be read and used in whole or in part. While each section is presented separately, the *Guide* presumes that the effective issuance and enforcement of protection orders require all systems to work in concert to achieve the best outcomes for victims and their children. Therefore, readers should survey all sections to achieve an understanding of each system's challenges and best practices.

Some strategies outlined in this *Guide* require no more than a slight shift in practice or policy of an agency, department, or professional. However, others require action and collaboration across disciplines and agencies or changes in legislation. Readers seeking to implement the suggested strategies in this *Guide* should consider: (1) convening an interdisciplinary working group in their communities to determine which strategies best fit their communities' needs and how to implement them; (2) consulting with the technical assistance providers listed in this *Guide* for targeted assistance; (3) hosting roundtable discussions about the topics in this *Guide* that require more community-specific discussion; (4) hosting community education events; or (5) contacting the NCJFCJ or NCFFC for targeted training and technical assistance.

While authors of this *Guide* agreed on the strategies necessary to achieve maximum safety and protection for battered women and their children, the language used among the professions differs. For instance, advocates often refer to battered women as "survivors" while criminal justice

personnel use the term "victims." The respective sections of the *Guide* retain each discipline's use in order to reflect its particular culture and philosophy. Similarly, the *Guide* refers to perpetrators of domestic violence as respondents, perpetrators, defendants, or offenders, reflecting not only culture and philosophy but procedure as well. Additionally, the *Guide* refers to victims of domestic violence as female in recognition of the fact that the vast majority of victims are female, though the authors acknowledge that some victims are male.

Certain themes arose repeatedly across disciplines. These principles can be found in this introductory section and are expressed as "guiding principles," each followed by key strategies useful for implementation. These principles are illustrated by specific examples to demonstrate further how they can be put into action successfully by more than one discipline. The remaining sections follow the same format: overarching principles, direct suggestions for achieving the goal of each principle, specific examples currently operating in some jurisdictions, and boxes that further elaborate where readers can obtain more information or further understanding of a specific practice. Readers may also review the citations throughout the *Guide* for more information. These citations are not designed to be an exhaustive list of relevant case law, statutes, or literature. Rather, they may give readers a place to start in their own research and were chosen for their variety and ability to illustrate various viewpoints and ways of achieving safety for victims of domestic violence.

Guiding Principles

Principle I

The paramount purpose of the protection order system is to enhance the safety and empowerment of victims.

Petitioners voluntarily access the protection order system for assistance and empowerment. By reinforcing in the victim of domestic violence her own sense of autonomy and confidence in the strength of her decision-making capabilities, the protection order system realizes its goal—restoration of the victim, both individually and to her community. But accessing the system may also create risk for victims of domestic violence, because separation and the act of seeking assistance could be a potentially dangerous time for them and their children. Therefore, safety must be of paramount concern for all professionals working with victims of domestic violence.

Strategies

- Include in protection orders the broad relief allowable under state law so as to meet the overall safety, socio-economic, and individual/community restoration needs of each victim.
- Maintain victim confidentiality throughout the protection order process. 1
- Refrain from issuing mutual orders² of protection because of their detrimental effects on victims. Mutual protection orders, among other things, are not entitled to full faith and credit in all situations; provide an avenue for unfair mutual arrest; and may not contain findings of domestic violence vital to some petitioners. Additionally, many state statutes specifically prohibit the issuance of mutual protection orders.³

1 The following statutes create a victim-advocate privilege and grant confidentiality to victim-advocate communications: ALA. CODE §§ 15-23-41 – 15-23-43 and 30-6-8 (defining confidential communication as any information exchanged between a victim and a victim counselor or in the presence of a third party who is necessary to facilitate communication); FLA. STAT. ANN. §§ 90.5035 and 90.5036 (creating both a sexual assault counselor-victim privilege and a domestic violence advocate-victim privilege, provided the advocate is registered as a domestic violence center advocate at the time the communication is made); 750 ILL. COMP. STAT. 60/227, 60/227.1 (defining confidential communication to include all records kept in the course of providing services, the location of any domestic violence program, and the identity of any domestic violence advocate or counselor). See also U.S. Department of Justice, Report to Congress: The Confidentiality of Communications Between Sexual Assault or Domestic Violence Victims and Their Counselors, Findings and Model Legislation (December 1995); 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 (1996).

2 For purposes of this *Guide*, a mutual protection order is a single order of protection that includes prohibitions against both the petitioner and the respondent.

3 See State v. Lucas, 795 N.E.2d 642 (Ohio 2003); People v. Stiles, 779 N.E.2d 397 (Ill.App. 2002); Uttaro v. Uttaro, 768 N.E.2d 600 (Ma. App. 2002); Conklin v. Conklin, 586 N.W.2d 703 (Iowa 1998); Pearson v. Pearson, 488 S.E.2d 414 (W.Va. 1997). For examples of state statutes prohibiting mutual protection orders, see 725 ILL. COMP. STAT. 5/112A-15 (prohibiting mutual orders of protection) and 750 ILL. COMP. STAT. 60/215 (prohibiting mutual orders of protection unless both parties have filed written pleadings requesting a protection order, proved past abuse by the other party, given prior written notice to the other party, and satisfied all other prerequisites); KAN. STAT. ANN. § 60-3107 (prohibiting the court from entering a protection from abuse order against the plaintiff unless three factors are met, including that the issuing court determined that both parties acted as primary aggressors); MICH. COMP. L. § 600.2950 (prohibiting the court from making personal protection orders mutual and prohibiting correlative separate personal protection orders unless both parties have properly petitioned the court); OHIO REV. CODE § 3113.31 (prohibiting the court from entering a protection order against the petitioner unless four factors are met including serving the petitioner with respondent's petition at least 48 hours prior to the hearing on respondent's petition); 23 PA. COMP. STAT. ANN. § 6108 (prohibiting mutual orders of protection unless both parties have filed timely written petitions, complied with service requirements, and are eligible for protection,

• Support the routine enforcement of local, out-of-state, and tribal orders in institutional philosophies and practices.⁴

Principle II

The protection order process should enhance the autonomy of victims of domestic violence.

Victims of domestic violence engage in myriad strategies to keep themselves and their children safe. Recognizing the voluntary nature of the protection order process and stressing the autonomy of victims of domestic violence accords appropriate deference to their assessment and decision-making capabilities concerning their families' safety needs.

"[T]he fact remains that [the domestic violence statute] creates a private 'cause of action' resting with the victim. ... Because the legislature has made a petition for injunction against domestic violence a private action, we conclude that this type of case may be voluntarily dismissed by the petitioner just like a dissolution, or any other civil action." *Tobkin v. State*, 777 So.2d 1160 (Fl. App. 2001).

Strategies

- Support victims' choices about filing for protection orders and the specific relief requested.
- Assist victims in making educated decisions for themselves and not what you think is best for them. Present options to them and let them choose the best course of action for themselves.
- Continue to assist victims even when they do not follow through on every step; rather, keep the lines of communication open, attempt to understand their fears and the context of their lives, and understand that a protection order may not lead to the dissolution of the relationship.

and requiring separate findings and separate orders when issuing protection orders on behalf of both petitioners); S.D. COD. L. § 25-10-5.2 (prohibiting the issuance of mutual orders for protection against abuse unless both parties personally appear; the respondent alleges, under oath, the existence of domestic abuse by stating the specific facts and circumstances of the domestic abuse; and the court finds, by a preponderance of the evidence, that domestic abuse occurred); UTAH CODE ANN. § 30-6-4.5 (prohibiting the issuance of mutual orders of protection unless three factors are met, including demonstrating the abuse or domestic violence did not occur in self defense and requiring a court that issues mutual orders to document the circumstances justifying such an order); W. VA. CODE § 48-27-507 (prohibiting the issuance of mutual protective orders unless, among other things, both parties have proven domestic violence by a preponderance of the evidence). To conduct an exhaustive search, see http://www.ncjfcj.org/dept/fvd/statutesfvd/. See also, Joan Zorza, What is Wrong with Mutual Orders of Protection? (1999) available online at http://www.scvan.org/mutual_orders.html.

4 See Celia Guzaldo Gamrath, Enforcing Orders of Protection Across State Lines, 88 ILL. B. J. 452 (2000); Office of Justice Programs, Enforcement of Protective Orders, Legal Series Bulletin #4 (Feb. 20, 2002), available online at http://www.ojp.usdoj.gov/ovc/publications/bulletins/legalseries/bulletin4/1.html (discusses importance of developing and utilizing data entry systems and general full faith and credit issues).

- Ensure that victims are not penalized when they do not follow through, either by dismissing or changing their orders.
- Avoid punishing victims for "violations" of their own protection orders.⁵
- Apprise victims that their information may be publicly available and where that information is stored, in order to enable them to make the most educated choices about what to disclose and to whom.
- Assist victims to obtain enforcement of both civil and criminal protection orders when they choose to do so.

Principle III

The protection order system should be seamless and accessible for victims of domestic violence.

Fundamental to our core values as a society is a justice system that is accessible to all who need assistance. The onus to assist those in need is on the system itself, not on those persons seeking services. For a victim of domestic violence, any "seam" in the system, such as a delay in enforcement, potentially presents danger to her and her children. Meaningful protection requires that the process be free of any such "seams."

Strategies

- Eliminate barriers to accessing the protection order system, such as language barriers, physical access barriers, and financial barriers.⁶ For example, set up remote petition sites and accept faxed or emailed petitions.
- Develop and utilize uniform or standard protection order forms within and across jurisdictional boundaries to reduce the barriers to enforcement.⁷

5 See State v. Lucas, 795 N.E.2d 642 (Ohio 2003) (holding that the victim is immune from prosecution for complicity in violating her own order: "only one party—the respondent—can be criminally responsible for the violation of protection order.... Protection orders are about the behavior of the respondent and nothing else.") See also North Olmsted v. Bullington, 744 N.E.2d 1225 (Ohio App. 2000), State v. Dejarlais, 969 P.2d 90 (1998) (consent to contact is not a defense).

6 Many states have statutes prohibiting fees for filing protection orders or related actions. For examples, see ARIZ. REV. STAT. § 13-3602 (the court may not assess a fee for filing a petition or for service of process); COLO. REV. STAT. ANN. § 13-14-102 (the court may not assess a filing fee, fee for service of process, or for certified copies of protection orders for the petitioner; the court may assess these costs to the defendant); N.H. REV. STAT. § 173-B:13 (no fee for optional filing of out-of-state protection orders); N.C. GEN. STAT. ANN. § 50B-2 (no court cost shall be assessed for filing, issuing, registering, or serving a protective order, petition, or witness subpoena); OKLA. STAT. ANN. tit. 22, § 60.2 (the court may not assess a filing fee, service of process fee, attorney fees, or any other fee or costs, whether a protective order is granted or not granted). In addition, under the federal Violence Against Women Act (VAWA 2000 amendments), to be eligible for funds under the STOP Violence Against Women Formula Grant Program and the Grants to Encourage Arrest and Enforcement of Protection Orders program, applicants must "certif[y] that [their] laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protection for a protection order, to protect a victim of domestic violence, stalking, or sexual assault, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction." 42 U.S.C. §8 3796gg-5 and 3796hh.

7 Statutes in several states mandate the use of uniform or standardized protection order forms. See, e.g., CAL. FAM. CODE §§ 6221 and 6226 (requiring standardized order and application forms; however, failing to use said order forms, in and of itself,

- Identify and institutionalize opportunities for cross-system collaboration for each system in the protection order process. Such collaboration should aim to make the process more efficient for victims and for the professionals who assist them.
- Identify and institutionalize opportunities for community collaboration for each system in the protection order process.⁸
- Develop coordinated, community-wide protocols to enable communities to implement effective responses to domestic violence, including issuing and enforcing protection orders.

Principle IV

All professionals involved in the protection order system should develop policies and protocols that memorialize specific strategies to guide practice. As one author noted, working in the field of domestic violence is "emotional labor" that includes a "social process for recovery." ⁹ Enduring the secondary effects of trauma is a fact of life for professionals in this field, which may translate into high employment turnover. However, the system demands consistency, which is provided through policies and protocols. These policies and protocols have the added benefit of aiding professionals in their decision-making processes in difficult situations and providing for accountability for those decisions that affect the lives of victims of domestic violence and their children.

Strategies

- Memorialize in writing all policies and protocols.
- Review all policies and protocols on a regular basis, but at a minimum annually, and inform and immediately train staff on changes.
- Seek input from partner disciplines when writing and reviewing policies and protocols.
- Make policies and protocols publicy available in order to facilitate accountability.

does not make the order unenforceable); KY. REV. STAT. § 403.737 (requiring standardized forms for all forms and orders entitled to full faith and credit and required to be entered in the statewide registry); LA. REV. STAT. § 46:2136.2 (requiring the use of a uniform form for the issuance of any protective or restraining order and titling it the Uniform Abuse Prevention Order); MO. STAT. ANN. § 455.073 (requiring the adoption of uniform petitions and order for protection forms and requiring that specific statements about violation of the order and entry into petitioner's residence appear on the order of protection); N.Y. FAM. CT. ACT § 814-a (requiring uniform temporary order of protection and order of protection forms that are compatible with the statewide computerized registry); TENN. CODE ANN. § 36-3-604 (requiring the development of petitions, amended orders, and *ex parte* forms that are uniform with those of surrounding states so that Tennessee forms will be more readily afforded full faith and credit, and providing that the petitioner is not limited to said forms); UTAH CODE ANN. § 30-6-4 (requiring the adoption of uniform petition and order for protection forms that contain specific information including a statement advising whether a minor child is included in a protective order and a statement advising that a petitioner may seek a writ of assistance from the court if the respondent fails to return custody of a minor child as ordered).

8 Community partners could include security, employee assistance, management, and human resources staff from local businesses; representatives from utilities companies, telephone companies, and Internet service providers; social services personnel; batterer intervention program staff; personnel from schools, colleges, and universities; religious leaders; youth leaders; public housing staff; staff from elder care facilities; policy-makers and local and state legislators; media representatives; and national technical assistance providers.

Principle V

Professionals involved in the protection order process should be cognizant of the victim's culture and diversity.¹⁰

People experience violence differently, not only from family to family, but within communities as well. In every culture, there are norms that prohibit and reject violence against women, and those that condone violence against women. People also experience control in vastly different ways depending on their cultural and personal backgrounds. Knowing these differences, and remaining sensitive to the uniqueness of people's experiences, is essential for professionals working in the protection order process.

- Understand that women of color may suffer from the intersection of the effects of racism and sex discrimination and may hesitate to utilize the criminal justice system. Work to eliminate racism and sex discrimination in your community.¹¹
- Understand that Native American survivors may have difficulty obtaining enforcement of protection orders when state courts refuse to enforce tribal protection orders or *vice versa*. ¹² For more information, contact Sacred Circle at (877) 733-7623.
- Ensure that battered immigrants have access to information in their language, and recognize that they may encounter unique obstacles if such access is denied.
- Be mindful that survivors who are lesbian, gay, bisexual, or transgendered may hesitate to call the police for fear of discrimination.
- Ensure that victims with disabilities have access to appropriate and effective services to meet their needs, such as TTY machines.
- Provide accessible services to rural and low-income survivors by, for example, traveling to rural areas to provide advocacy, providing child care or transportation funds to enable survivors to attend court proceedings, and making services available in the evenings.

¹⁰ See generally, CLARE DALTON & ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND THE LAW (2001).

¹¹ See Kimberly Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, 43 STAN. L. REV. 1241 (1993); Jenny Rivera, Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin and Gender Differentials, 14 B.C. THIRD WORLD L.J. 231 (1994).

Principle VI

Professionals involved in the protection order process should receive ongoing training on full faith and credit and other issues related to protection order issuance and enforcement.

Training can be crucial to achieving professional competency in most fields. Because protection orders in the domestic violence context are relatively new legal concepts, there is a need to stay abreast of current laws and policies. As laws are passed, they are assessed, and perhaps unintended consequences are identified. This information can and should be shared among disciplines, as professionals learn from each other by providing and attending interdisciplinary training.

- Identify, develop, and institutionalize appropriate training vehicles for staff, such as cross-system training, for each system involved in the protection order process.
- Include cultural competence in the training for protection order professionals so that they can better understand the unique barriers that victims from diverse communities may face when seeking the issuance or enforcement of protection orders.

Principle VII

Professionals working in the protection order process should continually reach out to their communities to provide education and facilitate understanding of domestic violence and protection orders.

Domestic violence is not an individual problem, but a community problem. Therefore, the solution must be community-based. Victims of domestic violence may not always seek assistance from law enforcement or the courts first, but rather may seek help from others in their community, such as clergy. In addition, the community in general represents the potential jury pool in prosecutions. Therefore, professionals have the opportunity to create a community culture of intolerance to violence from which to draw later.

- Train community organizations (e.g., Rotary clubs, League of Women Voters, Parent-Teacher Associations) about protection order laws and resources.
- Participate in community task forces.
- Provide education on domestic violence and protection orders to school personnel as well as to students.
- Develop and implement co-training programs (e.g., for judges, court personnel, and law enforcement) on violence prevention.
- Work with the media (print, radio, and television) to educate community members on domestic violence and protection orders and to promote accurate and sensitive coverage of domestic violence cases.
- Ensure that educational materials are available in multiple languages.

Introduction to Advocates

Advocacy¹ is essential for survivors of domestic violence and their children. Although the role of advocates varies according to state law, in general, advocates fulfill the dual role of helping the survivor navigate the complexities of the protection order system and of identifying the need for and working to make systemic changes that will improve the system's response to battered women and their children when they seek protection.

The advocate is the primary source of education for the survivor about the system and the options it affords, and of support for her in making and achieving her own choices concerning her personal and mental health. Effective advocacy rests upon the assumption that the advocate is part of the survivor's team, working on her behalf, with her input and consent. Within those parameters, advocates can assist survivors by shouldering some of the tasks they otherwise may face alone. The advocate may be the survivor's link between her culture or community and the rest of the system, helping her access appropriate and necessary services. The advocate's duties can overlap with those of a civil attorney working on behalf of the survivor and her children. Good advocacy and good civil legal representation, working in combination, constitute a powerful team on behalf of the survivor and her children.

Traditionally, advocates have also undertaken the task of monitoring the protection order system in order to identify the need for and promote systemic change where needed. In that role, advocates participate in community education programs, task forces, fatality review teams, and coordinating councils to improve processes, protocols, laws, and forms surrounding the issuance and enforcement of protection orders. They also develop relationships with the local media to educate them about, and serve as reliable sources of expertise on, domestic violence.

The following principles and strategies will inform and assist advocates in thinking critically about the functions they may perform on a daily basis to achieve their ultimate goal of better outcomes for domestic violence victims and their children.

¹ The role of advocates from non-profit, non-governmental, victim advocacy organizations differs from the role of victim witness specialists in governmental units such as police departments, prosecutors' offices, or courts. Both types of advocates provide survivors with information about the criminal justice system and help survivors in court proceedings. As governmental employees, however, victim witness specialists often have a responsibility to report information shared by survivors to police officers or to prosecutors. As their obligation is to help the state move forward in criminal cases, their communications with survivors could have limited confidentiality. This document addresses the broader role of advocates from non-profit victim advocacy organizations, although some of the recommendations apply to victim witness specialists working within the systems as well.

Advocates

Principle I

Advocates should assist survivors in obtaining and having their protection orders enforced in ways that prioritize victim safety, restoraton, and autonomy.

The process of leaving their abusers presents a heightened potential for danger for survivors of domestic violence. Many survivors experience "separation violence," as the act of leaving or seeking protection from an abuser challenges the abuser's power and control. While the decision to leave can be quite powerful for survivors, it also increases the risks to their safety and security. Therefore, listening to survivors and honoring their wishes must go hand-in-hand with attempts to restore to them the power to be the decisionmakers in their own lives and in the lives of their children.

Strategies

- Provide survivors with information about their options in the protection order process.
 - Assist survivors with finding legal representation as needed or desired.
 - Explain the legal proceedings to survivors in a comprehensible way, from filing to enforcement of orders, including the effects of the Violence Against Women Act (VAWA), the restriction on charging victims fees,² and the full faith and credit requirements.
 - Assist survivors in thinking critically about protection orders by asking such questions as: should a survivor file for a protection order in this state or in another state? Should a survivor register the order with the courts or with law enforcement? What are the benefits and risks? Where is the greatest economic support?
 - Provide information to survivors regarding relocation issues, including the laws from relevant states, options for registering protection orders, and contact information for attorneys and advocates in other locations.

2 Federal Violence Against Women Act (VAWA 2000 amendments): To be eligible for funds under the STOP Violence Against Women Formula Grant Program and the Grants to Encourage Arrest and Enforcement of Protection Orders program, applicants must "certif[y] that [their] laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, stalking, or sexual assault, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the state, tribal, or local jurisdiction." 42 U.S.C. §§ 3796gg-5 and 3796hh. Many states have passed laws prohibiting fees in protection order cases. For examples, see ARIZ. REV. STAT. § 13-3602 (the court may not assess a fee for filing a petition or for service of process); COLO. REV. STAT. ANN. § 13-14-102 (the court may not assess a filing fee, fee for service of process, or for certified copies of protection orders for the petitioner; the court may assess these costs to the defendant); N.H. REV. STAT. § 173-B:13 (no fee for optional filing of out-of-state protection orders); N.C. GEN. STAT. ANN. § 50B-2 (no court cost shall be assessed for filing, issuing, registering or serving a protective order, petition, or witness subpoena); OKLA. STAT. ANN. tit. 22, § 60.2 (the court may not assess a filing fee, service of process fee, attorney fees, or any other fee or costs, whether a protective order is granted or not granted).

- Respect survivors' choices about filing for protection orders, going to trial, requesting specific relief, or seeking enforcement of orders.³
- Inform survivors of the various ways to address protection order violations such as through criminal court or civil contempt proceedings.
- Advise survivors where their information may be stored in publicly accessible form, whether electronically or in paper form, and who has access to that information.
- Keep information about survivors confidential, and encourage others to do so, for survivor safety and privacy.⁴
- Work with attorneys to develop a handbook for advocates regarding privilege and confidentiality issues.⁵
- Inform survivors of any address confidentiality program in the state and of other legal tools available to keep their information confidential.

For example, Washington state law establishes an address confidentiality program permitting victims of domestic violence to apply for a post office box through the office of the Secretary of State. The office gives the survivor an identification card demonstrating that she is registered with the program. This allows the survivor to use a substitute mailing address and to receive legal process without disclosing her location. *See* WASH. REV. CODE § 40.24.010.

■ When survivors choose to file for protection orders, accompany them throughout the process and help them obtain effective orders.

• Assist survivors with filing for protection orders and attend the protection order hearings with them.⁶

6 Many statutes expressly permit advocates to attend court hearings. For example, see 750 ILL. COMP. STAT. 60/205 (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 § 70.123.020 (providing a definition of legal advocates that includes their role in attending court proceedings).

³ See generally Elaine Chiu, Confronting the Agency in Battered Mothers, 74 S. CAL. L. REV. 1223 (2001). **4** See Commonwealth v. Fuller, 667 N.E. 2d 847, 852-53 (Mass. 1996) (finding that crisis counselor privilege serves the important

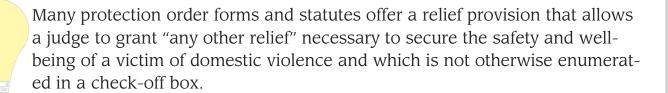
public interest of encouraging victims to report rape and to seek professional assistance); *In the Matter of a Grand Jury Subpoena Duces Tecum Directed to the Keeper of Records of My Sister's Place, Athens, Ohio, 45701*, 2002 Ohio 5600 (Ohio Ct. App.) (finding that both the need for criminal prosecutions and the need for confidentiality for domestic violence victims are important interests to protect, but that the Ohio legislature had elevated the interest of confidentiality for victims of domestic violence); *State v. J.G., 619* A.2d 232 (N.J. App. 1993) (finding that even a judge cannot hear about the communications between the victim and a counselor in chambers, absent compelling circumstances). The following statutes create a victim-advocate privilege and grant confidentiality to victim-advocate communications: ALA. CODE §§ 15-23-41 – 15-23-43 and 30-6-8 (defining confidential communication as any information exchanged between a victim and a victim counselor or in the presence of a third party who is necessary to facilitate communication); FLA. STAT. ANN. §§ 90.5035 and 90.5036 (creating both a sexual assault counselor-victim privilege and a domestic violence advocate-victim privilege, provided the advocate is registered as a domestic violence center advocate at the time the communication is made); 750 ILL. COMP. STAT. 60/227, 60/227.1 (defining confidential communication to include all records kept in the course of providing services, the location of any domestic violence program, and the identity of any domestic violence advocate or counselor). *See also* U.S. Department of Justice, *Report to Congress: The Confidentiality of Communications Between Sexual Assault or Domestic Violence Victims and Their Counselors, Findings and Model Legislation* (December 1995); 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 (1996).

5 For an example, see Arizona Coalition Against Domestic Violence, Confidentiality For

- Encourage survivors to define their needs and assist them to obtain orders tailored to those needs; for example, develop checklists and other tools that survivors can use to identify what they need from orders of protection that may include such things as child care costs, transportation costs, child support, and specific stay-away provisions that may extend to the workplace or school in addition to their homes.
- Ask the survivor in advance of the protection order hearing what the respondent may say about her, and assist her in preparing her responses.
- Inform survivors that they may need to ask for broad relief at the *ex parte* stage because some judges will not grant any relief not pled in the initial pleadings.
- Help survivors collect evidence, such as financial statements and copies of police reports if permissible, for protection order proceedings. Be careful, however, not to create a situation in which your testimony is required regarding any evidence.
- Examine with the survivor the advantages and disadvantages of providing any diaries she may possess to judges and the potential implications of doing so.
- Help survivors request economic relief such as child support, restitution, mortgage payments, property taxes, health insurance payments, medical expenses, the use of vehicles and car seats, attorney fees, and non-dissipation-of-assets orders when needed. Use wage garnishment forms if they are available; for example, Mississippi utilizes wage garnishment forms that advocates are able to fill in.
- Help survivors request specific visitation provisions, including how long the
 petitioner must wait for the respondent to appear for a scheduled visit, how
 many times the respondent is permitted to fail to appear altogether before the
 visitation is suspended, that violation of a supervised visitation center's rules
 constitutes a violation of the order, and a back-up plan if the center is not
 taking more clients.
- Assist the survivor in seeking relief that will restore her to her community, which may include relocating to a state where she may have family or other support.
- Discuss options such as modification of protection orders with survivors who want to dismiss their protection order; help them determine whether such dismissal is what they truly want and whether it will meet their needs.
- Suggest that attorneys and courts help survivors without mandating such services as counseling or mediation.

■ Advocate on behalf of survivors for provisions that would allow for the most effective enforcement of protection orders.⁷

- Assist the survivor in understanding the need to include in the stay-away
 provision a specific distance rather than using generic stay language; work
 with the survivor to determine what is necessary and reasonable in her
 situation, keeping in mind that for victims living in rural communities, specific
 distances may not be a viable option.
- Explain to the survivor the option of asking for a specific finding of abuse to be noted in the order.
- Advocate for explicit provisions regarding custody and visitation by including dates, times, and safe locations for visitation exchanges; emergency procedures; identification of third parties through whom communication can take place; and provisions to prevent parental abduction, where permitted by law.
- Assist survivors to maintain their current professional or social status, which
 may include helping them to remain employed or enrolled in college, or
 helping them to find a way to keep their children in the same religious
 community or school.
- Advocate for protection order provisions that help a survivor retain her
 economic or legal status, such as requiring the respondent not to interfere
 with the survivor's academic progress or to hand over passports and immigration papers for the survivor and the children.
- Use your state's "catch-all," discretionary, or "such other relief as may be necessary" clause to request relief that came out of safety planning, including economic relief or relief related to immigration issues.8



• Discuss with the survivor the possibility of having the respondent sign an affidavit agreeing to support the family for life or until after the survivor obtains citizenship in cases involving immigrant women.

7 Note that survivors should not be prosecuted for "violating" their own protection orders. See State v. Lucas, 795 N.E.2d 642 (Ohio 2003) (holding that a victim is immune from prosecution for complicity in violating her own order and that protection orders address the behavior of the respondent and nothing else). See also the Kentucky protection order form which provides this notice: "If an order is issued which says no contact and you decide to have contact with the respondent while this order is in effect, you may be placing yourself at risk. Additionally, such contact may result in the respondent being arrested for violating the order." Kentucky Form AOC-275.1, available online at http://www.kycourts.net/forms/InProgressForms/275.1.pdf.

8 See Powell v. Powell, 547 A.2d 973 (D.C. 1988) (finding that the catch-all provision in D.C.'s protection order law permitted the court to award monetary relief effectively to resolve family violence).

■ Address with survivors in all protection order cases safety issues regarding weapons.

- Ask about the presence of firearms during the intake interview, and document answers on the intake information form.
- Ask the survivor if her children, respondent's children, or other relatives or friends have firearms, who may give the respondent access to them.
- Encourage the survivor to ask the court for a specific federal Gun Control Act (18 U.S.C. § 922(g)(8)) finding, which would prohibit the respondent from possessing firearms for the duration of the order of protection.
- Work with local and federal law enforcement and courts to have firearms removed from perpetrators.9

How a Protection Order Can Stop a Firearm Purchase

In 1993, Congress enacted the Brady Handgun Violence Prevention Act (Brady Act), which requires all federally licensed gun dealers to obtain a criminal background check of a purchaser before completing a sale. In most cases, the background check is made using the National Instant Criminal Background Check System (NICS), which is comprised of several computer databases managed by the Federal Bureau of Investigation. Among other things, the FBI search includes an examination of the federal database that contains information about protection orders issued by state courts (the National Crime Information Center Protection Order File (NCIC POF)).

During the background check, the FBI conducts a search to determine whether the sale of the firearm would violate any applicable state or federal laws. By statute, the FBI search is limited to three business days; if no state or federal prohibitors are uncovered within that period, the sale is allowed to proceed by default. If the search reveals that the purchaser is subject to a current protection order meeting certain requirements, the sale cannot proceed, because 18 U.S.C. § 922(g)(8), a provision of the federal Gun Control Act, prohibits firearm possession by an individual subject to a qualifying protection order.

To help ensure that the background check will quickly identify a qualifying protection order, all protection orders entered into the NCIC POF should include the proper "Brady indicator," which is a marker showing whether the federal prohibition is applicable to this respondent and this protection order. If the protection order satisfies all of the requirements of 18 U.S.C.

Continued on page 22

§ 922(g)(8), the Brady indicator should so indicate. Advocates should ask the court to indicate clearly on the face of a qualifying protection order that it complies with the federal requirements, so that the proper Brady indicator will be entered into the national database. Note that the respondent could also be prosecuted federally under 18 U.S.C. § 922(g)(8) for possessing, shipping, transporting, or receiving a firearm or ammunition.

• Seek the assistance of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in ensuring that the federal firearms laws are followed; get to know your local field officers prior to needing their assistance.

■ Facilitate enforcement of protection orders across jurisdictions and tribal lines.¹⁰

- Confirm that survivors have legible, preferably certified copies of their orders of protection.
- Help survivors follow necessary steps when they choose to relocate to another state. This should include helping survivors find an advocate and an attorney in the new state, assisting with safety planning, providing information about the court system in the new jurisdiction, and helping survivors comply with requirements in the original state regarding relocation.

When survivors lack legal representation in a new location, advocates can suggest several resources to help find representation. For survivors who cannot afford attorneys, local legal services programs may be able to provide assistance. Local bar association referral services, law school clinics, and state domestic violence coalitions or local shelters may be helpful in identifying attorneys with domestic violence law expertise. The National Center on Full Faith and Credit also is available to assist in securing representation for survivors. For attorney referrals for interstate custody cases, contact the Legal Resource Center on Violence Against Women at (301) 270-1550.

- Discuss with survivors the advantages and disadvantages of relocating when they cross state, tribal, or territorial lines.
- Discuss with survivors who wish to relocate the advantages and disadvantages of registering protection orders in the new jurisdiction, especially if the registered order will be a searchable public record.

- Assist survivors if they decide to register out-of-state or tribal protection orders and help with enforcement efforts by working directly with local advocates, court personnel, and law enforcement officers in the new state or tribe.
- Identify appropriate cases for federal intervention, such as those that involve interstate violations of protection orders, and work with local law enforcement officers and prosecutors to refer such cases to federal prosecutors.

■ Clarify for survivors the roles of various system professionals.

- Ensure that survivors understand that only attorneys are authorized to practice law and that advocates may not provide legal advice regarding protection orders.¹¹
- Explain to survivors the various confidentiality and ethical rules for individuals they may meet during protection order proceedings, such as civil attorneys, prosecutors, advocates, and victim-witness specialists. Help survivors understand when the confidentiality rules do not apply to certain conversations.
- Discuss with the survivor the respective roles of attorneys, advocates, defense
 attorneys and their investigators in criminal court, and ensure that the
 survivor understands that the prosecutor represents the state and that stateemployed advocates are responsible, in part, for facilitating communication
 between the survivor and the prosecutor.
- Inform survivors whether any of the professionals, including court personnel, are mandated reporters of child or adult abuse.

Principle II

Advocates should work with other civil and criminal justice professionals and community members to promote effective enforcement of protection orders, according to the wishes and needs of survivors.¹²

Because they work intensively with survivors on a daily basis, advocates gain tremendous insights into survivors' needs and hopes. Advocates also are uniquely positioned to understand the totality of a survivor's experiences and to anticipate how the justice system's response will affect her. By sharing their unique insights and perspective with other professionals, advocates can help ensure that the survivors' voices are heard throughout the protection order process and that the process is responsive to their needs.

- Provide assistance to survivors in enforcement proceedings.
 - Follow up with survivors to help them in having their protection orders enforced or to have them modified according to changed circumstances; any type of follow up should only be done with the permission of the survivor and after obtaining safe contact information.
 - Assist survivors in implementing protection orders by accompanying them to retrieve belongings if it is safe to do so, or assisting in arranging for a police escort.
 - Advise survivors about gathering and presenting evidence, including physical
 evidence, photographs, electronic mail messages, letters, answering machine
 recordings of threats, telephone records, medical reports, and police reports,
 and follow up with police departments when possible if survivors have not
 been able to obtain copies of police reports regarding specific incidents.
 - Help survivors to provide prosecutors and courts information about respondents' dangerousness, criminal history, and protection order history, including all violations of orders, regardless of whether the violations involved the police or were prosecuted.
 - Assist survivors in informing prosecutors and courts of respondents' access to weapons.
 - Work with prosecutors to encourage courts to issue orders in criminal cases that are protective of victims. For more information on prosecutors' roles related to protection orders, refer to the section entitled "Prosecutors."

• Encourage attorneys to request reconsideration of or to appeal unfair protection order decisions.

■ Work with law enforcement to improve enforcement of protection orders issued in the state or elsewhere.

- Build relationships with local and federal law enforcement in advance of crises.
- Communicate with law enforcement officers regarding service of protection orders, including across state lines.
- Encourage officers to enforce apparently valid protection orders from other jurisdictions.
- Assist local police departments in developing enforcement protocols.
- Provide police departments information about officer or departmental liability for failure to enforce protection orders.
- Ask law enforcement officers to tell survivors about the protection order process and how to contact advocates if this step is not already mandated by state law. If it is mandated by state law, assist in ensuring that officers comply.
- Work with law enforcement officers to enforce custody provisions of orders by helping the survivor contact the police if the respondent seizes the children in violation of the protection order; urge officers to return the children to the survivor once the children are safe.
- Review with the survivor the advantages and disadvantages of providing the probation officer, if the respondent is on probation, the full text of the survivor's affidavit in order to determine whether probation should be revoked based on any of the allegations contained in the petition.
- Request increased officer surveillance at survivors' homes or workplaces, or any other needed area, with the consent of survivors.
- Ask officers to notify survivors if respondents' guns are returned; use the Victim Information and Notification Everyday to assist in this process.

■ Work with courts to improve survivor safety and perpetrator compliance.

- Encourage courts to adopt protocols that require a hearing take place before guns or other weapons are returned to the respondent.
- Advise court administrators of the need to set aside safe waiting areas for survivors seeking protection orders.
- Work with court administrators to ensure that domestic violence dockets have sufficient or, when necessary, increased security.
- Encourage courts to issue comprehensive protection orders including custody, support, and firearms relinquishment provisions.

• Provide information to courts regarding victim safety.





For example, in Brooklyn, New York, advocates provide information to courts by entering it into a database that judges may reference.

- Advise courts about the danger of issuing mutual protection orders and the fact that most are not enforceable against petitioners across state lines.
- Explain the importance of entering protection orders immediately into the state registry and into the NCIC Protection Order File. When this is mandated by state law, assist in ensuring compliance.
- Encourage courts to prevent abusers from continually filing for modifications of protection orders by requiring that the abuser pay both parties' attorney's fees or by restricting repeated continuances requiring the survivor to miss work.
- Encourage courts to set compliance review dates to ensure that respondents are complying with the protection order terms and to verify that they have relinquished firearms or attended batterer intervention programs.
- Suggest to courts that they refrain from requiring survivors to be present at recurring review dates.
- Notify survivors of upcoming hearings by calling them before each compliance monitoring appearance by the respondent; seek to have her appearance excused if she wishes not to attend, but let her know that she has the right to appear if she so desires, and conduct safety planning around the hearing.
- Inform prosecutors if abusers have filed false parental kidnapping or other criminal charges against survivors.
- Consider producing and encouraging the court to play for every party to a protection order a video explaining what will happen in the hearing, what the order is and what it prohibits, how to have it enforced, and what will happen if the respondent violates it.

■ Work with community members to help survivors enforce protection orders.

- Assist survivors in working with school administrators and teachers to enhance the enforcement of protection order terms regarding their children.
- Work with employers to increase domestic violence awareness if requested to do so by survivors by providing in-house training on domestic violence and explaining the possibility of and the need for frequent court appearances.¹³

 Encourage protection order systems personnel, including service providers, child protective services, courts, and the police, to respond positively and sensitively to survivors who may frequently and vociferously demand their right to obtain legal relief, who may require more attention than others, or who may present additional complicating issues, such as drug abuse.

■ Train professionals in disciplines throughout the state to enforce protection orders consistently and in ways that are empowering to survivors.

- Participate in multi-disciplinary cross-training opportunities.
- Participate in multi-disciplinary curricula development for training various professionals, and apply for the necessary accreditation, such as continuing legal education programs for attorneys.
- Work with state domestic violence coalitions to ensure that survivors across the state receive uniform and comprehensive information about state laws and practices.
- Work with state administrators of VAWA funds and with state judicial educators to promote education about protection order relief and enforcement and to fund judicial education on these issues.
- Develop a network of domestic violence attorneys to represent survivors in protection order and interstate custody cases.
- Conduct seminars with attorneys from local bar associations, including the family law, the women's law, and the civil rights sections, on the need for affordable or *pro bono* legal representation for survivors of domestic violence.
- Work with the military to promote the issuance of effective military protection orders, the enforcement of state protection orders on military installations, and knowledge of the Armed Forces Domestic Security Act, which requires enforcement of civilian protection orders on military installations.¹⁴
- Help raise awareness with other advocates, attorneys, and law enforcement officers on the need for domestic violence laws, including those involving protection orders, full faith and credit, and jurisdictional issues.
- Help educate child protective services (CPS) personnel that requiring survivors to obtain protection orders in order to avoid the risk of losing their children is contrary to justice and can increase the danger they face.¹⁵
- Help educate CPS personnel about the co-occurrence of adult and child sexual abuse.

• Help educate the media and be available to educate them further.

For example, several years ago the Rhode Island Coalition Against Domestic Violence sponsored a national conference, "Media Matters," to encourage domestic violence programs and the media to work together. Presently, two staff members conduct media and public relations work, including developing campaigns for Domestic Violence Awareness Month, in partnership with other New England states. The campaign includes identical billboard, television, bus, and print ads throughout several states, with support from corporate sponsors.

Principle III

Advocates should work with community members and with civil and criminal justice system professionals to promote systemic change and to raise public awareness about protection order relief and enforcement.

As noted above, advocates play a unique role in that they encompass the voices, hopes, dreams, and goals of survivors more so than other professionals in the field. Advocates have the potential to shape the community's collective consciousness toward ending violence against women.

- Conduct community education programs.
 - Conduct education programs with local religious communities to educate their leaders and members about protection orders.
 - Conduct annual awards ceremonies to highlight criminal justice professionals who have issued and enforced protection orders effectively.
 - Make videotapes describing the protection order process available in shelters and the courthouse, as well as schools and libraries, and ensure that survivors also have an opportunity to talk with advocates.
 - Distribute information widely about obtaining protection orders in such places as church bulletins, grocery store bags, community newspapers, flyers, lipstick containers, library bulletins, and brochures at health centers, beauty salons, or veterinarian or pediatricians' offices.

- Conduct presentations for local high school and college classes about protection order relief.
- Work in partnership with existing community organizations such as the League of Women Voters, Girl Scouts, Boys' and Girls' Clubs, and community literacy clinics, to disseminate materials.
- Educate local businesses regarding survivors' needs to retain their jobs, take time off to attend protection order hearings (this may be mandated by state law), obtain medical treatment, and resolve other matters related to the abuse.
- Assist community players to educate local businesses about workplace violence and maintaining a secure workplace when protection orders have been issued.
- Work with community members to educate local businesses that as employers they may be permitted by state law to file for protection orders as a means of protecting employees.

■ Assist in revising protection order forms.

- Advocate for the establishment of statewide protection order forms to enhance uniformity.
- Assist in developing protection order forms that look similar to those in surrounding states in order to ease enforcement.

Under Project Passport, Kentucky and seven nearby states developed similar first pages. For more information on that project, see

http://www.kdva.org/projectpassport.htm.

Project Passport is being replicated throughout the country through a Southeast expansion led by the state of Alabama and nationally by the National Center for State Courts. For more information, see Extending Project Passport at

http://www.ncsconline.org/D_Research/descriptions.html.

- Work with the courts to make sure that the form includes the consequences of violating protection orders by highlighting both state and federal penalties.
- Help revise protection order forms to include elements of federal firearms law and language from VAWA regarding interstate crimes and full faith and credit for protection orders.¹⁶
- Participate in the process of modifying protection order forms to allow courts to indicate compliance with the Parental Kidnapping Prevention Act (PKPA) and the Uniform Child Custody Jurisdiction Act (UCCJA) or the Uniform Child

- Custody Jurisdiction and Enforcement Act (UCCJEA) with respect to custody provisions.
- Help make protection order statutes more inclusive so that protection orders are available to all victims of domestic violence, including those in same-sex relationships and victims of dating violence.

Principle IV

Advocates should ensure that protection orders and advocacy are accessible to survivors from diverse communities. Advocates help survivors to navigate what can be a confusing and disorienting system for anyone, but survivors from diverse communities may experience additional challenges and could benefit significantly from sensitive and appropriate advocacy. Advocates, therefore, should reach out to survivors from diverse communities and ensure that advocacy services meet their unique needs.

- Provide information about protection order relief to survivors from diverse communities.
 - Provide advocacy for rural and low-income survivors by traveling to rural areas to provide advocacy, providing child care or transportation funds to enable survivors to attend court proceedings, and making services available in the evenings or by telephone.
 - Work with lesbian, gay, bisexual and trans-gendered communities, communities of color, immigrant communities, ¹⁷ religious groups, programs serving teenagers, and tribal nations to increase awareness of protection order relief.
 - Develop public service announcements about protection orders so as to overcome literacy and linguistic barriers; this can be accomplished by, for example, creating announcements on Spanish speaking radio or printing information in Yiddish newspapers.
 - Provide information about protection orders to facilities serving elder populations, such as nursing homes and senior citizens centers.
 - Provide information about protection orders to individuals with disabilities through disability rights organizations.

■ Assist survivors from diverse communities in obtaining legal relief and community resources.

- Educate local police and social services personnel about battered immigrants' eligibility for protection orders.
- Suggest that courts translate orders and court proceedings into languages survivors understand.
- Ensure that materials, including court forms, educational brochures, videotapes, and referral lists are available in, or translated into, the languages of survivors. 18
- Maintain relationships with diverse community groups such as individuals from mosques, synagogues, churches, recreation centers, immigrant rights' organizations, schools, businesses, neighborhood watch groups, and health centers to facilitate enforcement of protection orders.
- Work with tribal governments and state courts to overcome jurisdictional gaps preventing enforcement of state and tribal protection orders. This can be accomplished by, among other things: (1) contacting national tribal technical assistance organizations; (2) encouraging state and tribal judges to meet and discuss issues of mutual concern; and (3) encouraging state and tribal prosecutors and law enforcement to do the same.
- Ensure that survivors are not required to pay fees to file for protection orders, serve protection orders, or file criminal charges for protection order violations.

¹⁸ Courts should make these forms available, and may be required under federal anti-discrimination law to do so. Where this is not occurring, non-profit organizations can produce these translated forms and assist survivors to read and fill them out in their own languages before filling out the official forms.

Principle V

Advocates should consistently and routinely evaluate protection order systems and pursue necessary systemic changes.

Advocates are ideally suited to evaluate the efficacy of protection order systems and to press for needed improvements. Advocates gain a comprehensive understanding of the protection order system, including its strengths and weaknesses, as a result of their regular interaction with various facets of the system. In addition, their intensive work with survivors enables advocates to assess the system from a survivor's perspective.

Strategies

- Conduct court-watch programs.
- Follow up with survivors to determine whether all criminal and civil protection order provisions are being enforced.
- Convene a coordinated community task force to examine the enforcement of protection orders.
- Ask survivors to evaluate the protection order process immediately after they file for protection orders, request implementation of protection orders, register protection orders, or seek enforcement of orders.
- Conduct regular reviews of the protection order system by holding focus groups with survivors.
- Participate in or help establish fatality review boards to identify gaps and failures in the protection order process.²⁰

Fatality review boards are comprised generally of community members, including law enforcement officers, victim advocates, prosecutors, and court personnel. They examine recent domestic violence homicides in the community to determine whether criminal justice or community responses to such crimes could be improved to prevent such deaths in the future. In New Hampshire, for example, a statewide fatality review team consists of 30 persons from a range of disciplines including law enforcement officers, advocates, medical examiners, victim-witness advocates, court *Continued on page 33*

20 *See* National Council of Juvenile & Family Court Judges, Family Violence Department, *Fatality Reviews Packet*, available for distribution by contacting NCJFCJ at (800) 527-3223. For examples of state statutes establishing fatality review boards, see IND. CODE § 12-18-8-1 *et seq.* (establishing a domestic violence fatality review team for the purpose of reviewing deaths resulting from domestic violence); FLA. STAT. § 741.316 (establishing a fatality review team to review fatal and near-fatal incidents of domestic violence, domestic violence-related matters, and suicides); 15 VT. STAT. ANN. § 1140 (establishing a fatality review commission to examine the trends and patterns of domestic violence-related fatalities; identify barriers to safety; identify strengths and weaknesses in communities and systemic responses to domestic violence; educate the public, service providers, and policymakers about domestic violence fatalities and intervention and prevention strategies; and to recommend policies, practices, and services that encourage collaboration and reduce domestic violence fatalities).

personnel, civil legal attorneys, prosecutors, defense attorneys, healthcare professionals, and representatives of faith-based programs. The team reviews all domestic violence homicides and makes recommendations to reduce domestic violence-related deaths in the state, following up with an annual report and program of accountability.

• Perform safety audits of key agencies such as the police department, the prosecutor's office, and the court, to review institutional processes regarding protection orders and to identify where improvements are needed.²¹

A safety team audit analyzes case files of families receiving services and compares the interventions that were received with the needs that were demonstrated. A safety audit is set up to focus on an identified problem in case processing, and focuses on the system, not individual performances. The process examines how institutional ways of doing things, and how individual practitioners are organized and coordinated, may centralize or marginalize attention to community intervention goals such as victim safety or offender accountability.

- Review state protection order databases, if permitted, for suggested overall enhancements and as part of safety audits.
- Request that state domestic violence coalition attorneys draft *amicus* briefs, promote legal policies that benefit survivors, and litigate public impact cases including protection order appeals.
- Work with community members to resolve problems in the protection order process, including developing interagency protocols.

Introduction to Civil Attorneys

Civil attorneys play a vital role in the protection order process, offering victims of domestic violence legal advocacy and advice not otherwise available to them as they maneuver through the complexities of the protection order system. To be their most effective, civil attorneys need to become thoroughly familiar with the dynamics of domestic violence and gain a nuanced understanding of the benefits and challenges involved in both the issuance and the enforcement of protection orders.

Civil attorneys constitute their clients' main source of information on many aspects of the protection order system: the legal process through the various hearings and trials; the relief available for each client's particular circumstances; and the mechanics, and the risks, of relocating with children to another jurisdiction. Also, attorneys should assist with safety planning that focuses on the choices their clients make. Attorneys can help ensure that the system works in the way it is designed. They can urge protection order courts to address custody, visitation, and child support issues where their statutes so authorize, rather than deferring these decisions to divorce court. They can conceive and develop litigation strategies that create good case law, appeal bad decisions, and ensure that violations of protection orders come to the court's attention. Their expertise is invaluable, especially in cases where petitions or violations involve child abduction, immigration issues, or other complicated matters.

Despite the essential role of civil attorneys, there simply are not enough civil attorneys available to the victims who need them. It is imperative that attorneys who routinely work in this field seek and train volunteers, and encourage new attorneys to join the work, to add to the pool of those professionals dedicated to improving the lives of victims of domestic violence and their children.

Some of the recommendations in this section mirror recommendations in the Advocate's section because in some jurisdictions attorneys play a key advocacy role with survivors, while in others civil attorneys link with advocates to ensure survivors have the range of legal and advocacy services they need. The following principles and strategies can help guide both experienced and relatively new attorneys who strive to provide excellent representation to victims of domestic violence in the protection order system.²

¹ See Elaine Chiu, Confronting the Agency in Battered Mothers, 74 S. CAL. L. REV. 1223 (2001).

² For an in-depth discussion of the issues raised by domestic violence in civil cases and of the strategies attorneys can adopt in such cases, see *ABA Commission on Domestic Violence, The Impact of Domestic Violence on Your Legal Practice: A Lawyer's Handbook, (2ND ED.) (2004). See also, Catherine F. Klein & Leslye E. Orloff, <i>Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law,* 21 Hofstra L. Rev. 801 (1993).

Civil Attorneys

Principle I

Attorneys should provide clients comprehensive representation, leading to their safety and security.³

Attorneys should approach domestic violence protection order cases as they would all others, by building a strong and comprehensive case. One way to be as comprehensive as possible is to work closely with advocates. Allying with advocates can assist attorneys in their additional duty of taking into account the unique circumstances victims of domestic violence face. The goals of these cases, unlike other civil litigation, involve the safety and restoration of their clients.

Strategies

■ Assist clients to develop comprehensive safety plans by working in conjunction with advocates.

Safety planning is an ongoing process that changes with the circumstances surrounding a victim of domestic violence and encourages her to think critically and in advance regarding potential solutions or responses to violence that may enhance her safety and the safety of her children. Attorneys can review with their clients such scenarios as: what to do if their clients are at home and are currently being attacked; how their clients can communicate with their children to keep them as safe as possible; how their clients can protect themselves when they are not at home; how their clients can make themselves safer at work; and what their clients can take with them if they leave their home. While safety planning is a fluid process, there are tools that attorneys can use to generate questions that they can review with their clients. For an example of one such tool, see the American Bar Association's safety planning tool, in both English and Spanish, at http://www.abanet.org/tips/publicservice/dvsafety.html.

- Obtain training prior to conducting safety planning with a victim of domestic violence and suggest to your client that she meet with a local advocate to continue the safety planning process.
- Ensure that representation does not endanger your clients. Do not leave messages for, or send mail or email to, clients at home until instructed that it

³ Most domestic violence survivors have a range of interwoven legal needs. These may include the need to obtain and enforce a protection order, receive child support and/or other financial assistance, remain in housing and retain a job, and find representation in a long-term custody case. Attorneys should represent survivors for as many legal needs as possible and make appropriate referrals if they do not have the expertise to handle a particular type of case such as bankruptcy or immigration relief.

- is safe to do so.
- Refrain from mediating cases in protection order proceedings.
- Work with your clients to create safety plans that protect them at home, at work, in public, in court, and when traveling.
- Determine what your clients need in order to attain economic self sufficiency, as many victims require financial resources to escape abuse.⁴
- Help your clients determine what they have lost and how it can be replaced through protection order provisions. This could include restitution for damaged furniture, clothes, or children's items.
- Consider broad economic requests for relief, including the return of property and the payment of attorney's fees.
- Inform your client of the availability of restitution and victim compensation in criminal proceedings for protection order violations.
- Seek provisions in protection orders that prohibit respondents from interfering
 with victims' employability. For example, seek provisions that require respondents to return to victims necessary documents such as social security cards,
 immigration documents, or driver's licenses.
- Explain to your client that the custody provisions within a protection order are temporary, and discuss with her the advantages and disadvantages of beginning the custody process in family court.

■ Prepare for the protection order process.

- Interview your clients thoroughly and without children or others present, except if your client wishes an advocate or other person present (taking care to avoid inadvertently waiving attorney-client privilege). Help her obtain child care if necessary.
- Ask the petitioner to detail exactly what the respondent may say about her and assist her in preparing responses.
- Consider your client's work record as an additional source of documentation of abuse, as it may detail time taken for sick leave or time needed to attend court hearings.
- Consider children's school records as another source of documentation.
- Conduct safety planning with petitioners prior to having respondents served with *ex parte* orders or notices of hearings, understanding that each stage of the protection order process creates different concerns for victims. Make sure safety planning is tailored to the various stages of protection order proceedings.
- Explain court procedures thoroughly and make sure your clients understand what to expect.

- Educate your client in advance of any hearing about the judge's demeanor and preferences.
- Take clients into the protection order courtroom and explain the process, if time permits.
- Prepare other witnesses and evidence.
- Keep information about your clients' locations confidential when drafting pleadings.⁵
- Use the "any other relief" statutory provision in protection orders to request necessary relief learned about during the safety planning process.
- Consider carefully what relief is requested. Some judges will order only the relief pled in the initial pleading at the *ex parte* stage, and will not entertain new requests.
- Keep sample briefs on hand to pull and file as needed.
- Request the police call history and include a copy in your brief.

■ Represent clients in protection order cases.

Overview

- Consider obtaining a protection order in your original jurisdiction to avoid any personal jurisdiction obstacles if your client wishes to relocate.
- Meet your clients in safe locations in the courthouses.
- Work with court security personnel to enhance your client's safety while in the courthouse.
- Use witness rooms to prevent respondents from speaking to petitioners in court hallways, waiting areas, or negotiation settings.
- Attempt to negotiate a protection order with the respondent's counsel or with a *pro se* respondent where possible, and in accordance with the client's informed decision; parties should be separated during these negotiations.
- Examine with your client the efficacy of a consent order, considering the fact that a finding of abuse may not be included in the order; however, always ask for a finding of abuse.⁶
- Be prepared to go to trial when consent orders cannot be reached or would fail to protect your clients.
- Find out in advance the provisions of any other current orders (stay away, custody, etc.). If there are additional orders in place, address with the judge any conflict between these and the terms of the protection order before it is entered.

⁵ Some state statutes provide for confidentiality of victim information in court pleadings. For examples, see MICH. COMP. LAWS ANN. § 600.2950 (allowing a petitioner to omit his or her address of residence from documents filed with the court provided that the petitioner provide that court with his or her mailing address) and WIS. STAT. ANN. § 813.12 (mandating that the restraining order petition or injunction and the court not disclose the address of the alleged victim).

- Confirm before the hearing whether service was accomplished so that the victim does not unnecessarily come to court. Assist with achieving service in order to avoid continuances.
- Work with the courts if the case must be continued by asking the judge to allow you to continue the case without your client present.
- Be prepared to counter respondents' arguments based upon alleged due process violations and lack of personal jurisdiction, especially in inter-jurisdictional cases.⁷
- Submit a draft order to the court including all relief sought. For less routine provisions, provide a memorandum or brief explaining the legal and factual basis.
- Present evidence that satisfies the statutory basis for issuance of the protection order and ensure that the finding of abuse is on the record.⁸
- Ask for additional security when necessary, and stand between your client and the respondent to reduce intimidation during trial.
- Ensure that any stay-away provision contains a specific distance and is individualized to each client's needs, keeping in mind that specific distances might not be viable for victims in rural areas.
- Ensure that none of the provisions in your drafted order conflict with each other. Specifically read through the draft with those concerns in mind.
- Ask the judge to keep both parties in the courtroom while you check protection orders to be certain that they reflect all of the relief the judge ordered and that they are free from errors.
- Ask for reconsideration if judges do not order all relief that is reasonably requested and permitted under state law.

⁷ See A.R. v. M.R., 799 A.2d 27 (N.J. App. 2002) (finding that the trial court had personal jurisdiction over the respondent and could issue an *ex parte* protection order against him because he had made a series of calls to New Jersey to locate the victim); *Bartsch v. Bartsch*, 636 N.W.2d 3 (Iowa 2001) (finding that the court could issue a protection order without personal jurisdiction over the respondent). *See also Baker v. Baker*, 494 N.W.2d 282 (Minn. 1992) (holding that granting an *ex parte* protection order does not violate a respondent's due process rights).

⁸ See Lefebvre v. Lefebvre, 996 P.2d 518 (Or. Ct. App. 2000) (stating that the totality of the circumstances may be considered in support of petitioner's assertion that respondent placed her in fear of imminent serious bodily injury and in immediate danger of further abuse); Gustafson v. Mauck, 743 So.2d 614 (Fla. Dist. Ct. App. 1999) (finding that the context of the relationship and its history is relevant when considering whether abuser poses a threat to victim's safety); Coburn v. Coburn, 674 A.2d 951 (Md. App. 1996) (finding that courts may admit prior evidence of abuse in protection order proceedings); Maldonado v. Maldonado, 631 A.2d 40 (D.C. 1993) (finding that the respondent's incarceration alone was not grounds for failing to extend a civil protection order); Weir v. Weir, 631 A.2d 650 (Pa. Super. Ct. 1993) (finding that evidence of prior abuse was relevant to the victim's fear of imminent serious bodily injury). See also the following statutes, which provide that protection orders may not be denied because they were not filed within a particular time frame after the last incident of abuse: COLO. REV. STAT. ANN. § 13-14-102 (providing that the court shall not deny a petitioner the relief requested solely because of a lapse of time between an act of abuse or threat of harm and filing the petition for a protection order); IND CODE § 34-26-5-13 (providing that a court may not deny a petitioner relief solely because of a lapse of time between an act of domestic or family violence and filing the petition); WIS. STAT. ANN. § 813.12 (requiring the court to consider the potential danger posed to the petitioner and the pattern of abusive conduct by the respondent when considering when to issue an injunction and instructing that the decision cannot be based solely on the length of time since the last act of domestic abuse or the length of time since the relationship ended).

Custody provisions 9

- Work with your clients to determine their wishes and goals for the protection order process regarding custody and visitation, keeping in mind that these provisions may be temporary and are limited to the duration of the protection order
- List in your brief specifically what each parent does for each child on a daily basis.
- Ensure that decisions regarding both physical and legal custody are made in the protection order context and that it is clear which provisions affect which type of custody.
- Argue to the court that it is not within its authority to ignore requested relief. Therefore, judges must address custody and visitation requests if they are properly requested under the state's protection order statute.¹⁰
- Argue that your client should not be penalized for fleeing with children for safety reasons across state or tribal lines. 11
- Become familiar with the complex provisions of the Uniform Child Custody
 Jurisdiction Act (UCCJA), Uniform Child Custody Jurisdiction and Enforcement
 Act (UCCJEA), and the federal Parental Kidnapping Prevention Act in order to
 represent clients effectively in inter-jurisdictional custody cases. The following are specific strategies to use, effectively employing these jurisdictional
 custody laws:
 - Argue that the court has jurisdiction under the state's UCCJA or UCCJEA, in addition to any authority under the state's protection order code. 12
 - Argue that the court may exercise emergency jurisdiction because of domestic violence if the court is not in the child's home state.
 - Make the request to exercise jurisdiction in a pleading, fully briefed with an extensive, detailed request for custody rather than a check list.

⁹ For an in-depth examination of custody cases involving relocation of a parent to escape abuse, see Janet M. Bowermaster, *Relocation Custody Disputes Involving Domestic Violence*, 46 U. KAN. L. REV. 433 (1998); Deborah M. Goelman, *Shelter from the Storm: Using Jurisdictional Statutes to Protect Victims of Domestic Violence After the Violence Against Women Act of 2000*, 13 COLUM. J. GENDER & L. 101 (2004).

¹⁰ Statutes specifying that courts may order limited or supervised visitation include: ALASKA STAT. § 25.20.061 (allowing the court to set conditions for visitation including protected transfer of the child, supervised visitation, and abstention from possessing or consuming alcohol or controlled substances during visitation and for 24 hours prior to visitation); GA. CODE ANN. § 19-9-7 (allowing the court to place conditions on visitation including ordering the address of the child and victim be kept confidential whether or not visitation is allowed); IOWA CODE ANN. § 236.5 (mandating that the court condition or restrict visitation as to time, place, duration, or supervision or deny visitation entirely where the court finds that the safety of the victim or children will be jeopardized by unsupervised or unrestricted visitation).

¹¹ See ÅLA. CODE § 30-3-132 (providing that if a parent is absent or relocates because of an act of domestic or family violence by the other parent, the absence or relocation may not be a factor that weighs against the parent in determining custody or visitation). **12** See In Re M.C., 94 P.3d 1220 (Colo. App. 2004) (holding that a temporary restraining order constitutes a custody determination within the meaning of the UCCJEA's continuing jurisdiction provision); In Re M.G.M. and V.A.M., 2005 WL 729186 (Tex. App. March 31, 2005) (holding that the trial court in Texas had emergency jurisdiction to issue a temporary protection order even though Michigan had home state jurisdiction and a custody case had been filed there one week prior to the application for the protection order); *Zappitello v. Moses*, 458 N.W.2d 784 (S.D. 1990) (finding that the UCCJA applied to cases involving the state protection order law); Goelman, *supra* note 9; Darren Mitchell, *Enforcing Child Custody Orders Across Jurisdictional Lines*, NAT'L ASS'N OF STATE JUD. EDUCATORS NEWSL., Winter, 2004, *available online at* http://nasje.unm.edu/archives/winter04/resources_4.htm. For a copy of the model UCCJEA, including comments, see http://www.law.upenn.edu/bll/ulc/uccjea/final1997act.htm.

- ★ Make this jurisdictional argument early in your brief.
- Attach a copy of the applicable state law. It is always helpful to provide copies of the statutes and case law applicable for the proceeding.
- ★ Support your brief with police reports and any other supporting documents.
- ★ Show escalating patterns of violence and abuse, even if they seem remote in time.
- Be very specific and detailed about incidents of abuse.
- ◆ Ask the court in the home state to decline jurisdiction on the grounds that it is an inconvenient forum when victims flee from the children's home state for safety reasons; ¹³ ask to be present during this communication and submit memoranda to judges to prepare for the communication.
- ◆ Ask the courts to communicate with each other to resolve jurisdictional issues after hearing legal arguments when conflicting custody orders have been issued by courts in different jurisdictions in protection order and custody proceedings. Research whether under your jurisdiction's law the protection order supersedes other custody agreements.
- Ask to be present during any judicial communications, and submit memoranda to judges to prepare for their communication.
- Ensure that the protection orders include notations that the court complied with the UCCJA or the UCCJEA if custody is granted in a protection order.
- Provide information to attorneys and judges about the impact of domestic violence on children and the need to limit or suspend visitation with perpetrators.¹⁴
- If there is a supervised visitation center in your community, find out in advance its strengths and challenges. Visit the center and learn exactly what services it provides.
- Give the visitation center specific parameters regarding visitation conditions in the protection order. Often, your client's order is the only information the center receives.
- Give the visitation center additional information on the family such as petitions or the court referral form that states the reasons for the family's referral to the center when possible.

- Argue that the consequences for violating supervised visitation provisions be included in the order; do not give the respondent any incentive to violate the center's rules as a means of effectively canceling supervised visitation.
- Request that the order state that violating supervised visitation center rules constitutes a violation of the order for the respondent only.
- Ask for a back-up plan if the supervised visitation center is not taking more clients or the center declines the family.
- Ensure that the supervised visitation order¹⁵ which involves a third party rather than a center stipulates how long the petitioner must wait for the respondent to appear for scheduled visits and how many times the respondent is permitted to fail to appear altogether before the visitation is suspended.
- Request supervised visitation for perpetrators, and retention of the children's passports and birth certificates by petitioners, where clients fear child abduction.
- Contact the U.S. State Department regarding passport notification where respondents may abduct children. 16
- File motions for sanctions to restrict abusers' frequent filings for modification of custody or visitation provisions.

Economic provisions 17

- Examine the efficacy of requesting economic relief such as child support, restitution, attorney's fees, mortgage payments, property taxes, and the use of vehicles.18
- Seek to garnish respondent's wages to pay child support and fax the wage order directly to the payroll department of the respondent's employer; find out the payroll department information prior to the court proceeding.
- Seek possession of the house and keys for your client, or request that the court require the respondent to pay for the change in locks.
- Argue that the court should freeze the respondent's assets when appropriate.
- Ask the court for a non-dissipation of assets provision in the protection order if there is a joint checking or savings account, or the respondent has access to

¹⁵ See National Council of Juvenile and Family Court Judges, Family Violence Department, Supervised Visitation Packet, available by calling (800) 527-3223

¹⁶ For information regarding the U.S. State Department's passport issuance alert system, see http://travel.state.gov/law/info/info_633.html.

¹⁷ See Jody Raphael & Richard M. Tolman, Trapped by Poverty/Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare (1997), available online at http://www.ssw.umich.edu/trapped/pubs_trapped.pdf.

¹⁸ See Mugan v. Mugan, 555 A.2d 2 (N. J. Sup. App. 1989) (upholding an order requiring the defendant to make weekly payments for household, medical, dental, mortgage, and utilities expenses); Powell v. Powell, 547 A.2d 973 (D.C. 1988) (finding that the catchall provision in the Washington, D.C. protection order law permitted the court to award monetary relief to resolve effectively family violence); N.J. STAT. ANN. § 2C:25-29 (providing for an order requiring the defendant to pay to the victim monetary compensation for losses suffered as a direct result of the act of domestic violence, including but not limited to, loss of earnings or support, out-of-pocket losses for injuries sustained, moving expenses, reasonable attorney's fees, and compensation for pain and suffering). Several other states have similar provisions, including Alaska, California, Delaware, Illinois, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, West Virginia, and Wyoming. ORDER PROCEEDINGS (2004).

the petitioner's bank accounts.

• Assist clients to retain employment by explaining anti-discrimination or leave laws to the employer if this relief is requested by your client.¹⁹

For a comprehensive statute that prohibits discrimination and termination and requires up to 12 weeks of unpaid leave for victims of domestic violence or sexual violence, see the Illinois Victims' Economic Security and Safety Act, 820 ILL. COMP. STAT. ANN. 180/1 *et seq*. The Act also allows employees the same protection if a family or household member is a victim of domestic or sexual violence. When returning from leave, the employee is entitled to the same or equivalent position, with no loss of accrued benefits.

- Advocate for provisions that order respondents not to interfere with petitioners' finances by, for example, prohibiting interference with the victims' public benefits, employment, and education.
- Request that respondents be solely responsible and make direct payments for medical and house insurance.
- Request that respondents be responsible for making utilities payments.
- Request that respondents be responsible for making payments for children's activities, such as summer camp and sports league fees.
- Ask the court to prohibit respondents from canceling petitioners' credit cards or interfering with their credit ratings.
- Ask the court to give petitioners exclusive use of a vehicle, including any applicable car seats and keys, and to require that the respondent make the car insurance payments.

Additional safety provisions

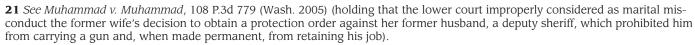
- Ask the petitioner if her or the respondent's children or other relatives possess or have access to firearms, thereby giving the respondent indirect access to weapons.
- Inform the court of the respondent's access to weapons and request that the court order the respondent to relinquish firearms to law enforcement officers within a specific timeframe.²⁰
- Inform the court if the respondent has a license to carry a firearm; if so, request that it be suspended.

¹⁹ See Jennifer Atterbury, Employment Protection & Domestic Violence: Addressing Abuse in the Labor Grievance Process, 1998 J. DISP. RESOL. 165 (1998).

- Ask the court to make a specific finding under the federal Gun Control Act (18 U.S.C. § 922(g)(8)), which would prohibit the respondent from possessing firearms for the duration of the order of protection.
- Be prepared to counter a respondent's arguments that he may lose his job because of firearms prohibitions if protection orders or criminal convictions result.²¹
- Ask the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to assist in developing a firearms return process to ensure that only qualified persons have their firearms returned.
- Request that the respondent be prohibited from removing from the petitioner's home or possession such items as passports, visas, immigration papers, deeds, and titles.
- Ask the court to prohibit the respondent's use of Global Positioning System (GPS) equipment, either through cars, on cell phones, or any other surveillance equipment used to monitor the whereabouts of the petitioner.²²
- Ask the court to make arrangements for the petitioner to leave the courthouse safely by providing the petitioner copies of protection orders first, offering escorts, or delaying the respondent's departure.
- Ask the court to require respondents, but not petitioners, to return to court for compliance review hearings in order to verify their adherence to economic, custody, batterers' intervention programs, and firearms provisions of orders of protection entered against them.
- Appeal or ask for modifications if protection orders that are harmful to clients are issued.

Appeals

- Appeal protection order denials or find an appellate attorney to do so.
- Appeal the issuance of mutual protection orders.
- Refer cases to one of the national networks of law firms willing to assist with appeals. ²³
- Develop partnerships with law firms prior to needing their assistance if you work at a legal services center or a non-profit.
- Assist, if possible, when victims are charged with violating their own orders.



²² Senator Joseph R. Biden, Jr.'s report, Subcommittee on Crime, Corrections, and Victims' Rights, *Ten Years of Extraordinary Progress: The Violence Against Women Act* (2004) (*available online at* http://biden.senate.gov/documents/VAWA_Report.pdf) cited as a challenge to enhancing criminal accountability the need to consider GPS and other technology used to stalk victims.

²³ The Domestic Violence Legal Empowerment and Appeals Project (DV LEAP), an organization whose mission it is to provide *pro bono* appellate representation to victims of domestic violence, can be reached at (202) 994-2278.

For example, law students and attorneys at the Sex Discrimination Clinic at Georgetown University Law School helped set a precedent for domestic violence cases in the District of Columbia. They represented the petitioner in the underlying civil protection order case and helped draft the appeal in *Powell v. Powell*. In that case, the Court of Appeals held that the protection order statute permits courts to award child support in protection orders if necessary to resolve the domestic violence case.

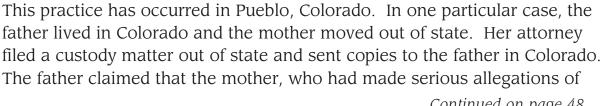
- Evaluate the negative consequences of losing an appeal and the likelihood of success given the particular factual and legal circumstances unique to domestic violence cases.
- Ask the court to publish opinions that are beneficial to victims of domestic violence.

■ Assist with the enforcement of protection orders.²⁴

- Keep your client files active and open after protection orders have been obtained.
- Assist clients who have decided to register their out-of-state orders by completing the registration for them or accompanying them if they choose to undertake the process, and ensure that no notification to the respondent takes place, unless the petitioner wishes for the respondent to be notified.²⁵
- Advise your clients to give copies of their orders of protection and photographs of perpetrators to employers, law enforcement officers, children's schools, and security in residential buildings, and to keep a copy of the orders in their cars and with them at all times.
- Seek enforcement through civil contempt or through the criminal process for violations of economic or custody provisions, and seek payment for time away from work and for childcare.
- Seek expedited hearings for contempt proceedings. In Maryland, for example, Montgomery County and Baltimore City routinely grant expedited hearings within 72 hours for protection order contempt proceedings.

²⁴ This includes enforcement of orders from other jurisdictions. *See People v. Hadley,* 658 N.Y.S.2d 814 (N.Y. City Crim. Ct. 1997) (finding that New York courts could enforce a New Jersey protection order under New York and federal law); Emily J. Sack, *Domestic Violence Across State Lines: The Full Faith and Credit Clause, Congressional Power, and Interstate Enforcement of Protection Orders,* 98 NW. U. L. REV. 827 (2004). For additional information regarding full faith and credit and related issues, contact the National Center on Full Faith and Credit, Pennsylvania Coalition Against Domestic Violence, (the National Center makes available free of charge several tools for civil attorneys, including matrices of state full faith and credit and firearms laws, model full faith and credit codes, protection order forms, notices to defendants, certification forms, and summaries of case law interpreting the federal domestic violence, stalking, and firearms criminal statutes), at (800) 256-5883, ext. 2.

- Consider filing a civil contempt motion for harassment if a respondent files repeated frivolous motions, requiring numerous court appearances by you and your client.²⁶
- Provide the court with information about the perpetrator's dangerousness, criminal background, and protection order history.
- Contact law enforcement officers when respondents violate protection order provisions for which they can be charged criminally if protected parties have already tried unsuccessfully to do so.
- Advocate with prosecutors on behalf of your clients during criminal enforcement proceedings; if there is a related criminal case, and the respondent makes an admission during your proceeding, inform the prosecutor or give them a copy of the transcript.
- Assist your client when a perpetrator has abducted children by contacting law enforcement and file for any necessary modification of a custody order.
- Request that the court establish a specific time when the respondent may retrieve personal belongings from the home.
- Work with attorneys, advocates, and law enforcement officers in other jurisdictions to help victims get protection orders enforced there.
 - Help your client to determine whether to flee to a new jurisdiction by examining with her where she is able to receive the most economic and emotional support, and help her to balance that against the possibility that the children may be significantly disrupted by a move away from a home to which they are accustomed, that your client may be safest where she is, or that she may be charged with child abduction.
 - Obtain and communicate to your client possible resources in the new jurisdiction prior to her leaving.
 - Request judge-to-judge communication between the two jurisdictions.
 - Remain informed of relevant proceedings taking place in the other jurisdiction by arranging with the court to listen to the hearings taking place there. You need not make an appearance if you are simply listening to the proceedings, since most hearings are open to the public.



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domestic violence, would move out of the country. The Colorado judge conducted an emergency custody hearing. The out-of-state attorney called the Colorado judge's clerk on the date of the hearing, and was placed on a speaker phone during the hearing. The judge made it clear to the out-of-state attorney that she was not to say anything, and the record clearly reflected that she was on the phone but was not making an appearance.

- File a brief with the court in your state asking it to decline jurisdiction if your client has fled and wishes to proceed in a new jurisdiction.
- Join attorney referral networks on issues related to domestic violence.²⁷

■ Provide, or assist your client in finding, representation in related legal cases in order to make protection order relief meaningful.

- Notify prosecutors of the history of domestic violence, with your clients' consent, if victims are charged with parental kidnapping. Become knowledgeable about the exemptions or defenses available to victims under state parental kidnapping and custodial interference laws.
- Represent clients in housing, immigration, bankruptcy, public benefits, health insurance, credit, and domestic relations cases, only if you are knowledgeable, in order to assist them to remain economically independent from abusers, or refer them to expert attorneys.
- Refer clients in extreme cases to experts for assistance in changing their social security numbers.
- Help your clients file for unemployment insurance or sue for wrongful discharge, or refer them to expert attorneys.
- Explain interstate issues to clients, including the options presented under jurisdictional laws such as the UCCJA, UCCJEA, PKPA, and VAWA.
- Help your clients prepare for relocation and comply with reporting requirements under state law.²⁸
- Help your clients find attorneys in other states as needed.

27 Attorneys interested in joining a network of attorneys working on interstate custody issues, especially those attorneys willing to work *pro bono*, should contact the Legal Resource Center on Violence Against Women at (301) 270-1550.

²⁸ Reporting requirements for parents relocating with their children vary significantly from state to state. Some examples of state statutes addressing relocation include: CAL. FAM. CODE § 3024 (the court entering a custody order may specify that a parent shall notify the other parent if the parent plans to change the residence of the child for more than 30 days, unless there is prior written agreement to the removal; to the extent feasible, the notice shall be provided within a minimum of 45 days before the proposed change of residence so as to allow time for mediation of a new agreement concerning custody); MICH. CT. RULE § 3.211(C)(1) (court awarding custody must approve the relocation of a minor out of state); MICH. COMP. LAWS § 722.31 (under certain circumstances, a parent must obtain court approval to relocate a child's residence to a location more than 100 miles from the child's legal residence at the time of the custody action); MASS. GEN. LAWS ch. 208, § 30 (minor child, who is a native of Massachusetts or lived in Massachusetts for five years and who is not old enough to consent, cannot be removed from state absent both parents' consent or a court order permitting relocation); N.J. STAT. ANN. § 9:2-2 (analogous requirement); MINN. STAT. § 518.175 subd. 3 (custodial parent may not relocate a child to another state without a court order or consent of the non-custodial parent); N.D. CENT. CODE § 14-09-07 (same prohibition, unless non-custodial parent has not exercised visitation rights for one year or has moved to another state and is more than 50 miles from the residence of the custodial parent); MO. REV. STAT. § 452.377 (parent seeking to relocate child must notify the other parent, who may file a motion seeking an order to prevent relocation).

Principle II

Attorneys should ensure that legal representation is accessible to victims from diverse communities. The comprehensive legal representation detailed above should be available to all victims, irrespective of culture, ethnicity, race, sexual orientation, disability status, age, religion, mental illness, socio-economic status, or any other factor of diversity.

Strategies

- Tailor legal services to client's cultural and communication needs.
 - Make legal services accessible to all clients, including those with disabilities.
 - Create a welcoming environment for clients from all cultures.
 - Ask courts in advance to make interpreters available for hearings.
 - Arrange for interpreters to facilitate communication between your clients and police officers, attorneys, prosecutors, and court staff.
 - Refrain from using family members, especially children, to interpret for deaf or non-English speaking clients.
 - Use the AT&T language line when appropriate. For more information, visit http://www.languageline.com.
 - Assist your clients in understanding all court forms, orders, and proceedings.
 - Present cultural information to the court as needed and when appropriate to facilitate the transformation of judicial attitudes.

For example, prosecutors from the Brooklyn district attorney's office invited newspaper reporters from language-specific newspapers to attend a community task force meeting on domestic violence. Subsequently, the reporters wrote about the meeting and about domestic violence resources. Prosecutors then posted the articles (in multiple languages) in the waiting room for the district attorney's office, finding that these articles made clients from different communities feel comfortable.

 Request custody provisions to address holidays that are specific to your client's culture.

■ Provide representation that is tailored to each client's individual needs.

- Help your clients seek protection order provisions tailored to their specific concerns.
- Provide accessible representation to rural and low-income victims by traveling to rural areas to provide representation, seeking child care or transportation funds to allow them to attend court proceedings, and making services available in the evenings.
- Consider providing legal services as a part of "one-stop shopping" for civil relief. However, be aware that information about your clients should not be disclosed between the participating entities.
- Object on relevancy grounds if judges ask about petitioners' immigration status.
- Seek clarification and education from immigration attorneys to understand the consequences of civil and criminal legal actions on your clients' immigration cases.
- Become familiar with new immigration relief available to your clients, such as the "T visa" (INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T)) and the "U visa" (INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U)).²⁹
- Obtain an affidavit, if possible, from the respondent to support the family until the victim obtains citizenship.
- Provide information from civil cases such as protection order hearings to petitioners who may be able to use the information when filing self petitions.

Principle III

Attorneys should work with other community members to make injunctive relief effective for clients.

While the role attorneys play for their clients is crucial, they cannot do this work alone. Many victims of domestic violence remind professionals that orders of protection are, to some respondents, "just pieces of paper." Therefore, the orders' effectiveness depends on other professionals and community members working together.

Strategies

■ Build relationships.

- Participate in coordinated community task forces.
- Work with local court personnel and advocates to improve protection order issuance and enforcement.
- Work with task forces to lobby for better protection order and full faith and credit statutes (enabling legislation), as well as for adoption of the UCCJEA if your state still has the UCCJA.
- Work with state domestic violence coalitions to develop brief banks.
- Learn about whom to contact for assistance, both state and federal, in enforcing protection orders criminally when initial responders fail to take such cases seriously.
- Work with courts to create a seamless civil contempt procedure.
- Make contacts with civil and criminal attorneys in other jurisdictions to assist clients in interstate protection order, custody, and abduction cases.
- Work with child protective services and educate case workers that requiring victims to get protection orders in order to avoid losing custody of their children is contrary to justice.³⁰

■ Work with law enforcement officers when requested by clients.

- Advocate with law enforcement officers regarding service of protection orders and assist them with information regarding respondents' whereabouts and identifiers.
- Request increased surveillance at your clients' homes or workplaces.
- Ask officers to collect evidence for protection order and enforcement proceedings and to testify.
- Work with officers to implement specific provisions of orders, such as returning children to the custodial parent.

- Educate officers about state firearms seizure laws.
- Help officers understand the danger of permitting perpetrators to retain firearms.
- Ask officers to destroy seized guns where permitted.
- Develop a policy with law enforcement officers to notify victims when abusers ask for their firearms to be returned.
- Explain to officers why victims should not be arrested for "violating their own orders."
- Assist officers to understand how to enforce orders from other jurisdictions.

■ Work with prosecutors, with clients' consent.

- Provide prosecutors information about perpetrators' lethality, criminal history, and protection order history.
- Inform prosecutors of respondents' access to weapons.
- Let your client know how to inform the prosecutor when a respondent makes an admission in a civil proceeding that might be useful in or lead to a criminal prosecution.
- Inform prosecutors if perpetrators file false parental kidnapping or other criminal charges against victims in any jurisdiction.
- Work with prosecutors to ensure that the terms and conditions of criminal protection orders are consistent with, and not contrary to, the terms and conditions set forth in civil protection orders.
- Contact the U.S. Attorney and the local prosecutor regarding any violations for which respondents can be charged for a federal crime to avoid double jeopardy complications. Be strategic about which charges, and which set of facts, should be prosecuted federally and which should be prosecuted locally, ensuring that there is as little overlap as possible.
- Refer to state-law exemptions and defenses available to abuse victims to encourage prosecutors to drop parental kidnapping charges against your clients.

■ Work with the courts.

- Participate in the development of protection order forms that look similar to those in surrounding states to ease enforcement across jurisdictional boundaries. For more information, see http://www.kdva.org/projectpassport.htm.
- Advocate that the forms include the consequences of violating protection orders by highlighting both state and federal penalties, including firearms violations.
- Help design protection order forms to enable judges to check boxes indicating that the protection orders were issued in compliance with jurisdictional laws (PKPA and UCCJA or UCCJEA).

- Advocate that protection order forms include the elements necessary for federal firearms laws to apply.
- Explain the importance of entering protection orders immediately into the state registry and into the National Crime Information Center (NCIC) Protection Order File.
- Encourage courts to set compliance review dates to ensure that respondents comply with the terms of orders, but ask that the victim be excused from appearing, unless she wishes to do so.
- Suggest that courts refrain from creating constant review dates where petitioners are required to be present.

Principle IV

Attorneys should promote systemic change to enhance effective issuance and enforcement of protection orders.

Attorneys are "frontline" workers in fighting domestic violence, and from that perspective have the capability of making necessary changes from within. Attorneys have a perspective on the process that few others possess. They can, and should, recognize the weaknesses of the system and strive to remove obstacles they routinely encounter, while working within their various professional constraints.

Strategies

- Work in partnership with community and criminal justice agencies to provide seamless protection order relief to victims.
 - Collaborate with traditional professionals, such as advocates and law enforcement officers, and non-traditional professionals, such as employers and business owners.
 - Train community members such as school personnel, religious clergy, and health care systems personnel about protection order laws and resources.
 - Educate service providers about the importance of maintaining the confidentiality of information about victims.
 - Participate in fatality review boards.
- Promote policies to improve protection order issuance and enforcement.
 - Work with state actors and tribal members to ensure that state courts give full faith and credit to tribal protection orders, and enter tribal orders into NCIC, and that Indian tribal courts give comity to state protection orders.³¹

- Ensure that petitioners are not required to pay fees for filing or serving protection orders or for filing criminal charges for violations.³²
- Promote legal policies that benefit victims of domestic violence. Courts should not issue mutual protection orders or penalize victims who return to abusers.
- Draft *amicus* briefs in protection order cases that have statewide implications.

³² Many states have statutes prohibiting fees for filing protection orders or related actions. For examples, see ARIZ. REV. STAT. § 13-3602 (the court may not assess a fee for filing a petition or for service of process); COLO. REV. STAT. ANN. § 13-14-102 (the court may not assess a filing fee, fee for service of process, or for certified copies of protection orders for the petitioner; the court may assess these costs to the defendant); N.H. REV. STAT. § 173-B:13 (no fee for optional filing of out-of-state protection orders); N.C. GEN. STAT. ANN. § 50B-2 (no court cost shall be assessed for filing, issuing, registering, or serving a protective order, petition, or witness subpoena); OKLA. STAT. ANN. tit. 22, § 60.2 (the court may not assess a filing fee, service of process fee, attorney fees, or any other fee or costs, whether a protective order is granted or not granted). In addition, under the federal Violence Against Women Act (VAWA 2000 amendments), to be eligible for funds under the STOP Violence Against Women Formula Grant Program and the Grants to Encourage Arrest and Enforcement of Protection Orders program, applicants must "certif[y] that [their] laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protection order, to protect a victim of domestic violence, stalking, or sexual assault, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction." 42 U.S.C. §§ 3796gg-5 and 3796hh.

Introduction to Courts and Judiciary

Courts and the judiciary have a unique and central role in issuing and enforcing domestic violence protection orders. Unlike the other professions in the field, judges have both adjudicative and administrative responsibilities; and unlike these 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; to treat all persons equally and offer them full access to court resources; and to ensure that all parties are afforded full constitutional due process. Judges must avoid even the appearance of partiality or favoritism, if they are to maintain the delicate balance of power among the three branches of government.

It is nevertheless imperative that courts take seriously the responsibility of protecting victims of domestic violence from further abuse once a finding of abuse has been made. The court is at liberty to exercise its broad authority to craft an order which is tailored to the particular needs of the victim and her children. Additionally, 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.

Judicial responsibility includes ensuring that the court system works in collaboration with other professions to see that orders are properly implemented and enforced. Cooperating with agencies that serve orders, monitor firearms relinquishment, and provide other assistance is necessary to ensure that court orders are understood fully, and that offenders are held accountable for their actions.

This chapter contains a multitude of recommendations that individual courts and judges may wish to consider as they handle these difficult cases. Because court systems vary greatly both across the country and within a single state or county jurisdiction, local practice may vary from court to court, or even from judge to judge. Thus, while some recommendations may seem similar or redundant, easy to implement or unrealistic, the reader is reminded that these reflect the variations across court systems throughout the country. Courts and judges are invited to revisit these strategies over time and implement them in stages.

The following principles and strategies are designed to assist courts in the evolving process of structuring a system that satisfies the constitutional mandates and judicial ethical considerations while meeting the needs of all parties involved in the protection order process.

Courts and Judiciary

Principle I

Courts that issue and enforce civil protection orders should provide a safe and welcoming environment for individuals seeking orders of protection. Courts should ensure that the necessary and appropriate assistance is offered, including referrals to community resources.

The primary purpose of protection orders is to protect victims of domestic violence, not to harm or victimize them further by requiring services such as counseling or parenting classes as conditions of receiving an order. When court is safe and accessible, victims of domestic violence avail themselves of the services and laws designed to help them and their children. Court personnel have the opportunity, by providing these services in the most welcoming manner possible, to be a critical link to safety. These services are enhanced when the court recognizes the importance of independent, community-based advocacy in the protection order process. ¹ Judges have the responsibility and opportunity, by taking ownership of every order they sign and recognizing the court's stake in the enforceability of these orders, to provide the leadership in the courthouse for staff to follow these guidelines.

Strategies

- Make courts safe and accessible to victims by, for example, providing protection orders by telephone, videotape, and facsimile, and by providing safe waiting areas.²
- Inform litigants of the processes for obtaining and enforcing protection orders, along with what relief is available, by, for example, developing a brochure, website, or video to disseminate this information, and providing it in languages that reflect those spoken in the community.
- Assist victims in obtaining and enforcing protection orders by designating specially trained personnel³ for tasks such as the following:
 - Providing general information about court procedures.
 - Providing referral information about advocacy and other community resources such as financial assistance and shelters.
 - Providing information to victims about enforcement procedures, notification systems, and protection order registries.

¹ Some state statutes specifically permit advocates to attend court hearings, including 750 ILL. COMP. STAT. 60/205 (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 § 70.123.020 (providing definition of legal advocates that includes their role in attending court proceedings).

REV. CODE § 70.123.020 (providing definition of legal advocates that includes their role in attending court proceedings).

2 Many state statutes mandate safe waiting areas at the courthouse. See, e.g., MINN. STAT. ANN. § 611A.034 (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 (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).

³ While clerks are not permitted to give legal advice, they can assist in informing petitioners which forms need to be filled out and where these forms need to be filled.

- Providing information that registering or filing is not a prerequisite to enforcement of out-of-state or tribal protection orders.⁴
- Providing referral information regarding legal representation.
- Identify volunteers or staff from an outside agency to serve in the above roles if court employees cannot take on the responsibilities. For example, AmeriCorps advocates perform this role in New Hampshire, probation officers in New York, and concierges in Kentucky.
- Consider offering a "one-stop shop," with proper confidentiality safeguards, for safety planning, housing assistance, child support, supervised visitation, counseling, and civil legal assistance, so that victims can access services when protection orders are entered. For information about a new federal initiative that supports 15 such centers, visit the Office on Violence Against Women website at http://www.ojp.usdoj.vawo.pfjci.htm.
- Keep the victim's address information confidential in the petition and throughout the proceedings, in accordance with state law and if the victim so requests.
- Consider safeguards to protect the confidentiality of information about petitioners. For example, provide private meeting space and inform petitioners of the confidentiality provisions of the court process.
- Ensure that interpreters are available to meet the language needs of all victims appearing in court.
- Participate in the development of a protocol whereby, in cases where immigrant victims may have committed petty crimes, they can seek criminal or civil orders of protection without jeopardizing their ability to obtain citizenship or to qualify for a special route to status.⁵

5 For information about mechanisms for providing safety and justice for noncitizen victims, see Gail Pendleton, *Ensuring Fairness and Justice for Noncitizen Survivors of Domestic Violence*, 54 (4) JUV. FAM. CT. J. 69 (2003). *See also* Deanna Kwong, *Removing Barriers for Battered Immigrant Women: A Comparison of Immigrant Protections Under VAWA I and II*, 17 BERKELEY WOMEN'S L. J. 137 (2002).

⁴ See 18 U.S.C. § 2265(d) (2) (stating that out-of-state protection orders meeting basic full faith and credit requirements must be enforced notwith-standing a failure to comply with any requirement that the order be registered or filed in the enforcing state or tribal jurisdiction); many state statutes also set forth this requirement, including FLA. STAT. ANN. § 741.315 (neither registration of a foreign order, nor residence in the state, is required for enforcement purposes) and WYO. STAT. ANN. § 35-21-111 (stating specifically that "filing and registration of the foreign order in the statewide protection order registry shall not be prerequisites for enforcement of the order in Wyoming").

Principle II

Courts should issue protection orders that are clear, comprehensive, and tailored to the specific needs of the individual petitioner.

Unclear or ambiguous orders are difficult to enforce. Law enforcement officers may be unable to decipher what the terms mean and how they should be enforced. In addition, courts should recognize that protection orders are far more effective when they provide plenary relief, including economic provisions, and when the relief is carefully tailored to the needs of each victim. Many victims do not leave abusive relationships because they lack the financial independence necessary to do so.

Strategies

- Courts should issue protection orders that include broad relief, tailored to the petitioner's needs.⁶
 - Include on the protection order forms the broad relief available and requested under state law.⁷
 - Be specific about location and distance prohibitions the protection order imposes on the respondent rather than entering a general "stay away" provision, keeping in mind, however, that specific distance provisions may not be viable for victims in rural areas.
 - Order economic relief when necessary. Explain to the parties that nothing in the order interferes with the legal title or ownership of any property.
 - Order economic relief to enable the petitioner to maintain the home if the respondent is ordered to vacate the residence.⁸
 - Order restitution for missed work for all court dates if possible.
 - Order that the respondent be prohibited from removing from the petitioner's home or possession such items as passports, visas, immigration papers, deeds, and titles and that he not interfere with the utilities for the home.
 - Consider including as a provision in the order that, if a respondent is a police officer, using departmental resources or knowledge to intimidate or harass the petitioner will constitute a violation of the protection order.

⁶ Judges may want to consider using a dangerousness assessment tool while determining the specific needs for each petitioner. For an online dangerousness assessment tool that includes a training component, see http://www.dangerassessment.org.

⁷ This should include protection for victims of dating violence and same-sex intimate partner violence. See Bryant v. Bryant, 624 A.2d 584, 586 n. 2 (N.J. Super. 1993) (interpreting statute to include homosexual relationships that turn violent); Tribuzio v. Roder, 813 A.2d 1210 (N.J. Super. 2003) (finding that petitioner was entitled to a protection order against her former dating partner despite the fact that the one-year relationship had ended three years prior to the filing for the protection order). See also, Barbara Hart, Lesbian Battering: An Examination, in NAMING THE VIOLENCE, SPEAKING OUT ABOUT LESBIAN BATTERING 173 (Kerry Lobel, ed. 1986); DAVID ISLAND & PATRICK LETELLIER, MEN WHO BEAT THE MEN WHO LOVE THEM: BATTERED GAY MEN AND DOMESTIC VIOLENCE 236-239 (1991).

⁸ Victims of domestic violence may also be protected in their lease agreements through a variety of means. *See*, for example, ARIZ. REV. STAT. § 33-1315 (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 (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 is seeking a restraining order); WASH. REV. CODE §§ 59.18.570 - 59.18.585 (among other protections, permitting a tenant, who has a valid order of protection or has reported domestic violence, sexual assault, or stalking to a qualified third party, to terminate the rental agreement without further obligation).

• Use the state's long-arm statute to obtain jurisdiction over out-of-state respondents who pose a continuing threat to victims who have fled across state lines.

In *A.R. v. M.R.*, the appellate court in New Jersey determined it had personal jurisdiction over the defendant, who resided in Mississippi, despite the fact that the plaintiff sought protection in New Jersey where she had fled. The court noted that the defendant made repeated phone calls to the plaintiff's home in New Jersey and had previously threatened to pursue her wherever she might go and kill her. Therefore, the court held that the defendant posed a continuing risk to the plaintiff and that the "telephone calls were tantamount to defendant's physical pursuit of the victim [in New Jersey]" and that the court properly asserted personal jurisdiction over the defendant.

■ Courts should provide the parties with information about enforcement and other issues related to protection orders.

- Explain the full faith and credit provisions of the protection order while both parties are still in the courtroom.
- Recite and explain orally, and on the record if possible, all orders that are being imposed and ask both parties whether they have any questions about the orders' provisions or enforceability.
- Give certified copies of the order to petitioners, and do not charge for multiple copies.
- Notify the respondent in the presence of the petitioner of the consequences for violating protection orders under state and federal law, including those related to firearms.
- Provide the respondent with a copy of the order, and if the respondent is not present at the hearing, mail the order if that is permitted by state law. The respondent's failure to participate in the hearing should not affect the enforceability of the order.
- Consider creating a video explaining to the parties to the protection order the terms of the order and consequences if the respondent violates it. Viewing the video separately could allow the petitioner to leave the courthouse before the respondent.
- Review the requirements for modifying and extending the order if the petitioner wishes later to do so.
- Offer petitioners the opportunity to consult with an advocate regarding safety issues and other alternatives prior to dismissing or modifying protection orders.

⁹ See Ind. Trial Proc. Rule 4.4. "(A) Acts Serving as a Basis for Jurisdiction. Any person or organization that is a nonresident of this state, a resident of this state who has left the state, or a person whose residence is unknown, submits to the jurisdiction of the courts of this state as to any action arising from the following acts committed by him or her or his or her agent: ... (8) abusing, harassing, or disturbing the peace of, or violating a protective or restraining order for the protection of, any person within the state by an act or omission done in this state, or outside this state if the act or omission is part of a continuing course of conduct having an effect in this state." See also, A.R. v. M.R., 799 A.2d 27 (N.J. App. 2002) (finding that the trial court had personal jurisdiction over the respondent and could issue an ex parte protection order against him because he had made a series of calls to New Jersey to locate the victim). For technical assistance related to personal jurisdiction and long-arm statutes, contact the National Center on Full Faith and Credit at (800) 256-5883, ext. 2.

Principle III

Custody and visitation matters should be addressed in protection orders in a specific and detailed manner. 10

Petitioners and respondents are often bound together through children they share. However, access to children may need to be limited or halted to protect the safety of a parent and the children, keeping in mind that custody and visitation matters are a common avenue that respondents use to continue harassing victims of domestic violence. This restriction can be achieved in the protection order context, ¹¹ as legislatures have chosen to grant the court authority to do this in a variety of ways. Judges with expertise in domestic violence should not discount the value that their experience brings to their decision-making capabilities and should use that experience to craft orders with the highest degree of safety.

Strategies

- Address custody and visitation only after paternity has been established.
- Comply with the applicable state law when custody and visitation provisions are included in the order. Some states require compliance with their state child custody jurisdictional law when custody provisions in protection orders are issued and others do not. If the law requires compliance, indicate on the order that those requirements have been satisfied.
- Consider developing and using check-off boxes and fill-in forms for visitation provisions, allowing specificity, ease, and efficiency. If these are used, ensure that there is sufficient space to accommodate very specific and detailed visitation terms.

The Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide offers judges practical information on when to order custody evaluations, what to ask for in the evaluation, and how to read the evaluations properly. For a copy of the bench book, please contact the Family Violence Department of the National Council of Juvenile and Family Court Judges at (800) 527-3223.

• Enforce custody and visitation provisions in valid protection orders pursuant to the VAWA and other federal and state jurisdictional laws. 12

10 For insights into the importance of careful decision-making in custody and visitation cases involving domestic violence, see LUNDY BANCROFT & JAY G. SILVERMAN, THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS (Sage Publications 2002), and Maureen Sheeran & Scott Hampton, *Supervised Visitation in Cases of Domestic Violence*, 50(2) JUV. FAM. CT. J. 13 (1999). **11** *See Brandt v. Brandt*, 645 N.W.2d 327 (Mich. App. 2002) (holding that the trial court has the authority to issue an emergency protection order containing custody and visitation provisions, reasoning that access to children may need to be restrained to protect the safety of a parent). **12** *See* Deborah M. Goelman, *Shelter from the Storm: Using Jurisdictional Statutes to Protect Victims of Domestic Violence After the Violence Against Women Act of 2000*, 13 COLUM. J. GENDER & L. 101 (2004). *See also*, Uniform Child Custody Jurisdiction and Enforcement Act (1997), § 102(4) (defining a "child-custody proceeding" governed by the Act to include a proceeding for protection from domestic violence), *available online at* http://www.law.upenn.edu/bll/ulc/uccjea/final1997act.htm.

■ Courts should be specific and detailed about supervised visitation and exchange provisions in orders of protection. ¹³

- Include in the custody and visitation provisions the children's names, dates of birth, and which child is covered by which provision.
- Be clear about which type of custody the court is granting (legal vs. physical or both). If ordering visitation or exchange at a center, provide the center with clear guidelines on how to achieve the court's safety objectives and state in the order the goals for the visitation.
- Be specific as to place, time, transportation, parties, exchange, and what to do for upcoming holidays and birthdays.

For example, 725 ILL. COMP. STAT. 5/112A-14 states: "If the court grants visitation, the order shall specify dates and times for the visitation to take place or other specific parameters or conditions that are appropriate. No order for visitation shall refer merely to the term 'reasonable visitation.'"

- Safeguard victims and children by ordering supervised visitation or exchange when necessary.
- Become familiar with the visitation center that the court is ordering be used. Visit the center and know what exact services are provided.
- Make specific findings on the record regarding why the supervised visitation plan ordered by the court is necessary to protect the victim and her children and what services are requested of the center (if applicable).
- Give the visitation center specific parameters regarding safety precautions in the order, as the protection order may be the only information the center receives.
- Give the visitation center additional information on the family such as intake forms, petitions, or court referral forms that state the reasons for the family's referral to the center when possible.
- Make provisions for situations in which the supervised visitation center is not accepting
 clients or refuses an individual case. The court should consider those situations carefully
 and craft visitation orders that do not endanger the victim or children by simply defaulting
 to unsupervised visits.
- Inform the respondent that some violations of center rules could constitute a violation of the order of protection when ordering exchange or visitation at a center.
- Inform the family at the initial hearing that if they are denied services at the visitation center, they are required to return to court and that there shall be no visitation in the interim.

- Require third-party supervisors (aside from a center) 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 the visitation as scheduled, how long a petitioner is required to wait if a respondent is late, and how many times a petitioner is required to make herself and her children available for visitation when the respondent refuses to attend the visitation in third-party visitation situations.

Principle IV

Courts should assume an active role in ensuring that protection orders are properly served in a timely manner. Service of process, especially across jurisdictional lines, presents enormous challenges even for the most astute professional. Timely service ultimately saves the judges and court personnel time in already heavy dockets. There is greater impact, stemming from the court's inherent credibility, on service personnel when a call is made from the court rather than a victim, her advocate, or even law enforcement personnel. This is an area where small investments in time can increase victim safety.

Strategies

- Ensure that victims are not charged fees for service of process or for filing protection orders. VAWA 2000 requires grantees under the STOP Violence Against Women Formula Grant Program, the Grants to Encourage Arrest and Enforcement of Protection Orders program, and the Stop Violence Against Indian Women program to certify that their laws, practices, and policies do not require victims to pay filing or service costs related to criminal domestic violence cases or protection orders. 14
- Ensure that the order is delivered to law enforcement and served on the respondent; refrain from making service the victim's responsibility.
- Tell the petitioner that she may call the serving agency regarding the status of service.

14 Many states have statutes prohibiting fees for filing protection orders or related actions. For examples, see ARIZ. REV. STAT. § 13-3602 (the court may not assess a fee for filing a petition or for service of process); COLO. REV. STAT. ANN. § 13-14-102 (the court may not assess a filing fee, fee for service of process, or for certified copies of protection orders for the petitioner; the court may assess these costs to the defendant); N.H. REV. STAT. § 173-B:3 (no fee for optional filing of out-of-state protection orders); N.C. GEN. STAT. ANN. § 50B-2 (no court cost shall be assessed for filing, issuing, registering or serving a protective order, petition, or witness subpoena); OKLA. STAT. ANN. tit. 22, § 60.2 (the court may not assess a filing fee, service of process fee, attorney fees, or any other fee or costs, whether a protective order is granted or not granted). In addition, under the federal Violence Against Women Act (VAWA 2000 amendments), to be eligible for funds under the STOP Violence Against Women Formula Grant Program and the Grants to Encourage Arrest and Enforcement of Protection Orders program, applicants must "certif[y] that [their] laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, stalking, or sexual assault, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction." 42 U.S.C. §§ 3796gg-5 and 3796hh.

- Inform petitioners that they may choose to obtain service through private service agencies, where permitted under state law.
- Consider using the probation officer to serve notice of the order of protection when the respondent is on probation.
- Include a request from the court, along with notice to the respondent, to bring proof of income, pay stubs, tax returns, bank statements, etc., to assist the court in any economic relief request.
- Include a letter from the court to be served with the petition detailing the consequences of violating the protection order.
- Consider the theory of "constructive service" of temporary orders. If the respondent knows of the order through means other than service, the court may find that the respondent was sufficiently aware of the *ex parte* order of protection and therefore, had notice of the upcoming hearing.¹⁵
- Provide for an automated system of victim notification regarding when there was successful service of the order, when and if the respondent was ordered to relinquish firearms, and all hearing dates.¹⁶
- Contact the state VAWA coordinator for assistance in contacting an out-of-state VAWA coordinator to ensure that no fee is charged out of state.
- Coordinate with the out-of-state Attorney General's office for service in the new state.

Principle V

Court philosophy, vision, and practice should support a seamless court process for the effective enforcement of protection orders. Courts should issue orders in a manner that facilitates enforcement in other jurisdictions.

Courts and judges have a vested interest in seeing their orders enforced. Without routine and effective enforcement of orders from all contexts, the credibility and foundation of the court process is challenged. Effective enforcement also means taking care to remove gaps and close loopholes that compromise victim safety.

Strategies

- Use and adhere to the guidelines set forth in the Full Faith and Credit: A Passport to Safety: A Judges' Bench Card. 17
- Issue and enforce protection orders consistent with the full faith and credit provisions of the Violence Against Women Act (VAWA) (18 U.S.C. §§ 2265 and 2266).
- Provide respondents notice and opportunity to be heard and on the face of the protection order note that this has been done.
- Refrain from issuing mutual protection orders.¹⁸
- \bullet Include on all orders the court's contact information as the court of origin.
- Include applicable state law citations in the order, especially for statutory terms specified within the order.
- Check in advance of the protection order hearing whether there are any other existing orders that may conflict with the provisions in the protection order. Modify either order if necessary and possible to give the respondent only one set of mandates and to alleviate conflicting or confusing provisions.¹⁹

¹⁷ The judicial bench card is a reference guide for judges that outlines the federal laws on full faith and credit and gives judges immediate access to such information as what the issuing and enforcing courts determine, what the firearms prohibitions are, and custody issues. Copies of the *Full Faith and Credit: A Passport to Safety: A Judge's Bench Card* are available by calling the Family Violence Department of the National Council of Juvenile and Family Court Judges at (800) 527-3223 or by downloading from http://www.ncjfcj.org.

¹⁸ For purposes of this *Guide*, a mutual protection order is a single order of protection that includes prohibitions against both the petitioner and the respondent.

¹⁹ *See People v. Stiles*, 779 N.E.2d 397 (Ill. App. 2002) (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; the court held that the existence of the second order in no way voided the initial order). *See also* Mich. Ct. Rules 3.706 ("a personal protection order takes precedence over any existing custody or parenting time order until the personal protection order has expired").

Kitsap County, Washington, received a federal grant to test a pilot project in which the court administrators and clerks manually review all active court orders in which conflicting domestic violence protection provisions exist. The court calls the parties back to court, at which time the Unified Domestic Violence Order Judge, rather than rehearing the issues, resolves the conflicting provisions. The judge then incorporates the changes into all applicable orders, having authority to determine issues from every jurisdiction in the county. For more information on the Kitsap County Trial Court Project: A New Beginning: Protecting Victims by Preventing Conflicting Domestic Violence Orders manual, call (360) 337-4959.

- Ensure that the provisions within the protection order do not conflict with one another.
- Collaborate with other justice system participants to ensure a seamless process for issuing and enforcing protection orders, including military authorities and state, federal, and tribal prosecutors; defense attorneys; and law enforcement officers.²⁰
- Collaborate with victim advocates and attorneys to ensure that victims have effective assistance, including legal representation, in court.
- Refrain from finding a victim guilty of violating her own order of protection.²¹
- Accept faxes as certified copies. Follow up with a hard certified copy, with the fax number as proof of service if requested.
- Consider conducting regular compliance review hearings for the respondent only (victims should not be required to attend), consistent with state law, and schedule the hearings at the time of the issuance of the civil protection order. This ensures that enforcement is predictable and communicates the message that the court takes compliance seriously.²²

²⁰ See Emily J. Sack, Domestic Violence Across State Lines: The Full Faith and Credit Clause, Congressional Power, and Interstate Enforcement of Protection Orders, 98 NW. U. L. REV. 827 (2004); Full Faith and Credit: A Passport to Safety: A Judge's Bench Card (2003), available by calling the National Council of Juvenile & Family Court Judges, Family Violence Department at (800) 527-3223.

²¹ See State v. Lucas, 795 N.E.2d 642 (Ohio 2003) (holding that the victim is immune from prosecution for complicity in violating her own order and that protection orders address the behavior of the respondent and nothing else). See also, North Olmsted v. Bullington, 744 N.E.2d 1225 (Ohio App. 2000) (same); State v. Sisemore, 55 P.3d 1178 (Wa. App. 2002) (holding that the state is not required to show who initiated the contact in a violation of protection order prosecution; the defendant still acts knowingly if he maintains the contact that may have started accidentally); State v. Washington, 726 A.2d 326 (N.J. Super. 1998) (holding that reconciliation between the parties did not vitiate the order of protection so as to exonerate defendant of offense of violating order); People v. Gams, 60 Cal. Rptr. 2d 423, 426 (Cal. App. 1997) (holding that the terms of protection orders remain in effect despite the actions of the parties; "to hold otherwise would place compliance with lawful court orders in the hands of the very people who often need the most protection from their own impotency"). State statutes addressing these issues include: CAL. PENAL CODE § 13710 (the terms of a protection order remain in effect despite the actions of the parties involved); WASH. REV. CODE § 10.99.040 (requiring notice on protection order forms that a defendant violates a protection order even if the victim initiates the contact).

For compliance review hearings, courts could:

- Use judicial hearing officers and retired judges to conduct compliance review hearings if dockets are too large.
- Prepare a pre-set compliance review form, so that a judge may check off with a high degree of specificity and ease exactly what will be reviewed at the compliance hearing.
- ◆ Consider having "stages" of protection orders, and bring back the party or parties for review by, for example, setting a visitation order for six months and conducting the review after the six-month period has elapsed. This may offer an additional way to review compliance.
- ◆ Use a web-based program to assist in compliance information.
- ◆ Include in the compliance review order forms items that can be ascertained independently from the victim's input.
- Conduct compliance reviews 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 the protection order compliance only and not for the judge to entertain new allegations against the victim. This should be made clear when the hearing is conducted and at the time of its scheduling. Judges should include such a caveat in the order itself and may refer to the check-off review form.
- Use compliance reviews as another means of enforcing the respondent's surrender of firearms and check in with the respondent and require proof that the surrender had occurred.
- Use compliance reviews as a means of reviewing compliance with child support or other economic provisions ordered in a protection order, or as a condition of bail if there is a concurrent criminal case.
- Understand that a victim's safety risk is elevated at court hearings, including compliance review hearings, regardless of whether she is required to attend.
- Request and provide information from and to probation officers where appropriate.²³
- Initially presume the validity of orders of protection from other jurisdictions. Nonetheless, require the enforcing party to present relevant evidence to support the orders' validity. If there is ambiguity or reason to question validity, request that the enforcing party provide further information and, if necessary, contact the issuing court.
- Use email as a means of direct communication with other judges in cases involving inter-jurisdictional enforcement and the UCCJA/UCCJEA.

- Email a copy of your order to foreign jurisdictions in PDF format to prevent tampering with, editing, or modification of the order.
- Develop court watch or self-evaluation programs internally and externally in order to monitor court progress, identify problems, and provide feedback on problem areas.²⁴
- Participate in fatality review boards.



Fatality review boards are comprised generally of community members, including law enforcement officers, victim advocates, prosecutors, and court personnel. They examine recent domestic violence homicides in the community to determine whether criminal justice or community responses to such crimes could be improved to prevent such deaths in the future. In New Hampshire, for example, a statewide fatality review team consists of 30 persons from a range of disciplines including law enforcement officers, advocates, medical examiners, victim-witness advocates, court personnel, civil legal attorneys, prosecutors, defense attorneys, healthcare professionals, and representatives of faith-based programs. The team reviews all homicides and makes recommendations to reduce domestic violence-related homicides in the state, following up with an annual report and program of accountability.

Principle VI

Courts should develop, utilize, and mandate the use of uniform, statewide protection order forms.

Uniform protection order forms help facilitate the enforcement process by making protection orders more easily recognizable across jurisdictions and by prompting similar data elements. *Uniformity also has the added benefit of ensuring that respondents* throughout the state are provided the same notices and information on actions that will constitute a violation of the order.

Strategies

- Develop uniform statewide forms that include the following elements:²⁵
 - Language to the effect that any custody provision was issued in compliance with the federal Parental Kidnapping Prevention Act (PKPA) and the state Uniform Child Custody Jurisdiction Act (UCCJA) or Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA);
 - Reference to the federal full faith and credit mandate, providing notice to the parties that the protection order is enforceable nationwide;
 - Language stating that a violation of the protection order may subject the respondent to federal and state prosecution, under interstate crimes created by the VAWA and subsequent legislation;
 - Notice of the federal firearms prohibitions;
 - Contact information for the issuing court;
 - Reference to the federal law that conditions federal grant funding upon not charging a fee for the filing, service, or enforcement of protection orders (42 U.S.C. §§ 3796gg-5 and 3796hh).

Under Project Passport, Kentucky and seven nearby states developed similar first pages. For more information, see http://www.kdva.org/projectpassport.htm. Project Passport is being replicated throughout the country through a Southeast expansion led by the state of Alabama and nationally by the National Center for State Courts. For more information, see Extending Project Passport at http://www.ncsconline.org/D_Research/descriptions.html.

²⁵ For model protection order forms that include recommended notices to the respondent and findings necessary to trigger federal laws, contact the National Center on Full Faith and Credit, (800) 256-5883, ext. 2. Statutes in several states mandate the use of uniform or standardized protection order forms. See, e.g., CAL. FAM. CODE §§ 6221 and 6226 (requiring standardized order and application forms; however, failing to use said order forms, in and of itself, does not make the order unenforceable); KY. REV. STAT. § 403.737 (requiring standardized forms for all forms and orders entitled to full faith and credit and required to be entered in the statewide registry); LA. REV. STAT. § 46:2136.2 (requiring the use of a uniform form for the issuance of any protective or restraining order and titling it the Uniform Abuse Prevention Order); MO. STAT. ANN. § 455.073 (requiring the adoption of uniform petitions and order for protection forms and requiring that specific statements about violation of the order and

- Consider developing a uniform first page of the protection order to look similar to those of the surrounding states.²⁶
- Develop statewide, standardized forms for protection orders, civil compliance reviews, modification hearings, extensions, wage withholding orders, and show cause or contempt hearings.
- Consider using a database program that allows the court to issue computer-generated orders of protection.

The Center for Court Innovation in New York has developed a program that allows judges to issue computer-generated orders of protection from the bench and is available for adaptation to courts outside of New York. The program, called the Domestic Violence Court Application, contains built-in rules that must be fulfilled before the order can issue. For example, the order will not issue if a child's date of birth is not included, or if the order does not contain an expiration date, two requirements that must be met before an order can be entered into the statewide registry. The orders, once issued, are then automatically uploaded into the registry and subsequently into NCIC without the need for re-entry, thereby reducing human error. For more information on receiving this program for adaptation to your community, contact the Center's National Technical Assistance Department at (212) 373-1682.

entry into petitioner's residence appear on the order of protection); N.Y. FAM. CT. ACT § 814-a (requiring uniform temporary order of protection and order of protection forms that are compatible with the statewide computerized registry); TENN. CODE ANN. § 36-3-604 (requiring the development of petition, amended order, and *ex parte* forms that are uniform with those of surrounding states so that Tennessee forms will be more readily afforded full faith and credit, and providing that the petition is not limited to said forms); UTAH CODE ANN. § 30-6-4 (requiring the adoption of uniform petitions and order for protection forms that contain specific information including a statement advising whether a minor child is included in a protective order and a statement advising that a petitioner may seek a writ of assistance from the court if the respondent fails to return custody of a minor child as ordered).

Principle VII

Courts should have in place an information management system that promotes victim safety and offender accountability.

The enforceability of protection orders is compromised when professionals seeking to enforce an order do not have shared access to information. A free but controlled exchange of information among professionals involved in protection order cases will enhance enforceability, victim safety, and offender compliance.

Strategies

- Ensure the prompt entry of all protection orders into NCIC and/or the state database, either by entering the order directly or by faxing the order to the proper agency responsible for maintaining the database.²⁷
- Encourage your court system to use the NCIC database if you do not already participate; for more information, contact the NCIC at (304) 625-2000.
- Share needed information with other jurisdictions to facilitate the enforcement of protection orders regardless of where they are issued.
- Protect victim confidentiality when sharing information with other courts and avoid disclosing confidential information including, but not limited to, the current address of the victim or children.
- Make a notation on child support orders that domestic violence is present for cases involving issues of domestic violence. This ensures, for example, that the victim's address is not shared if the order is transferred to another jurisdiction for enforcement and that victims are afforded the same added security in a child support hearing as they would get in a domestic violence hearing.
- Keep victims apprised of defendants' criminal status in applicable cases by, for example, informing the victim of the defendant's bail status at a final protection order or child custody hearing, and when defendants are to be released from jail, and strive to make victims aware of other applicable hearings before they occur.²⁸

ment officers, and prosecutors, keep victims and witnesses advised as well.

The Domestic Violence Court Application program highlighted in the box on page 70 allows counselors, batterers' intervention providers, district attorneys, probation officers, victim-witness personnel, and advocates to enter pertinent information into the database, closing what may have been gaps in communication among the various providers and the court system. The database then allows criminal and civil court judges to review this information from the bench, giving them a clearer and more accurate picture of the case status, including offender program compliance or non-compliance, along with any information that the victim wants the court to know. For more information on receiving this program for adaptation to your community, contact the Center's National Technical Assistance Department at (212) 373-1682.

Principle VIII

To provide safety for victims, judges should ensure that firearms and ammunition are removed from respondents, consistent with state and federal law and as victim safety may require.²⁹

In order to fulfill their judicial responsibilities, judges must educate themselves on the state and federal firearms laws to enhance their decision-making capabilities. This area causes a great deal of controversy, as some judges have theoretical differences in opinion and approach to firearms seizure; but it also causes a great deal of confusion, as some judges believe that this is exclusively a federal issue. In fact, it can be both a federal and a state issue, 30 with no Supremacy Clause concerns. Sometimes it is mandatory that courts order the surrender of firearms. Other times it is discretionary, and even in those situations, it is vital that judges understand the philosophical underpinnings behind the laws in order to make the most safety-conscious decision from the bench. At least one study shows that if there is a gun in the home, and there is a history of domestic violence, a woman is 14.6 times more likely to become a victim of homicide.31

Strategies

- Ensure that protection order forms include state and federal firearms restrictions.
- Inquire as to the presence and location of all firearms, including those possessed by all family members and children who may give the respondent indirect access to weapons.

31 The Help Network Update 2003—Guns and Domestic Violence: A Deadly Combination. To order the report, contact the Help Network at (773) 880-8170.

²⁹ See generally, Darren Mitchell & Susan B. Carbon, *Firearms and Domestic Violence: A Primer for Judges*, CT. REV., J. AM. JUDGES ASS'N, Summer, 2002, *available online at* http://www.courts.state.ny.us/ea/XML/XML_Data/Reference_Materials/Firearms_and_Domestic_Violence.pdf. **30** For examples of state statutes that prohibit firearms possession by perpetrators against whom a protection order is issued, see CAL. CIV. PROC. CODE § 527.9 (a person subject to a temporary restraining order shall relinquish the firearm within 24 hours of the order); N.J. REV. STAT. § 2C:25-28 (emergency relief for victims of domestic violence may include forbidding the defendant from possessing any firearm or other weapon, and ordering the search for and seizure of any such weapon); WIS. STAT. § 813.12 (an injunction against domestic abuse shall require the respondent to surrender any firearms that he or she owns or has in their possession).

- Require respondents, where authorized by state law,³² to surrender their firearms and ammunition, being clear and precise as to when, where, and how. Also consider requiring the surrender of gun permits and licenses, especially if these allow for purchases without a background check.³³
- Recognize that the federal law, 18 U.S.C. § 922(g)(8), prohibits persons against whom qualifying protection orders have been issued from possessing firearms.³⁴
- Inform respondents, when applicable, that possession or attempted possession of a firearm or ammunition is a crime under federal law and also may be a crime under state law.
- Send letters, where appropriate, to respondent's family members informing them about their liability for third-party transfers of firearms.
- Consider faxing law enforcement on a daily basis a list of respondents against whom protection orders were issued and asking law enforcement to verify whether respondents relinquished their firearms. If respondents fail to surrender their firearms, consider issuing a bench warrant.
- Consider using a forfeiture form to be turned in by a law enforcement officer or licensed gun dealer within a specified time frame, confirming forfeiture, and then follow up with the respondent if that form is not received on time.
- Coordinate with law enforcement personnel to determine what agency should be the repository for firearms and ammunition surrendered by respondents of orders of protection. For example, MASS. GEN. LAWS ANN. ch. 140, § 129D specifies that seized firearms shall be stored with a proper licensing authority.
- Establish a mechanism for monitoring compliance with firearms relinquishment orders.



For example, in Indianapolis, the civil court issues a Supplementary Order Prohibiting Possession of Firearm/Requiring Surrender of Firearm, which orders the respondent to relinguish firearms at a specified date, time, and location. The criminal court similarly issues an Order Requiring Surrender of Firearm(s). Both orders provide detailed instructions on the proper process for relinquishing firearms.

34 See State v. Adams, 747 N.Y.S.2d 909 (2002) (upholding the prohibition of the respondent subject to a protection order, who was also convicted of criminal domestic violence, from possessing a firearm; the court reviewed 18 U.S.C. § 922(g)(8) and (g)(9) in general, and their applicability to the respondent/defendant in particular). See also, Conkle v. Wolfe, supra note 32.

³² See Benson v. Muscari, 769 A.2d 1291 (Vt. 2001) (holding that courts may include firearm prohibitions in protection orders pursuant to the "catch-all" provision of Vermont's protection order code). See also Conkle v. Wolfe, 722 N.E.2d 586, 592-94 (Ohio App. 1998) (holding that the court could prohibit the respondent's possession of firearms through the use of the "any other relief the court deems fair and equitable" provision of the state's protection order statute).

³³ Examples of state statutes explicitly requiring the surrender of gun permits and licenses include: 430 ILL. COMP. STAT. 65/8 (department of state may seize a firearm owner's identification card when the person is subject to an existing order of protection or has been convicted of domestic battery or a similar offense); KY. REV. STAT. § 237.110 (the holder of a license shall surrender the license to the court or officer serving the protection order when a domestic violence order or emergency protective order is issued); MASS. GEN. LAW. ANN. ch. 209A, § 3C (upon continuation or modification of an abuse prevention order, the court shall also order or continue to order the immediate suspension and surrender of a defendant's license to carry firearms and firearms identification card); NEV. REV. STAT. § 202.3657 (sheriff may revoke a permit if a sworn affidavit shows that a permittee has been convicted of a crime involving domestic violence or stalking, or is subject to a restraining order or other order for protection against domestic violence); N.Y. FAM. CT. ACT § 842-a (when a temporary order of protection is issued, the court shall suspend any existing license possessed by the respondent and order the respondent ineligible for such a license upon certain conditions being met); TEX. GOV'T CODE ANN. § 411.187 (a license may be suspended if the license holder commits an act of family violence and is the subject of an active protective order or is arrested for an offense involving family violence). See also, CONN. GEN. STAT. ANN. § 29-36f (Commissioner of Public Safety shall not issue an eligibility certificate to a person subject to a restraining or protective order).

- Send a letter to the petitioner before returning firearms and ask if there are any reasons why the firearms should not be returned; include a list of disqualifiers, as is the practice in Miami.
- Conduct a hearing to determine whether a respondent is disqualified from possessing firearms and ammunition under other state or federal law before authorizing the return of weapons.

A simple but comprehensive and effective procedure to prevent the return of firearms to disqualified persons has been implemented in New Hampshire. Before any firearms may be returned, the state statute on protection from abuse requires the court to conduct a hearing, with notice to the victim, the defendant, and the relevant law enforcement agency currently in possession of the defendant's firearms. The defendant is required to complete a Motion and Affidavit for Return of Firearms which tracks the information required for the Brady background check at the time of purchase. The state Department of Safety runs a records check (in-state and out-of-state criminal records, motor vehicle, and NCIC) 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 (such as a recent drug conviction). 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 a disqualifier has been identified, a court order is issued denying the requested return.

Principle IX

Courts should review their existing security procedures and implement increased security measures in domestic violence case courtrooms as may be needed.³⁵

The potential for violence in the courtroom is a reality in any case, but perhaps more so in the context of domestic violence. The risk factors are high for victims of domestic violence as they separate from their abusers, and the courtroom may be the only opportunity for contact between these two parties. This contact in the courtroom, therefore, may actually result in heightened risk for victims, despite being surrounded by court personnel, making this an especially vulnerable and dangerous time for victims. Increased security measures also assist in maintaining and enhancing the safety of court personnel working in the courtroom.³⁶

Strategies

- Install security cameras in the parking areas.
- Provide for escorts to the courtroom from the victim's car or other transportation and from the courtroom at the conclusion of the hearing when necessary.
- Create secured parking spaces for victims near the courthouse entrances.
- Confiscate weapons upon entrance into the courthouse, and conduct regular sweeps around the perimeter of the courthouse, looking for hidden weapons.
- Provide for secure stairwells.
- Provide for separate elevator banks, entrances, and exits for prisoners.
- Provide security personnel and panic buttons in domestic violence case courtrooms.
- Establish a personnel position in the courthouse to interview petitioners and obtain information that will effectuate prompt service of protection orders.
- Provide secure areas to fill out and file petitions for protection orders.
- Provide secure hallways by assigning law enforcement officers to monitor the hallways around the courtroom, looking for potential disturbances.
- Establish separate waiting areas for victims and defendants.
- Provide extra security during the hearing by assigning a court staff person to stand between the victim and the perpetrator in order to reduce intimidation especially if the victim is unrepresented and without an advocate.
- Permit victims to leave the courtroom first and require that the perpetrators remain in the courtroom for at least 15 minutes before being permitted to leave.

³⁶ This concern was dramatically illustrated on March 11, 2005, in Fulton County, Georgia, when defendant Brian Nichols allegedly overpowered a sheriff's deputy, stole her weapon, and shot dead Superior Court Judge Rowland W. Barnes, his court clerk, and another sheriff's deputy before escaping the courthouse.

Principle X

Judges and court personnel should become and remain fully informed about protection order issues, including full faith and credit, federal firearms laws, and cooperation with tribal nations and with the military to enforce orders.

Domestic violence and protection order laws undergo frequent revision, both at the state and the federal levels. Ideas regarding best practices for judges and court personnel in protection order cases are similarly evolving at a rapid pace. Therefore, it is incumbent upon judges and court personnel to stay abreast of the latest developments. Additionally, court personnel, and not just judges, should be well-versed in any changes in procedural laws or practices.

Strategies

- Attend training on domestic violence, protection orders, full faith and credit, and firearms law.
- Strive to remain aware of what information court clerks are giving victims on protection orders and assess its accuracy, especially information regarding the registration of orders.
- Encourage state judicial educators to offer specialized training on protection orders, full faith and credit, and firearms law, similar to programs offered by national organizations including the National Council of Juvenile and Family Court Judges and the Battered Women's Justice Project.
- Consider developing an information sheet for clerks on protection order issues.³⁷

Introduction to Law Enforcement

Law enforcement personnel are pivotal in protecting individual victims and their children and holding perpetrators accountable for their violence. As the first line of protection, they can address not only the immediate need to stop the violence and protect the safety of the victim, the children, and the responding officers, but also the need to facilitate the victim's access to other culturally relevant services designed to enhance safety. Their response also sends a profound message—often the first—to victims, children, and perpetrators about how the community and the legal system will respond to the violence. A lackluster response risks signaling to the victim and children that they are without resources and to the perpetrator that he has tacit permission to continue his abuse. How officers interact with victims will in large part determine their willingness to seek assistance in the future and to follow through with criminal prosecution. 1

The role of law enforcement officers is also vital to the effectiveness of the protection order system as a whole. By informing respondents about the protection order process, confiscating potentially deadly firearms and other weapons, and setting the tone for respondents to understand that they will be held accountable for their violence, including violating a protection order, officers increase the safety of the community and send the message that domestic violence will not be tolerated.

Law enforcement officers also have access to information that is critical to assessing the dangerousness of the situation. Officers rely on 911 operators to convey an accurate and objective description of the scene, whether there is a previous history of protection orders, and whether any children are present; to determine if a translator is needed; and to verify the existence of firearms while the officers are en route to the scene.

Because law enforcement officers respond to the immediate crisis, they have unique information to provide to other system professionals in their efforts to improve the issuance and enforcement of protection orders. For example, the line officer can indicate to court partners how protection order issuance impacts their ability to enforce an order.

The following principles and strategies give law enforcement officers the tools to treat the victim's and officer's safety as paramount and successful strategies for working within the system to improve enforcement of protection orders.

Law Enforcement

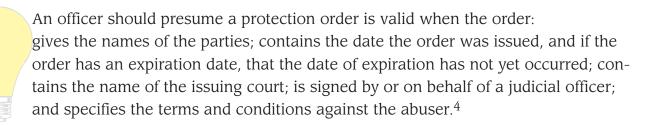
Principle I

Law enforcement officers should enforce protection orders that are valid on their face.²

It is not always practical or even possible for a law enforcement officer, at the critical juncture when a victim is seeking enforcement, to look behind the face of an order to determine whether it was issued in accordance with due process and other legal requirements. Nor should an officer charged with safeguarding the victim and her children be required to attempt such an analysis. Officers confronted with a protection order violation should give primacy to the safety concerns and err on the side of protection by enforcing the order if it is valid on its face. The defendant will have an opportunity to challenge the validity of the order in subsequent proceedings.

Strategies

• Enforce facially valid protection orders, including those containing remedies or protection for parties that would not have been issued in your home jurisdiction.³



² For information about how law enforcement officers should enforce protection orders, including those from other jurisdictions, see INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, PROTECTING VICTIMS OF DOMESTIC VIOLENCE: A LAW ENFORCE-MENT OFFICER'S GUIDE TO ENFORCING ORDERS OF PROTECTION NATIONWIDE, *available online at* http://www.theiacp.org/documents/pdfs/Publications/ACF3068.pdf.

³ In many states, statutes explicitly refer to facial validity for purposes of protection order enforcement: CONN. GEN. STAT. ANN. § 46b-15a (protection orders are presumed valid if such orders appear authentic on their face); IND. CODE § 34-26-5-17 (defines what constitutes "facially valid"). Other states with similar provisions include California, Florida, Hawaii, Idaho, Kentucky, Maryland, Mississippi, Montana, Nevada, New Hampshire, New York, Oklahoma, South Carolina, Texas, West Virginia, and Wyoming. See also Victoria L. Lutz & Cara M. Bonomolo, How New York Should Implement the Federal Full Faith and Credit Guarantee for Out-of-State Orders of Protection, 16 PACE L. REV. 9 (1995) (outlining sample protocols for law enforcement officers).

⁴ Note that personal service of an order may not be required for it to be enforceable; actual knowledge of the order may be sufficient. *See MacDonald v. State*, 997 P.2d 1187 (Alaska App. 2000) (actual knowledge sufficient for violation of protection order; no personal service was effected). Also note that registration or filing is not a prerequisite to enforcement of out-of-state or tribal protection orders. *See* 18 U.S.C. § 2265(d)(2) (orders satisfying federal requirements must be enforced "notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State or tribal jurisdiction"). Many states have incorporated this federal requirement into their statutes. *See*, e.g., FLA. STAT. ANN. § 741.315 (neither registration of foreign order, nor residence in the state is required for enforcement purposes) and WYO. STAT. § 35-21-111 (stating specifically that "filing and registration of the foreign order in the statewide protection order registry shall not be prerequisites for enforcement of the order in Wyoming").

- Refrain from enforcing mutual protection orders against the petitioner.⁵ Under the Violence Against Women Act (VAWA), such orders are enforceable in other jurisdictions against petitioners only when the respondent has filed a written pleading and the judge made a specific finding that both parties were entitled to protection order relief. For purposes of this *Guide*, a mutual protection order is a single order of protection that includes prohibitions against both the petitioner and the respondent.
- Refrain from charging victims with violating their own orders.

"Protection orders are about the behavior of the respondent and nothing else. How or why a respondent finds himself at the petitioner's doorstep is irrelevant. To find [the petitioner] guilty of complicity would be to criminalize irrelevancy." *State v. Lucas*, 795 N.E.2d 642 (Ohio 2003).

"It appears to us that the city showed a certain degree of impatience with the victim in this case, and the arresting officer attempted to make the victim responsible for the offender's behavior. ... [A]ny number of reasons may exist for a victim's being in the offender's presence. Many of these reasons may not be volitional, even though they may appear on the surface to be so." *North Olmsted v. Bullington*, 744 N.E.2d 1225 (Ohio App. 2002).⁶

• Arrest for protection order violations where permitted, including custody violations, even absent proof of service, unless state law requires verification.

Alabama addressed this issue when it enacted a statute that states that "Lack of knowledge by the defendant of the order which was violated shall be an affirmative defense to conviction for violating [the order of protection] at trial only, but *shall not affect the determination of the arresting officer in deciding to arrest."* ALA. CODE § 30-5A-5 (emphasis added).

⁵ Mutual protection orders present particular challenges to officers in the field because the information necessary to ascertain whether such an order is enforceable against the original petitioner likely is not present in the order itself nor immediately available to the officer. Officers should work with prosecutors to develop an approach to situations in which a mutual protection order is presented, and they should consult with prosecutors in individual cases before enforcing the order against the petitioner, unless the order makes it clear on its face that the requirements for enforceability against the petitioner have been satisfied. Officers should enforce all mutual orders against the respondent, however, provided the order satisfies the facial validity requirements discussed in the text box above.

⁶ See also CAL. PENAL CODE § 13710 (the terms of a protection order remain in effect despite the actions of the parties involved); WASH. REV. CODE § 10.99.040 (requiring notice on protection order forms that a defendant violates a protection order even if the victim initiates the contact).

- Enforce custody provisions in out-of-state or tribal orders even if your state statutes do not provide for awards of temporary child custody within protection orders.
 - Follow your state law and practice.⁷ For example, you may need to seek an order from the court or may be able to contact the on-call judge.
 - ◆ Give child support orders full faith and credit under the Full Faith and Credit for Child Support Orders Act (28 U.S.C. § 1738B) if they meet the standards in the federal law.
 - Give the victim referrals to appropriate agencies such as advocacy groups or legal aid in cases where your state law does not allow you to arrest the perpetrator, 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 perpetrator for parental kidnapping or interference with custody, if applicable, as an additional or alternate way to proceed. Note that child custody decrees may be entitled to full faith and credit under the Parental Kidnapping Prevention Act (PKPA).
 - Work directly with other applicable jurisdictions when enforcing custody provisions in protection orders.
 - ◆ Work directly with the Federal Bureau of Investigation (FBI) to obtain an Unlawful Flight to Avoid Prosecution (UFAP) warrant when a parent has taken a child across jurisdictional lines in violation of a protection order. The UFAP warrant allows the FBI agents to get involved where they otherwise would not have jurisdiction, while the underlying charge would remain as a state violation.⁸
- Assist the victim in seeking help with non-arrestable offenses; do not simply leave the scene. For example, refer the victim to people who can assist with civil and/or criminal contempt proceedings arising out of offenses that do not qualify as a criminal violation of a protection order.
- Remind the courts of what provisions are not arrestable and ask courts to inform victims specifically on how to utilize other enforcement procedures for non-arrestable offenses.

⁷ *See, e.g.,* ORE. REV. STAT. § 107.732 (authorizes law enforcement to assist in the recovery of children pursuant to a custody provision in protection order).

⁸ See 18 U.S.C. § 1073 (creating an offense for flight across state lines to avoid prosecution or giving testimony and authorizing federal officers to search for state felons, which can be helpful when abusers violate state parental kidnapping laws by abducting their children across state lines). See also United States Attorneys' Office Criminal Resource Manual, § 1780, available online at http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm01780.htm (stating that the primary purpose of the Fugitive Felon Act is to permit the Federal government to assist in the location and apprehension of fugitives from state justice). When Congress enacted the Parental Kidnapping Prevention Act (PKPA), it stated that the federal UFAP provision applied to cases involving parental kidnapping and interstate or international flight to avoid prosecution. Pub. L. No. 96-611, § 10(a). "The PKPA also provides access to authorized persons, including law enforcement officers, to the Federal Parent Locator Service. This service, which searches such Federal agency databases as Social Security Administration, Internal Revenue Service, and State Employment Agencies can help find abducting parents. The PKPA authorizes the Federal Bureau of Investigation to investigate parental kidnapping cases when an unlawful flight to avoid prosecution (UFAP) warrant has been issued. FBI investigation of parental abduction cases that cross state boundaries can be crucial to the resolution of these crimes." Ronald Laney, Parental Kidnapping, Fact Sheet No. 34 (November 1995), available online at http://www.ncjrs.org/txtfiles/fs-9534.txt.

- 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 case when appropriate.
- Advise victims where they can go for legal assistance.
- Use translators, including those for the hearing impaired, when interviewing victims or giving them information on how to obtain additional assistance.

Principle II

If necessary, law enforcement officers should use all available means to verify the existence and contents of an order. When there is lack of enforcement of an order of protection there is reinforcement to the abuser that the order does not matter. There may be times when an officer is confronted with an order that is questionable. Officers should take the extra step to verify an order if necessary.

Strategies

- Consult various sources to verify the existence of a protection order including, but not limited to, the National Crime Information Center (NCIC), local or state registries/databases, issuing courts, and the involved parties.⁹
- Investigate the feasibility of participating in NCIC and seek the resources necessary to do so.
- Develop a system to allow law enforcement officers to verify protection orders 24 hours a day, seven days a week. Be aware that verification is necessary only under limited circumstances, such as when no paper copy of the order is presented, if the copy presented does not appear to be facially valid, or if there is a question about its expiration.
- Adopt policies that require the immediate entry of orders, including emergency protection orders and consent orders, into databases/registries.
- Develop protocols for the immediate entry of these orders into protection order databases/registries in jurisdictions that issue protection orders when courts are closed.
- Ensure police access to databases/registries so that officers may obtain the full text of protection orders and the status of service 24 hours a day.



Principle III

In addition to arresting offenders for protection order violations, law enforcement officers should arrest for other applicable criminal offenses.

Violations of orders of protection do not take place in a vacuum. Officers should interview victims and seek the context of the violation, which may give the officer an opportunity to prevent future violence by holding the offender accountable for his behavior. Officers can and should facilitate protection order enforcement and actively look for intervention opportunities.

Strategies

- Identify other arrestable offenses, including those related to custody and stalking, and arrest the offender if probable cause exists and the officer has arrest authority, regardless of whether an order is found to exist.¹⁰
- Thoroughly investigate domestic violence allegations, which may lead to arrestable offenses other than a protection order violation.
- Document any of the respondent's admissions regarding lack of compliance with non-arrestable offenses in the incident report. Provide the victim with access to and copies of the incident reports if possible.
- Consult all available sources such as NCIC and other wants and warrants databases to determine the existence of outstanding warrants.

Principle IV

Law enforcement agencies must ensure prompt and effective service and enforcement of local protection orders, as well as those from other jurisdictions, including tribal protection orders.

Some orders are not effective until they are properly served, leaving victims of domestic violence vulnerable during a critical period. For example, an ex parte order generally does not take full effect until served; therefore, the sooner the service, the sooner a victim may rely on the protection order provisions being enforced. Because of the danger involved to both the victim and the officer serving the order, careful planning is required. Service also gives the officer the opportunity to explain to the respondent the seriousness of the situation.

Strategies

- Prioritize and streamline service of process and enforcement mechanisms.
 - Put in place a protocol for service of protection orders.
 - Make service of protection orders a priority for law enforcement agencies.
 - Even where there is a specialized domestic violence unit, all officers should serve orders as soon as possible.

In Las Vegas, when an officer stops a person against whom the Nevada Criminal Justice Information System notes that a protection order has been issued, the officer is required to notify and serve the person by:

- obtaining the terms and conditions of the order and writing them on the form provided by the department;
- giving the completed form to the person or orally advising him of the terms and conditions of the order;
- providing the person with the appropriate notices;
- ◆ having the person sign the form, if practicable, and noting on the form if the person refuses; and
- informing the person of the name, location, and hours of operation of the issuing court to obtain a copy of the order.
- Promptly report to the petitioner that service was completed upon successful service of the order of protection.

• Notify the victim within 15 minutes of serving or arresting the respondent and inform her of the respondent's reaction to service so she may address any new safety issues; any member of the law enforcement agency may contact the victim, not just the serving officer.

If the respondent is particularly agitated or violent during service, or exhibits other behavior that alarms the law enforcement officer, victims should be notified that their safety may now be compromised. If the respondent makes threats to the law enforcement officer, makes threats regarding the victim, or otherwise lashes out, the victim should be notified so that she may take additional steps to be safe following service. Law enforcement should not assume the victim is safe after the respondent has been served.

- Use correctional officers for service of incarcerated respondents, and probation officers for service of respondents who are on probation.¹¹
- Deputize for service U.S. Marshals, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) officers, and probation officers.
- Enlist the help of private process servers who may serve orders on a *pro bono* basis, if permitted under state law.
- Serve faxed or electronic copies of protection orders, including those from other jurisdictions if permitted to do so under state law.¹²
- Use copies of protection order forms to assist in serving respondents and to document when service is completed. Consider making the abusers responsible for obtaining copies of served orders. See the box on Las Vegas (page 84) for more information.
- Seize any weapons in respondents' possession when serving protection orders, if permitted to do so under state law, and notify them that all other weapons should be relinquished.¹³
- Coordinate with the Attorney General's office as well as the law enforcement agency for service of out-of-state orders.
- Create a dedicated process system for out-of-state orders with a specialized office in each state to assist with service, fees, and firearms issues.
- Utilize NCIC to determine whom to call to find out if service is accomplished out of state or to be notified by teletype that service is complete.

¹¹ For information on probation officers' response to and involvement in domestic violence cases, see the American Probation and Parole Association's Domestic Violence Project at http://www.appa-net.org/Domestic_Violence/index.htm.

¹² See CONN. GEN. STAT. ANN. § 46b-15 (permitting faxed copies of *ex parte* orders to be served upon respondents who do not live in the same town as the petitioner); OKLA. STAT. ANN. tit. 22, § 60.4 (permitting service by fax if service is to be in another county); and W. VA. TRIAL CT. RULE 12.05 (permitting any temporary or final protective order to be faxed to serving law enforcement).

¹³ See N.C. GEN. STAT. ANN. § 50B-3.1 (upon service of a protection order, the respondent shall immediately surrender all firearms and permits to the sheriff) and HAW. REV. STAT. § 134-7 (at the time of service of the protection order, the police officer may take custody of all firearms or weapons in plain sight, found through consensual search, and those surrendered by the respondent).

■ Conduct comprehensive information gathering to facilitate service of process.

- Check the respondent's criminal history for warrants, convictions, and firearms prior to serving a protection order to ensure the safety of both the victim and the officers.
- Seek information from the victim about where to find the respondent, such as regular meeting places and work address.

If the respondent is incarcerated, obtain information for service, such as prisoner location, address and phone number, using state resources such as the database run by the state of Maryland, which makes inmates' housing information publicly available and searchable. For more information, visit the Maryland Department of Corrections Inmate Locator website at http://www.dpscs.state.md.us/inmate/.

- Work with advocacy agencies to devise a form to help facilitate service.
- Determine what agency serves intrastate and interstate protection orders and work with agency personnel to eliminate any fees.

VAWA 2000 requires grantees under the STOP Violence Against Women Formula Grant Program and the Grants to Encourage Arrest and Enforcement of Protection Orders program to certify that their laws, practices, and policies do not require victims to pay filing or service costs related to criminal domestic violence cases or protection orders.¹⁴

• Ask the respondent when serving a protection order for as many numerical identifiers as possible, such as social security number; date of birth; vehicle identification numbers; 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.

Currently, the fields prompted by the NCIC protection order file are: sex (SEX); protected person name (PPN); protected person sex (PSX); protected person date of birth (PPB); race (RAC); protected person race (PPR); place of birth (POB); place of crime (PLC); date of birth (DOB); height (HGT); weight (WGT); eye color (EYE); hair color (HAI); FBI number (FBI); skin tone (SKN); scars, marks, tattoos, and other characteristics (SMT); fingerprint classification (FPC); miscellaneous identifying number (MNU); social security number (SOC); operator's license number (OLN); operator's license state of issue (OLS); operator's license year of expiration (OLY); protection order number (PNO); protection order condition (PCO); Brady indicator (BRD); date of expiration (EXP); date of issue (ISD); court originating agency identifier (CTI); originating agency case number (OCA); miscellaneous information (MIS); license plate number (LIC); license plate state of issue (LIS); license plate year of expiration (LIY); license plate type (LIT); vehicle identification number (VIN); vehicle year (VYY); vehicle make (VMA); vehicle model (VMO); vehicle style (VST); and vehicle color (VCO). Refer to the Data Section for more information.

- Include a written request from the court that the respondent bring to court proof of income, bank statements, pay stubs, or tax returns when serving a protection order.
- Include a letter from the court when serving a protection order detailing the consequences of violating the order.
- Check routinely contacts with members of the public for outstanding protection orders and serve orders that have not yet been served.
- Document all service attempts and results, including dates and times.
- Enter information about the service into local or state registries/databases via computer, telephone, or fax immediately upon completion of service attempts or service of process. When possible, law enforcement officers should be given equipment to update status information from their vehicles.
- Verify service if state law requires verification:
 - ◆ Upon verifying the existence of a protection order, regardless of the issuing jurisdiction, use all available means to determine whether the protection order has been served on the respondent, including asking the respondent if he has been served with or knows of the protection order.
 - ◆ If a determination is made that the order was previously served, arrest for violations of the order, including custody violations, in accordance with the laws, policies, and procedures of the jurisdiction where the violation occurred.

◆ If the order has not been served, make all attempts to serve the respondent and notify the appropriate agency and the victim that service was completed. If the respondent does not leave after service has taken place, the officer should arrest the offender based on the offense of a violation of a served protection order.

■ Prioritize the safety of victims, children, and officers.

- Conduct a dangerousness assessment with the petitioner in preparation for service and inquire about the respondent's habits, regular meeting places, and numerical identifiers.
- Place personnel in the courthouse to interview petitioners and obtain information that will effectuate prompt service of process. Provide training to the interviewers, who may be volunteers or staff members.

For example, the Montgomery County, Maryland Sheriff's Department domestic violence unit includes both deputies and lay people who are responsible for assisting in serving protection orders. The petitioner delivers a copy of the protection order to the department, at which time she meets with a member of the unit. Employees ask a series of questions, including, but not limited to, places the respondent may be found during a regular 24-hour period, personal identifiers such as tattoos, birthmarks, and scars, all phone numbers, the car and its identifiers, family member names and addresses, and other pertinent information. The department staff also questions the petitioners about the presence of firearms, animals in the home, drug and alcohol use, and additional information needed to enhance the safety of the victim and the deputies. The department will also conduct safety planning with every victim and will notify the victim immediately upon service of the protection order, as well as all attempts made for service, and will run a firearms and criminal background check on all respondents.

- Establish a procedure for conducting follow-up calls to the petitioner when initial attempts to serve the protection order have been unsuccessful.
- Document respondent's behavior, statements, nonverbal signals, etc. that may indicate a potential elevated threat to the victim. Inform the appropriate people of the potential threat, such as the victim, an advocate, and the prosecutor.
- Conduct routine welfare checks, if permitted by the victim, by stopping by unannounced at the victim's home, especially if the respondent has been late returning children.

Principle V

Law enforcement officers should use all available means to seize firearms from offenders. 15

The link between the presence of, or access to, firearms and domestic violence homicide is well established. In addition to federal legislation that prohibits the possession of firearms when the respondent is subject to a qualifying protection order or was convicted of a qualifying misdemeanor or felony, some state laws authorize or require that officers seize weapons. Law enforcement officers are in the best position to take guns immediately as incident to an arrest, through plain view, or if the weapon is evidence, for example. They are also in the best position to seize weapons in a safe manner, as they are trained to do so.

Strategies

- Attempt to verify the existence of firearms through dispatch and mobile data terminals while en route to the scene.
- Make inquiries of the parties involved as to the presence and location of firearms as soon as it safe and possible to do so.
- Seize and secure all weapons and ammunition in plain sight at the scene.
- Use all state law authority to seize firearms and ammunition.

15 See generally, Darren Mitchell & Susan B. Carbon, Firearms and Domestic Violence: A Primer for Judges, CT. REV., J. AM. JUDGES ASS'N, Summer, 2002, available online at

http://www.courts.state.ny.us/ea/XML/XML_Data/Reference_Materials/Firearms_and_Domestic_Violence.pdf. For examples of law enforcement protocols addressing firearms seizure, see MARYLAND POLICE AND CORRECTIONAL TRAINING COMMISSIONS, MODEL DOMESTIC VIOLENCE POLICY FOR THE MARYLAND LAW ENFORCEMENT COMMUNITY (2004), available online at www.mdle.net/dvpolicy04.pdf; SAN DIEGO DOMESTIC VIOLENCE COUNCIL, DOMESTIC VIOLENCE LAW ENFORCEMENT PROTOCOL, available online at http://www.sandiegodvcouncil.org/sddvc.html; POLICE CHIEF'S ASSOCIATION OF SANTA CLARA COUNTY, DOMESTIC VIOLENCE PROTOCOL FOR LAW ENFORCEMENT (2002), available online at http://www.growing.com/nonviolent/.

16 See Massee v. Thompson, 90 P.3d 394 (Mt. 2004) (finding that the failure of law enforcement officers to seize weapons pursuant to state statute, among other things, was sufficient to support a jury verdict in wrongful death action against law enforcement agency). See also the following statutes, which authorize law enforcement officers to seize firearms at the scene of a domestic violence incident: ALASKA STAT. § 18.65.515 (plain view); ARIZ. REV. STAT. § 13-3601 (plain view and from consensual search); CAL. PENAL CODE § 12028.5 (plain view or from consensual search); CONN. GEN. STAT. ANN. § 46b-38b (plain view); MD. CODE ANN., FAM. LAWS § 4-511 (plain view); MONT. CODE ANN. § 46-6-603 (all weapons used or threatened to be used during domestic violence incident); N.H. REV. STAT. §§ 173-B:9 and B:10 (all weapons used or threatened to be used during domestic violence incident); N.J. STAT. ANN. § 2C:25-26 (search for and seize all firearms); OHIO REV. CODE § 2935.03 (all firearms used or threatened to be used during domestic violence incident); TENN. CODE ANN. § 36-3-620 (all firearms used or threatened to be used during domestic violence incident; may seize all firearms in plain view and from a consensual search).

New Jersey's Criminal Code § 2C:25-26 provides that, when a defendant charged with a crime or offense involving domestic violence is released from custody before trial on bail or personal recognizance, the court may enter an order prohibiting the defendant from possessing any firearm or other weapon and may order the search for and seizure of any such weapon at any location where the judge has reasonable cause to believe the weapon is located. Alaska's Criminal Code § 18.65.515 provides that an officer investigating a crime of domestic violence may seize all deadly weapons in plain view; if a deadly weapon was actually used or possessed during the alleged incident, the officer may seize all deadly weapons owned, used, possessed, or within the control of the alleged perpetrator.

- Ask victims about their property rights in firearms. If the firearms are mutual property, victims can take them and voluntarily surrender them to police for safekeeping or sell them. Note that important safety considerations must be addressed in such situations, and victims should be referred to advocates for safety planning.
- Prohibit the third-party transfer of firearms at the scene. If firearms have been transferred to a third party before an officer's arrival, inform the third party that transferring the firearms back to the offender may be illegal. (See 18 U.S.C. §§ 922 (d)(8) and (d)(9)).
- Seek cross-deputization of local law enforcement as U.S. Marshals/federal agents. They then have the ability to seize firearms according to federal law.
- Refer cases to federal agencies, thereby making additional use of federal as well as state authority to seize firearms.¹⁷
- Evaluate the efficacy of asking probation officers to check probationers' homes for firearms. Probation officers can check 24 hours a day and do not need a warrant to search and seize.
- Ask probation officers to cooperate in scheduling a meeting with the respondent outside of the home. This could leave the victim home alone, at which time police officers can search for and seize weapons.
- Make arrangements to store the seized weapons, either at the law enforcement agency or with an off-site licensed storage facility. If permitted by state law, the respondent may be assessed all fees for storage.¹⁸

¹⁷ In addition, in some jurisdictions, case law establishes that state officers may make arrests and seize firearms pursuant to violations of *federal* law. *See United States v. Haskin*, 228 F.3d 151 (2d Cir. 2000) (state law enforcement officers authorized to arrest for violations of federal firearms laws and to seize weapons pursuant to such arrest).

¹⁸ See CAL. FAM. CODE § 6389 (local law enforcement agency may charge the respondent a fee for the storage of any firearm); MASS. GEN. LAWS ch. 140, § 129D (the owner of firearms shall be liable to a dealer who takes possession of the weapons for reasonable storage costs); N.H. REV. STAT. § 173-B:5 (law enforcement agency may charge the defendant a reasonable fee for storage of firearms, ammunition, and specified deadly weapons taken pursuant to a protection order); N.C. GEN. STAT. ANN. § 50B-3.1 (the sheriff may charge a reasonable fee for storage of firearms, which must be paid in full before the authorized return of firearms or ammunition).

- Destroy seized firearms if permitted by law.
- Develop an informational form providing notice to the respondent and any third party requesting the respondent's firearms that while the third party may be eligible to receive the firearms, it is illegal to transfer them back to the respondent or allow him access to the weapon or ammunition.

For example, the Alexandria Police Department in Virginia has developed a Firearm Return Form that states in part: "The purpose of this letter is to advise you of several federal and state laws that could affect you as you take possession of the firearms described in the 'Firearms Description' below. The Alexandria Police Department wants you to make an informed decision as you take possession of, and become the legally responsible party for these firearm(s). There are several laws that regulate the transfer of firearms. In order for the Police Department to comply with federal and state laws, we require a full criminal history check of each person who wishes to obtain possession of a firearm in our custody. This includes a person picking up his or her own firearm, a person picking up a firearm for the purpose of delivering the weapon to the owner and any person taking possession and ownership, at the request of the legal owner of a firearm that is temporarily being held by the Police Department (called a third-party transfer)." See also 18 U.S.C. § 922 (d)(9).

- Develop a form for notifying the petitioner when the respondent requests the return of firearms and notify the petitioner before returning firearms or other weapons to the respondent.
- Require the offender to obtain a court order authorizing the return of any such firearms.

Principle VI

Law enforcement management should demonstrate leadership on protection order enforcement issues.¹⁹

Management is in a position to signal to line officers and the public that protection order enforcement is important to public safety and should be treated as a priority. If line officers get conflicting messages from management, enforcement will not be uniform, seriously jeopardizing the victims the protection order system is designed to protect. Enforcement of protection orders can be a volatile situation for police officers as well, and management should ensure officers receive the training and guidance they need to handle these situations.

Strategies

- Establish routine cross-facilitated multi-disclipinary training and information sharing for community stakeholders on protection order issues.
 - Establish mandatory, on-going domestic violence training for law enforcement agency personnel, contractors, and volunteers to take place at least annually.
 - Participate in training opportunities on cultural competency.
 - Coordinate joint training with local law enforcement, including campus, tribal, and railroad departments; federal law enforcement; U.S. Attorneys offices; and State Attorneys General offices on laws and issues related to firearms and domestic violence.
 - Coordinate joint training with immigration attorneys on laws and other issues on immigration as they relate to victims of domestic violence.
 - Update agency personnel, contractors, and volunteers on changes to laws, policies, procedures, and "best practices," through, for example, training bulletins, in-service training, and roll call, which allows for immediate updates to changes in policy, practice, and law.
 - Supply appropriate personnel with up-to-date investigative tools such as video and voice recording equipment and digital cameras, and train officers on the proper use of equipment in crime scene and victim injury documentation,

19 Numerous judicial decisions establish that law enforcement agencies face potential liability for failure to protect domestic violence victims, including those with protection orders. *See, e.g., Mastroianni v. County of Suffolk,* 705 N.Y.S.2d 504 (N.Y. 2000) (allegations supported claim that police officers violated non-delegable duty, acted in reckless disregard of decedent's safety, and intentionally and willfully failed to arrest husband; special relationship between police and victim was found to exist based upon prior knowledge and separate and verifiable knowledge from prior incidents of domestic violence); *Matthews v. Pickett County,* 996 S.W.2d 162 (Tenn. 1999) (victim can sue negligent officers for damage caused by failure to arrest, even if it was "just" property damage when the defendant burned down victim's house; officers did not have immunity from suit because of special duty doctrine because court held that the order of protection is not issued for the public's protection in general); *Sneed v. Howell,* 716 N.E.2d 336 (Ill. App. 1999) (Illinois domestic violence act permits plaintiffs to sue for willful and wanton conduct on the part of the city's police department). *But see Town of Castle Rock v. Gonzales,* No. 04-278, 2005 WL 1499788 (U.S. June 27, 2005) (holding that, while enforcement of a protection order does not, for the purposes of the Due Process Clause of the Fourteenth Amendment, create a property interest, "it does not mean States are powerless to provide victims with personally enforceable remedies. Although the framers of the Fourteenth Amendment ... did not create a system by which police departments are generally held financially accountable for crimes that better policing might have prevented," states are free to craft such a system under state law").

- interviews in protection order violation cases, and evidence-based investigation.
- Work with courts and prosecutors to define for courts the specificity needed in protection orders to enhance enforceability.

■ Develop internal policies that facilitate effective enforcement of protection orders.²⁰

- Collaborate with community stakeholders in developing and regularly updating police forms, policies, and protocols to reflect changes in the law and "best practices."
- Develop methods for securing voluntary relinquishment of firearms and seizing firearms in accordance with state laws in consultation with local prosecutors.
- Develop policies that require compliance with and support for federal firearm provisions and refer appropriate cases to federal agencies.
- Explore alternative staffing ideas for the more timely service of protection orders. For example:
 - ◆ Allow regular road service deputies to modify their schedules in order to serve during off hours;
 - Form a specialized unit with paid overtime opportunities; and
 - Hire and train retired officers to serve protection orders part-time.

■ Develop protocols governing how officers respond to protection order violations and related issues.²¹

- Design protocols to require that officers document their efforts to secure service and enforce orders of protection in order to maximize department resources and officer efficiency.
- Design protocols to support the presence of victim advocates at the scene or notify advocates about domestic violence incidents so they may contact victims.
- Design protocols that require officers to make attempts to locate and arrest the offender for a protection order violation when the offender has fled the

²⁰ For more information on how law enforcement management can promote effective response to domestic violence, consult the International Association of Chiefs of Police's National Law Enforcement Leadership Initiative, *available online at* http://www.theiacp.org/research/VAWLawEnforceInit.html.

²¹ For examples of law enforcement protocols addressing the response to protection order violations, see KENTUCKY GOVERNOR'S OFFICE OF CHILD ABUSE AND DOMESTIC VIOLENCE SERVICES, MODEL DOMESTIC VIOLENCE LAW ENFORCEMENT POLICY, available online at http://chfs.ky.gov/NR/rdonlyres/54B7AF71-5428-4EC6-AE69-

¹⁵⁸BBFBF8031/0/ModelDomesticViolenceLawEnforcementPolicy.htm; NEW HAMPSHIRE GOVERNOR'S COMMISSION ON DOMESTIC VIOLENCE, LAW ENFORCEMENT: A MODEL FOR POLICE RESPONSE TO DOMESTIC VIOLENCE CASES, available online at http://www.doj.nh.gov/victim/pdf/dvlaw.pdf; PENNSYLVANIA ATTORNEY GENERAL'S DOMESTIC VIOLENCE TASK FORCE, MODEL PROTOCOL FOR POLICE RESPONSE TO DOMESTIC VIOLENCE, available online at http://www.wjin.net/Pubs/2998.pdf; SAN DIEGO DOMESTIC VIOLENCE COUNCIL, DOMESTIC VIOLENCE LAW ENFORCEMENT PROTOCOL, available online at http://www.sandiegodvcouncil.org/sddvc.html.

- scene, and to obtain a warrant for arrest if the offender is not found. The protocol should also require follow up to serve the warrant.
- Design protocols to include directions for officers assisting victims with protection orders from other jurisdictions, including options regarding registration of orders if desired by the victims.
- Mandate through protocols the arrest of domestic violence offenders for probable cause violations of protection orders when required or permitted under state law.
- Adopt policies and protocols requiring enforcement of foreign or tribal protection orders.
- 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 include 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.²²

- Adopt the International Association of Chiefs of Police (IACP) model policies on police officer-involved domestic violence cases and protection order issues.
- Adopt a policy of zero-tolerance for police officer domestic violence.
- Adopt formal policies regarding police officer domestic violence,²³ which should become a core component of the training curriculum at the academy, incorporated by Field Training Officers, and incorporated into the training curriculum during roll call.
- Stay informed on whether any officers are subject to protection orders.
- Ensure that officers subject to protection orders do not use department resources, such as access to registries, to harass or intimidate the victim by limiting their access to those resources.
- Adopt policies that remove duty weapons from officers who are subject to protection orders (*see* 18 U.S.C. § 922 (g)(8)) or who have been convicted of a qualifying misdemeanor crime of domestic violence (*see* 18 U.S.C. § 922 (g)(9)).²⁴

²² For a complete discussion, see International Association of Chiefs of Police, *Discussion Paper on IACP's Policy on Domestic Violence by Police Officers,* (July 2003), *available online at* http://www.theiacp.org. *See also* WASH. REV. CODE. § 10.99.090 (requiring law enforcement agencies to work in partnership with community-based domestic violence victim advocates to develop officer-involved domestic violence policies by June 2005).

²³ For an example of a model policy, see INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, DOMESTIC VIOLENCE BY POLICE OFFICERS: A POLICY OF THE IACP POLICE RESPONSE TO VIOLENCE AGAINST WOMEN PROJECT, *available online at* http://www.theiacp.org/documents/pdfs/Publications/domviolmodelpolicy%2Epdf.

²⁴ Pursuant to 18 U.S.C. § 922 (g)(8), a qualifying protection order is one that meets the following conditions: the protected party is a spouse, former spouse, present or former cohabitant with the respondent, parent of common child, or a child of the respondent or of the protected party; the order was entered after a hearing of which the respondent had notice and an opportunity to appear; and the order included a finding that the respondent represents a credible threat to the protected party or includes an express prohibition against harassment, stalking, or the use of force that would reasonably be expected to cause injury. This section is subject to an "official use" exemption for law enforcement officers and other government employees (see 18 U.S.C.

- ◆ The on-scene supervisor should suggest that the accused officer relinquish all firearms voluntarily.
- ◆ If an arrest is made, the on-scene supervisor should consider removing the accused officer's firearms as a safety consideration and to reduce department liability.
- ◆ Departments should conduct regular periodic checks of protective order databases for names of officers.
- Departments should also consider the use of administrative orders of protection.

"An administrative order of protection is a directive from a supervisor ordering an officer to refrain from particular conduct toward a particular person as a condition of continued employment. The use of administrative orders of protection is helpful in that they may enhance victim safety; and punishment for violations of an order can proceed quickly, reducing department liability and eliminating the time a department may need to continue to pay an officer on administrative leave or suspension for the duration of a lengthy criminal case." IACP, Discussion Paper on IACP's Policy on Domestic Violence by Police Officers.

Principle VII

Law enforcement agencies should collaborate and coordinate with other community stakeholders involved in responding to and preventing domestic violence.²⁵

Law enforcement officers are a critical component of the public response to domestic violence; but they, like every other discipline, cannot accomplish these goals alone. Officers respond to immediate domestic violence crises and, therefore, have a vital point of view to share with other disciplines, while taking the time and care to learn from others as well.

Strategies

- Design protocols to support the presence of community victim advocates at the scene of alleged domestic violence incidents or to contact advocates and advise them of the incidents.
- Defer to client confidentiality and do not stand within viewing or hearing distance when an advocate interviews a victim at the scene of an alleged domestic violence incident.
- Collaborate with community stakeholders to create a card, in languages represented in the community, that contains resource information for distribution to victims at the scene of an alleged domestic violence crime. This practice may be mandated by state law or local policy.
- Meet with courts to inform judges of protection order language that would be the most enforceable.
- Be available at bail hearings to recommend conditions of bail for a protection order violation.
- Seek opportunities to consult with prosecutors during domestic violence case preparation, including protection order violations and stalking cases.
- Participate with other stakeholders in the development and modification of protection order-related jurisdictional forms such as those for proof of service.
- Collaborate with community stakeholders in designing a strategy for follow-up with victims and train those charged to do follow-up, taking into consideration the needs of underserved populations and prioritizing victim safety.



Grant courts access to the National Law Enforcement Telecommunication System (NLETS). Although this would require a policy change at NLETS, it would eliminate the court's need to go through a law enforcement department to access previous protection order case dispositions and other cases from outside jurisdictions and would allow the courts to have direct access to the information, making the process for the courts significantly easier.

"The National Law Enforcement Telecommunication System (NLETS) was created by the principal law enforcement agencies of the states nearly 35 vears ago. Since its founding, NLETS role has evolved from being primarily an interstate telecommunications service for law enforcement to a more broad-based network servicing the justice community at the local, state, and federal levels. It is now the pre-eminent interstate law enforcement network in the nation for the exchange of law enforcement and related justice information." Information cited from http://www.nlets.org.

- Have law enforcement officers represent the department on local domestic violence taskforces, and ensure that they have access to and support from those with decision-making authority. ²⁶
- Develop working relationships with the regional offices of the ATF and the U.S. Attorneys' offices prior to any particular incident. This should include knowing the identity of your local Assistant U.S. Attorney (AUSA) who handles domestic violence-related cases; asking for advice from the AUSA on procedures and guidelines for meeting the required elements of the federal crimes; meeting the ATF and FBI agents with whom the AUSA regularly works; and using the AUSA, ATF, and FBI agents in ongoing training, roll calls, and academy trainings.
- Develop a relationship with state VAWA administrators in your state and in other states to assist you when there are problems. These administrators distribute and monitor grants under the STOP (Services, Training, Officers, Prosecutors) grant formula, which provides funding for, among other things, training and special units for law enforcement officers. To find out who your state VAWA administrator is, call the Office on Violence Against Women at (202) 307-6026.

Introduction to Prosecutors

Prosecutors play a central role in making sure the protection order system works. As the legal representative of the state, the prosecutor can and should work with each of the other parts of the system to safeguard victims and see that perpetrators are held accountable. Prosecutors should assist law enforcement to establish uniform policies and procedures on the response to protection order violations and should train law enforcement personnel on those policies and procedures. They should assist in making sure victim-witness specialists are well trained on domestic violence and assigned to guide and support victims. Prosecutors should encourage victims to engage with community-based advocates, and call on these advocates as resources when appropriate. They should educate the courts about effective protection order issuance and enforcement, and coordinate with relevant systems players to increase the accuracy and timeliness of information entered into protection order registries.

The prosecutor's role in each individual case is no less crucial. It is the prosecutor who can make sure individual victims feel heard, respected, and welcomed to participate in seeking the protections they and their children need and in holding perpetrators accountable for complying with the terms of protection orders. It is the prosecutor who, at each stage of prosecution, can make creative use of special prosecutorial tools to enhance victim safety and perpetrator accountability.

Prosecutors have the ability to request conditions on bail and conduct background checks at bail hearings. They can seek to revoke probation and request regular compliance reviews. By working with the federal prosecutors in their jurisdictions to develop a protocol for referring appropriate violations of the federal firearms laws, they can reduce firearm availability to violators and increase the safety of domestic violence victims and their children.

In acknowledgement of the prosecutorial obligation to balance the state's interests against those of the victim, this *Guide* includes techniques to assist in that process.¹ The following principles and strategies offer prosecutors practical guidelines for various stages of a domestic violence criminal prosecution, including the entry of no-contact orders and protection order violations.

Prosecutors

Principle I

Throughout the criminal justice process, prosecutors should enhance the safety of victims and hold offenders accountable for violations of local protection orders as well as those issued in other jurisdictions, including tribal lands.

Prosecutors have the dual role and responsibility of being sensitive and concerned with both victim safety and the attainment of justice.² This role and responsibility should include carefully assessing each case and using their discretion, a key tool given to prosecutors, not to prosecute the true victim of domestic violence. This role should also include taking opportunities throughout the process to promote the safety and autonomy of victims and recognizing that their safety is compromised throughout various stages, not just at or during a trial.

Strategies

- Help craft enforceable orders of protection and facilitate protection for victims in jurisdictions where it is the role of the prosecutor's office to do so.³
- Enforce protection orders from other jurisdictions, including tribal lands.⁴
- Communicate with other state and federal partners to decide who is in the best position to take the case. For further discussion, see Principle IV.
- Enforce *ex parte* and final protection orders that comply with federal full faith and credit requirements, whether issued by consent, by default hearing, or after trial, consistent with the requirement of the federal full faith and credit provision.⁵
- Enforce orders from other jurisdictions and tribal protection orders regardless of whether victims registered or filed the orders with law enforcement or the courts.⁶

² See Erin L. Han, Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases, 23 B.C. THIRD WORLD L.J. 159 (2003); Cheryl Hanna, No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions, 109 HARV. L. REV. 1849 (1996).

³ See also the Civil Attorney and Advocate Sections for more information.

⁴ See PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE & NATIONAL COLLEGE OF DISTRICT ATTORNEYS, A PROSECUTOR'S GUIDE TO FULL FAITH AND CREDIT FOR PROTECTION ORDERS: PROTECTING VICTIMS OF DOMESTIC VIOLENCE (2004) (available from the National Center on Full Faith and Credit, (800) 256-5883, ext. 2).

⁵ See State v. Bellows, 596 N.W.2d 509 (Ia. 1999) (the state's failure to file a copy of an Illinois protection order in Iowa did not bar prosecution for violating the Illinois order in Iowa; the court specifically rejected the defense's argument that the Illinois order had no legal effect in Iowa); People v. Hadley, 658 N.Y.S.2d 814 (N.Y. City Crim. Ct. 1997) (finding that New York courts could enforce New Jersey protection order under New York and federal law). The federal full faith and credit provisions may be found at 18 U.S.C. §§ 2265 & 2266.

• Ensure that victims are not required to pay fees to enforce, serve, file, or register out-of-state or tribal protection orders.⁷

■ In making charging decisions, regard as paramount victim safety and offender accountability.8

- Use interpreters, including those for the hearing impaired, during interviews with victims and witnesses when necessary.
- Grant immunity, or offer deferred adjudication, to the victim when the respondent is threatening to expose her for a petty crime in retaliation for requesting a protection order.
- Refrain from filing charges for minor crimes that will subject immigrant victims to criminal prosecutions.
- Charge defendants who violate protection orders with the underlying crimes that gave rise to the protection order, including stalking, when possible and if the statute of limitations has not run.
- Charge violators of out-of-state and tribal protection orders with the same criminal offenses that apply to violations of orders issued within your jurisdiction.
- 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 (NCIC) Protection Order File, or by contacting law enforcement or the court in the issuing jurisdiction. Note that many valid orders are not entered into the NCIC.
- Charge defendants with any other applicable crimes, including stalking.⁹
- Prosecute for substantive state law violations in addition to any protection order violation, being sure to avoid double jeopardy problems.¹⁰

7 Under the federal Violence Against Women Act (VAWA 2000 amendments), to be eligible for funds under the STOP Violence Against Women Formula Grant Program and the Grants to Encourage Arrest and Enforcement of Protection Orders program, applicants must "certif[y] that [their] laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filling, issuance, registration, or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, stalking, or sexual assault, that the victim bear the costs associated with the filling of criminal charges against the offender, or the costs associated with the filling, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction." 42 U.S.C. §§ 3796gg-5 and 3796hh. Many states have passed laws prohibiting fees in protection order cases. Examples include: ARIZ. REV. STAT. § 13-3602 (the court may not assess a fee for filling a petition or for service of process); COLO. REV. STAT. ANN. § 13-14-102 (the court may not assess a filling fee, fee for service of process, or for certified copies of protection orders for the petitioner; the court may assess these costs to the defendant); N.H. REV. STAT. § 173-B:13 (no fee for optional filling of out-of-state protection orders); N.C. GEN. STAT. ANN. § 50B-2 (no court cost shall be assessed for filling, issuing, registering or serving a protective order, petition, or witness subpoena); OKLA. STAT. ANN. tit. 22, § 60.2 (the court may not assess a filling fee, service of process fee, attorney fees, or any other fee or costs, whether a protective order is granted or not granted).

8 For examples of statutes requiring or favoring prosecution of offenders, see FLA. STAT. ANN. § 741.2901 (criminal prosecution shall be the favored method of enforcing compliance with inj

written policies encouraging the prosecution of domestic abuse offenses).

9 See Commonwealth v. Majeed, 694 A.2d 336 (Pa. 1997) (a violation of a protection order can form the basis of a criminal charge, i.e. the burglary of a home the defendant owned, where he had consented to a protection from abuse order requiring him to stay away). See also IND. CODE § 35-45-10-5 (enhanced penalty for stalking when a protection order is in effect).

10 See United States v. Dixon, 509 U.S. 688 (1993) (contempt conviction for violation of a protection order does not bar subsequent prosecution for assault with intent to kill and threats to injure or kidnap; however, it does bar prosecution for assault, where the defendant violated the protection order by assaulting his wife).



- Charge for state firearms offenses where applicable.
- Treat violations of custody provisions within protection orders as a crime, in accordance with state law.
- Refer appropriate cases to federal prosecutors where federal domestic violence, stalking, or firearms offenses have been perpetrated.
- Seek to revoke a defendant's probation for violation of protection order provisions related to safety.

■ Be proactive regarding victim safety and offender accountability during the bail hearing.

- Check for warrants, arrests, charges, and convictions in the issuing and enforcing jurisdictions and elsewhere.
- Consult with available registries, including state, tribal, and NCIC, to determine whether protection orders have been issued.
- Contact jurisdictions where the defendant has lived to check criminal history databases there.
- Ask the victim about the perpetrator's access to firearms and other safety risks.
- Request a continuance of bail proceedings until the defendant's criminal and protection order history can be located if necessary.
- Provide the judge with the risk factors from your or the advocate's lethality assessment that support the need for high bail or no bail, where permitted under state law.
- Argue that defendants pose an increased flight risk because of their willingness to violate the issuing court's protection order, especially if the violation extended across jurisdictional lines.
- Convey to the court the victim's wishes as well as the prosecutor's recommendation.
- Determine whether specific prohibitions in bail or conditions of release should be sought, such as no contact with the victim, no leaving the jurisdiction, no possession of firearms, and compliance with child support.¹¹
- Establish a mechanism to notify victims of defendants' release after a bail hearing. This may be mandated by state law.

Victim Information and Notification Everyday (VINE) allows crime victims to obtain timely information about criminal cases and the custody status of offenders 24 hours a day via telephone, the web, or email. VINE is available in 36 states. Seventeen states have implemented statewide programs that make the VINE service available in every county in the state. VINE customers use a secure web site to register victims, obtain usage and other status reports, and print notification letters locally that are then mailed to the victim. For more information, contact Appriss at (866) 277-7477 or online at http://www.appriss.com.

■ Include the necessary background on, and status of, the protection order in pre-trial preparation and during the trial itself.

- Find out the basis for issuing the order in the original jurisdiction.
- Obtain the necessary records from the issuing court, including affidavits of service and transcripts of the protection order proceeding.
- Obtain evidence that the protection order is valid and enforceable by contacting the issuing state or tribal jurisdiction or researching available databases.
- Present a *prima facie* case of the order's enforceability before offering proof of the violation.
- Call witnesses to testify that the defendant knew about the order and its provisions if notice is contested.¹²

■ Use the process of sentencing and the defendant's sentence itself as an opportunity to enhance victim safety.

- Inform courts of defendants' prior crimes and protection order history.
- Permit victims to make an impact statement and to request specific protection and compensation. State law may mandate this practice.
- Ensure that defendants are informed of state and federal firearms prohibitions at sentencing.
- Provide information to courts about the specific risks defendants pose and the kinds of safeguards that are necessary.

12 See Commonwealth v. Mendonca, 740 N.E.2d 1034 (Mass. App. 2001) (the actual knowledge of an order is sufficient to support a violation of such order); MacDonald v. State, 997 P.2d 1187 (Alaska App. 2000) (actual knowledge is sufficient for violation of a protection order; no personal service was effected); People v. Ramos, 735 N.E.2d 1094 (Ill. App. 2000) (the state is required to prove only actual knowledge of the order to show the violation of a protection order; this includes the actual knowledge only of the specific terms which he is charged with violating, not the entire order). See also, 720 ILL. COMP. STAT. ANN. 5/12-30 (the state is required to show only actual knowledge of an order of protection in order to prosecute for violation of that order).

13 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 the National Center for Victims of Crime's report at http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32515; see also, KY. REV. STAT. § 421.520 (the victim has the right to submit a written victim impact statement to the probation officer responsible for preparing the pre-sentence investigation report); MICH. COMP. LAWS § 780.765 (the victim has the right to appear at the defendant's sentencing and make an oral impact statement); VA. CODE ANN. § 19.2-295.3 (the victim is entitled to testify in the presence of the accused, upon a finding that the defendant is guilty of a felony limited to specific factors set forth by statute).

- Expose the danger of permitting home detention with electronic monitoring for offenders who violate protection orders.
- Remand for revocation of bail on the underlying case where possible.
- Establish a mechanism to notify victims of perpetrators' release after sentencing or incarceration. State law may mandate this practice.
- Avoid deferred adjudication, ¹⁴ which may result in certain firearms prohibitions not being triggered.

■ Follow up on a violation case after conviction and sentencing.

- Request compliance review hearings where possible.
- Notify the court that issued the protection order of the outcome of a criminal case.
- Provide victims with copies of orders containing sentencing and probation conditions.
- Consult with probation to ensure that you will be notified immediately if defendants violate orders of protection.¹⁵
- Include as terms and conditions of probation that the probationer attend batterers intervention programs, pay child support, and not possess firearms, as appropriate.
- Notify victims prior to offenders' release and completion of sentence.
- Notify victims when criminal protection orders expire and of any effect on offenders' ability to possess firearms.

■ Practice evidence-based prosecution where appropriate.

• Assess whether evidence-based prosecution is appropriate where the victim cannot or will not assist in the prosecution.¹⁶

Prosecutors should educate themselves on evidence-based prosecution and learn the practical tools such as: how to gain admissibility for and effectively use 911 tapes, photographs, and other documents; how to gather and handle evidence in cases where there is no victim assistance; how to use effectively other witnesses to the protection order violation (co-workers, neighbors, children); how to use the relevant hearsay rule exceptions to introduce victim statements; 17 how to use perpetrator admissions effectively; and how to gain admissibility for and effectively use evidence of prior acts.

¹⁷ See Tom Lininger, Prosecuting Batterers After Crawford, 91 VA. L. REV. 747 (2005); Allie Phillips, Weathering the Storm after Craw-



¹⁴ Generally, a deferred adjudication is not considered a conviction under state law. As a result, a deferred adjudication generally will not trigger federal firearm laws, unless the conditions imposed include a prohibition on firearm possession.

¹⁵ For information on probation officers' response to and involvement in domestic violence cases, see the American Probation and Parole Association's Domestic Violence program at http://www.appa-net.org/Domestic_Violence/index.htm.

¹⁶ See Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004).

- Recognize that victims may be unable or unwilling to assist in the prosecution
 of protection order violations for myriad reasons, including fear of retaliation,
 economic dependence, or concern about the effect of a conviction on the
 perpetrator.
- Train law enforcement officers on why evidence-based prosecution is used and how they can facilitate it through effective investigation and evidence-gathering.
- Consider using *voir dire* to prepare the jury pool for the possibility that the victim will not testify during the trial (or that she may testify for the defense). *See* http://www.ndaaapri.org/apri/programs/vawa/voir_dire_questions.htm for sample *voir dire* questions relating to evidence-based prosecution.

Principle II

Prosecutors should use state, federal, and tribal firearms laws as important tools in holding offenders accountable and enhancing the safety of victims, children, and communities.¹⁸

Firearms and domestic violence are a lethal combination. Because laws addressing firearms and domestic violence have been enacted at both the federal and state/tribal level, prosecutors at both levels can work collaboratively to promote victim safety by making strategic use of the two systems. Prosecutors can also encourage law enforcement officers to seize weapons, which may lead directly to either federal or state convictions.

Strategies

- Act as a resource to criminal and civil justice personnel regarding firearms laws, and ensure that protection orders are consistent with firearms statutes.
 - Educate local law enforcement officers, court personnel, advocates, and family law attorneys about the elements of state, federal, and tribal firearms laws.

ford v. Washington (2004), Part I, available online at http://www.ndaa-apri.org/publications/newsletters/update_volume_17_num-ber_5_2004.html, and Part II, available online at http://www.ndaaapri.org/publications/newsletters/update_volume_17_num-ber_6_2004.html; Amy Karan & David M. Gerstein, Domestic Violence Hearsay Exceptions: In the Wake of Crawford v. Washington, TODAY MAGAZINE, Summer 2004; Brooks Holland, Using Excited Utterances to Prosecute Domestic Violence in New York: The Door Opens Wide, or Just a Crack?, 8 CARDOZO WOMEN'S L.J. 171 (2002); Neal A. Hudders, The Problem of Using Hearsay in Domestic Violence Cases: Is a New Exception the Answer?, 49 DUKE L.J. 1041 (2000).

18 For more information regarding the state and federal laws addressing firearms and domestic violence, see Darren Mitchell & Susan B. Carbon, *Firearms and Domestic Violence: A Primer for Judges*, CT. REV., J. AM. JUDGES ASS'N, Summer, 2002, *available online at* http://www.courts.state.ny.us/ea/XML/XML_Data/Reference_Materials/Firearms_and_Domestic_Violence.pdf.



- Determine whether your state authorizes law enforcement officers to arrest offenders and seize firearms pursuant to federal firearms violations, and disseminate this information to officers and others.
- Assist court personnel to revise protection order forms to include the elements necessary to make the federal firearms laws applicable.
- Work with court personnel to include warnings on protection order forms that federal law, and state law where appropriate, prohibits the possession of firearms by persons against whom a valid protection order is issued.
- Include provisions that require respondents to relinquish firearms to law enforcement in jurisdictions where prosecutors are involved in drafting protection orders and where appropriate under state law.

■ Investigate whether the perpetrator has access to firearms.

- Encourage law enforcement officers to make inquiries of a variety of witnesses regarding firearms at the scene of an alleged domestic violence offense.
- Ensure that advocates in the prosecutor's victim-witness office discuss with victims whether firearms are present and pose a threat.
- Ask questions when interviewing victims about whether firearms are present in the home, including those owned or possessed by other family members.
- Search law enforcement databases to determine whether defendants have a criminal history that results in a prohibition against possessing firearms.
- Inquire as to whether defendants have firearms, where bail review statutes cover safety risks.¹⁹
- Work directly with probation officers, if the respondent is on probation, to search for and seize firearms. Probation officers can search 24 hours a day and do not need a warrant to search and seize.
- Include a search warrant request for any weapons with a motion to revoke probation based on information that the defendant has acquired a new weapon.

19 Note that some state statutes impose a mandatory firearm prohibition on all defendants charged with domestic violence crimes; see, for example, CAL. PENAL CODE § 646.93 (unless good cause is shown, the judge shall impose as a condition of release on bail that the defendant not possess any firearms or other deadly or dangerous weapons); HAW. REV. STAT. § 806-11 (arraigning courts must order a defendant who is under indictment for any crime of violence to dispose of all firearms and ammunition in the defendant's possession within 48 hours; court also must immediately notify law enforcement of the order; law enforcement may seize all firearms and ammunition if the defendant does not comply within 48 hours); 725 ILL. COMP. STAT. 5/110-10 (conditions of the bail bond shall include that defendant will "at a time and place designated by the court, surrender all firearms in his or her possession to a law enforcement officer" for custody and impounding). In other states, firearm prohibitions are discretionary; see, for example, ME. REV. STAT. ANN. tit. 15, § 1026 (as a standard for release for a crime bailable as a right of preconviction, a judge may require that the defendant refrain from possessing a firearm or dangerous weapon); N.J. REV. STAT. § 2C:25-26 (when a defendant charged with a crime or offense involving domestic violence is released from custody before trial on bail or personal recognizance, the court may issue an order prohibiting the defendant from possessing any firearm or other weapon and ordering the search for and seizure of any such weapon at any location where the judge has reasonable cause to believe the weapon is located); TENN. CODE ANN. § 40-11-150 (prior to releasing a person charged with domestic violence or violation of an order of protection, the magistrate may enter an order prohibiting the defendant from using or possessing a firearm or other weapon specified by the magistrate).

■ Enforce firearms laws.

- Contact law enforcement to determine whether respondents have complied with protection order provisions requiring them to relinquish firearms.
- Prosecute respondents for violation of court orders when they fail to comply with protection order provisions regarding firearms.
- Work with courts to develop a mechanism to track compliance with relinquishment orders and to punish noncompliance.
- Obtain a search warrant for weapons when booking for a bench warrant for failure to appear on a compliance hearing.
- Collaborate with local prosecutors who prosecute gun violations and request that they cross-check gun violator indictments against the protection order registry.
- Facilitate enforcement of the federal law prohibiting firearm possession by persons convicted of misdemeanor crimes of domestic violence by ensuring that written plea agreements in such cases indicate the specific elements of the offense to which defendants plead guilty (the federal law requires that the offense "has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon." 18 U.S.C. § 921(a)(33)).
- Collaborate with federal counterparts and local law enforcement to develop a system for triage and referral for federal prosecution where appropriate.

For more information on working with federal prosecutors, order *Cross-Designation & Federal Firearms Laws: What Local Prosecutors Need to Know* by calling the American Prosecutors Research Institute at (703) 549-4953, or visit their website at http://www.dnaa-apri.org. The guide offers local prosecutors answers to frequently asked questions regarding federal gun laws, as well as presents an overview of Project Safe Neighborhoods, a project built on the collaborative work between federal and state prosecutors to reduce gun violence.

Principle III

Prosecutors should prevent perpetrators from misusing the protection order process and the criminal justice system to harm victims. Because prosecutors have discretion regarding whether to prosecute in some situations, they are in an ideal position to prevent the misuse or abuse of the criminal justice system. Abusers will continue to control and abuse their partners, and the criminal justice system may provide them with such an opportunity. If prosecutors allow victims to be unjustly prosecuted, the entire system is undermined, and actually reinforces the belief that domestic violence is a mutual problem rather than promoting victim safety and offender accountability.

Strategies

- Consider the context when one parent files parental kidnapping charges against the other.²⁰
 - Prioritize victim safety in charging decisions.
 - Ensure that assessment of the predominant aggressor takes place.
 - Determine whether protection orders have been issued in the past and against whom.
 - Investigate whether past police reports for domestic violence exist and against whom.
 - Bring the case to a grand jury and permit the victim to explain, via telephone if possible, the context of the flight across state lines with the children if the victim of domestic violence is charged with kidnapping.
 - Evaluate the impact on children and make decisions that will protect them, for example, by permitting children to remain in a refuge state with the victimized parent.
 - Defer parental kidnapping charges, or decline to file charges, against domestic violence victims in such cases.²¹

20 See Deborah Goelman, Lisa Laura, & Sue Osthoff, *Parental Kidnapping and Domestic Violence, in* ABA COMMISSION ON DOMESTIC VIOLENCE, THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK, (2nd ed. 2004). **21** Some state parental kidnapping/custodial interference statutes explicitly include exemptions or defenses in domestic violence situations. For an example of an exemption, see CAL. PENAL CODE ANN. §§ 278.5, 278.7 (parental kidnapping does not apply to a person with a right to custody of a child who has been a victim of domestic violence provided certain requirements are satisfied, including making a report to the prosecutor in the original jurisdiction and initiating a civil custody action within a reasonable amount of time). For examples of affirmative defenses, see MO. REV. STAT. § 565.160 (it is an absolute defense to the crimes of parental kidnapping and child abduction that the person was fleeing an incident or pattern of domestic violence); R.I. GEN. LAWS § 11-26-1.1 (it shall be an affirmative defense that the person was fleeing an incidence or pattern of domestic violence). For information about the various states' parental kidnapping laws (current through June 2003), see http://www.missingkids.com/en_US/documents/CrimCustodInterfStatutes.pdf.

■ Determine whether a "mutual" protection order from another jurisdiction is enforceable against both parties.²²

- Determine whether the respondent filed a written pleading and whether the issuing court made a finding that both parties were entitled to the protection order. Under 18 U.S.C. § 2265(c), mutual orders are enforceable across state lines against petitioners *only* if both requirements are met.
- Participate in training law enforcement officers on conditions in which mutual orders are enforceable and on how to respond to situations in which there is a mutual order, so as to avoid dual arrests.

Principle IV

Prosecutors should use state, federal, and tribal laws to protect victims and children from respondents who violate custody and visitation provisions within protection orders.

Batterers use custody and visitation to control and maintain access to victims. It is an avenue that often provides batterers with an opportunity to misuse the system. When a respondent violates an order of protection, including custody violations, the risk to the victim increases, as the abuser is willing to subject his children to his efforts to maintain or regain power and control.

Strategies

- Determine whether state laws regarding custodial interference may be used to protect children from abusers who violate protection order provisions or seek to abduct children across state lines.
- Charge respondents with parental kidnapping or custodial interference if they violate custody provisions within protection orders.
- Charge respondents for violation of protection orders where the separate offense of "violation of a protection order" exists.
- Work with victims and law enforcement officers to build a cumulative record regarding custody violations.
- Collaborate with parental kidnapping units within law enforcement departments to help retrieve abducted children.



- Work with law enforcement officers to contact national registries or Interpol when perpetrators abduct children across state or international lines.
- Consider the efficacy of charging the respondent for seemingly *de minimis* violations of custody provisions within protection orders, such as repeatedly returning children late after visitation, to deter escalating behavior.
- Advise victims that they may directly inform prosecutors of violations of protection order provisions.
- Advise victims that they may directly report protection order violations to police and may obtain offense report numbers.
- Discuss with victims the efficacy of documenting violations of custody or visitation provisions within protection orders.

Principle V

State, federal, and tribal prosecutors should strive to be the catalyst for coordination among law enforcement officers, advocates, and others in the community.²³

Prosecutors, like every other professional working in the field of domestic violence, cannot do the work alone. Prosecutors are instrumental in holding offenders accountable. They have a unique perspective in seeing justice done that should be shared with others, but they also rely on the previous work of others to be successful. Domestic violence is a community problem, and prosecutors hold a major key to the community solution.

Strategies

- Coordinate with other prosecutors and law enforcement personnel to promote accountability for respondents who violate protection orders.
 - Refer appropriate cases to federal prosecutors, and meet regularly with them to encourage federal prosecutions.
 - Seek cross-deputization of local prosecutors as Special Assistant U.S. Attorneys (SAUSA), who can then prosecute for federal crimes and send perpetrators to federal prison. The authority for a local prosecutor to be sworn in as a SAUSA, also known as cross-designation, is derived from 28 U.S.C. § 543.

The process for becoming a SAUSA is as follows: "First the local chief prosecutor must agree to the cross-designation. Second, the United States Attorney must approve the appointment. Next, a security background check is performed. (This can take several months). Finally, the SAUSA is sworn in before the United States Attorney or the Administrative Officer of the United States Attorneys' Office. The SAUSA must be admitted to the appropriate federal district court." From *Cross-Designation & Federal Firearms Laws: What Local Prosecutors Need to Know, available online at* http://www.ndaa-apri.org. Funding may be available under the Project Safe Neighborhoods program. *See* http://www.psn.gov for funding opportunities.

- Request that U.S. Attorneys train local prosecutors and state court judges on federal firearms prohibitions and the ways the systems can work together.
- Coordinate with tribal prosecutors to ensure that respondents who violate state court protection orders on tribal lands, or tribal protection orders outside of tribal lands, are held accountable.
- Ask prosecutors in jurisdictions where victims or perpetrators formerly resided for assistance with collecting evidence, including police reports, telephone records, medical reports, proof of protection order issuance and service, family court or civil records, and proof of perpetrators' prior bad acts.
- Refer appropriate cases to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and request that the agents seize weapons for federal firearms violations.
- Coordinate with military staff to ensure prosecution of protection order violations on military installations. *See* the Armed Forces Domestic Security Act, 10 U.S.C. § 1561a, which states that a civilian order of protection has the same force and effect on a military installation as such order would have within the jurisdiction of the civilian court that issued the order.
- Assist law enforcement personnel to establish uniform protocols for responding to violations of protection orders.
- Ensure that all prosecutors share with police officers what they need in terms of evidence collection that will help build an effective case for prosecution, even without victims' testimony.
- Train Domestic Abuse Response Teams (DART) to document protection order violations.

Domestic Abuse Response Teams generally pair a law enforcement officer with a highly trained advocate who provides crisis intervention to victims and their children at the scene of an emergency response. Supporting the Response Team is a coordinated, multi-disciplinary, multi-advocacy network made up of law enforcement, domestic violence service providers, child protective services, adult protective services, public health nurses, hospitals, animal control/humane society, and victim assistance programs, among others. The whole team then represents a support system for the victim and her children.

■ Together with victim-witness specialists, provide support and guidance to victims throughout the criminal justice process.

- Assist victims with safety planning.
- Explain the criminal legal process and court procedures to victims. Provide a written brochure or document in languages represented in your community.
- Inform victims that protection orders, including custody provisions, are entitled to enforcement nationwide.
- Ensure that there is a reliable means of notifying victims in advance about firearms seizure and return.
- Provide resources for information on enforcement procedures in the various jurisdictions where victims plan to be.
- Assist victims who choose to register their orders outside of your issuing jurisdiction in obtaining certified copies of protection orders from your jurisdiction.
- Obtain victim input for release or sentencing conditions.
- Facilitate restitution and victim compensation.
- Provide referrals to community-based advocacy and legal services.

■ Work with clerks of court, law enforcement, and others to improve the effectiveness of protection order registries.

- Ensure the timely entry of protection orders into state or tribal protection order registries and the NCIC Protection Order File.
- Create quality-control procedures to check for missing data prior to the protection order's entry into the registries.
- Develop response mechanisms to reply promptly to verification requests from other jurisdictions.
- Enter protection orders from other jurisdictions into registries, including the relief that is not available in the entering jurisdiction.

- Communicate with law enforcement officers and the courts to strategize across disciplines on effective issuance of protection orders.
- Refer to the Technology Section for greater detail if needed.
- Collaborate with diverse members of the community to promote education about, and enforcement of, protection orders.

Prosecutors should provide information about the criminal justice system in languages representative of the community when they educate community members about the relevant laws and resources available. Prosecutors should also consider partnering with community members in enforcing protection orders, and consider working with members of religious communities to promote education. Through Project Eden, in New York, for example, prosecutors work with the Board of Rabbis and mikveh women (who preside over a ritual bath) to provide information to abused Orthodox Jewish women.

- Create partnerships with community members in enforcing protection orders.
- Work with members of religious communities to promote education.
- Advise community members to document violations of protection orders.
 For example, when respondents come to victims' workplaces, employers can document that violation.
- Avoid issuing subpoenas, if possible, to obtain information from community-based domestic violence programs.
- Work with healthcare professionals, union members, pharmacists, employers, beauty parlor owners, immigrants' rights workers, Department of Homeland Security staff, hotel security staff, bar association members, law school professors and students, law firm attorneys, junior league members, school teachers, and daycare providers to raise awareness of protection order relief.

Introduction to Data Systems/State Registries

The prompt and accurate entry of protection orders into the state and/or federal database, most notably the National Crime Information Center (NCIC), ¹ greatly facilitates enforcement. ² Effective registries provide quick, accurate, and complete information, upon which law enforcement personnel rely daily. With a few keystrokes, registries can provide officers such critical information as who the petitioner and respondent are; where and how the respondent can be found; what the protection order prohibits; whether other protection orders have been entered against a perpetrator; whether any such orders have been violated; and whether any such orders are active or have expired. Law enforcement personnel who have immediate access to such information are far better equipped to afford protection to domestic violence victims and their children and to arrest perpetrators who violate protection orders.

Data systems and state registries impact the ability of other professionals to do their jobs effectively and efficiently as well. The more information professionals have regarding the parties concerned, the better the job they can do. In addition to the protection order data already mentioned, data systems and registries can provide up-to-date information on such crucial matters as domestic violence criminal case dispositions; can track firearms seizures and returns; and can reveal respondents' attempts to purchase firearms from dealers.³ An accurate data system is necessary to the functioning of the National Instant Background Check System (NICS)

Because NCIC operates nationally, the data system allows for information-sharing by all of the states and provides any state seeking enforcement of a protection order immediate access to information about it. Thus, data systems are potent tools to facilitate full faith and credit across the country.

The following principles and strategies provide guidelines for system administrators and policymakers on how to establish a registry; who should have access; what information the registry should contain; and how it should function in order to provide the most comprehensive information in the quickest and safest possible manner.

¹ To contact the NCIC, call (304) 625-2000.

² See Office of Justice Programs, Enforcement of Protective Orders, Legal Series Bulletin #4 (Feb. 20, 2002), available online at http://www.ojp.usdoj.gov/ovc/publications/bulletins/legalseries/bulletin4/welcome.html (discussing importance of developing and utilizing data entry systems).

³ See, e.g., N.J. STAT. ANN. § 2C:25-34, which states that all records in the domestic violence restraining order central registry shall be released to police or other law enforcement agency conducting a background investigation involving a person's application for a firearm permit.

Data Systems/State Registries⁴

Principle I

All states should participate in the National Crime Information Center (NCIC) Protection Order File (POF) database.⁵

The POF database provides vital information to law enforcement officers on the scene of domestic violence offenses and is one of the few that has the potential for stopping illegal gun purchases. Despite the essential role that participation in the NCIC can play, not all states participate; and of those states that do, not all participate fully. This situation can jeopardize the safety of victims seeking enforcement.⁶

Strategies

- Provide for immediate entry of information into the database.
- Monitor the status of orders of protection being entered into the NCIC POF database and, when necessary, determine why orders are not being entered promptly into the federal database.
- Use the miscellaneous field in the NCIC system to indicate the status of service of process.
- Develop a process for routinely auditing the protection orders entered into the NCIC and take corrective action as may be needed.

⁴ A database is generally maintained by the courts or domestic violence agencies; a registry is usually maintained by a law enforcement agency. Databases feed information into a registry, which in turn feeds into NCIC, which is accessible to law enforcement personnel from all over the country to permit order verification. Registries or databases have been created by state statute in these states: ALASKA STAT. §§ 18.65.540, 18.66.110; ARIZ. REV. STAT. § 12-1809; ARK. CODE ANN. § 12-12-215; CAL. FAM. CODE §§ 6380, 6382, 6383, 6385; COLO. REV. STAT. ANN. § 18-6-803.7; CONN. GEN. STAT. ANN. § 51-5c; D.C. CODE ANN. § 16-1044; FLA. STAT. ANN. § 61.1825; GA. CODE ANN. § 19-13-52; 19 GUAM CODE ANN. § 14106; LA. REV. STAT. § 46:2136.2; NEV. REV. STAT. §§ 179A.350, 33.095; N.J. STAT. ANN. § 2C:25-34; N.Y. EXEC. LAW § 221-a; N.D. CENT. CODE § 12-60-23; OHIO REV. CODE § 2919.272 (establishing registry for out-of-state orders); OR. REV. STAT. § 163.741; 23 PA. CONS. STAT. ANN. § 6105; VT. STAT. ANN. § 1105; VA. CODE ANN. §§ 19.2-387.1, 52-45; 15 W. VA. CODE § 48-27-802; WYO. STAT. § 35-21-110. For a historical overview of the development of a statewide registry, see DONALD COCHRAN, PROJECT HISTORY OF THE MASSACHUSETTS STATEWIDE AUTO-MATED RESTRAINING ORDER REGISTRY, BOSTON, MA: OFFICE OF THE COMMISSIONER OF PROBATION, MASSACHUSETTS TRIAL COURT (JULY 1994).

⁵ The following state statutes mandate participation in the NCIC Protection Order File: KAN. STAT. ANN. § 60-3112; MONT. CODE ANN. §§ 40-4-125; 40-15-303; N.C. GEN. STAT. ANN. § 50B-3; OKLA. STAT. ANN. tit. 22, § 60.5 (requiring 24-hour-a-day access for law enforcement, which may include NCIC entry).

⁶ As an illustration, see Ken Little, *Deadly Loopholes; Domestic violence protective orders don't protect victims from gun crimes, cases show,* Star News, Nov. 7, 2004 (detailing system failures in a domestic homicide case in which the defendant, despite his prior conviction of a qualifying misdemeanor crime, purchased an assault rifle and killed his ex-girlfriend the day she received a protection order against him).

Principle II

All states should establish a full text state protection order registry or database.⁷ Registries based on data fields rather than the actual text of orders are missing crucial information. Providing the full text ensures completeness and accuracy for law enforcement officers on the scene of domestic violence crimes and minimizes the likelihood that officers will make incorrect interpretations or assumptions about the provisions of the order. Full text registries may also be used to facilitate service by allowing law enforcement officers to download the full text from the database.

Strategies

• Determine who will maintain the state registry or database and strive toward a single point of entry. Consider whether the courts can maintain the database and provide protection order information to law enforcement.

A single point of entry system prevents the double entry of data. Ideally, this single point of entry should enter the data at the time a petitioner files a petition for a protection order. Communities are using innovative means to transmit data. For example, Louisiana courts fax the data, some states may hand-deliver the data, and Pennsylvania is in the process of developing a single point of entry for electronic transfer between the database and the registry.

- Ensure that the administering agency supplies the NCIC information from the state registry or database.
- Ensure that the database indicates who has what type of custody and the parameters of visitation.
- Include in the state registry all of the paperwork related to the protection order, from the petition and service to documentation of the disposition of the case.
- Consider using a steering committee when establishing and deciding upon user access to a state registry or database. Include on the committee victims, victim advocates, persons with technological expertise, law enforcement officers, and judicial representatives.

User access to a state registry or database should be available to: law enforcement personnel,⁸ court personnel, probation and parole department personnel, prosecutors, domestic violence victim advocates, private attorneys, firearms licensing board personnel, the National Instant Criminal Background Check System (NICS), and the state's point of contact.

- Consider providing access to victim advocates from non-profit,
 nongovernmental programs so that they can assist victims with safety planning.
- Consider limiting certain user access levels to protect confidentiality and security of data. Certain groups need only a minimal level of access to be effective.
- Build in protections for victim safety, such as automatic notices that inform victims when perpetrators have attempted to purchase firearms or are released from jail.
- Create a plan for long-term support of the state registry or database.
- Consider seeking the following sources when identifying funds to create or support the registry: Violence Against Women Act (VAWA) funds, grants from the Department of Commerce, or allocations by state governments from fees or fines.

Principle III

State registries or databases should maintain comprehensive data about all qualifying orders, including emergency and ex parte orders. Databases containing both emergency and ex parte orders provide users key information about case history and progression or escalation in violence. Emergency and ex parte orders are issued at potentially the most dangerous time in a victim's relationship, so it is important for law enforcement officers to have access to these orders and their provisions. Seeing the entire history may give law enforcement officers additional information that enhances their ability to determine the predominant aggressor and to make probable cause determinations.

Strategies

• Include information about protection order issuance, modifications, extensions, service, and violations in the state registry or database. Include information about protection orders that have expired and the dates and times when protection orders are in effect, even if the NCIC has rejected the orders.

Some states do not maintain in their registries orders that NCIC has rejected, even when these orders are valid. NCIC rejects orders largely because of insufficient numeric identifiers for respondents, i.e. date of birth or social security number. States should maintain both NCIC rejected and expired orders in their state registries. Expired orders give officers on the scene entire case histories and may provide information about the escalation of violence.

Notify victims immediately when respondents are served.

A possibility currently being explored in the field is permitting petitioners to determine how and by whom they will be notified once service has been achieved. For example, petitioners could specify that they wish to be notified by a law enforcement officer, by an advocate, by email, etc. This information could be programmed into the database and triggered when service has taken place. Notice as soon as possible is crucial for petitioners because safety issues are of immediate concern once respondents have been served with a protection order.

- Include in the state registry or database contact information for the issuing court.
- Allow for electronic recognition of signatures.

• Include service confirmation, including verbal notification, in the state registry or database within 30 minutes of receiving the information if possible.

Proof of service needs to be in the system and viewable for all law enforcement officers in order to avoid the following: delay in arresting the offender in those jurisdictions that require proof of service; unnecessary duplication of service; or failure to enforce an order for apparent lack of service.

- Include fields for firearms seizure and return, and document respondents'
 attempts to purchase firearms, which may be a state or federal criminal offense,
 especially if the respondent lied on the federal form regarding the existence of
 a protection order.
- Generate a notification mechanism in the state database that firearms were not surrendered despite an order to do so.
- Accept orders from other states, including orders issued by tribal courts.
- Permit victims to register out-of-state or tribal protection orders into the registry or database upon request without fee or notice to the respondents. (18 U.S.C. § 2265(d) prohibits notifying respondents when the order is registered in an enforcing jurisdiction.)
- Use the miscellaneous field to note the relief granted when the relief in an outof-state or tribal protection order does not match the state registry conditions.
- Staff registries so as to allow for the immediate entry of orders into the database at the time of issuance, to permit data entry personnel to enter respondents' numeric identifiers or any corrections and supplemental information into the registry at any time, and to enter service immediately upon service.

Ideally, orders should be entered into registries within minutes of being issued. Examples of what states consider immediate: California requires the order be entered within one business day; Colorado, Guam, and Montana require the order be entered within 24 hours; Louisiana requires that the order be entered no later than by the end of the next business day; and Nevada requires the order be entered no later than eighthours after it was signed.

- Provide for internal audits and verification of data entered into state registries and, when mistakes are detected, investigate the cause so systemic problems can be eliminated.
- Provide technical support for the state registry or database 24 hours a day.

Principle IV

Registry or database staff should assist in the development of tools to gather appropriate information for the registry and for other purposes. Inaccurate or incomplete information greatly limits the utility of protection order registries and databases. Registry/database staff, because they understand the technical data requirements and capabilities of the registries and databases, can help ensure that the information is accurate and comprehensive by working with others in the protection order system to develop effective information-gathering tools.

Strategies

- Work with appropriate agencies to assist in developing standardized forms that incorporate the data requirements of the state registry or database.
- Utilize data fields for the state registry that are consistent with those used by the NCIC in order to ease transmission to the NCIC.
- Utilize Global Justice XML Data Model (GJXDM) for uniformity in data transfer protocols.⁹
- Participate in efforts to develop or revise protection order petitions and other forms to include questions designed to collect respondents' numerical identifiers that are required by state registries and the NCIC.
- Encourage professionals working in the protection order system, including law enforcement officers, advocates, court personnel, and judges, to solicit information about numerical identifiers from interviews with or questioning of petitioners and respondents.



Principle V

State registries or databases should provide easy access to information for enforcement purposes while protecting victim safety. Technology can greatly enhance efforts to enforce protection orders. Databases that are difficult to use may not be accessed by law enforcement officers who must make quick decisions at the scenes of volatile situations. Easy access, however, should not be translated into universal access, as protection orders should not be available on public websites.

Strategies

- Facilitate ease of access to information in the state registry or database.
 - Permit law enforcement officers, probation and parole officers, court personnel, and advocates to view protection order information electronically 24 hours a day.
 - Ensure that law enforcement personnel are trained to access the state registry and the NCIC Protection Order File.
 - Train state registry personnel to be responsive to the NICS point of contact or state point of contact regarding federal firearms background checks.

When an individual attempts to purchase a firearm, the dealer (or federal firearms licensee) contacts either a designated state point of contact (POC) or the FBI to begin a background check on the person attempting the purchase. The POC may use its own database and/or the NICS database. NICS links existing systems such as the NCIC and additional POC databases together to determine whether the individual is prohibited from purchasing or possessing a firearm. The NICS response consists of a notice to the dealer that the purchase or transfer may proceed, is denied, or is delayed.

■ Establish procedures to safeguard data.

- Develop protocols to keep data secure by permitting access only to authorized users and by prohibiting public access to the data via the internet.
- Limit the collection of information about victims to what is necessary for enforcement.
- Implement and document policies to prevent the misuse of data.
- Consider developing memoranda of understanding with agencies to which the data will be transferred.



Agencies that transfer data should have memoranda of understanding with the other agencies, controlling what will happen with the transferred data. Data should be used only for enforcement of protection order purposes. For example, agencies should include in their memoranda of understanding that the information will not be made publicly available, i.e. published on a public website.

- Notify victims of how data will be used and stored so that they can take precautions. For example, victims should be notified if their information is available on a public website.
- Train state registry staff about the importance of confidentiality in domestic violence cases.
- Establish protocols for disaster relief and recovery. Obtain an offsite storage system for data that will serve as a backup if the main system goes down because of weather or other disasters.

NCIC & Immigration Information¹⁰

NOTE: This information is as accurate as possible as of June 2004. The Department of Homeland Security (DHS) may start entering other kinds of immigration status "violators" into the system in the future, including students, professional workers, and visitors who overstay their visas.

What information does NCIC include?

DHS is now entering information into the Immigration Violators File (IVF) on three kinds of non-citizens. The NCIC screens should indicate into which of the three categories an individual falls. They are:

- * "Absconders." These are non-citizens with "final orders of removal" who have not left the United States. A final order applies to someone who has been through the immigration system and been ordered deported by an immigration judge. The NCIC contains administrative warrants for removal of absconders.
- * "NSEERS violators." The National Security Entry-Exit Registration System (NSEERS) imposes a variety of registration requirements on certain immigrants, mostly from Muslim, Arab, or South Asian countries. DHS has begun



entering administrative warrants for arrest of persons DHS deems subject to, but not in compliance with, some requirement of NSEERS.

* "Previously deported felons." These are non-citizens with felony convictions who have been previously ordered deported. They may have no warrant against them, but are subject to criminal penalties if they re-entered the United States after removal.

Are these immigration violations crimes?

For absconders and NSEERS violators, DHS is entering only administrative warrants for removal and arrest, respectively. There are criminal penalties for the willful failure to depart the country after entry of a removal order and the willful failure to comply with a provision of NSEERS; but the absconders and NSEERS violators listed in the NCIC have not been charged with or convicted of these crimes, nor are they subject to criminal warrants.

There are criminal penalties for illegal re-entry by a previously deported felon.

Would domestic violence victims appear in NCIC?

Yes. Domestic violence victims may be in all of these categories. For instance, they may be on the absconder list for any of several reasons. Immigration judges can order people deported because they do not attend an immigration hearing ("in absentia" removal orders); and many people unknowingly receive such orders, including non-citizen victims of domestic violence who are eligible to apply for the immigration status for crime survivors that Congress created in 1994 and 2000. They may fail to attend immigration hearings because their abusers intercept the hearing notice from the DHS or give them misinformation about their obligations. They may not attend because they do not understand the notice, which often is in English. They may be eligible for immigratiom status and not know it because they lack counsel; appointed counsel is not required for immigration hearings, and few immigrant victims of domestic violence can afford to pay an attorney. Although immigration judges should tell domestic violence victims that they are eligible for status, few of them do, often because they do not ask questions that would flag cases involving domestic violence.

Domestic violence victims may appear on the NSEERS list if they entered the country on nonimmigrant visas and were registered under the NSEERS Point of Entry system, which targets visitors from certain countries. Male domestic violence victims (who may also be eligible for immigration status), may have registered under the Call-In Registration system, which requires men and boys from 25 countries to report to local DHS offices. Many non-citizens fail to

comply because the requirements are complicated and publicized only through the Federal Register.

Finally, as with other victims of domestic violence, immigrant victims may be convicted of crimes because their abusers have a better command of English and our laws and have successfully manipulated them to commit crimes or convinced the authorities that they have engaged in criminal activity. Many public defenders and criminal defense attorneys are unfamiliar with the serious immigration consequences of crimes that flow from plea agreements as well as convictions after trial.

What happens when there is an immigration hit?

The absconder and NSEERS violator screens request, but do not mandate, a call to the Law Enforcement Support Center (LESC), an Immigration and Customs Enforcement (ICE) unit in Vermont staffed 24 hours a day, seven days a week to respond to inquiries from state/local police.

Glossary of Federal and State Uniform Statutes

Armed Forces Domestic Security Act

10 U.S.C. § 1561a: This statute states "A civilian order of protection shall have 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 federal statute provides generally that the appropriate authorities of each state shall enforce according to its terms a child support order consistent with this provision 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 or Indian tribe shall be accorded full faith and credit by the court of another state or Indian tribe and enforced as if it were the order of the enforcing state or tribe, 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 or tribe, 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 states that "the term 'protection order' includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court (other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law) whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection."

Gun Control Act

18 U.S.C. § 922 (d)(9): This section states that it "shall be 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 has been convicted in any court of a misdemeanor crime of domestic violence."

18 U.S.C. § 922(g)(8): This section applies to persons subject to a "qualifying" state or tribal 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 prohibits harassing, stalking, or threatening an intimate partner or the child of such partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury.

Gun Control Act (Lautenberg Amendment)

18 U.S.C. § 922(g)(9): This section applies to persons convicted of a qualifying misdemeanor crime of domestic violence, and it applies to convictions that occurred both before and after September 30, 1996, its date of enactment. A qualifying misdemeanor is any misdemeanor that constitutes a violation of state or federal law; had as an element either the use or attempted use of physical force or the threatened use of a deadly weapon; and was committed by a current or former spouse, parent, or guardian of the victim; a person who is cohabitating or has cohabitated with the victim as spouse, parent, or guardian of the victim; or a person similarly situated to the spouse, parent or guardian of the victim. The accused must have been represented by counsel or made a knowing and voluntary waiver of that right, and, if entitled to a trial by jury, have been so tried or have made a valid waiver.

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 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, that person, a member of the immediate family (as defined in section 115) of that person, or the spouse or intimate partner of that person; or (2) with the intent (A) to kill or injure 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 (as defined in section 115) of that person; or (iii) a spouse or intimate partner of that person, uses the mail or any facility of interstate or foreign commerce to engage in a course of conduct that 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).

Interstate Travel to Commit Domestic Violence

18 U.S.C. § 2261: This statute states that it is an offense (1) to travel in interstate or foreign commerce or to enter or leave Indian country with the intent to kill, injure, harass, or intimidate a spouse or intimate 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 or intimate 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, 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 (1) a person to travel in interstate or foreign commerce, or to enter or leave Indian country, 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 for (2) a person 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 offers the same jurisdictional bases as the UCCJEA; but, 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 or tribe.

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 Commissions 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.

Uniform Child Custody Jurisdiction and Enforcement Act

The UCCJEA is a uniform state law regarding jurisdiction in child custody cases. It was drafted by the National Conference of Commissioners on Uniform State Laws, and is operative only in states whose legislatures have enacted it to replace their respective versions of the UCCJA. It specifies which court should decide a custody case, rather than how the court should decide the case. The UCCJEA sets forth four bases for jurisdiction: home state, significant connection, emergency, and more appropriate forum, 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. 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 exists when no other state has home state or significant connection jurisdiction, or when another state has declined to exercise jurisdiction in deference to the more appropriate forum state.

A court having jurisdiction under one of the jurisdictional bases above may declare itself to be 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 may 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.

Uniform Interstate Family Support Act

The Uniform Interstate Family Support Act (UIFSA) 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.

Other Common Abbreviations

ATF - Bureau of Alcohol, Tobacco, Firearms, and Explosives

AUSA - Assistant United States Attorney

CPS - Child Protective Services

FBI – Federal Bureau of Investigation

GPS – Global Positioning System

IACP - International Association of Chiefs of Police

NCIC – National Crime Information Center

NICS – National Instant Criminal Background Check System

STOP - Services, Training, Officers, and Prosecutors

VAWA – Violence Against Women Act

VAWA 2000 - Violence Against Women Act of 2000



Resources and Technical Assistance for Protection Orders and Full Faith and Credit

National Council of Juvenile and Family Court Judges Family Violence Department: (800) 527-3223

National Center on Full Faith and Credit: (800) 256-5883, ext. 2

Battered Women's Justice Project (Civil): (800) 903-0111, ext. 2

National Center for State Courts: (888) 450-0391

International Association of Chiefs of Police: (800) THE-IACP

Tribal Law and Policy Institute: (323) 650-5467

Legal Resource Center on Violence Against Women: Professionals/Technical Assistance: (301) 270-1550

Survivors: (800) 556-4053

Center for Court Innovation: (212) 397-3050

National Crime Information Center: (304) 625-2000

National Instant Criminal Background Check System: (877) 444-NICS

American Prosecutors Research Institute: (703) 549-4953

National College of District Attorneys: (803) 544-5005

Full Faith and Credit Profession-Specific Tools

Protecting Victims of Domestic Violence: A Law Enforcement Officer's Guide to Enforcing Orders of Protection Nationwide. Available from the International Association of Chiefs of Police website (www.theiacp.org); to order additional copies free of charge, email the IACP at turnern@theiacp.org.

An Advocate's Guide to Full Faith and Credit for Orders of Protection: Assisting Victims of Domestic Violence. Available for order from the National Center on Full Faith and Credit at (800) 256-5883, ext. 2 or (202) 265-0967, ext. 2.

Increasing Your Safety: Full Faith and Credit for Protection Orders. Available for order from the National Center on Full Faith and Credit at (800) 256-5883, ext. 2 or (202) 265-0967, ext. 2.

A Prosecutor's Guide to Full Faith and Credit for Protection Orders: Protecting Victims of Domestic Violence. Available for order from the National Center on Full Faith and Credit at (800) 256-5883, ext. 2 or (202) 265-0967, ext. 2.

Full Faith and Credit: A Passport to Safety: A Judge's Bench Card. Available for order from the National Council of Juvenile and Family Court Judges at (800) 527-3223.

Appendix A

We would like to thank the following committee members, participants, and staff for their time and input at the Full Faith and Credit: Moving Forward Summit Meeting, held at Santa Ana Pueblo, New Mexico, May 27 – 28, 2004:

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Appendix B

We would like to thank the following participants and staff for their time and input at the Full Faith and Credit: Moving Forward Custody, Visitation, and Support Meeting, held in Washington, DC, September 23 - 24, 2004:

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We would like to thank the Full Faith and Credit: Moving Forward Steering Committee for their hard work and deliberations over a three-year period that led to this document.*

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