

Custody and Parenting Time Orders: Compliance Monitoring and Enforcement Strategies for Courts

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Court orders addressing custody and parenting time offer an opportunity to respond to many victim parents' single greatest concern: the safety and welfare of their children. Well-crafted orders can provide critical protection for victim parents and children and set forth specific schedules, requirements, and standards of conduct that provide clarity and certainty for all family members. This assumes that abusive parents will comply with orders and abide by restrictions placed upon them. Unfortunately, in many courts the onus is on victims to navigate an inaccessible and/or confusing process of bringing violations to the court's attention. As a result, orders can be rendered meaningless and restrictions on parenting time can be readily ignored by abusers.

This document provides a set of suggested practices and strategies for consideration by courts seeking to improve compliance with custody and parenting time orders. Examples are provided, from around the country, that may be tailored to your communities' needs and existing processes, recognizing that some suggested practices require the deployment of court resources, including docket time, that may be constrained. Thus, full implementation may be challenging, but we suggest piloting some of the strategies to determine the actual fiscal or docket impact. Several courts that have implemented the compliance monitoring strategies described herein report enhanced efficiency and fewer enforcement actions.

Exercise judicial leadership to promote and support the development of improvements

Convene a collaborative workgroup of family court stakeholders (judges, court staff, attorneys, advocates, supervised visitation/safe exchange personnel, prosecutors involved in civil protection order enforcement, etc.) to:

- learn about their perspectives on custody and parenting time orders, enforcement issues, litigant needs, and the challenges they face;

- review current practices and develop improvements; and
- assess the impact of changes and make adjustments.

Craft orders with enforceability and compliance monitoring in mind

- Ensure that custody and parenting time provisions and any associated provisions, such as communication limitations, restrictions on parenting time location, requirements for safe exchange of children, economic relief, and referrals to batterers intervention programs, are unambiguous and as specific as possible.
 - Consider the use of co-parenting apps to ensure documentation of communication between parents, potentially encouraging compliance and facilitating monitoring efforts.

Send a strong message regarding compliance and enforcement from the bench

- Address both parties at issuance of orders regarding expectations, how compliance will be monitored and violations addressed, and steps to take when orders are violated (with specific instructions on whom to contact and actions to take based upon the type of violation alleged; for instance, when law enforcement should be called, when a contempt filing may be appropriate, etc.).
- Provide this information in writing, perhaps as an attachment to the order, including information to assist the respondent with complying with the order (see next section below).
- If resources permit, charge case management personnel or compliance officers with meeting respondents one-on-one after issuance of orders to promote compliance by explaining respondents' responsibilities and answering their questions.
- As described below, consider scheduling compliance review hearings at a time when all litigants are in the courtroom awaiting hearings so that they observe how the court addresses violations, as well as compliance.

Provide litigants with accurate, understandable (plain language, short, and to the point) instructions regarding steps to take if child-related provisions of an order are being violated

- Include in the order itself, or in a supplemental form or instruction sheet, information for both parties regarding the steps to take if a provision is violated and the potential consequence.

- Consider developing a frequently asked questions document describing commonly occurring situations and explaining which would be considered violations and the aggrieved parent's options for enforcement and redress.
 - Ensure that such information, if provided by the court, does not contain legal advice or otherwise violate ethical constraints.
- Ensure that instructional materials explain all options for enforcement of orders, including through a contempt proceeding and through the criminal process by means of arrest and prosecution, if available.
- Examples of information packets for litigants addressing enforcement and/or modification include the following:
 - [“Contempt of Court in Family Law Cases: The Basics,”](#) (Northwest Justice Project, Washington State)
 - [“Family Court Matter: Instructions For Request To Have Other Party Held In Contempt of Court,”](#) (Minnesota Judicial Branch)
 - [“Enforcement of Visitation Orders,”](#) (Nebraska Supreme Court Committee on Self-Represented Litigation)
 - [“Developing and Enforcing Your Parenting Plan,”](#) (Multnomah County, OR Superior Court)
 - [ME online course addressing modifications and enforcement of parental-rights orders](#) (Pine Tree Legal Services)

Implement compliance monitoring that does not rely upon victim-parents to initiate a court enforcement process

- Conduct compliance review hearings in civil protection order cases to address adherence with parenting time provisions and other important provisions of orders.
 - Provide petitioner with notice of compliance hearings and permit, but do not mandate, participation.
 - Recognize that multiple court hearings can be a burden to both parties, including missed work, transportation, and child care challenges, so attempt to schedule them to facilitate the parties' ability to participate and be strategic in their use.
- Consider implementing a specialized docket for compliance review.
 - Some judicial officers hear compliance matters at the outset of the calendar to demonstrate to all present the court's commitment to monitoring compliance with orders.
 - Examples: A video describing the [use of compliance review hearings in the context of civil protection orders in Louisville, KY](#) and an article describing the [use of compliance review hearings in DeKalb County, GA](#).

- Employ a case docket coordinator/case manager to coordinate compliance monitoring.
 - Advocate for the resources necessary to support such positions; explain the benefits, including the coordinator/case manager's ability to:
 - Meet with respondents after issuance of orders to ensure understanding of all terms and responsibilities.
 - Collect information regarding alleged violations and share it with the court to support decision making.
 - Provide referrals to resources for litigants as appropriate.
 - Monitor compliance with treatment programs, support obligations, firearms, and other requirements.
- If conducting review hearings for all orders is impractical, consider:
 - Implementing a mechanism to identify cases in which concerns about non-compliance warrants review hearings (for example, cases with previous violations and/or where lethality factors are present).
 - Establishing a process for the abusive parent to demonstrate compliance with the parenting arrangements to the court.
 - This could involve a schedule for the parent to submit to the court documentation regarding compliance with and participation in services, etc.
- Consider appointing a compliance monitor, with the abusive parent responsible for fees.
- For cases in which supervised visitation or safe exchange using a professional program is ordered, ensure that the program provides reports on visits or exchanges as directed by the court, and review the reports for instances of abusers' noncompliance with orders.
 - Look for late or missed visits and the explanations given, and for instances in which the program reports interventions, including termination of visitation.

Establish an effective, user-friendly mechanism to enable litigants to alert the court to alleged violations and seek redress

- Provide information to litigants to ensure that they learn about the contempt process, how it may be used, and how to initiate the process (examples of instruction sheets and other informational resources are provided above).
 - Provide the information in written resources and online on court websites.
- Hold contempt/show cause hearings without delay and rule on motions swiftly.
 - Timely hearings enable the court to address matters before they spiral out of control.

- Timely rulings avoid leaving victim parents in limbo with no mechanism to obtain appellate review.

Understand and exercise your full authority to address non-compliance with child-related relief orders, making decisions that account for the particular context of the situation and the circumstances of the family

- Consider modification of orders and other actions to compel compliance short of a finding of contempt.
- Recognize that show cause hearings offer opportunities to address violations and compel future compliance without the need to decide a full civil or criminal contempt case.
 - In appropriate cases, courts can reinforce the seriousness of the order and need for compliance without imposing sanctions at this stage.
- Hold full contempt hearings where appropriate.
 - Understand the different purposes, procedural requirements, and other characteristics of criminal versus civil contempt:

Criminal versus Civil Contempt: An Overview		
	Criminal Contempt	Civil Contempt
Where Appropriate	Defendant has done something they were ordered not to do	Defendant has failed or refused to do something they had been ordered to do; defendant must be able to comply with the order
Purpose of Punishment	Punitive--to vindicate authority of court	Remedial for benefit of plaintiff; to coerce compliance (“defendant holds the keys to the jail”)
Proof Required	Beyond a reasonable doubt	Preponderance of the evidence (generally)
Due Process Rights	All criminal procedural safeguards apply, including the privilege against self-incrimination	Only the usual due process rules apply, e.g., adequate notice of hearing; some case law establishes that defendant can invoke the privilege against self-incrimination, but that the court can infer guilt

Right to Jury Trial	No jury trial for "petty contempt" (sentence up to six months); right to jury trial if sentence is more than six months or "serious contempt fine"	No right to jury trial
Right to Counsel	Right to counsel due to potential "loss of liberty"	No automatic right to counsel, even if potential incarceration up to one year (Turner v. Rogers, U.S. Supreme Court 2011); must be adequate alternative procedural safeguards (adequate notice of the importance of a particular issue in the proceeding, fair opportunity to present and to dispute relevant information and court findings); some states provide for right to counsel
Duration of Punishment	Defendant must undergo punishment regardless of later compliance with court order	Sanctions end when defendant complies with court order

- Address evidentiary issues regarding violations in contempt hearings with safety in mind.
 - Consider alternatives to child testimony where possible (use of guardians ad litem with domestic violence expertise; in camera interviews; potential hearsay exceptions for out-of-court statements by children).
 - Recognize that, as in hearings for issuance of protection orders, the parties' testimony may be the sole source of evidence of a violation.
- Make decisions that account for the context of the abuse in the family and its effects.
 - Be attuned to abusers' misuse of the enforcement system.
 - Recognize that petitioners' putative violations may be due to protective parenting (e.g., denial of access to prevent harm to child).
- Make decisions that take into consideration and balance both parties' needs and realities.
 - For instance, if the failure to comply with a court order is a result of financial hardship or other challenging circumstances, shape the sanctions accordingly and consider whether the court could help address the circumstances.

- For example, in DeKalb County, GA, the court worked with the Georgia Department of Labor and the DeKalb County Workforce Development to enable it to order respondents to engage in a search for employment at agencies. See this [description](#) of the court's compliance program.
- Consider a range of potential sanctions tailored to the circumstances of the case and the context of the abuse:
 - Civil contempt sanctions can be used to enforce compliance with the provisions of an order and/or to compensate the aggrieved party for losses associated with the failure to comply.
 - Decisions should be guided by safety considerations, the child's best interests, but also should account for the particular circumstances of the abuser and victim.
 - Consider issuing a probationary order or other order short of a contempt finding that affirms the seriousness of the order and mandates compliance with all terms.
 - Craft sanctions that address the specific violations and concerns, including such provisions as:
 - Required participation in abusive partner intervention or parenting classes;
 - Modification of parenting time and related provisions;
 - Posting of a bond to ensure compliance by abuser;
 - Make-up parenting time; and
 - Reimbursement of costs associated with violations, including attorney's fees.
 - If incarceration is deemed appropriate, ensure compliance with constitutional requirements (see matrix on pages 5-6) and impose terms that account for the family's circumstances (e.g., financial consequences, effect on child-care, etc.).

Respond effectively to challenges imposed by the COVID-19 pandemic

- Consider issuance of guidance to litigants regarding co-parenting and compliance with orders during the pandemic.
 - Examples: [Alaska](#); [Maricopa County, AZ](#); [Michigan](#); and [Montgomery County, PA](#)
- In adjudicating alleged violations of orders during the pandemic, take into account the specific effects on the particular family involved.
 - For example: the parents may disagree about the risk posed to a child during parenting time stemming from the employment-based exposure to infection risk of one of the parents; pre-existing supervision arrangements

- or visitation locations may be unavailable and there is no agreed-upon alternative arrangement; the abusive parent may exploit remote visits to harass, threaten, or otherwise intrude upon the victim-parent; the abusive parent may exploit the pandemic to make sham allegations of violations.
- For additional information regarding family court responses to the pandemic, including the safe and effective use of remote court hearings, see:
 - [National Council of Juvenile and Family Court Judges, Considerations for Safe and Effective Responses by Courts to the COVID-19 Pandemic](#)
 - [National Council of Juvenile and Family Court Judges, Court Toolkit: Reflections on System Resilience and Reforms: A Focus on Cases Involving Abuse](#)
 - [National Center for State Courts, Remote Court Operations Incorporating A2J Principles](#)
 - [National Center for State Courts, Checklist for Judges in Virtual Proceedings](#)

Suggested Resources:

Laurie S. Kohn, [The False Promise of Custody in Domestic Violence Protection Orders](#), 65 DePaul L. Rev. (2016).

Margaret M. Mahoney, *The Enforcement of Child Custody Orders by Contempt Remedies*, 68 U. PITT. L. REV. 835, 854 (2007).

Statutes setting forth possible sanctions for noncompliance with custody and parenting time orders: Colo. Rev. Stat. § 14-10-129.5; Del. Code Ann. tit. 13, §§ 727–28; La. Stat. Ann. §§ 13:4611(d)–(e); Mich. Comp. Laws § 552.644(2); Minn. Stat. § 518.175(6); N.J. Stat. Ann. § 2A:34-23.3; and Wyo. Stat. Ann. § 20-2-204.

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