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ENFORCEMENT OF PROTECTIVE ORDERS

LEGAL SERIES



Message From THE DIRECTOR

Over the past three decades, the criminal justice field has witnessed an astounding proliferation of statutory enhancements benefiting people who are most directly and intimately affected by crime. To date, all states have passed some form of legislation to benefit victims. In addition, 32 states have recognized the supreme importance of fundamental and express rights for crime victims by raising those protections to the constitutional level.

Of course, the nature, scope, and enforcement of victims' rights vary from state to state, and it is a complex and often frustrating matter for victims to determine what those rights mean for them. To help victims, victim advocates, and victim service providers understand the relevance of the myriad laws and constitutional guarantees, the Office for Victims of Crime awarded funding to the National Center for Victims of Crime to produce a series of bulletins addressing salient legal issues affecting crime victims.

Enforcement of Protective Orders, the fourth in the series, provides an overview of state laws and current issues related to the enforcement of protective orders. This bulletin and the others in the Legal Series highlight various circumstances in which such laws are applied, emphasizing their successful implementation.

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Introduction

To deter violent, abusive, and intimidating acts against victims, both civil and criminal courts have been granted the authority to restrain improper conduct. Referred to as “restraining orders,” “injunctions,” or “protective orders,” these orders restrict or prohibit one individual’s behavior to protect another individual. Although protective orders are most often thought of in conjunction with domestic violence, state legislatures have advocated their use to restrict stalking conduct, prevent abuse of elderly or disabled individuals and children, and protect crime victims and witnesses from harassment by defendants.

Recently, states have provided for protective orders in new contexts. For example, in California, an employer whose employee has been the subject of unlawful violence or a credible threat in the workplace may seek a protective order on the employee’s behalf.¹ In Maine, petition for a protective order may be brought by a business that has been a victim of harassment.²

Protective orders generally include provisions restricting contact; prohibiting abuse, intimidation, or harassment; determining child custody and visitation issues; mandating offender counseling; and prohibiting firearm possession and provisions for other relief the court deems appropriate.

Courts are increasingly being given discretion to restrict conduct and impose specific conditions, and they can tailor a protective order to fit the particular circumstances of a case. However, such orders are effective only when the restrained party is convinced the order will be enforced. Unequivocal, standardized enforcement of court orders is imperative if protective orders are to be taken seriously by the offenders they attempt to restrain.

Status of the Law

Whereas all states have enacted laws authorizing the issuance of civil or criminal protective orders, available enforcement tools vary from state to state. Established, clear-cut penalties for violations of protective orders are



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We hope that victims, victim advocates, victim service providers, criminal justice professionals, and policymakers in states across the Nation will find the bulletins in this series helpful in making sense of the criminal justice process and in identifying areas in which rights could be strengthened or more clearly defined. We encourage you to use these bulletins not simply as informational resources but as tools to support victims in their involvement with the criminal justice system.

John W. Gillis
Director

necessary to encourage compliance. In addition, for law enforcement agencies, prosecutors, and judges to appropriately enforce valid orders, they must be aware of the existence and specific terms of each order.

Criminal Sanctions for Protective Order Violations

Criminal sanctions are the most common mechanism used to enforce protective orders. The violator may be charged with a felony, a misdemeanor,³ or contempt of court;⁴ however, in most states, felony treatment is reserved for repeat violations⁵ or aggravated offenses.⁶ In some states, a combination of these options may apply, depending on the original offense for which the order was entered or the number of times the order was violated. For example, in Utah, a protective order violation can be a misdemeanor or felony depending on the classification of the initial crime.

In several states, a violation may be treated as a new offense. An individual who violates a protective order in Indiana commits invasion of privacy, which is considered a misdemeanor offense.⁷ Entering a building in violation of the terms of a protective order is construed a first-degree criminal trespass in Connecticut.⁸ Pennsylvania's Supreme Court found a violation of a protective order to be partial grounds for a burglary charge.⁹

Some states, such as Utah, treat a domestic violence protective order violation either as a misdemeanor or as criminal contempt and a separate domestic violence offense. State courts in California, Kentucky, Minnesota, New Mexico, and Texas have held that finding a defendant guilty of criminal contempt does not preclude a subsequent prosecution on the grounds of double jeopardy.¹⁰

A few states require anyone who violates a protective order to serve a minimum term of confinement. In Hawaii, violators of protective orders entered in domestic violence and harassment cases must spend at least 48 hours in jail for a first violation and 30 days for any subsequent violations.¹¹ In Iowa, the mandatory minimum sentence for the violation of a no-contact order is 7 consecutive days.¹² Illinois's requisite 24-hour imprisonment for a second or each subsequent protective order violation is less stringent.¹³ Taking a different approach, Colorado law provides that any sentence imposed for a violation of a protective order must run consecutively (following) and not concurrently (at the same time) with the sentence imposed for the crime giving rise to the order.¹⁴

Protective order violations can also provide the basis for several other related penalties, such as bail forfeiture; bail, pretrial release, or probation revocation; imposition of supervision; and incarceration.¹⁵ A few states, like Delaware, provide for a range of remedies—an individual who violates a protective order can be charged with a misdemeanor, found in civil or criminal contempt, and criminally prosecuted, fined, and/or imprisoned.¹⁶

Several states have created additional sanctions for violation of protective orders. Counseling may be ordered in some states, including Hawaii, Massachusetts, and Rhode Island.¹⁷ Electronic monitoring of violators may be imposed in Washington.¹⁸ An Alabama violator who is found in contempt for willful conduct is responsible for court costs and attorney's fees incurred by a person seeking enforcement of the order.¹⁹

Order Verification: Statewide Central Registries

Although criminal sanctions for violating protective orders are important, they can be imposed for a violation only if police and judges are aware of their existence. A major enforcement issue arises when no system is in place for verifying both the existence of a valid protective order and its terms and conditions.

In 1992, Massachusetts became the first state with a computerized database of all domestic violence restraining orders issued within the state. The Massachusetts Registry of Civil Restraining Orders was designed to provide law enforcement agencies and the courts with prompt, accurate information to assist them in responding appropriately to each domestic violence incident. Reliable information on existing protective orders can help law enforcement make an arrest decision. Judges and prosecutors use the registry when prosecuting violations and making bail-release determinations. Under Massachusetts law, criminal and civil record searches are required for each

protective order application.²⁰ “When considering [an abuse] complaint, . . . a judge shall cause a search to be made of the records contained within the statewide domestic violence record keeping system . . . and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving domestic or other violence.”²¹

In addition, data collected from the registry enable state officials to evaluate and implement effective interventions and sanctions. A July 1994 study based on registry data produced several significant findings: 1) a restraining order is issued every 2 minutes in Massachusetts, 2) almost half of all restraining orders involve people who are or have been in a dating relationship, and 3) approximately 43,000 Massachusetts children are exposed to acts of violence between members of their household each year.²² This information is invaluable in demonstrating the prevalence of domestic violence and in highlighting the specific issues that need the attention of victim service providers and policymakers. More recently, the registry was used to develop a profile of serial batterers and the specific type of offender who is likely to abuse.²³

Encouraged by the success of the Massachusetts registry, several states have established local or statewide registries and improved protective order verification procedures.²⁴ Several states, including California, Kansas, Kentucky, and South Dakota, have standardized verification of protective orders through development of written procedures and policies.²⁵

Full Faith and Credit Provisions

In addition to enforcing protective orders issued within a state, law enforcement agencies and state courts also must recognize orders issued in another state or jurisdiction.²⁶ The full faith and credit provisions of the 1994 Violence Against Women Act (VAWA) require that every temporary or final injunction, protective order, or restraining order properly issued by a state court be given full faith and credit by courts in every other state.²⁷

Most states have passed their own full faith and credit laws.²⁸ Under state provisions, the terms of a foreign protective order (i.e., an order issued in another state) must be enforced as though it were issued by the new state. This means that the new state’s remedies and sanctions apply, even if they differ from those of the issuing state. As the Colorado General Assembly recognized, “domestic violence is an issue of public safety. The risk of harm to victims of domestic violence is not limited by state boundaries. Victims have the right to travel

safely from one state, tribe, or territory to another and be afforded the same protections as their home state would provide against a perpetrator.”²⁹ The goal of these VAWA-required provisions is to ensure enforcement of civil and criminal protective orders nationwide, even when victims cross state lines to escape abuse.

In some states, such as Montana, foreign protective orders must be filed formally to be enforceable:

A certified copy of an order of protection from another state, along with proof of service, may be filed in a Montana court with jurisdiction over orders of protection in the county where the petitioner resides. If properly filed in Montana, an order of protection issued in another state must be enforced in the same manner as an order of protection issued in Montana.³⁰

In Kentucky, a victim filing a foreign protective order must file an affidavit along with the order certifying “the validity and status of the foreign protective order, and attest[ing] to the person’s belief that the order has not been amended, rescinded, or superseded by any orders from a court of competent jurisdiction. All foreign protective orders presented with a completed and signed affidavit shall be accepted and filed.”³¹ In addition, the circuit court clerk in Kentucky must validate each foreign protective order annually by contacting the original issuing court. If validation is not received from the foreign jurisdiction within 31 days of the request, the invalidated order shall be cleared from Kentucky’s registry.³²

In order to assist a court of another state in determining whether a protective order issued in [Kentucky] is entitled to full faith and credit, . . . all protective orders issued [in Kentucky] . . . shall include a Statement certifying that the issuing court had jurisdiction over the parties and the matter, and that reasonable notice and opportunity to be heard has been given to the person against whom the order is sought sufficiently to protect that person’s right to due process.³³

Requirements like this help streamline the validation process and ensure that protection of the victim is continued without interruption.

In other states, such as Colorado, filing a foreign protective order is voluntary:



Filing of the foreign protection order in the central registry or otherwise domesticating or registering the order . . . is not a prerequisite to enforcement of the foreign protection order. A peace officer shall presume the validity of, and enforce . . . a foreign protection order that appears to be an authentic court order that has been provided to the peace officer by any source.³⁴

Likewise, Arizona law enforcement officers may rely on a copy of a protection order issued by another state, a United States territory, or an Indian tribe. In addition, a “peace officer may . . . rely on the Statement of any person who is protected by the order that the order remains in effect.”³⁵

Current Issues

National Registry

The National Stalker and Domestic Violence Reduction Act authorizes the inclusion of civil restraining and abuse prevention orders in all National Crime Information Center databases.³⁶ However, only 19 states have begun to enter their protective orders since the Federal Bureau of Investigation began accepting orders for the national registry in May 1997. In fall 1998, the national registry contained only 97,136 entries, which is estimated to be less than 5 percent of the 2 million orders believed to qualify for entry. Until a complete national registry is available, states’ ability to give full faith and credit to each other’s protective orders is compromised. Thus, to date, the goal of establishing a separate, comprehensive national protective order registry remains unrealized.

Massachusetts’s experience in developing its Registry of Civil Restraining Orders indicates that keys to the success of any such registry system include 1) a high level of commitment by all parties involved in developing the system; 2) the existence of a central collection point for the protective order data; 3) reliable data collection methods and well-trained staff; 4) the capability to provide technical support, audit data quality, and monitor local court performance; 5) the ability to develop and support computer programs; and 6) online access to data by police and other law enforcement agencies.³⁷

Consolidation of Procedures

In many states, several types of restraining orders (both criminal and civil) are available to victims seeking protection. Often, different procedures and remedies apply to different types of orders,

making application for and enforcement of the appropriate order difficult and confusing.

Colorado has incorporated two policies into its statutes that significantly streamline the protective order process and should improve enforcement. The first is the automatic imposition of a no-contact order in criminal and juvenile cases. Such no-contact orders are imposed at arraignment or first court appearance and remain in effect until final case disposition. The order restrains the offender “from harassing, molesting, intimidating, retaliating against or tampering with any witness to or victim of the acts.”³⁸ In juvenile cases, the offender’s parents or legal guardian is also restrained under the order. The victim is relieved of having to apply for a protective order, and law enforcement response to complaints by victims who are contacted by offenders becomes standardized. In addition, when a victim can demonstrate—through caller ID or other credible evidence—that an incarcerated defendant called in violation of a no-contact restraining order, the defendant may lose all phone privileges except for calls to his or her attorney.³⁹

Colorado has consolidated its civil protection order process by combining the procedures for obtaining domestic violence, elder abuse, and stalking protective orders and using standardized petition and order forms.⁴⁰ By adopting a uniform format, Colorado has simplified the process and attempted to improve the enforcement rates of all protective orders. The Colorado General Assembly reasoned that

The statutes provide for the issuance of several types of civil restraining orders to protect the public, but that many of these restraining orders have many elements in common. The general assembly also [found] that consolidating the various forms for issuing civil restraining orders and creating, to the extent possible, a standardized set of forms that will be applicable to the issuance of civil restraining orders will simplify the procedures for issuing these restraining orders and enhance the efficient use of the courts’ and citizens’ time and resources.⁴¹

Louisiana and Kentucky have also developed standardized forms. Louisiana’s form, referred to as a “uniform abuse prevention order,” “encompasses peace bonds, temporary restraining orders, protective orders, preliminary and permanent injunctions, and court-approved consent agreements . . . as long as such order is issued for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to, another person.”⁴² In Kentucky, any order that

requires entry into the state's Law Information Network, including orders of another jurisdiction entitled to full faith and credit, must be entered on a specified form.⁴³

Protective Order Renewal Requirements

Most states limit the time that a protective order may remain in effect to a relatively short period, usually 1 to 3 years. Although extensions to protective orders may be obtained, the extension process often requires a victim to face the offender in court, and possibly come out of hiding, to continue to receive court-ordered protection.

A few states have authorized the issuance of permanent protective orders. In New Jersey, a conviction for stalking operates as an application for a permanent restraining order.⁴⁴ "The permanent restraining order entered by the court subsequent to a conviction for stalking . . . may be dissolved upon the application of the stalking victim to the court which granted the order."⁴⁵

Connecticut judges can issue a standing criminal restraining order in domestic violence cases when they believe that such an order will best serve the interests of the victim and the public. These standing orders remain in effect until they are modified or revoked by the court.⁴⁶

Other states have extended the time during which a protective order is effective. A no-contact order issued against a stalker convicted in California remains in effect for 10 years.⁴⁷ Iowa law authorizes a 5-year protective order and allows a 5-year extension.⁴⁸

About This Series

OVC Legal Series bulletins are designed to inform victim advocates and victim service providers about various legal issues relating to crime victims. The series is not meant to provide an exhaustive legal analysis of the topics presented; rather, it provides a digest of issues for professionals who work with victims of crime.

Each bulletin summarizes—

- Existing legislation.
- Important court decisions in cases where courts have addressed the issues.
- Current trends or "hot topics" relating to each legal issue.

Conclusion

Unless protective orders are enforced, they can prove harmful to victims by creating a false sense of security. Around the United States, legislatures have put laws into place that enable law enforcement personnel to act quickly in cases of violation and permit courts to impose severe sanctions. As use of protective orders increases, victim service providers and advocates can expect further developments in the area of enforcement.

Notes

1. CAL. CIV. PROC. CODE § 527.8 (2001).
2. ME. REV. STAT. ANN. § 5-4653 (2000).
3. For example, ALASKA STAT. § 11.56.740 (2001); ARK. STAT. ANN. § 9-15-207 (2001); CAL. PENAL CODE § 273.6 (Deering 2001); CONN. GEN. STAT. § 46b-15 (2001); DEL. CODE ANN. tit. 10, § 1046 (2000); HAW. REV. STAT. §§ 580-10, 604-10.5 (2000); 720 ILL. COMP. STAT. § 5/12-30 (2001); IND. CODE ANN. § 35-46-1-15.1 (Burns 2000); KAN. STAT. ANN. § 21-3843 (2000); ME. REV. STAT. tit. 22, § 4036-A (2000); MASS. ANN. LAWS ch. 208, §§ 34C, D (Law. Co-op. 2001); MINN. STAT. § 609.748 (2000); MISS. CODE ANN. § 97-3-107 (2001); NEB. REV. STAT. § 28-311.09 (2001); N.C. GEN. STAT. § 50B-4.1 (2001); N.D. GEN. STAT. § 14-07.1-13 (2000); OKLA. STAT. § 22-60.6 (2000); R.I. GEN. LAWS § 15-5-19.1 (2001); S.D. CODIFIED LAWS ANN. § 22-19A-16 (2000); TEX. PENAL CODE ANN. § 25.07 (Vernon 2000); UTAH CODE ANN. § 77-36-2.5 (2000); VA. CODE §§ 16.1-253.2, 18.2-60.4 (2000); WASH. REV. CODE § 10.14.170 (2001); WYO. STAT. § 6-4-404 (2000).
4. For example, CAL. PENAL CODE § 136.2 (Deering 2001); DEL. CODE ANN. tit. 11, § 3536 (2000); GA. CODE ANN. § 30-5-5 (2000); HAW. REV. STAT. § 710-1077 (2000); IOWA CODE § 236.14 (2001); KAN. STAT. ANN. § 21-3835 (2000); MD. ANN. CODE art. 27, § 763 (2001); MINN. STAT. § 609.748 (2000); MO. REV. STAT. § 491.610 (2001); N.J. REV. STAT. § 2C:28-5.2 (2001); N.Y. CRIM. PROC. LAW § 530.13 (2001); 18 PA. CONS. STAT. § 4955 (2000); R.I. GEN. LAWS § 11-32-6 (2001); WASH. REV. CODE § 10.14.120 (2001); WIS. STAT. § 940.48 (2001).
5. For example, 720 ILL. COMP. STAT. § 720-5/12-30 9 (2001); TEX. PENAL CODE ANN. § 25.07 (Vernon 2000); WASH. REV. CODE §§ 10.99.040, .050 (2001).



6. For example, ARIZ. REV. STAT. ANN. § 13-2921.01 (2001) (aggravated harassment); MICH. STAT. ANN. § 28.643(9) (Law. Co-op. 2000) (aggravated stalking).
7. IND. CODE ANN. § 35-46-1-15.1 (Burns 2000).
8. CONN. GEN. STAT. § 46b-15 (2001).
9. *Commonwealth v. Majeed*, 548 Pa. 48, 694 A.2d 336, *aff d*, 704 A.2d 163 (Pa. 1997).
10. *People v. Kelley*, 60 Cal. Rptr. 2d 653, *rev'd and remanded on other grounds*, 52 Cal. App. 4th 568 (Cal. Ct. App. 1997); *Commonwealth v. Burge*, 947 S.W.2d 805 (Ky. 1997), *cert. denied*, 522 U.S. 971 (1997); *State v. Bowen*, 560 N.W.2d 709 (Minn. Ct. App. 1997); *State v. Gonzales*, 123 N.M. 337, 940 P.2d. 185 (N.M. Ct. App. 1997), *cert. denied*; *Estrada v. State*, 1997 WL 331996 (Tex. Ct. App. 1997) (unpublished opinion). For more indepth discussion of these cases, see A. Perry and N. Lemon (Dec./Jan. 1998), "Five States Hold Criminal Contempt Does Not Bar Later Prosecution on Double Jeopardy Grounds," *Domestic Violence Report*, Kingston, NJ: Civic Research Institute, Inc., p. 19.
11. HAW. REV. STAT. §§ 580-10, 604-10.5 (2000).
12. IOWA CODE § 236.14 (2001).
13. 720 ILL. COMP. STAT. § 5/12-30 (2001).
14. COLO. REV. STAT. § 18-6-803.5 (2000).
15. For example, MO. REV. STAT. § 491.610 (2000); N.Y. CRIM. PROC. LAW §§ 530.12, .13 (2001); 18 PA. CONS. STAT. § 4955 (2000).
16. DEL. CODE ANN. 10 § 1046 (2000).
17. HAW. REV. STAT. §§ 580-10, 604-10.5 (2000); MASS. ANN. LAWS ch. 209A, § 7 (Law. Co-op. 2001); R.I. GEN. LAWS § 15-5-19.1 (2001).
18. WASH. REV. CODE ANN. § 10.99.040 (2001).
19. ALA. CODE § 12-15-155.
20. MASS. ANN. LAWS ch. 208, § 34D, ch. 209, § 32, ch. 209A, § 5A, 7, ch. 209C, § 15 (Law. Co-op. 2001).
21. MASS. ANN. LAWS ch. 209A, § 7 (Law. Co-op. 2001).
22. Cochran, Donald (July 1994). *Project History of the Massachusetts Statewide Automated Restraining Order Registry*, Boston, MA: Office of the Commissioner of Probation, Massachusetts Trial Court.
23. Adams, Sandra (December 1999). *Domestic Violence Special Report: Serial Batterers*, *Probation Research Bulletin*, Boston, MA: Office of the Commissioner of Probation, Massachusetts Trial Court.
24. For example, ALA. CODE § 18.65.540 (2001); ARIZ. REV. STAT. § 13-3602 (2000); CAL. FAM. CODE § 6380 (Deering 2001); COLO. REV. STAT. § 18-6-803.7 (2000); FLA. STAT. § 741.30 (2000); LA. REV. STAT. § 46:2136.2 (2000); N.D. CENT. CODE § 12-60-23 (2000); W. VA. CODE § 48-24-12 (2000).
25. CAL. PENAL CODE § 13701 (Deering 2001); KAN. STAT. ANN. § 22-2307 (2000); KY. REV. STAT. § 403.783 (2001); S.D. CODIFIED LAWS ANN. § 23-3-39.8 (2000).
26. For more indepth analysis of this issue, see Zorza, Joan (Dec./Jan. 1997). "The Implications of Full Faith and Credit for Protective Orders," *Domestic Violence Report*, Kingston, NJ: Civic Research Institute, Inc.
27. 18 U.S.C. §§ 2265, 2266 (2001).
28. For example, ALA. CODE § 30-5-4 (2001); ARIZ. REV. STAT. ANN. § 13-3602 (2000); ARK. STAT. ANN. § 9-15-302 (2001); CAL. FAM. CODE § 6380.5 (Deering 2001); FLA. STAT. § 741.315 (2000); IOWA CODE § 236.19 (2001); KAN. STAT. ANN. § 21-3843 (2000); KY. REV. STAT. § 403.7527 (2001); LA. REV. STAT. § 46:2136 (2000); MASS. ANN. LAW ch. 209A, § 5A (Law. Co-op. 2001); MD. FAM. LAW CODE ANN. § 4-508.1 (2001); MISS. CODE ANN. § 93-21-13 (2001); MO. REV. STAT. § 455.067 (2001); N.H. REV. STAT. ANN. § 173-B:11-b (2000); OHIO REV. CODE ANN. § 2919.272 (2001); 23 PA. CODE STAT. § 6118 (2001); S.C. CODE ANN. § 20-4-140 (2000); TENN. CODE ANN. § 36-3-622 (2001); UTAH CODE ANN. § 30-6-12 (2000); 15 VT. STAT. ANN. § 1108 (2001); W. VA. CODE § 48-2A-3 (2000); WIS. STAT. § 806.247 (2000).
29. COLO. REV. STAT. § 18-6-803.8 (2000).
30. MONT. CODE ANN. § 40-15-301 (2000).
31. KY. REV. STAT. § 403.7521 (2001).
32. KY. REV. STAT. § 403.771 (2001).
33. KY. REV. STAT. § 403.751 (2000).

34. COLO. REV. STAT. § 18-6-803.8 (2000).
35. ARIZ. REV. STAT. ANN. § 13-3602 (2000).
36. 28 U.S.C. § 534 note (2001).
37. *Supra* note 22, at 19.
38. COLO. REV. STAT. §§ 18-1-1001, 19-2-707 (2000).
39. COLO. REV. STAT. § 16-3-402 (2000).
40. *Id.*
41. COLO. REV. STAT. § 13-1-136 (2000).
42. LA. REV. STAT. § 46:2136.2 (2000).
43. KY. REV. STAT. § 403.737 (2001).
44. N.J. REV. STAT. § 2C:12-10.1 (2001).
45. *Id.*
46. CONN. GEN. STAT. § 53a-40e (2001).
47. CAL. PENAL CODE § 646.9 (Deering 2001).
48. IOWA CODE § 708.12 (2001).

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