

Civil Protection Orders

By Catherine F. Klein and Leslye E. Orloff

[*Editor's note:* The following is reprinted from the AMERICAN BAR ASSOCIATION COMMISSION ON DOMESTIC VIOLENCE, THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK 4-1 to 4-5, 4-7 (Deborah M. Goelman et al. eds., 1996). Reprinted by permission. Copyright © 1996 by the American Bar Association.]

Civil protection orders are available to domestic violence victims by statute in all fifty states, the District of Columbia, Puerto Rico, and all U.S. territories. Civil protection orders that are properly drafted and consistently enforced can offer effective protection for victims of domestic violence. In most jurisdictions, protection orders offer broad relief and may be used with or instead of more traditional domestic relation remedies. Protection orders can also offer crucial protection against continued violence for victims who are not ready to separate from their abusers.

There are two types of protection orders available to victims of abuse. Most states authorize emergency, or temporary orders of protection, issued after an *ex parte* hearing if the victim can show that there is immediate danger of future violence. Such orders are short-lived (typically fourteen to thirty days) and are intended to protect victims of domestic violence until a full hearing can be scheduled. Courts also issue protection orders after a full hearing, by consent, or by default. Full pro-

tection orders are of a longer duration, typically for one to three years. The National Council of Juvenile and Family Court Judges recommends that protection orders last indefinitely. Progressive jurisdictions are adopting this approach.

Obtaining a Protection Order

Generally there is no statute of limitations within which a victim of domestic violence must file for a protection order. Some courts, however, may not grant an order if the most recent threat or incident of abuse took place several months prior to the filing of a petition for a civil protection order.

State statutes and case law define the relationship required between the parties in order to be eligible for protection. The types of relationships protected include

- current or former spouses;
- family members who are related by blood or marriage (i.e., parents, siblings, aunts, uncles, grandparents, and in-laws);
- current or former household members;
- persons who have a child in common;
- persons in dating or intimate relationships; and
- persons in same-sex relationships.

Catherine F. Klein is associate professor, Catholic University of America School of Law, 3600 John McCormack Rd. NE, Washington, DC 20064; 202.319.5140. Leslye E. Orloff is an attorney, NOW Legal Defense and Education Fund, 1522 K St. NW, Suite 550, Washington, DC 20005; 202.326.0042; lorloff@nowdef.org.

A few trend-setting states allow protection orders to be issued to persons who offer refuge to victims of domestic violence.

States condition the issuance of a protection order on an underlying act of abuse which constitutes a criminal act, including battery, assault, kidnapping, burglary, criminal trespass, interference with child custody, rape and sexual assault, interference with personal liberty, and stalking. Some states authorize the issuance of protection orders for behavior that has not physically harmed the petitioner (e.g., emotional abuse, threats, stalking, and destruction of property, including harm to pets).

Most jurisdictions allow an abused adult to file on the adult's own behalf. Most states allow an adult to file on behalf of a child or an incompetent adult. Some progressive states allow minors to petition for protection on their own behalf.

Jurisdiction for protection orders generally exists in the state where the underlying acts of abuse have taken place or where the victim is present.

The federal Violence Against Women Act of 1994 affords full faith and credit to a sister state's protection order (including an *ex parte* order) as long as due process requirements were met in the issuing state.¹ . . .

Relief Available

Be careful to include all forms of relief necessary to protect the victim. Gaps in the relief provided or a lack of specificity in the drafting of the order can lead to future violence and make enforcement of the order difficult if not impossible. Because batterers often are also abusive to the petitioner's children, be mindful to include the children specifically by name in all appropriate provisions.

Courts have broad authority to issue any form of relief that may deter violence. Orders need not be limited to only those forms of relief listed in the state statute. Be creative: ask for all the relief you think is necessary.

Ask the victim about the entire history of abuse (e.g., most recent incident, first incident, and worst incident), places that the victim frequents, and ongoing issues requiring resolution, such as the batterer's behaviors that need containment.

The following is a checklist of relief generally available in jurisdictions, as determined by statute, under general catchall phrases or by case law. The practitioner should carefully consider and discuss fully with each client the following options:

- *The respondent shall not molest, assault, harass or in any matter threaten or physically abuse the petitioner or the petitioner's child or children or all of them.* Protection orders should always include a "no further abuse" clause; otherwise enforcement through contempt or criminal prosecution will be very difficult. Word the clause clearly so that the abuser knows specifically which types of actions are forbidden.
- *The respondent shall stay 150 yards away from the petitioner's home, person, workplace, children, place of worship, and day care provider.* Define clearly what places the respondent is forbidden to go. Include in the "stay away" provision all locations frequented by the petitioner. If the petitioner is in hiding, the order should prohibit the respondent from going to the petitioner's residence without revealing its location and prohibit the respondent from attempting to locate the petitioner either directly or through third parties. The order may also provide for a minimum distance that the respondent must keep from the petitioner and other listed locations and persons.
- *The respondent may not contact petitioner or petitioner's children or all of them in any manner—personally, in writing, by telephone, or through third parties.* Batterers frequently adopt less violent, harassing behaviors following the issuance of a protection order. Their intent is to continue to assert power and control over the victim in a manner less likely to

¹ Violence Against Women Act of 1994, 18 U.S.C. § 2265. See also Susan B. Carbon et al., *Enforcing Domestic Violence Protection Orders Throughout the Country: New Frontiers of Protection for Victims of Domestic Violence*, in this manual.

draw the attention of legal or law enforcement authorities. This provision will forestall such behavior.

■ *The respondent shall vacate the residence at (location) by (date and time). The (local) police department shall stand by and shall give respondent fifteen minutes to collect respondent's personal belongings. Personal belongings include clothes, toiletries, and one set of sheets and pillowcases. No other property may be removed from the premises without the petitioner's permission. The police shall take all keys and garage openers from respondent, check to see that they are the rights ones, and then turn keys over to petitioner.* Vacate orders require the respondent to leave the home shared with or owned by the petitioner and must specify how the vacate order is to be carried out. Include additional provisions prohibiting the respondent from reentering the home and ordering respondent to surrender all keys, refrain from damaging the premises or property, and refrain from shutting off utilities or discontinuing mail service.

■ *The respondent shall relinquish possession and/or use of the following personal property (list specifically itemizing property in question) as of (date and time).* The court may order the respondent to relinquish certain items of personal property or restrain respondent from taking, selling, or destroying certain personal property. If the protection order has a vacate provision, the respondent may be appropriately ordered to relinquish use of all the property except for personal belongings and any enumerated items. If both parties have vacated the home, the order should clearly state which items the respondent may remove from the family home.

■ *As of (date and time), the respondent shall turn over to the (local) police department any and all weapons that the respondent owns or possesses and all licenses the respondent has authorizing the possession of or purchase of weapons.* The court may prohibit the respondent from possessing

any weapon or firearm or revoke the respondent's weapons license or prohibit the respondent from purchasing or receiving a weapon for the duration of the protection order. The court may also order the local police to search for and confiscate weapons when they assist on a vacate order or are called for assistance. Courts should require the respondent to submit a receipt proving that the weapons were relinquished as ordered.

■ *The respondent shall participate in and successfully complete the following (counseling program).* Courts may order appropriate treatment for respondents including intervention counseling or substance abuse counseling for the batterer. Only treatment programs which have been certified as having specific expertise working with domestic violence perpetrators should be used. Joint or family counseling is inappropriate where there has been domestic violence. Substance-abuse treatment alone is insufficient to address battering behavior.

■ *Temporary custody of the minor children is awarded to petitioner until further order of this court or the expiration date of this order.* Include a custody order as part of a protection order whenever children are involved. Even when children have not been abused themselves, children living in homes where there is violence are, studies show, adversely affected.²

■ *The respondent has rights of visitation with the minor child(ren) under the following conditions (specific requirements).* Craft a visitation arrangement that ensures the safety of the petitioner and the children. The National Council of Juvenile and Family Court Judges recommends against unsupervised visitation until the abusive parent successfully completes a domestic violence treatment program and, if warranted, a substance-abuse treatment program. Supervised visitation can be arranged through either an approved third party or a local supervised visitation cen-

² See, e.g., HOWARD A. DAVIDSON, ABA (AMERICAN BAR ASSOCIATION) CTR. ON CHILDREN & THE LAW, THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN: A REPORT TO THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION (1994).

ter if available. If the petitioner believes that visitation need not be supervised, the order should clearly provide when, where, and how visitation is to take place. Particularly if there is a “stay away” or “no contact” provision, the order should arrange a drop-off and pickup, such as a relative’s home, that does not result in contact. If this is not possible, exchange of the children should take place in a public place such as a museum, McDonald’s, or a local police precinct. If there is no reasonable way that the petitioner or the children or all of them can be safe during visitation, request that visitation rights be suspended until further order of the court. Be prepared to show the judge why visitation is not feasible and argue that continued conflict between the parents is not in the child or children’s best interest.

- *The respondent shall pay child support for (minor child) in the amount of (dollar amount) biweekly.* Victims who have a minor child with the respondent may be entitled to child support. Use the child support guidelines to determine the amount of the award and make certain that child support orders are paid through wage withholding so that the respondent cannot use child support payments as a coercive tool.

- *The respondent shall pay for the repair of the door to petitioner’s apartment and all costs associated with the changing of petitioner’s lock and all medical expenses the petitioner incurs as a result of respondent’s violence.* Courts may order the batterer to provide monetary relief to the victim. Victims may be entitled to reimbursement for economic losses, including: medical costs, repair of damaged property, attorney fees, and court costs. Respondent also may be ordered to continue paying health insurance for the victim and the child or children.

- *The (local) police department shall assist the petitioner in enforcing the order and shall pay special attention to calls for assistance from petitioner or (petitioner’s*

address) or both. Request police assistance to transport the petitioner to a shelter, accompany the petitioner home, serve process, and assist on vacate orders, or orders dealing with the relinquishment of personal property and weapons. . . .

Mutual Protection Orders

A mutual protection order is one that is entered against both parties; it requires both parties to abide by the restraints and other forms of relief in the order. Batterers often file false petitions for civil protection orders (in addition to false criminal charges) after victims take legal action against them. Some batterers do not file petitions but allege during civil protection order hearings that they have been abused. Under these circumstances, courts may issue mutual protection orders in the mistaken belief that such orders will prevent future violence against either party. However, when mutual protection orders are entered against innocent victims, both batterers and victims learn that the system can be manipulated and that courts are unwilling to determine who has been abused and order appropriate protection.

Mutual protection orders are not afforded full faith and credit under the Violence Against Women Act of 1994 unless the following safeguards are met: (1) a petition articulating grounds for issuance of such order was filed; (2) the person against whom the order was entered was served with notice of the petition; (3) the person against whom the order was entered had an opportunity for a hearing before a court, and (4) the court made specific findings that each party was entitled to such an order.³

Be wary of mutual orders entered against the petitioner without the respondent filing a petition, presenting evidence of abuse, and obtaining a court ruling that your client committed an offense of domestic violence. Orders of this kind violate the petitioner’s due process rights and should be opposed.⁴

³ 18 U.S.C. § 2265 (c)(1)(2) (1994).

⁴ See Catherine F. Klein & Leslye Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 1074–78 (1993).