

Enforcement of Civil Protection Orders

Catherine F. Klein and Leslye E. Orloff

Civil protection orders can effectively decrease or stop domestic violence. In some cases, mere issuance of a protection order can help reduce domestic violence because the abuser fears potential criminal sanctions for violations of the order. However, for some abuse victims, issuance of a protection order without adequate enforcement can actually increase the risk to a victim by creating a false sense of security.¹ Imposition of criminal sanctions for violation of protection orders are the primary form of effective enforcement. Most jurisdictions offers multiple forms of civil protection order enforcement.

Violation of a protection order may be:

- a misdemeanor;
- criminal contempt of court; and/or
- civil contempt of court.

Violation of Civil Protection Orders as an Arrestable Criminal Offense

● In virtually all jurisdictions, violation of a civil protection order is a crime for which the police can arrest the offender.² In a vast majority of states, violation of a protection order can lead to the offender's arrest whether or not the violation of the protection order took place in the police officer's presence:

● While some states deem all protection order violations misdemeanors, in most jurisdictions the defendant will have committed a misdemeanor if he or she violates the provisions of a civil protection order which:

- prohibit threatening to commit or committing acts of family violence;
- prohibit harassing, annoying, telephoning, contacting, or otherwise communicating with the victims who received a protection order;
- require the defendant to vacate the family home or the petitioner's residence;

¹Peter Finn and Sarah Colson, National Institute of Justice, *Civil Protection Order: Legislation, Current Court Practice, and Enforcement* 49 (1990)

²Catherine F. Klein and Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra 801, 1095-97 (1993) (*hereinafter Klein and Orloff*)

- require the defendant to stay away from the petitioner;
- prohibit the defendant from using or possessing a firearm or other weapon.³

●When a client has been a victim of domestic violence, counsel should play an active role protecting the abuse victim's interests when violation of a civil protection order is being prosecuted criminally.⁴ Counsel should:

- Advocate with the prosecutor's office regarding the initiation of criminal charges.
- Assist the abuse victims in communicating with the police and prosecutors when the victim wants the violation of the protection order to be prosecuted as a crime.
- Collaborate with the prosecution by sharing photographs relevant to the prosecution, providing names and assisting in locating witnesses, proposing terms of pretrial release or bail that protect the abuse victim, notifying the prosecutor when the defendant has violated conditions of pre-trial release, preparing a victim impact statement for sentencing, supporting the victim throughout the criminal case, helping inform her about the status of the criminal prosecution and explaining delays and criminal court procedures.
- Develop a dialogue with the prosecutor so that counsel and the prosecutor can coordinate strategies when the protection order will be enforced by the petitioner through a criminal contempt action and by the state through a criminal prosecution. Coordination is needed so that both cases can go forward without raising double jeopardy issues.⁵
- Develop a safety plan with the battered woman client that will help protect her should she choose to testify at the criminal trial.
- Be aware that a battered woman's cooperation is not always necessary to prosecute the respondent for violation of a civil protection order. Physical evidence, photographs, injuries, and testimony of law enforcement officers, family members, and other witnesses can support a criminal conviction even when the victim is unwilling or unable to testify. When a battered woman client does not wish to testify at a criminal trial out of fear of retribution from the abuser, counsel can assist by communicating the client's wishes to the prosecutor and encouraging them and/or, with permission of the victim, assisting them in gathering the evidence they

³Klein and Orloff, *supra*, note 2, at 1095-1097. See also National Council of Juvenile and Family Court Judges, MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE, at 3. (1994).

⁴Leslye E. Orloff and Catherine F. Klein, DOMESTIC VIOLENCE: A MANUAL FOR PRO BONO LAWYERS, (4th ed. 1994).

⁵See United States v. Dixon, 113 S.Ct.2849 (1993).[PARENTHETICAL]

need to proceed without the client's testimony.

- Counsel should discuss with the abuse victim the pros and cons of pursuing a civil protection order enforcement through a criminal contempt proceeding when a criminal prosecution is being brought by the state.

- Advantages of pursuing simultaneous criminal contempt proceedings when the state is bringing a criminal case against the abuser:

- the battered woman controls the criminal contempt case, but has no control over the criminal prosecution;
- litigation of the criminal contempt case will usually be concluded much sooner than the criminal prosecution;
- quicker litigation and sentencing of the abuser will provide the abuse victim protection from the abuser during the pendency of the criminal prosecution;
- sentencing in the criminal contempt case is more likely to be crafted to respond to the battered woman's immediate needs and safety concerns.

- Disadvantages of pursuing a criminal contempt action when the state is bringing a criminal case against the abuser for protection order violation:

- The battered woman will need to secure representation of legal counsel. Few battered women will be able to successfully prove criminal contempt beyond a reasonable doubt without counsel in a criminal contempt action because the respondent will be entitled to legal representation.
- The abuse victim in a criminal contempt case will not have the resources of the state to assist in prosecuting the abuser for criminal contempt.

Criminal Contempt

- In order for civil protection orders to be enforced, the law enforcement officials must be able to readily identify the respondent as the person violating the protection order. Petitioners should never consent to mutual protection orders, because mutual protection orders can be difficult to enforce, or may even lead to arrest of the victim.⁶ Furthermore, most mutual orders are unenforceable across state lines under the Violence Against Women Act.

- Counsel should tell the client to carry her protection order with her at all times and call the police immediately if the respondent violates it. Petitioner should show the protection order to police upon arrival and request the arrest of the respondent. Whether or not an arrest is made,

⁶model code

the petitioner should insist upon a police report.⁷

- In most states, a violation of a protection order is a violation of law and punishable by criminal contempt. Violent acts that constitute criminal include threats, assault, battery, rape, and destruction of property. Nonviolent acts can also constitute criminal contempt including violation of stay away, no telephoning and no contact provisions. Child abduction and concealment also constitute criminal contempt.⁸ Counsel filing criminal contempt motions must plead specifically how each act has violated the civil protection order.

- To prove contempt, counsel must demonstrate that the respondent had notice of the protection order and that respondent acted or failed to act in violation of the order. The protection order violation need not be an independent criminal act.⁹

- Multiple crimes or contempts can be consolidated into one action for trial purposes. Although offenses are consolidated procedurally, they retain their individual character as separate from each other by time and circumstances.¹⁰

- Where protection order violations are punished as contempts which do not carry penalties that exceed a six month term of imprisonment, the violation are deemed petty offenses. Petty offenses do not carry a right to jury trial and are an exception to the Sixth Amendment. Consolidated contempts in many jurisdictions will not confer a right to jury trial because the acts are separate and consolidated for procedural purposes only.¹¹ Counsel should be aware that in some jurisdictions, consolidation of multiple contempt actions may trigger defendant's right to a jury trial on the criminal contempt motion.

- Victims can also choose to bring contempt motions alleging a course of contemptuous conduct rather than bringing separate contempt motions for each violation. Alleging a course of contemptuous conduct, rather than individual contemptuous acts, can be helpful in meeting the burden of proof of criminal contempt proceedings,¹² but usually will limit the potential sentence to not more than six months.

- The petitioner has the burden of proving the criminal contempt beyond a reasonable doubt. Although testimony alone can be enough to establish proof beyond a reasonable doubt, the

⁷Leslye E. Orloff and Catherine F. Klein, *Domestic Violence: A Manual for Pro Bono Lawyers* (4th ed, 1994).

⁸Klein and Orloff, *supra*, note 2, at 1102.

⁹Klein and Orloff, *supra*, note 2, at 1120.

¹⁰*Id.* at 1106.

¹¹*Id.* at 1107.

¹²*Id.* at 1110.

likelihood of a successful criminal contempt prosecution is much greater if petitioner's testimony is corroborated by photographs, witness testimony, police or hospital records.

- Protection orders remain valid until expiration or subsequent court order. Battered women, leaving violent relationships, typically make two to five attempts before successfully leaving their batterers.¹³ Reunification of the parties does not nullify an existing protection order. Civil protection orders are court orders issued by the court against the respondent. The petitioner's actions in reuniting with or agreeing to see the respondent cannot excuse a violation the court's order.¹⁴ Absent a court order that rescinds or modifies the civil protection order, the order must be obeyed.¹⁵

- Protection orders can be issued even if the parties are not separated. Such orders can be helpful to shift the balance of power in the relationship and may help to reduce or eliminate the violence.

Civil Contempt

- In civil contempt cases, courts seek to compel future compliance with the civil protection order, whereas in criminal contempt, courts seek to punish past violations of the law.

- Civil contempt typically involves protection order remedies violations such as failure to pay child support or other monetary relief, and failure to vacate a residence or return property.

- Civil contempt is also an appropriate measure when a respondent fails to comply with orders to return children, in order to coerce compliance.

Abuser's Due Process Rights

- The alleged contemnor or defendant in a criminal court enforcement action is entitled to counsel, cannot be compelled to give evidence against himself, can secure the attendance of witnesses, can cross examine the witnesses against him, and is presumed innocent until proven guilty beyond a reasonable doubt.¹⁶

- Double jeopardy is never a bar to a subsequent criminal prosecution for the same act for which a civil protection order is issued.

- In United States v. Dixon, 113 S. Ct.2849 (1993) the Supreme Court ruled that double jeopardy

¹³Lewis Okun, Termination or Resumption of Cohabitation in Women Battering Relationships: A Statistical Study, in *Coping with Family Violence: Research and Policy Perspectives* 107 (1988)

¹⁴Klein and Orloff, supra, note 2, at 1114.

¹⁵Klein and Orloff at 1110-1112.

¹⁶Id. at 1120-1121.

would not bar a battered woman from enforcing her civil protection order through criminal contempt proceedings while the state proceeds with a criminal prosecution for crimes he committed against the battered woman at the time he violated the civil protection order, as long as the contempt proceeding and the criminal prosecution reach require proof of additional elements. This ruling assures that battered women with civil protection orders can move swiftly to protect themselves by enforcing those orders without risking immunizing the abuser from criminal prosecution for the new crimes he commits against her after the issuance of the protection order.¹⁷

Interstate Enforcement of Protection Orders Under the Violence Against Women Act Full Faith and Credit

- Civil protection orders issued by one state or Native American tribe must be accorded full faith and credit by other states or Native American tribes.
- All valid protection orders (temporary, emergency, final, civil and criminal) are entitled to full faith and credit. However, full faith and credit is only accorded to protection orders issued by courts having proper jurisdiction and in which the opposing party is given reasonable notice and opportunity to be heard.¹⁸
- Mutual protection orders are not entitled to full-faith and credit because they do not meet the Violence Against Women Act's due process requirements.¹⁹
- Custody and child support provisions of civil protection orders are not afforded full faith and credit. Actions to enforce custody and child support awards are governed the Uniform Child Custody Jurisdiction Act, the Parental Kidnaping Prevention Act, and The Uniform Reciprocal Support Enforcement Act.
- Registration of an out-of-state protection order a prerequisite to enforcement under the Violence Against Women Act and is not required for full faith and credit.
- Registration may however, offer significant benefits and may make enforcement in the new state more effective. Orders that are registered are entered into the state law enforcement computer system, it will be easier for police who are asked to enforce the order to ascertain the validity of the order, and generally makes enforcement easier. Civil protection orders should be registered,

¹⁷United States v. Dixon, 113 S.Ct. 2849 (1993).

¹⁸Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322, 108 Stat. 1953, Sept. 13, 1994.

¹⁹Mutual protection orders are orders issued when no written petition was filed, when no notice of the request for a protection order was given to the person against whom the order was issued, when there was not opportunity to be heard and/ or there was no finding that an underlying offense that could serve as the basis for issuing a protection order was committed by the person against whom the order was issued.

unless registration will compromise the battered woman's safety (e.g. if, the state registration process requires that notice of registration be given to the abuser when the battered woman is in hiding).²⁰

- States must enforce civil protection order issued in sister jurisdictions even if the same order containing the same relief could not have been issued in the enforcing jurisdiction.
- States must enforce civil protection orders from other jurisdictions in the same manner as the state enforces its own civil protection orders.
- State courts may issue enforceable civil protection orders for incidents of violence occurring on, and to residents residing upon, federal military installations. Military protection orders are also available to persons who work or reside upon a military base.²¹

Enforcement Checklist

- Do not consent to mutual protection orders.
- Tell your client to carry her protection order with her at all times and call the police immediately if the respondent violates it.
- Tell your client to show the protection order to police upon arrival and to request the arrest of the respondent.
- Bring a civil contempt to coerce future compliance with a civil protection order.
- Bring criminal contempt to prosecute past violations of a civil protection order.
- Decide whether to bring separate contempt motions or allege a course of contemptuous conduct.
- Assist your client in seeking criminal prosecution of civil protection order violations and in coordinating your clients' cooperation in the criminal prosecution.
- Contempt will not preclude criminal prosecution, and vice versa, if the contempt and crime are comprised of additional/different elements.
- Protection orders remain valid until expiration or subsequent court order.

²⁰The abuser's rights are not compromised by failure to give notice of registration of a valid civil protection order in another state because for the protection order to be issued the abuser received written notice of the allegations, had an opportunity to contest the allegations at a hearing, the court entered an order against him and he was given notice that he was required to comply with the terms of the order.

²¹Klein at 1100.

● Civil protection orders must be accorded full faith and credit outside the issuing state under the federal Violence Against Women Act. Therefore if your client is moving to a new jurisdiction, that new state must enforce her order as if it were one of its own. Before your client moves you should help her identify a domestic violence program in the state to which she will relocate that can help her enforce her protection order in that state.

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