



Beyond the Criminal Justice System

SAFETY AND PROTECTION ORDERS

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I. INTRODUCTION

Sexual assault can shatter a survivor's sense of safety. They may not feel safe for months or years after an assault. Addressing a survivor's safety—both physical and emotional—is a core tenet of trauma-informed, survivor-centered legal practice. This chapter identifies steps you can take as an attorney to help your client regain their sense of safety, including safety planning, protection orders, and other specific safety measures. These measures cannot stand alone, you should also provide referrals to ensure the survivor is addressing their emotional and psychological safety needs as well. Prioritizing survivor safety makes it much more likely they will be willing and able to access civil and criminal legal remedies.

II. SAFETY PLANNING

Every survivor should be offered comprehensive safety planning both at the outset of and throughout their legal representation. Because a survivor's situation is not static, safety planning should be an ongoing process and not a single, one-time event. Attorneys need to collaborate with their clients for effective safety planning, as the client is in the best position to assess what is most likely to help keep them safe. Attorneys need to be trained in safety planning for sexual assault survivors. Legal representation must be consistent with the survivor's broader safety strategy. Attorney-client safety planning may be conducted in collaboration with a sexual assault crisis center or other appropriate service provider. A survivor's safety plan should be updated and revised as necessary throughout the course of legal representation. Attorneys should ensure that a survivor receives ongoing, individualized, and case-specific safety planning services that take a survivor-centered approach.¹

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¹ For additional resources, see WomensLaw.org, www.womenslaw.org/about-abuse/safety-tips (last visited Jul 30, 2024).

The following information is an initial overview of some common safety planning considerations. It is not a substitute for comprehensive training in this area. Safety planning considerations may include:

- Considering each aspect of a survivor's life and how their safety may be impacted including, but not limited to, housing, transportation, employment, education, immigration concerns, privacy, and criminal legal concerns;
- Seeking a civil and/or criminal protection order (if available);
- Encouraging clients to take stock of their online presence and social media usage including what may be accessible to the perpetrator as well as checking their devices for permissions, location sharing, and spyware;
- Identifying safe places to stay or live away from home (including emergency shelter or transitional housing); and
- Connecting to a broad network of support that includes (where possible) friends, family, and professional service providers.²

Careful safety planning is particularly important if a perpetrator knows the survivor's daily routines or where the survivor lives, works, or attends religious, cultural, or educational events; has made a specific threat to harm the survivor if the assault is reported; or has access to a weapon.

For survivors who do not know the identity of their perpetrator, safety planning may be especially challenging. In cases of extreme danger, a survivor may want to consider seeking relocation services and legal advice on the viability of identity change.³

For some, but not all, survivors, a civil protection order may be an appropriate remedy to enhance their safety. For others, especially survivors of non-intimate partner sexual assault, there may be no remedy. For

² For additional information on safety planning with survivors of sexual assault, see <https://youtu.be/4vskYq2R7Nw> (last accessed Jul 30, 2024).

³ For additional information about the appropriate and effective use of relocation services including the legal and practical implications of identity change, contact the Relocation Counseling & Identity Protection Initiative at 617-603-1557.

example, if the survivor does not know the identity of the perpetrator, naming the respondent and personal service of the order may be impossible. Sexual assault-specific civil protection orders are available in most jurisdictions for survivors of non-intimate partner sexual assault.⁴ Other protection order remedies that may be available to a sexual assault survivor include a criminal “no contact” provision, stalking order, military protective order, order on behalf of an older survivor or a survivor with disabilities, or a school-based or workplace-based no contact order. General anti-harassment orders may also provide a survivor with protection. See Section III. A., below, for a more detailed discussion of the various orders.

III. FACTORS TO CONSIDER BEFORE FILING FOR A PROTECTION ORDER

The purpose of a protection order is to get an enforceable court order that enhances a survivor’s safety. Eligibility for a civil protection order (CPO) varies by jurisdiction; for example, while every state and territory has a domestic violence protection order, not every state has sexual assault

⁴ Most jurisdictions have civil protection orders for which victims of non-intimate partner sexual assault may be eligible. (Survivors may also be eligible for other, more general civil anti-harassment or peace orders in the relevant jurisdiction but the remedies and enforcement mechanisms available to the victim through such orders may be very limited in scope.) Jurisdictions include: **Alaska**: ALASKA STAT. § 18.65.850 ; **California**: CAL. CIV. PROC. CODE § 527.6 (West); **Colorado**: COLO. REV. STAT. § 13-14-100.2 ; **Connecticut**: CONN. GEN. STAT. § 46b-16a; **District of Columbia**: D.C. CODE ANN. § 16-1001 (West) .; **Florida**: FLA. STAT. § 784.046; **Illinois**: 740 ILL. COMP. STAT. 22/101 – 22/301; **Indiana**: IND. CODE § 34-26-5-1 .; **Kansas**: KAN. STAT. ANN. § 60-31a04; (West) **Kentucky**: KY. REV. STAT. ANN. § 456.010 (West).; **Louisiana**: LA. STAT. ANN. § 46:2181 ; **Maine**: ME. STAT. tit. 5 §§ 4651 – 4659; **Maryland**: MD. CODE ANN., CTS. & JUD. PROC. §§ 3-1501 – 3-1510; **Massachusetts**: MASS. GEN. LAWS ch. 258E, §§ 1 – 7; **Michigan**: MICH. COMP. LAWS § 600.2950a; **Minnesota**: MINN. STAT. § 609.748; **Missouri**: MO. REV. STAT. § 455.010; **Montana**: MONT. CODE. ANN. §§ 40-15-102 – 40-15-303 (West); **Nebraska**: NEB. REV. STAT. § 28-311.11 (West); **Nevada**: NEV. REV. STAT. § 200.378; **New Jersey**: N.J. STAT. ANN. §§ 2C:14-13 – 2C:14-21 (West); **New Mexico**: N.M. R. CIV. P. DIST. CT. 1-066; **North Carolina**: N.C. GEN. STAT. § 50C-1.; **North Dakota**: N.D. CENT. CODE § 12.1-31-01.2; **Ohio**: OHIO REV. CODE ANN. § 2903.214 (West); **Oklahoma**: OKLA. STAT. tit. 22, § 60.2; **Oregon**: OR. REV. STAT. § 163.760; **Pennsylvania**: 42 PA. CONS. STAT. and ANN. § 62A01 *et seq.*; **South Dakota**: S.D. CODIFIED LAWS §§ 22-19a-8 – 22-19a-17; **Tennessee**: TENN. CODE ANN. § 36-3-601.; **Texas**: TEX. CODE CRIM. P. PROC. ANN. Art. §§ 7B.001 – 7B.008; **Utah**: UTAH CODE ANN. § 78B-7-502; (West) **Vermont**: VT. STAT. ANN. tit. 12 § 5131 .; **Virginia**: VA. CODE ANN. § 19.2-152.10; **Washington**: WASH. REV. CODE § 7.105.010 ; **West Virginia**: W. VA. CODE § 53-8-1; **Wisconsin**: WIS. STAT. § 813.125; **Wyoming**: WYO. STAT. ANN. §§ 7-3-506 – 7-3-512.

specific orders.⁵ The remedies available pursuant to a CPO also vary by jurisdiction and type of order but may include a “stay-away” provision that requires the perpetrator to stay a certain distance from a survivor and/or the survivor’s children or other family members, temporary custody, housing rights, economic assistance, and cooperation with immigration or other legal or administrative proceedings. Additionally, court injunctions, general anti-harassment orders, no-contact orders in criminal cases, and stay-away orders issued by educational institutions or on behalf of employers may provide additional sources of protection. If a CPO is obtained, a perpetrator may be sanctioned for contacting a survivor, even if no assault or other criminal activity is committed during the contact. Further, protection orders do not necessarily preclude other civil or criminal remedies; indeed, they may provide a survivor with the interim resources necessary to pursue those other courses of action.

A. Types of Protection Orders

There are various types of protection orders available to survivors, depending on: (1) the circumstances of the assault; (2) where the survivor (or the perpetrator) lives; (3) where the assault occurred; and (4) the relationship, if any, between the survivor and the perpetrator.⁶ The eight most common types of orders are:

- (1) **Sexual Assault Specific Safety Orders:** These are civil protection orders that provide remedies specifically for survivors of sexual assault and do not require an underlying relationship between the survivor and the perpetrator. Consequences for violating a sexual assault CPO may include civil or criminal contempt or criminal liability.
- (2) **Domestic Violence Safety Orders:** These CPOs may be available to survivors of sexual assault who have a qualifying relationship with the perpetrator, such as a dating or sexually intimate relationship,

⁵ *Id.*

⁶ Depending on the jurisdiction, these orders may be referred to as “restraining orders,” “stay-away orders” or civil “protection orders.” The term “protection order” in this chapter includes all such orders of protection.

currently live together or did so in the past, or are related by blood, marriage, or adoption.

- (3) **Anti-Stalking Orders:** These orders are available to any survivors of stalking, including survivors of sexual assault, and there are no relationship requirements. Eligibility is likely to be determined by how many contacts or incidents have occurred between the parties and whether the survivor experienced objectively reasonable fear. Typically, anti-stalking protection orders require at least two or more unwanted contacts between the survivor and the perpetrator.
- (4) **“Peace” and Anti-Harassment Orders:** Many jurisdictions offer safety or “peace” orders that are general enough to be an option for all survivors of harassment and assault, including sexual assault survivors.
- (5) **Criminal Justice System Based Orders:** Such orders are sought by the prosecutor on behalf of the survivor in a criminal case if a criminal case against the defendant is pending. They are also often a standard condition of a defendant’s release agreement in any criminal case.
- (6) **Institution-Based Orders:** These orders, typically issued by employers, educational institutions, or housing authorities, may be available to provide protection to survivors when they are on the institution’s property or participating in activities sponsored or hosted by the institution.
- (7) **Civil Injunctions:** Civil judicial orders require that the perpetrator refrain from committing certain acts and may be obtained if the survivor has filed an underlying civil claim against the perpetrator. Although civil injunctions lack the criminal consequences that may be imposed for violations of the CPOs described above, they are still court-issued orders and may be an avenue to additional legal remedies if violated.
- (8) **Military Protective Orders:** Military protection orders may be issued against a service member in any branch of the United States military (e.g., Army, Navy, Marine Corps, Air Force). The order may be written or verbal. Service and enforcement of a military

protection order may present unique challenges if the parties do not reside on the same military base, installation, or other military site.

An attorney should assess whether an order is necessary and, if so, which type of order(s) may be appropriate for each individual client based on the client's needs and the specific facts of the case. Depending on the relationship between the survivor and the perpetrator, the nature and frequency of the sexual assault(s), the jurisdiction's requirements, and the other civil or criminal remedies sought, a survivor may be eligible for one, all, or none of the orders described above.

[PRACTICE TIP: A survivor who seeks a protection order must be informed of how the protection order process may affect a criminal prosecution. For example, the survivor's statements in the petition for the order and at any subsequent court hearings may provide the defendant with access to survivor testimony that would otherwise not be accessible. See Section D., below, for further discussion of this issue.]

B. Full Faith & Credit

The Full Faith and Credit provision of the Violence Against Women Act⁷ (VAWA) requires states, territories, and tribes to enforce protection orders issued by another state, territory, or tribe as long as the issuing entity had proper jurisdiction and the defendant was afforded adequate notice to comport with due process.⁸ This provision also requires that law enforcement personnel enforce protection orders issued by another jurisdiction *as if the order were issued by the enforcing state, territory, or tribe*.⁹ Military courts are also required to give full faith and credit to qualifying state and tribal protection orders.¹⁰ The survivor does not need to register or file the protection order in the enforcing state for this VAWA

⁷ 18 U.S.C. §§ 2261–2266.

⁸ 18 U.S.C. § 2265.

⁹ *Id.*

¹⁰ 10 U.S.C. § 1561a (“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...[T]he term ‘civilian order of protection’ has the meaning given the term ‘protection order’ in section 2266 (5) of title 18.”).

provision to apply.¹¹ Federal law requires that Full Faith and Credit be extended to any “injunction, restraining order or any other order issued by a civil or criminal court for the purpose of preventing . . . sexual violence.”¹²

C. Retaliation, Timing, and Application

The risk of retaliation by a perpetrator may increase when a survivor files a police complaint or seeks civil legal intervention directed toward the perpetrator. If a client fears retaliation, discuss how they think the perpetrator is likely to respond and how the client’s safety will be impacted if you file for a protection order. The careful timing, filing, service, and handling of court hearings may play an important role in protecting the safety of the survivor. This is especially true in the context of the survivor’s decision regarding whether to report the assault to law enforcement. If the police plan to make an immediate arrest, the prosecutor may seek a criminal stay-away order on the survivor’s behalf. If the prosecutor will not seek such an order, it may be prudent to coordinate the filing of the police complaint with the protection order application. Even if a stay-away order is issued in a criminal case, the survivor may want to secure a civil protection order, too. Unlike a criminal order, the civil protection order may be dismissed, modified, or renewed with greater input from the survivor. It will remain in effect even if criminal charges against the perpetrator are dismissed.

[PRACTICE TIP: Filing for a protection order may trigger retaliation. Help the survivor assess whether filing for a protection order will result in added danger or and, if so, what may be done to minimize the harm. Be sure to engage in ongoing safety planning with your client. You may want to refer your client to a sexual assault crisis counselor or other advocate with safety planning expertise for further assistance.]

The risk of retaliation is also heightened when a perpetrator is notified of the outcome of an employment or educational disciplinary proceeding. If

¹¹ 18 U.S.C.A. § 2265(d). However, survivors may want to register a protection order in their new state or jurisdiction to ensure local law enforcement is aware.

¹² 18 U.S.C.A. § 2266(5).

the perpetrator is going to be dismissed from or otherwise sanctioned at work, or suspended or expelled from school, as a result of the survivor's complaint, protection orders may play a vital role. Protection orders may also provide the survivor with additional legal recourse if the perpetrator contacts them in violation of a court order.

[CHECK YOUR JURISDICTION'S LAW: Some but not all jurisdictions require mandatory arrest of an individual who violates a protection order. In many jurisdictions, violation of a protection order is a criminal offense, meaning a perpetrator may face additional criminal charges.]

A survivor who obtains a protection order may find that the perpetrator uses the court system as a means for further harassment. For example, the perpetrator may file a motion to vacate, modify, or compel the survivor to appear in court and recount the assault. Documenting these and similar efforts may help you persuade the reviewing court that these filings are thinly veiled efforts to intimidate, harass, or injure your client. In some jurisdictions, a perpetrator's over-use of the court system may be deemed evidence of harassment if it is extreme enough.¹³ The standard for vacating or modifying a civil protection order may not be found in statute. If the standard is not defined, look to the jurisdiction's common law for guidance on the applicable standard.

D. The Interrelationship Between Protection Orders and Other Remedies

1. Substantive Implications

Protection orders may have a substantial impact on other remedies the survivor seeks. The impact may be beneficial, or it may be burdensome or dangerous. For example, securing a protection order may help a survivor expedite the perpetrator's ouster from a residence, school, or work site. Landlords, housing authorities, employers, schools, and other agencies and institutions are sometimes reluctant to devote enough time and resources to conducting their own internal investigation. Additionally, they

¹³ See, e.g., *In re Marriage of Phasavath*, 132 Wash. App. 1033 (2006) (considering ex-husband's repeated threats to pursue legal action against ex-wife as evidence of harassment).

often fear litigation and liability if they act against a perpetrator without adequate evidence or legal support. For them, a court order such as a CPO may alleviate both the fear and the burden: a court order containing judicial findings may be relied on in lieu – or in support – of an institution’s own internal investigation. It may embolden an otherwise reluctant landlord, employer, or administrator to help.

At the same time, a CPO application has significant potential to undermine other outcomes that the survivor seeks, such as criminal conviction of the perpetrator. For example, a survivor who wants to secure a CPO may feel obliged to describe their relationship with the perpetrator as a “dating” or “intimate partner” relationship to be eligible for the protection order, even if such a relationship is not established. The survivor’s attorney should help the survivor understand the risk of characterizing the relationship in this manner as it may be used against the survivor in a criminal prosecution. Such evidence of a dating or intimate relationship may be used to support a perpetrator’s defense that sex was consensual in a related criminal or civil proceeding. If the survivor denies the relationship, they may be accused of lying – either on the civil application or in the criminal case. In such cases, a civil injunctive, housing, school-based, or criminal-based stay-away order may be a better option (*see below*). Another significant risk of a CPO is that a survivor may provide statements in the CPO petition or at a CPO hearing (where survivors often appear *pro se*) that could be challenged as inconsistent with subsequent testimony. This is especially true for survivors who provide testimony while still experiencing acute trauma. Any discrepancies between the survivor’s testimony in a CPO case and in the subsequent criminal case can be used as grounds for impeachment.

Finally, some survivors are unable to resolve their CPO cases if there is a concurrent criminal prosecution. This typically occurs when a judge delays the civil case if it would require a defendant facing criminal charges to compromise their Fifth Amendment rights by testifying in the civil matter. Some jurisdictions have resolved this dilemma by continuing the terms of the temporary CPO until the criminal case is resolved, by prohibiting the use of a respondent’s CPO testimony in a related criminal case, or by not issuing any findings and having the parties stipulate to the order instead.

2. Evidentiary Implications

As noted above, an affidavit submitted in support of a request for a CPO may be used as part of an effort to undermine the survivor in a subsequent criminal proceeding. If the affidavit contains specific facts and the survivor's subsequent testimony (in a civil or criminal case) differs from the affidavit, the perpetrator's attorney may try to use it to impeach the survivor during a criminal proceeding. This is especially common when a survivor's testimony and/or prior statements to police, hospital staff, witnesses, etc., differ from the statements set forth in the CPO petition. Although such inconsistencies may be a reaction to trauma, they may nevertheless be used against a survivor in a criminal case. At the same time, a CPO petition that is significantly devoid of specific facts may be used to impeach the survivor in a criminal trial precisely for that reason.

Attorneys in CPO proceedings must think strategically about how much detail to include in an affidavit. The survivor's certainty about the details, ability to recall the information consistently, and privacy considerations will inform that choice. If you are in a jurisdiction in which the nature of the relationship between the perpetrator and the survivor determines eligibility for the order, eligibility considerations also may influence how you and your client choose to describe the relationship between the parties. As noted above, if the survivor describes a "dating" relationship with the perpetrator to be eligible for the CPO, this description will likely enhance the criminal defense argument that sexual contact was consensual.

E. Seeking a Civil Protection Order: Benefits and Burdens

Avoid making promises to a client about what a protection order can and cannot provide: perpetrators' behavior cannot be predicted with total accuracy. Some perpetrators will abide by CPOs because they fear punishment if they do not obey a court order. Others will violate a court order with impunity, even if they have been punished for prior violations. In the end, the order is simply a piece of paper and cannot fully ensure that a survivor will be protected from contact, harassment, or even further assault by the perpetrator.

The reasons to pursue – or not pursue – a CPO will vary from client to client. Some survivors may feel confident that an order will stop further

contact and harassment and provide them with a sense of safety and security. Other survivors may fear retribution if they seek an order. Respect this fear and do not encourage a client to ignore it. Your role is to help your client make informed decisions.

The scope of protection and remedies available through a CPO is different in every jurisdiction. In addition to the specific remedies outlined in the law, many CPO statutes contain a “catch-all” provision that allows a court to order additional remedies the court deems necessary. There are many remedies a survivor may want to request the court to order, but some of the more common or important provisions include:

- A stay-away provision prohibiting direct or indirect contact with the survivor;
- Compensation for lost or damaged property;
- Ordering the perpetrator to vacate a residence;
- Restitution for medical or counseling costs, lost wages, damaged personal property, moving expenses, and any other out-of-pocket costs incurred as a result of the assault;¹⁴
- Assistance with the survivor’s housing costs (such as rent or mortgage, residential parking fees, etc.);
- Surrender of firearms and/or suspension of the right to carry a weapon;¹⁵ and

¹⁴ See, e.g., **Maine**: ME. REV. STAT. ANN. tit. 5, § 4655 (allowing judge to order “payment of monetary compensation to the plaintiff for losses suffered as a direct result of the harassment”); **Massachusetts**: MASS. GEN. LAWS ch. 209A, § 3 (allowing judge to order defendant to pay monetary compensation to abused person for “losses suffered as a direct result of such abuse,” including “loss of earnings or support, costs for restoring utilities, out-of-pocket losses for injuries sustained, replacement costs for locks or personal property removed or destroyed, medical and moving expenses and reasonable attorney’s fees”); **Missouri**: MO. REV. STAT. § 455.050(3) (allowing court to order respondent to pay compensation to victim including money for housing costs, court costs, and medical expenses resulting from abuse); **New York**: N.Y. FAM. CT. ACT § 841(e) (McKinney) (allowing court to order respondent to pay restitution in amount not to exceed \$10,000).

¹⁵ See, e.g., **Colorado**: COLO. REV. STAT. § 18-1-1001(3)(c) (court may issue order prohibiting defendant from possessing or controlling firearm or other weapons); **Massachusetts**: MASS. GEN. LAWS ch. 209A, §§ 3B, 3C (providing for suspension of firearms license and surrender of

- An award of child or spousal support.¹⁶

All states allow a court to award temporary child custody pursuant to a CPO either by statute or through the use of “catch-all” provisions.¹⁷ Some jurisdictions’ laws specifically address the issue of rape that results in pregnancy. If the survivor is suing the perpetrator for custody, issuance of a CPO and the findings and terms therein may be helpful in any subsequent custody or divorce (or immigration) proceedings. (See *Serving Immigrant Survivors of Sexual Assault* for additional information regarding immigrant survivors.)

[PRACTICE TIP: A CPO proceeding is a much timelier vehicle than a criminal case for a survivor seeking emergency financial compensation. Although a convicted defendant in a criminal case may be ordered to pay restitution, in most jurisdictions it is the prosecutor and not the survivor who decides whether and how much restitution to request. Even if the defendant is ordered to pay restitution, it is typically ordered only at

firearms and ammunition upon issuance of protection order if plaintiff demonstrates “a substantial likelihood of immediate danger of abuse”); **New York**: N.Y. FAM. CT. ACT § 842-a (McKinney) (providing for surrender of firearms and license suspension upon issuance of protection order). While VAWA prohibits possession of a firearm by a respondent subject to a qualifying protective order, not all CPOs are “qualifying orders” under federal law. Therefore, a victim may want to request dispossession as a condition of the state CPO.

¹⁶ See, e.g., **California**: CAL. FAM. CODE § 6341 (West) (allowing court to order child support if parties are married or respondent is presumptive father and there is no pre-existing support order in place); CAL. FAM. CODE § 6346 (West) (allowing court to issue custody and visitation orders as part of protection order hearing); **Illinois**: 750 ILL. COMP. STAT. 60/214(b) (allowing court to address issues of custody, visitation, and support payments in protection order proceeding); **New York**: N.Y. FAM. CT. ACT § 842 (allowing order of protection to include custody award, order of visitation, and temporary order of support).

¹⁷ See, e.g., **Montana**: MONT. CODE ANN. § 40-15-201(2)(j) (2021)(West) (order of protection may include order “directing other relief considered necessary to provide for the safety and welfare of the petitioner or other designated family member”); **North Carolina**: N.C. GEN. STAT. § 50C-5 (2005) (court may order “other relief deemed necessary and appropriate by the court” as part of civil no-contact order); **South Dakota**: S.D. CODIFIED LAWS § 22-19A-11 (2007) (protection order may include order for “other relief as the court deems necessary for the protection of the person seeking the protection order, including orders or directives to law enforcement officials”); **Texas**: TEX. CODE CRIM. PROC. ANN. art. 7B.005 (West 2021) (as part of a protection order, a court may “order the alleged offender to take action as specified by the court that the court determines is necessary or appropriate to prevent or reduce the likelihood of future harm to the applicant or a member of the applicant’s family or household”).

sentencing, if at all. A survivor may also have more success seeking reimbursement in a CPO than in a criminal case because of the lower standard of proof. States' Crime Victim Compensation funds may be an additional source for funds to cover a victim's expenses.]

A CPO must be served on the respondent before it is enforceable. If the perpetrator was a stranger, or if the survivor does not know how or where they may be reached, this may be difficult to achieve.

The survivor will also need to be prepared to testify about the assault in front of the judge and, after the *ex parte* stage, in front of the perpetrator as well. The survivor's testimony may have to be given in open court.

[CHECK YOUR JURISDICTION'S PROCESS: In many jurisdictions, CPO hearings are more informal than other court proceedings. A survivor may be able to get an order granted without a full hearing.¹⁸ If the perpetrator is willing to "consent" to the order being granted, there may be no hearing at all. Other jurisdictions, however, do not have summary proceedings and may conduct full evidentiary hearings.¹⁹ In addition, in many jurisdictions, CPO hearings are conducted in open court, in which case the survivor will have to testify about their

¹⁸ See, e.g., *Frizado v. Frizado*, 420 Mass. 592, 597–98 (1995) (abrogated on other grounds by *Zullo v. Goguen*, 672 N.E. 2d 502 (Mass. 1996)) (procedure for obtaining a protection order is "intended to be expeditious," "must be practical," and "the rules of evidence need not be followed, provided that there is fairness in what evidence is admitted and relied on."); *Maksuta v. Higson*, 577 A.2d 185, 186 (N.J. Super. Ct. App. Div. 1990) ("The Domestic Violence Act provides for proceedings which may be relatively informal."); IND. CODE ANN. § 34-26-5-10 (2022)(no automatic hearing required for the order to become permanent but a hearing is required if requested by either party or if the petitioner requests monetary relief, possession of joint property, prohibition of the possession of a firearm, or eviction of the offender from the residence).

¹⁹ See, e.g., *Utley v. Baez-Camacho*, 743 So. 2d 613, 614 (Fla. Dist. Ct. App. 1999) ("The purpose of a due process hearing following the grant of an *ex parte* temporary injunction is to give the defendant an opportunity to show that the allegations previously relied on are not true. The witnesses should be sworn, each party should be permitted to call witnesses with relevant information, and cross-examination should be permitted."). See also Christina DeJong & Amanda Burgess-Proctor, *A Summary of Personal Protection Order Statutes in the United States*, 12 VIOLENCE AGAINST WOMEN 68 (2006), available online at <https://journals.sagepub.com/toc/vaw/12/1> (last accessed Jul 30, 2024).

experience before an open courtroom.²⁰ This may be difficult and could re-traumatize the survivor. Be sure you are familiar with the practices of the court in which you are appearing, and with all relevant privacy protections you may be able to pursue.]

Inform the survivor that, in a contested hearing, the perpetrator will be present in court, and the survivor will have to see them. This could be very difficult. If there is a hearing, the perpetrator will have an opportunity to present their version of the facts. This may also be traumatic, insulting, and distressing for the survivor to hear. The respondent, if they are *pro se*, or their attorney will probably cross-examine the survivor following their testimony. If the respondent is *pro se*, some judges will require them to direct their questions to the judge, who will then pose them to the survivor, if the judge deems the questions appropriate. However, not all judges will provide such a “screen.” Even if the survivor is not questioned directly by the respondent, they will still hear the respondent’s questions even if they are not required to answer them.

Sometimes, judges – most often those who are not familiar with sexual assault issues – may require a sexual assault survivor to answer questions that are relevant only to a higher standard of proof than the standard required for issuance of a CPO. Although the standard of proof in a CPO case does not require a finding that there was criminal non-consensual sex, a judge may nevertheless question the survivor or allow the defense to ask questions that seek to establish the respondent’s criminal conduct. This may be damaging to the survivor emotionally and may also undercut the criminal case against the perpetrator. Attorneys should be familiar with the standard of proof in the governing jurisdiction and carefully consider which of the perpetrator’s acts meet the statutory requirements. Careful attention to the standard and the evidence given may be a way to spare the survivor from testifying about the assault itself. Familiarity with state and local court rules, the rules of evidence, limitations on cross-examination, and any rules

²⁰ See e.g., WomensLaw.org, www.womenslaw.org (last visited Jul 30, 2024), for a description of the procedures for obtaining a protection order in every state and the District of Columbia.

regarding the protection of private or privileged information may also help an attorney object to the admission of certain information.²¹

[PRACTICE TIP: Emphasize to the survivor and prepare them for the fact that it is critically important to give consistent testimony so that any evidence they give in the CPO hearings is not later used against the survivor in the criminal case.]

While the CPO process is difficult and frightening for some survivors, for others it is very healing and empowering. For some survivors, recounting their experience in court helps them come to the realization that they were wronged through no fault of their own. Being believed by the court and respected by a supportive judge who grants the order may help a survivor feel vindicated and in control. This may be especially true if the CPO is continued after a contested hearing in which the judge believed the survivor and not the perpetrator. At the same time, for many survivors the legal system is not a vehicle (or even a catalyst) for healing.

[PRACTICE TIP: Get to know your client well enough to have a conversation with them about the relative benefits and burdens of seeking a CPO. If you can earn their trust and understand one another, both you and your client will enter these proceedings confident that the process is worth pursuing,

²¹ For a practical guide to evidentiary issues encountered in civil protection order cases, the American Bar Association's Commission on Domestic Violence offers outlines on evidence issues in domestic violence cases entitled *A Lawyer's Handbook: Volume 1 – The Domestic Violence Civil Law Manual, 4th Edition*, available at https://www.americanbar.org/groups/domestic_violence/Initiatives/publications/ (last accessed Jul 30, 2024). See also Jane H. Aiken & Jane C. Murphy, *Evidence Issues in Domestic Violence Civil Cases*, 34 FAM. L.Q. 43 (2000). Your state's continuing legal education program or domestic violence program may also provide manuals on evidence issues and litigating protection order cases. See, e.g., *OBTAINING, ENFORCING AND DEFENDING C.209A RESTRAINING ORDERS IN MASSACHUSETTS* (Andrea J. Cabral ed., 1997 & Supp. 2004) available from Massachusetts Continuing Legal Education, <https://www.mcle.org/product/catalog/code/1970295B00> (last accessed Jul 30, 2024). National sexual assault-focused resources may be more difficult to locate, but helpful state sexual assault resources do exist. See e.g., *SEXUAL VIOLENCE LAW IN KENTUCKY: A HANDBOOK OF CRIMINAL, CIVIL, AND ADMINISTRATIVE LAWS* (Marylee Perry ed., 2003), available at https://www.kasap.org/wp-content/uploads/2023/04/SexLawBooklet_Full-Print-REV_10-28-18_web-1.pdf (last accessed Aug 7, 2024). See also *CIVIL REMEDIES FOR WOMEN VICTIMIZED BY VIOLENCE: A PRACTICE MANUAL FOR ATTORNEYS* (Carol E. Jordan *et al.* eds., 2003), available for purchase at https://uknowledge.uky.edu/ipsvaw_book/3/.

regardless of the outcome. If you avoid a difficult conversation or have not worked through the decision together, your client may blame you for putting them through a harrowing ordeal that was not worth the pain; this may be true even if they prevail and the order is issued. A survivor should be cautioned that CPO petitions are public documents. Therefore, any facts that are included in the CPO petition are likely to become accessible to the general public. Although a court may be willing to seal the documents, even a sealed document is not an assurance that the survivor's personal information will remain private. Talk to your client about what they hope to gain through the order and whether there are other ways to access those remedies. If there are no better options and they know what to expect from the process, then you can both move forward confident that they have selected the remedy that is right for them.]

F. Speed and Efficiency of Protection Orders

Protection order hearings may be a more expeditious and survivor-friendly venue for holding the perpetrator accountable relative to other civil or criminal prosecutions. CPO cases are typically resolved within two weeks to one month. In contrast, it can take two to four months to complete a school or employment disciplinary process and one to two years for a criminal prosecution. Filing and hearing procedures as well as court personnel are often more survivor-friendly in CPO cases than in criminal cases or other types of civil proceedings. In many jurisdictions, civil protection order statutes were created mostly with input from domestic violence survivors and with the expectation that in most cases the parties would represent themselves. Although CPO proceedings are accessible to *pro se* litigants, research has found that assistance of counsel improves survivors' access to and outcomes in CPO cases.²² This may be

²² In their 2003 article, *Explaining the Recent Decline in Domestic Violence*, economists Amy Farmer and Jill Tiefenthaler conclude that the availability of legal services in a victim's county of residence "has a significant, negative effect on the likelihood that an individual woman is battered. . . . [and that] legal services provision is one likely significant factor in explaining the decline [in domestic violence]." CONTEMPORARY ECONOMIC POLICY, Vol. 21, No. 2, April 2003, 158-172, available at <https://onlinelibrary.wiley.com/doi/abs/10.1093/cep/byg002>.

particularly true for survivors of non-intimate partner sexual assault, to prevent the proceeding from turning into a sexual assault trial.

IV. OBTAINING PROTECTION ORDERS

A. Sexual Assault Specific Protection Orders

Some legislatures have established safety orders specifically for survivors of sexual assault.²³ In contrast to domestic violence CPOs, these sexual assault protection orders do not require a qualifying relationship – such as dating, marriage, intimate sexual partner, etc. – between the parties.²⁴ Further, most jurisdictions do not require the survivor to report the incident to law enforcement or to participate in a criminal prosecution.²⁵ However, there are exceptions: for example, Florida requires a victim to cooperate with law enforcement;²⁶ in Iowa, an order may be issued upon the defendant’s arrest, a magistrate’s finding of sexual assault, and a continued threat to the victim.²⁷ While most protection orders are civil in nature, Arkansas law authorizes a permanent criminal protection order in sexual

²³ A number of states offer civil protection orders or no-contact orders for victims of sexual assault. See, e.g., **Florida**: FLA. STAT. § 784.046 (victim may file a sworn petition for an injunction for protection against sexual violence in circuit court; if violated, respondent shall be held in custody in accordance with the rules of criminal procedure, pending a hearing); **Illinois**: 740 ILL. COMP. STAT. 22/201 (2022) (victim of non-consensual sexual conduct or penetration may petition a court for a civil no-contact order); 740 ILL. COMP. STAT. 22/219 (2004) (“A knowing violation of a civil no contact order is a Class A misdemeanor; A second or subsequent violation is a Class 4 felony.”); North Carolina: N.C. GEN. STAT. § 50C-3-C-5 (2009) (victim of unlawful conduct may file a petition for a civil no-contact order).

²⁴ See, e.g., **Montana**: MONT. CODE ANN. § 40-15-102(2) (victim of sexual assault is eligible regardless of the relationship to the offender); **Texas**: TEX. CODE CRIM. PROC. ANN. art. 7A.01(a) (West 2021) (victim of sexual assault may file an application for a protection order without regard to the relationship between the applicant and the alleged offender).

²⁵ See, e.g., **Illinois**: 740 ILL. COMP. STAT. ANN. 22/202(a) (2020) (action may be commenced independently or in conjunction with a criminal prosecution); **Montana**: MONT. CODE ANN. § 40-15-102(5) (2021) (“A petitioner is eligible for an order of protection whether or not: (a) the petitioner reports the abuse to law enforcement; (b) charges are filed; or (c) the petitioner participates in a criminal prosecution.”).

²⁶ FLA. STAT. § 784.046 (2005) (victim must have reported sexual violence to a law enforcement agency and be cooperating in any criminal proceeding against respondent).

²⁷ IOWA CODE § 664A.3 (2021).

assault cases where a defendant has been convicted and exhausted their right to appeal.²⁸

1. Petitioning for an Order

In most jurisdictions, petitioning for a sexual assault protection order is a two-step process. The first step is to file for a temporary order; this typically involves the survivor filing an “application,” “complaint,” “petition,” or “affidavit” in civil court. Issuance of the order typically requires a showing of immediate or imminent harm. If granted, the preliminary order will be issued based on the survivor’s application and will be issued *ex parte* (i.e., the respondent does not need to be notified or present at this initial hearing). If issued, the order is temporary and will be effective only for a fixed, and relatively short, period of time.²⁹ The order will be valid but unenforceable until it is served on the respondent.

[CHECK YOUR JURISDICTION’S LAW: Laws vary with respect to the proper venue for obtaining this type of safety order.]

To obtain a protection order, most jurisdictions require that the survivor make a minimum showing in the initial application, complaint, or affidavit. Although the exact language varies from jurisdiction to jurisdiction, most courts look for two criteria. First, in their application or affidavit, a survivor must state that they are the survivor of a sexual assault or attempted sexual assault committed by the perpetrator. They need to provide the court with enough information that it can reasonably believe their

²⁸ ARK. CODE ANN. § 5-14-103 (West) (providing sexual assault victims with a criminal permanent no-contact order when defendant pleads guilty or *nolo contendere* or has exhausted all appeals after conviction).

²⁹ See, e.g., **Florida**: FLA. STAT. § 784.046 (court may grant a temporary injunction not to exceed 15 days upon an *ex parte* hearing pending a full hearing); **Illinois**: 740 ILL. COMP. STAT. ANN. 22/214 (2010), 740 ILL. COMP. STAT. ANN. 22/216 (2018) (court may order an emergency order lasting 14–21 days without notice to respondent based on victim’s petition); **Montana**: MONT. CODE ANN. § 40-15-201(4) (2021) (court may issue an immediate temporary order of protection based upon victim’s sworn petition and other evidence for up to 20 days without prior notice to the respondent); **Texas**: TEX. FAM. CODE ANN. § 83.002 (Vernon 2002) (temporary *ex parte* orders not to exceed twenty days but may be extended upon petition by plaintiff or by judge for additional twenty day periods).

assertion.³⁰ As noted above, in some jurisdictions, a survivor’s report to law enforcement or cooperation with an investigation and/or prosecution, or a conviction in a criminal case is necessary before an order may issue.³¹

Second, most statutes require that the survivor assert that they are afraid of their perpetrator and fear for their safety. Again, the survivor should be sure to provide enough information for a trier of fact to determine that they are in fear or danger of future harm by the perpetrator.³²

The second step of the protection order process requires that the survivor return to court for a hearing at which the respondent is present. The perpetrator will have an opportunity to respond to the survivor’s initial complaint.³³ Both parties will be given an opportunity to present evidence. The court may decide to continue, make permanent, modify, or vacate the preliminary protection order.

2. Drafting the Affidavit

Remember that the information contained in a survivor’s affidavit may significantly affect the availability of other legal remedies. Any statements contained in the CPO affidavit must be consistent both with statements

³⁰ See, e.g., **Illinois**: 740 ILL. COMP. STAT. ANN. 22/213(a) (2022) (petitioner must show they are a victim of non-consensual sexual conduct or penetration); **Iowa**: IOWA CODE § 664A.3 (magistrate must find probable cause to believe a sexual assault occurred).

³¹ See, e.g., **Arkansas**: ARK. CODE ANN. § 5-14-103 (providing sexual assault victims with a permanent criminal no-contact order when defendant pleads guilty or *nolo contendere* or has exhausted all appeals after conviction); **Florida**: FLA. STAT. § 784.046 (requiring that victim has reported sexual violence to a law enforcement agency and is cooperating in any criminal proceeding against respondent); **Iowa**: IOWA CODE § 664A.3 (protection order available upon arrest and a finding by a magistrate that a sexual assault occurred and the defendant poses a threat to the victim).

³² See, e.g., **Florida**: FLA. STAT. § 784.046 (2022) (petitioner must show that an immediate and present danger of violence exists); **Iowa**: IOWA CODE § 664A.3 (2022) (magistrate must find that the presence of or contact with the defendant poses a threat to her safety); **Montana**: MONT. CODE ANN. § 40-15-201(1) (2005) (sworn petition must state that she is in “reasonable apprehension of bodily injury” and is in “danger of harm if the court does not issue a temporary order”).

³³ See, e.g., **Florida**: FLA. STAT. § 784.046) (requiring a full hearing); **Montana**: MONT. CODE ANN. §§ 40-15-201 to 202 (final order of protection consideration after full hearing); **Texas**: TEX. CODE CRIM. PROC. ANN. art. 7B.003 (West 2021) (requiring a full hearing and statement of the required findings).

they have made in the past and any future testimony. When drafting the affidavit, the survivor and their attorney will want to find the right balance between providing enough detail to support the survivor's request while at the same time committing to as little detail as possible so as not to undermine any future testimony. To the extent possible, limit the information in the affidavit so it cannot later be used to impeach the survivor. Review medical records and police reports prior to filing the protection order affidavit to avoid inconsistencies, if possible. Be wary of including details that are inconsistent with a survivor's prior statements to law enforcement, medical providers, and other first responders. Although there may be very good reasons for inconsistencies, they may be used to undermine the survivor's credibility.³⁴ At the same time, an affidavit that is vague or contains too few specifics may expose a survivor to additional or more invasive questioning by the judge and/or the defendant (at the subsequent hearing for a permanent order). In addition, as discussed previously, a survivor's attorney should know whether there is a pending criminal prosecution or investigation. Be sure to assess the impact an affidavit may have on those proceedings.

In some cases, a survivor may be able to submit a supplemental affidavit to the initial pleadings. This may be an opportunity to bolster previous assertions or add allegations about the assault. Be aware, however, that filing a supplemental affidavit may result in inconsistencies between the first and second affidavits, or between statements in the affidavit and those made to the police or prosecutor. Such inconsistencies may also jeopardize a survivor's credibility unless adequately explained in the supplemental affidavit.

[PRACTICE TIP: In some attorneys' experience, judges scrutinize perceived inconsistencies more closely in sexual assault cases than in other protection order cases. If you have access to other attorneys who have handled these cases, you may want to get their insight into local practice. Individual

³⁴ Where inconsistencies are found between the victim's current description of what occurred and these records, interview your client closely to obtain more information. This may include an explanation of why there is a difference (e.g., a non-professional interpreter was used for the initial police interview) or additional detail so that the information is consistent with the records or report.

judges may approach these matters very differently, so learn as much as you can about the specific judge assigned to the matter, if you know the judge ahead of time. This information can also inform your case strategy.]

B. Peace Orders and Anti-Harassment Orders

Some jurisdictions allow courts to issue general anti-harassment protection orders.³⁵ An anti-harassment order may be an effective civil remedy for survivors who are not eligible for a sexual assault or other CPO that has a broader scope and better enforcement mechanism. Anti-harassment orders typically are designed so that survivors will be able to prove that the requisite harassment occurred. These laws do not require the complainant to have a qualifying relationship with their harasser.³⁶

“Harassment” may include a wide spectrum of behavior ranging from assault to unwanted contact and annoyance.³⁷ Through these orders, a court will enjoin a perpetrator from further harassment. Anti-harassment orders do not usually offer a survivor the range of remedies available in a sexual assault or domestic violence CPO. The consequences of violating

³⁵ See, e.g., **Arizona**: ARIZ. REV. STAT. ANN. § 12-1809 ; **California**: CAL. CIV. PROC. CODE § 527.6(a)(1) (West 2022) (“person who has suffered harassment... may seek a temporary restraining order and an order after hearing prohibiting harassment”); **Maine**: ME. . STAT. tit. 5, §§ 4653-4655 (West 2022) (victim of harassment may seek a temporary protection order or consent agreement); **North Dakota**: N.D. CENT. CODE § 12.1-31.2-01(2) (West 2021) (victim of disorderly conduct may seek a restraining order). In Maryland, the Peace Order statute specifically allows an order based on sexual assault. MD. CTS. AND JUD. P. CODE ANN. §§ 3-1501-1509 (West 2022).

³⁶ *Id.*

³⁷ See, e.g., **Arizona**: ARIZ. REV. STAT. ANN. § 12-1809 (harassment includes a “series of acts over any period of time that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person and serves no legitimate purpose”); **California**: CAL. CIV. PROC. CODE § 527.6(b) (West 2022) (harassment defined as “unlawful violence, a credible threat of violence, or a knowing and willing course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose”); **Maine**: ME. . STAT. tit. 5, § 4651(2)(c) (harassment includes “three or more acts of intimidation, confrontation, physical force or the threat of physical force directed against any person, family or business that are made with the intention of causing fear, intimidation or damage to personal property and that do in fact cause fear, intimidation or damage to personal property”); **North Dakota**: N.D. CENT. CODE § 12.1-31.2-01) (disorderly conduct means intrusive or unwarranted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person).

an order can include a monetary fine, imprisonment, or both.³⁸ Remedies such as emergency financial assistance and ouster are not available. For some perpetrators, however, the very existence of a court order may be an effective deterrent and afford the survivor some additional relief.

A survivor may petition for an anti-harassment order in civil court. Most jurisdictions have an *ex parte* application process. As with the other types of orders, temporary anti-harassment orders may be converted into longer term or permanent injunctions following a full hearing where all parties had notice and an opportunity to be heard.³⁹ Standard application procedures require a survivor to petition. A sworn affidavit describing the harassment and the need for relief may also be required.⁴⁰

C. Anti-Stalking Orders

Most jurisdictions have enacted laws that authorize protection orders for survivors of stalking.⁴¹ Anti-stalking orders may be an effective remedy for

³⁸ See, e.g., **California**: CAL. PENAL CODE § 273.6(a)-(b) (West 2022) (violation of an order is a misdemeanor punishable by fine of not more than \$1000 or by imprisonment for not more than one year, or both; if physical injury results, the violation is punishable by fine of not more than \$2000 or imprisonment for no less than thirty days nor more than one year, or both); **Maine**: ME. STAT. tit. 5, § 4659 (2022) (violation of a protection order is a Class D crime that may result in warrantless arrest upon probable cause that violation occurred); **North Dakota**: N.D. CENT. CODE § 12.1-31.2-01(7) (violation punishable by imprisonment of up to three hundred sixty days or a fine of up to three thousand dollars or both).

³⁹ See, e.g., **Maine**: ME. STAT. tit. 5, § 4654 (2022) (court may issue temporary order based upon verified complaint or affidavit without written or oral notice to defendant or his attorney); **North Dakota**: N.D. CENT. CODE § 12.1-31.2-01(4) (based on the petition for relief, court may grant a temporary protection order pending a full hearing).

⁴⁰ See, e.g., **Maine**: ME. REV. STAT. ANN. tit. 5, § 4654(2)(A) (a temporary order may be based on a verified complaint, or an affidavit accompanying the complaint, stating that the plaintiff “may be in immediate and present danger of physical abuse from the defendant or in immediate and present danger of suffering extreme emotional distress as a result of defendant’s conduct,” whether law enforcement has been contacted, and “sufficient information to substantiate the alleged harassment”); **North Dakota**: N.D. CENT. CODE § 12.1-31.2-01(3) (“petition for relief must allege facts sufficient to show the name of the alleged victim, the name of the individual engaging in the disorderly conduct,” and that the individual engaged in disorderly conduct and must be accompanied by an affidavit made under oath “stating the specific facts and circumstances supporting the relief sought”).

⁴¹ See, e.g., **Alaska**: ALASKA Stat. §18.65.850-867 (West 2022); **California**: CAL. CIV. PROC. CODE § 527.6; **Colorado**: COLO. REV. STAT. ANN. § 13-14-103 (West 2022); **Connecticut**: CONN. GEN. STAT. § 46b-16(a); **Florida**: FLA. STAT. § 784.046; **Georgia**: GA. CODE ANN. § 16-5-

some sexual assault survivors. Typically, to qualify for a stalking protection order, the survivor must have had at least two unwanted contacts with the perpetrator where they were afraid or apprehensive.⁴² In some jurisdictions, acts such as following the survivor or coming into their presence is a sufficient basis for issuing an order. Other jurisdictions require more substantial action, such as a direct threat or physical assault.⁴³ Eligibility for

94 (West 2022); **Hawaii**: HAW. REV. STAT. § 604-10.5; **Illinois**: 740 ILL. COMP. STAT. ANN. 21/15 (2022); **Indiana**: IND. CODE ANN. § 34-45-10-5 (West 2022); **Kansas**: KAN. STAT. ANN. § 60-31a06 (West 2022); **Kentucky**: KY. REV. STAT. ANN. §456.090 (West); **Louisiana**: LA. STAT. ANN. 14:40.2 (t 2022); **Maine**: ME. STAT. tit. 5, §§ 4653-4655 (West 2022); **Maryland**: MD. CTS. AND JUD. P. CODE ANN. §§ 3-1501-1509 (West 2022); **Massachusetts**: MASS.GEN. LAWS ch. 258E, § 3 (West); **Michigan**: MICH. COMP. LAWS § 750.411h (2022); **Minnesota**: MINN. STAT. § 609.748; **Missouri**: MO. REV. STAT. § 455.005 (2022); **Montana**: MONT. CODE ANN. § 40-15-102; **Nebraska**: NEB. REV. STAT. § 28-311.02-03; 28.31109-10 (West); **Nevada**: NEV. REV. STAT. § 200.571 (2022); **New Hampshire**: N. H. REV. STAT. ANN. § 633:3-a (2022); **North Carolina**: N.C. GEN. STAT. § 50C-1; **Ohio**: OHIO REV. CODE ANN. § 2903.214; **Oklahoma**: OKLA. STAT. ANN. tit. 22, §60.1; **Oregon**: OR. REV. STAT. § 163.738 (2022); **Pennsylvania**: 42 PA. STAT. and CONS. STAT. § 62A03; **South Carolina**: S.C. CODE ANN. § 16-3-1750 (2022); **South Dakota**: S. D. CODIFIED LAWS § 22-19A-8; **Texas**: TEX. CODE CRIM. PROC. ANN. art. 7B.002(West); **Utah**: UTAH CODE ANN. § 78b-7-701 (West 2022); **Vermont**: VT. STAT. ANN. tit. 12 § 5133 (West 2022); **Virginia**: VA. CODE ANN. § 19.2-152.10; **West Virginia**: W. VA. CODE § 53-8-4 (West 2022); **Wisconsin**: WIS. STAT. § 813.125; **Wyoming**: WYO. STAT. ANN. § 6-2-506 (West 2022).

⁴² See, e.g., **Michigan**: MICH. COMP. LAWS §§ 750.411h, 750.411i, 600.2950a (2022) (requiring “willful course of conduct involving repeated or continuing harassment” that would “cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested”); **Ohio**: OHIO REV. CODE ANN. § 2903.211(A)(1) (WEST) (defining stalking as when a person “by engaging in a pattern of conduct” knowingly causes another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person); **Oregon**: OR. REV. STAT. § 163.738 (requiring “repeated and unwanted contact” that causes the victim “reasonable apprehension regarding the personal safety of the victim or a member of the victim’s immediate family or household”, among other requirements).

⁴³ See, e.g., **Michigan**: MICH. COMP. LAWS § 750.411h (prohibited contact includes but is not limited to: “(i) following or appearing within sight of the individual; (ii) approaching or confronting that individual in a public place or on private property; (iii) appearing at the individual’s workplace or residence; (iv) entering onto or remaining on property owned, leased, or occupied by that individual; (v) contacting that individual by telephone; (vi) sending mail or electronic communications to that individual; or (vii) placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.”). Cf. **Ohio**: OHIO REV. CODE ANN. § 2903.211(B)(2) (West 2006) (menacing by stalking is a felony if: (a) the offender made a threat of physical harm to or against the victim; (b) the offender trespassed on the land or premises where the victim lives, is employed, or attends school; (c) the victim is a minor; (d) the offender has a history of violence towards the victim or any other person; (e) the offender had a

an anti-stalking order varies widely. A survivor whose perpetrator has contacted them even once after an assault may qualify for an anti-stalking order. In jurisdictions that have an anti-stalking statute, violating the order may be a criminal offense.⁴⁴

Survivors may be able to apply for an anti-stalking order without filing criminal charges or otherwise pursuing criminal remedies.⁴⁵ Similar to the orders discussed above, protection orders for survivors of stalking are usually available through the civil court process.⁴⁶ Temporary *ex parte* orders are usually available and, like their domestic violence and sexual assault counterparts, may be extended or made permanent upon a full hearing.

D. Domestic Violence Protection Orders

Every state has enacted legislation authorizing CPOs to protect survivors of domestic violence.⁴⁷ In jurisdictions that do not offer sexual assault specific

deadly weapon; or (f) the offender caused serious physical harm to the premises where the victim lives, to the real property where the premises is located, or to any personal property located on the premises).

⁴⁴ See, e.g., **Ohio**: OHIO REV. CODE ANN. § 2919.27(B)(1) (West 2022) (violation of a protection order is a misdemeanor of the first degree); **Oregon**: OR. REV. STAT. § 163.750(2) (violation of court's stalking protection order is a Class A misdemeanor unless the person has a prior conviction for stalking or for violation of a stalking protection order, then violation is a Class C felony).

⁴⁵ See, e.g., **Michigan**: MICH. COMP. LAWS ANN. § 600.2950a(1) (relief may be sought or granted whether or not the individual to be restrained or enjoined has been charged or convicted); **Oregon**: OR. REV. STAT. § 30.866 (a person may bring a civil action in a circuit court for a court's stalking protection order, for damages, or both), Cf. OR. REV. STAT. § 163.738 (stalking citation requested through law enforcement).

⁴⁶ See, e.g., **Michigan**: MICH. COMP. LAWS ANN. § 600.2950a(1) (individuals may petition to the family division of circuit court); **Oregon**: OR. REV. STAT. § 30.866 ("a person may bring a civil action in circuit court").

⁴⁷ See, e.g., **Alabama**: ALA. CODE § 30-5-2 (2022) (victim is defined as an individual who is related in any of the following ways to the person who commits an act of abuse: (1) currently or formerly married; (2) child in common; (3) dating relationship; (4) current or former household member; (5) relative of a current or former household member who also lived with the defendant and (6) parent, stepparent, child or stepchild); **Kentucky**: KY. REV. STAT. ANN. § 403.720 (West 2022) (protection order available to "spouse, former spouse, grandparent, grandchild, parent, child stepchild, or any other person living in the same household as a child if the child is the alleged victim"); **Virginia**: VA. CODE ANN. §§ 16.1-228, 253.1 (West) (protection orders available to prevent abuse by current or former spouse, specified relatives, person with whom the plaintiff

safety orders, domestic violence protection orders may be appropriate. They may also be appropriate for certain survivors depending on the remedies the survivor seeks, the terms of the order, and the conditions that must be satisfied to secure the order. For a domestic violence order to be appropriate in a sexual assault case, there must be some type of dating, intimate partner, or other qualifying relationship between the parties.⁴⁸ A sexual assault survivor who cannot satisfy the relationship element (*e.g.*, related to the perpetrator by blood, marriage, or adoption, share a residence, have a prior sexually intimate relationship), may not qualify for a jurisdiction’s domestic violence protection order. In some jurisdictions, however, dating relationships fall within the scope of the required underlying relationship,⁴⁹ so if a survivor was assaulted during a date or by a perpetrator with whom a romantic relationship was shared, they may be eligible for a domestic or family violence protection order.⁵⁰

[CHECK YOUR JURISDICTION’S LAW: The definitions and scope of who is eligible for a domestic violence protection order vary. Research your jurisdiction’s statute to determine if your client’s relationship with the perpetrator meets your jurisdiction’s definition.]

Because the remedies for sexual assault survivors are much more limited than those for domestic violence survivors, you may need to think

has a child in common, and individual who lives with plaintiff or has lived with plaintiff within the past 12 months). For a synopsis and citation to every state’s domestic violence protection order statute, see WomensLaw.org, <https://www.womenslaw.org/laws/general/restraining-orders> (last visited Aug 7, 2024)

⁴⁸ See *generally* ISABELLE SCOTT, DOMESTIC VIOLENCE PRACTICE AND PROCEDURE (Clark Boardman Callaghan: 2022 ed.).

⁴⁹ See, *e.g.*, **Arkansas**: ARK. CODE ANN. § 9-15-103 (West) (“family or household members” defined to include a dating relationship, but a dating relationship does not include “a casual relationship or ordinary fraternization between two individuals in a business or social context”); **Illinois**: 750 ILL. COMP. STAT. Ann. 60/103(6) (2022) (“family or household member” includes “boyfriend or girlfriend, or someone you date or used to date”); **Washington**: WASH. REV. CODE § 26.50.010(2) (West 2005) (“family or household member” includes “someone you dated or are dating as long as the abuser is sixteen or older”).

⁵⁰ Additionally, in some jurisdictions the legal definition of “domestic violence” includes sexual violence perpetrated by someone with whom the survivor does not share any type of dating or intimate relationship. For this reason, it is incredibly important to understand the laws in your jurisdiction.

creatively about how to secure the protections your client seeks. Think expansively when assessing how to fit the facts of your client’s relationship into the statutory definition. For example, a survivor may have been sexually assaulted by someone to whom they are related by blood, marriage, or adoption (e.g., sister-in-law, father-in-law, adult child, cousin) and thus be eligible for a family violence order. Even if the assault occurred on their first date, some jurisdictions’ definitions of a “dating relationship” might encompass a one-time date.⁵¹ In other jurisdictions, sharing a dormitory or living in the same communal housing may be the basis for eligibility.⁵² Consider an innovative approach. The legislative histories of domestic violence protection order schemes may support expansive and inclusive statutory interpretation by a court applying the law to protect survivors in individual cases.⁵³

Many jurisdictions have specialized courts for domestic violence protection order hearings. These courts are typically staffed by judges who with specialized training on the dynamics of domestic violence.⁵⁴ Laws and

⁵¹ See, e.g., ALASKA STAT. § 18.66.990(5)(C) (2022) (“adults or minors who are dating or who have dated”); ME. . STAT. ANN. tit. 19A, § 4002 (West 2022) (“individuals currently or formerly involved in dating each other, whether or not the individuals are or were ‘sexual partners’”); W. VA. CODE § 48-27-204(4) (West 2022) (“persons who are or were dating: Provided, that a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship.”). *But see Phillips v. Campbell*, 844, 206 Cal. Rptr. 3d 492 Ct. App. (2016) (defining dating relationship’ means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations).

⁵² See, e.g., *Hamilton v. Ali*, 795 A.2d 929, 934 (N.J. Super. Ct. Ch. Div. 2001) (students sharing a dorm suite were “household members” for purposes of New Jersey’s Prevention of Domestic Violence Act).

⁵³ See generally Klein & Orloff, *supra* note 451. See also *A Guide for Effective Issuance & Enforcement of Protection Orders*, National Council of Juvenile and Family Court Judges (2012); *Model Code on Domestic and Family Violence*, National Council of Juvenile and Family Court Judges (2012), available online at www.ncjfcj.org/wp-content/uploads/2012/03/modecode_fin_printable.pdf.

⁵⁴ See Susan Keilitz, *Specialization of Domestic Violence Case Management in the Courts: A National Survey* (2000), available at www.ncjrs.gov/pdffiles1/nij/grants/186192.pdf; see also Betsy Tsai, Note, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 FORDHAM L. REV. 1285 (2000) (discussing both the traditional court system and several model domestic violence programs); Juliette Terzieff, *New York Courts Untangle Domestic Violence*, WOMEN’S ENEWS, June 6, 2005, available at <https://womensenews.org/2005/06/new-york-courts-untangle-domestic-violence/>.

court procedures govern whether your jurisdiction’s specialized domestic violence court (if there is one) is the exclusive court in which requests for protection orders may be filed or whether protection orders may also be issued by family courts in divorce or criminal proceedings. Research the procedures that apply in your jurisdiction.

[CHECK YOUR JURISDICTION’S LAW: If your jurisdiction has a family violence court, you may need to file for the protection order at this specialized court, and in accordance with their specific procedures.]

If the survivor is eligible for relief, in many jurisdictions an emergency order is granted at the time of filing. In other jurisdictions, the protection order petitioner may elect to seek a temporary order followed by a hearing on the CPO or they may choose to forego the emergency order and request that a hearing be held on the full order. In most jurisdictions, the *ex parte* order remains in effect for a limited amount of time (typically ten to fourteen days). The survivor will have to return to court prior to the expiration of the temporary order to seek a “permanent” order or an extension of the order.

[CHECK YOUR STATE’S LAW: The duration of the domestic violence protection order varies from jurisdiction to jurisdiction. Check your statute for the duration of the order in your state, tribe or territory.⁵⁵ Some orders remain in effect for one year (unless renewed), while others are valid for as long as three years.⁵⁶ A few jurisdictions allow for life-time orders but this can be limited to the most serious cases.⁵⁷]

⁵⁵ See *supra* note 42.

⁵⁶ See, e.g., **Kansas**: KAN. STAT. ANN. § 60-3107(e) (West) (one year, renewable for an additional year); **Kentucky**: KY. REV. STAT. ANN. § 403.750(2) (LexisNexis Supp. 2022) (not to exceed three years, renewable for an additional three years); **Ohio**: OHIO REV. CODE ANN. § 3113.31(E)(3)(a) (West 20019) (up to five years); **Iowa**: Iowa Code IA ST § 236.5 (for a fixed period of time not to exceed one year).

⁵⁷ **Massachusetts**: *Champagne v. Champagne*, 708 N.E. 2d 100 (Mass. 1999) (allowing permanent restraining orders in divorce cases under Mass. Gen. Laws ch. 208, § 18 and noting that permanent orders are available under chapter 209 for married parties, separated parties, and unmarried parties with children); **New Jersey**: N.J. STAT. ANN. §§ 2C:12-10.1 (West 2010)

E. Stay-Away Orders and Criminal Prosecutions

1. Securing an Order Via the Criminal Process

In many jurisdictions it is standard practice for a prosecutor to seek a stay-away order as a part of the criminal prosecution. Once a defendant has been charged, a general no-contact order is typically entered, prohibiting the accused from direct or indirect contact with the survivor. A no-contact order may also be a condition of the defendant's pre-trial release even where no statutory language requires it.⁵⁸ The no-contact provision may be entered by a pre-trial release officer, or by a judge at the bail or dangerousness proceeding or other pre-trial hearing. The criminal court has broad discretion as to what can be ordered in the criminal case as part of any pre-trial release order.

[PRACTICE TIP: Attorneys representing sexual assault survivors should work with prosecutors and Victim Witness Assistants to assure that any pre-trial release or bond order contains as many specific protections as the survivor wants,

(requiring a permanent protection order be issued upon conviction in stalking cases; victim may seek dissolution).

⁵⁸ See, e.g., **California**: CAL. PENAL CODE § 646.93(c) (West) (judge shall impose as additional conditions of release on bail that the “defendant shall not initiate contact in person, by telephone, or any other means with the alleged victims”, or “knowingly go within 100 yards of the alleged victims, their residence, or place of employment”); **Connecticut**: CONN. GEN. STAT. § 54-64a(c)(5) (as additional condition on release, court may order that the arrested person “avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense”); **Delaware**: DEL. CODE ANN. tit. 11, § 2108(a)(5) (2001) (as condition with any form of bail, court may “require the person to have no contact or restricted contact with the victim, the victim’s family, victim’s residence, place of employment, school or location of the offense”); **Florida**: FLA. STAT. § 903.047(b) (2016) (as a condition of pre-trial release the court shall require that “the defendant refrain from any contact of any type with the victim, except through pretrial discovery” pursuant to the rules of criminal procedure); **Indiana**: IND. CODE . § 35-33-8-3.2(a) (“upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community,” a court may require that the defendant refrain from any direct or indirect contact with an individual); **Maine**: ME. STAT. tit. 15, § 1026(3)(A)(5) (conditions may include that the defendant avoid all contact with a victim of the alleged crime, a potential witness regarding the alleged crime or with any other family members of the victim or the defendant or to contact those individuals only at certain times or under certain conditions); **Massachusetts**: MASS. GEN. LAWS ch. 276, § 58A(2)(B)(v) (West 2018) (court may order pretrial release subject to restrictive condition that defendant avoid all contact with an alleged victim of the crime).

and that the dangerousness hearing accurately describes the survivor’s level of fear.]

[CHECK YOUR JURISDICTION’S LAW: Some jurisdictions offer more specific, and more stringent, no-contact orders for cases of sexual assault.^{59]}

[PRACTICE TIP: Communicate to the prosecutor the survivor’s fear of their perpetrator. Have the prosecutor or Victim Witness Assistant contact the survivor when a stay-away order is issued as part of the criminal case to ensure that the survivor understands all of the terms of the order. This will enable the survivor to make an informed decision as to whether needs are met with a criminal stay-away order or whether a civil protection order is necessary. Ideally, a survivor could be confident that bail would be revoked for the perpetrator if contact is made.]

A criminal defendant may be released from custody pending trial in various ways. The court may require posting of a cash bond as security that the perpetrator will return to court. Depending on the nature and severity of the offense, the defendant’s criminal history and flight risk, jail capacity, and other factors, a defendant may be released on their “personal recognizance” – a defendant’s promise to return to court subject to punishment if they do not return – or to the custody of a third party. If the perpetrator is a flight risk or poses a danger to the public (this includes the

⁵⁹ See, e.g., ; **Arizona**: ARIZ. REV. STAT. ANN. § 13-3967(E)(2) (2022) (when a person who is charged with sexual offense is released on their own recognizance or on bail, court shall impose “a condition prohibiting the person from having any contact with the victim”); **Iowa**: IOWA CODE § 664A.3 (when a person is arrested for sexual abuse and the magistrate finds probable cause that a crime has occurred and that “the presence of or contact with the defendant poses a threat to the safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim’s immediate family,” the magistrate “shall enter a no-contact order” which shall require the defendant to have no contact with “the victim, persons residing with the victim, or the victim’s immediate family”); **Kentucky**: KY. REV. STAT. ANN. § 431.064(2) (West)) (before releasing someone charged with a sexual offense, the court may issue an order: “enjoining the person from threatening to commit or committing acts of domestic violence or abuse against the alleged victim,” “prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly,” or “directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be”).

survivor and any witnesses), the prosecutor may ask the court to order the defendant to remain in custody pending trial or sentencing.

Also, make sure that your client is aware of their rights pursuant to any constitutional or statutory crime victims' rights laws.⁶⁰ These crime victims' rights may include the right to be notified of any court hearings at which the defendant may be present, to be consulted regarding any plea offer or sentencing recommendation, and to be notified of the defendant's release status. (A victim may want to register with the computerized "Victim Information and Notification Everyday" (VINE) service that contacts registered victims to let them know if the convicted defendant in their case is released from custody, escapes, is transferred, etc.⁶¹) Some victim rights may be automatic while others extend only if a victim requests them.

2. Revoking Bail for Violating the Release Order By Having Contact with the Survivor

If the perpetrator violates the terms of release, you should provide the prosecutor with a clear and concise summary of that violation. If the defendant attempts to intimidate the survivor or other witness, after safety planning the survivor may want your help with asking the prosecutor to ask the court to revoke the perpetrator's release status. The prosecutor could ask the court to hold the perpetrator in jail pending trial. If the perpetrator is intimidating the survivor or witnesses, or getting others to do so on his behalf, that is a separate criminal offense for which the defendant can be charged. The defendant could also be taken into custody pending trial for intimidating a witness.

3. Limitations of Criminal Stay-Away Orders

A stay-away order issued in a criminal case may not help a survivor feel safe enough. The terms of the stay-away order and the scope of remedies it authorizes may be too narrow. Or, if criminal charges are dismissed or the defendant is acquitted, the order will likely be dismissed in its entirety.

⁶⁰ For more information about crime victims' rights by state, see the National Victim's Constitutional Amendment Passage website at www.nvcap.org/stvras.html (last visited Jul 30, 2024).

⁶¹ More information about VINE is available online at www.appriss.com/VINE.html.

Because the prosecutor has discretion whether to pursue criminal charges, the criminal stay-away order may or may not offer protection. If a criminal case is dismissed and the survivor is not notified of the dismissal, the survivor has little or no protection. For these and other reasons, a survivor may choose to pursue one or more of the civil protection order remedies as a companion remedy to a stay-away order. A civil remedy may be the most effective and practical method for securing the necessary protections.

F. Private Property Orders: Housing, Employment, and School-Based Orders

Women and girls who are school age are among the most frequent survivors of sexual assault.⁶² These survivors, who are among those most likely to be attending an educational institution, must know whether they can be protected from the perpetrator without having to go through a civil or criminal court procedure.

Some academic institutions will issue a stay-away order when a student is charged with assaulting another student. Some schools issue mutual orders that are binding on both parties. Such orders can feel harmful and a survivor may feel as if they are being punished for their own victimization. Moreover, mutual orders are not “qualifying protective orders” under federal law and thus are not entitled to full faith and credit under federal law. Although school-based orders are issued most often when a disciplinary proceeding is pending, they may also be available even without a formal disciplinary proceeding.⁶³ Consult the institution’s policy manual for more detailed information on obtaining and enforcing protection orders within academic institutions.

For a survivor who was assaulted at work, or by a co-worker or supervisor, and who does not want to seek their own order, an employer’s protection

⁶² According to the Office of Justice Programs Bureau of Justice Statistics, women and girls between the ages of 12 and 24 comprise the majority of sexual assault victims. U.S. DOJ, CRIMINAL VICTIMIZATION IN THE UNITED STATES, 2021 STATISTICAL TABLES, Table 5 (Victimization rates for persons age 12 and over, by gender and age of victims and type of crime) (2020-2021)). See also Kathryn M. Reardon, *Acquaintance Rape at Private Colleges and Universities: Providing for Victims’ Educational and Civil Rights*, 38 SUFFOLK U. L. REV. 395, 397 (2005).

⁶³ See also Reardon, *supra* note 465, at 399-409 (advocating for protective policies concerning sexual violence on college campuses).

order may be an adequate remedy. These orders are not available in all jurisdictions, but they are in effect in some cities and states to allow employers to seek protection orders when violent crimes occur at work.⁶⁴ Employer-based orders typically require the perpetrator to stay away from the workplace. (See *Sexual Assault Survivors' Employment Rights* for more information on workplace protection orders.)

Finally, landlords and public housing authorities may be able to issue or obtain no-trespass orders requiring perpetrators to stay away from residential buildings. (See *Housing Considerations for Survivors of Sexual Assault* for additional information on housing-based orders.)

G. Civil Injunctions

If the survivor is not eligible for any of the protection orders described above, you may be able to seek a civil injunction on the survivor's behalf. Unlike sexual assault, family violence, and stalking protection orders, which typically result in arrest and/or criminal consequences if violated, violation of a civil injunction will result only in civil contempt of court.⁶⁵ Civil contempt proceedings may lead to a lengthy trial or protracted hearing. Rarely will they result in the perpetrator's incarceration. Because of the time and legal resources required for this lengthy process, a civil injunction can be an expensive remedy. Therefore, a survivor will almost always be better served if they seek one or more of other orders for which they qualify first. Civil injunctions are often viewed as a remedy of last resort because they

⁶⁴ See, e.g., ARIZ. REV. STAT. ANN. § 12-1810 (West 2013); ARK. CODE ANN. § 11-5-115 (West); CAL. CIV. PROC. CODE. § 527.8(a) (West 2016); GA. CODE ANN. § 34-1-7(b) (West); IND. CODE ANN. § 34-26-6-6; ME. STAT. tit. 5, § 4653; NEV. REV. STAT. § 33.250(1); N.C. GEN. STAT. § 95-261 (2021); R.I. GEN. LAWS § 28-52-2 (2022); TENN. CODE § 20-14-102 (West 2022). Employers may also have policies in place to assist victims of domestic violence and/or sexual assault. See, e.g., Jane A. Randel & Kimberly K. Wells, *Corporate Approaches to Reducing Intimate Partner Violence Through Workplace Initiatives*, 3 CLINICS OCCUP. ENVTL. MED. 821, 830 (2003) (describing CIGNA Corporation's policy of seeking protection orders to discourage perpetrators from entering the premises). For a summary of employer-based remedies for victims of sexual and domestic violence, see the Employment and Housing Rights for Victims of Domestic Violence drop-down charts *available at* the Legal Momentum website, <https://www.legalmomentum.org/library/quick-reference-guide-victims-domestic-violence-workplace-2003> (last visited Jul 30, 2024).

⁶⁵ 43A C.J.S. *Injunctions* § 398 (2005).

are cumbersome and time intensive to secure, and the protection and enforcement remedies are typically limited in scope.

[CHECK YOUR LAW: Review your jurisdiction's rules of civil procedure to determine the standard and procedures for seeking a civil injunction.]

H. Military Protection Orders

The United States Military Justice System has its own, unique version of protection orders. In the military, any commissioned officer can issue an order restricting the liberty of any enlisted member. Only an individual's commanding officer, however, may restrict the liberty of a commissioned or warrant officer. (A commanding officer may delegate this authority to a warrant, petty, or noncommissioned officer.)

The armed services version of a CPO is a Military Protective Order (MPO). An MPO may be verbal or written (although written orders are preferred). A commander or commissioned officer may issue an MPO regardless of whether a CPO is already in place.⁶⁶ A survivor may want to get both a CPO and MPO because the scope of protections will differ. For example, an MPO may include provisions that are more restrictive than those in a CPO. An MPO may also include locations that are beyond the jurisdiction of the civil court that issued the CPO, such as locations outside the U.S. Conversely, a CPO can afford protection where an MPO may not, such as at sites off the military base, installation, camp, etc.

Before an MPO may be issued, there must be a "reasonable belief" that:

- An offense for which the accused may be court-martialed has been committed;
- The person to be restrained committed it; and
- The restraint ordered is required by the circumstances.

⁶⁶ As of Fiscal Year 2007, U.S. Military Contractors operating in combat zones are subject to the Uniform Code of Military Justice (UCMJ), too. Previously, the UCMJ applied only to civilians in combat areas during periods of war declared by Congress.

Because a military protection order is issued by a commanding officer, it is not enforceable if the service member is reassigned to another command. Moreover, civilian law enforcement agencies and civilian courts cannot enforce an MPO because it does not meet the due process requirements under the full faith and credit provisions of VAWA. A civilian survivor may notify military law enforcement if the MPO is violated. Also, some military installations have entered into cooperative agreements with local law-enforcement agencies that allow civilian authorities to detain a military offender until military police arrive.

V. CONCLUSION

Safety planning and protection orders are important tools in helping a survivor access a variety of resources and protections they need to feel safe and to recover from the assault. Your role as a survivor attorney is to help determine which type of order is most appropriate for the survivor's unique circumstances. To help your client successfully navigate the protection order process, you must be familiar with the laws of the relevant jurisdiction. In addition, in many cases, you will be called upon to think and argue creatively while you pursue justice on the survivor's behalf.