

Representing Victims in Protection Order Hearings

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Goals of Training

- ❑ Become familiar with what a DVPO is and what state and federal laws apply
- ❑ Understand the victims' needs and how to prepare an effective direct examination
- ❑ Understand other needs of survivors of domestic violence and sexual assault

The Statistics

- ❑ Protection Orders decrease, but do not eliminate, the risk of continued abuse or homicide;
- ❑ More than 17% of domestic homicide victims had a protection order against the perp at time of killing;
(Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.46, table 15)
- ❑ PO respondents who had a criminal record were more likely to violate the order than those who did not
(Adams & Powell, Tragedies of Domestic Violence: A Qualitative Analysis of Civil Restraining Orders in Massachusetts, Office of the Commissioner of Probation, Massachusetts Trial Court, p. 17 (1995)).

Findings

- ❑ Most petitioners suffered physical abuse;
- ❑ For more than half, the abuse was severe;
- ❑ Few victims sought POs immediately;
- ❑ ¼ had endured abuse for more than 5 years;
- ❑ Majority of abusers had criminal records and most had been arrested for violent crimes other than dv;
- ❑ Reports indicate some 86% of the women who received a protection order state the abuse either stopped or was greatly reduced.

James Prack, *Battered Women in the Courtroom: The Power of Judicial Response* (1999), (reviewed in Media Cheney-Lind, James Prack, *Battered Women in the Courtroom: The Power of Judicial Response*, 35 Crime, L. & Soc. Change 363 (2001)).

Goals of Court Intervention in Domestic Violence Cases

- ❑ Stop the violence
- ❑ Protect the abused party
- ❑ Protect the children and other family members
- ❑ Protect the general public
- ❑ Hold the perpetrator accountable for the violent behavior and for stopping that behavior
- ❑ Rehabilitate the perpetrator
- ❑ Provide restitution for the abused party and
- ❑ Convey to the public that domestic violence will not be tolerated

W.S. §35-21-102

- ❑ What is "Domestic Abuse?"
 - Domestic Abuse means: the occurrence of one or more of the following acts by a household member, **but does not include acts of self defense:**

W.S. §35-21-102 (2 of 3)

- Physically abusing, threatening to physically abuse, attempting to cause or causing physical harm or acts which unreasonably restrain the personal liberty of any household member;
- Placing a household member in reasonable fear of imminent physical harm
 - Threats to cause physical abuse or placing a household member in reasonable fear of imminent physical harm are sufficient to support the issuance of a protective order in 48 jurisdictions, including Wyoming.

W.S. §35-21-102 (3 of 3)

- Causing a household member to engage involuntarily in sexual activity by force, threat of force or duress.

Who is Protected? Definition of “Household Member”

- Persons married to each other;
- Persons living with each other as if married;
- Persons formerly married to each other;
- Persons formerly living with each other as if married;
- Parents and their adult children;
- Other adults sharing common living quarters;
- Persons who are the parents of a child but who are not living with each other; and
- Persons in, or formerly in, “dating relationships.”

Definition of “Adult”

For Domestic Violence Protection Orders:

- Adult means a person who is sixteen (16) years of age or older, or legally married.

Dating Relationships

- As of October 2002, 28 States and D.C. and Puerto Rico allow people in dating relationships to obtain POs
- WY has no specific determining factors; but examples are
 - Length of relationship
 - Nature of relationship and
 - Frequency and type of interaction between persons involved in relationship.

Temporary Relief

- Refrain from abusing or threatening to physically abuse or committing any act which unreasonably restrains petitioner’s personal liberty;
- Vacate petitioner’s dwelling;
 - Continue to pay rent or mortgage
 - Surrender keys
- Refrain from entering dwelling/household

Temporary Relief (2 of 3)

- Refrain from contacting petitioner:
 - Verbally, or in person;
 - By telephone or other electronic means;
 - In any written form;
 - Through third persons (friends and family);
 - By nonverbal communication and gestures.

Temporary Relief (3 of 3)

- Other relief as deemed appropriate by the Court (catch all).
- If petitioner does not attend the hearing for the Protection Order, the temporary order is automatically dissolved.
- “WILLFUL VIOLATION OF ANY PROVISION OF THIS ORDER CONSTITUTES A CRIME AND CAN RESULT IN IMMEDIATE ARREST AND MAY RESULT IN FURTHER PUNISHMENT” (Required notice in Order)

Order of Protection

- Refrain from further “domestic abuse”
- Use and possession of home
 - Prohibit from re-entering
 - Surrender all keys
 - Refrain from damaging premises or property
 - Refrain from shutting off utilities
 - Refrain from discontinuing mail service

Attorneys and Advocates

- Always consider listing children by name as protected parties in their mother’s protection order;
- Also, if judge allows, seek prohibitions against contact or harassment of the family members.

Limitations on Respondent’s Visitation Rights

- Visitation only if court finds it to be in children’s best interest;
- Only if adequate provisions can be made for safety of children and petitioner;

To Provide for Safety, Court MAY Order:

- Exchange in a protected setting;
- Respondent to counseling or intervention program;
- Respondent to abstain from alcohol or controlled substances for up to 24 hrs. before and during visitation;

To Provide for Safety, Court MAY Order: (2 of 2)

- ☐ Supervised visitation;
- ☐ Respondent to pay for supervision;
- ☐ Prohibit overnight visitations;
- ☐ Require respondent to post bond to secure return and safety of children;
- ☐ Any other condition court deems necessary.

Confidentiality

- ☐ Regardless of visitation, court shall, upon request of the petitioner, order the address of petitioner and any children kept confidential. (W.S. 35-21-104(e)).

Protection Order Relief

- ☐ Order no contact
- ☐ Temporary Custody of Children
- ☐ Visitation with Respondent

Protection Order Relief (2 of 4)

- ☐ Child Support
- ☐ Support for the victim
 - Medical costs,
 - Repair of damaged property,
 - Attorney's fees, and
 - Health insurance for victim and minor child(ren).

Protection Order Relief (3 of 4)

- ☐ Refrain respondent from transferring, concealing, encumbering or otherwise disposing of petitioner's property or joint property
 - Order does not affect title to property;
 - Petitioner is likewise restrained.
- ☐ Retrieval of personal property
 - Supervised by law enforcement
 - Personal clothing and effects
 - Prearranged so both parties are present.

Protection Order Relief (4 of 4)

- ☐ Respondent shall undergo appropriate counseling for specified term not to exceed "90 days";
- ☐ "Other" injunctive relief as the court deems necessary for protection of petitioner.
 - Respondent shall deliver firearms and "other weapons" to the Sheriff.

Court Shall Not Bar Relief:

- ☐ Solely due to lapse of time between domestic violence act and filing for PO;
- ☐ Because criminal or civil order is entered in a case pending between the parties;
- ☐ Petitioner received orders in the past;
- ☐ Petitioner has withdrawn petition before or asked that one be rescinded;
- ☐ Because there is evidence of some domestic abuse on the part of the petitioner.

Counseling for Petitioner

- ☐ Court may refer an adult petitioner to attend counseling relating to petitioner's status or behavior as a victim but shall not order or make as a condition of receiving protection that an adult petitioner receive counseling.

Representing the Victim

- ☐ Detailed conversation about the victim's needs
- ☐ Issue spot
- ☐ Prepare an effective direct examination
- ☐ Safety Planning

Discuss Pros of Protection Orders

- ☐ Don't have to file for divorce;
- ☐ No filing fee;
- ☐ Protection Order can be issued quickly;
- ☐ May be good for up to a year;
- ☐ Can be renewed for good cause, up to a year;
- ☐ Remedies available from the statute;
- ☐ Increase credibility.

Discuss Cons of Protection Orders

- ☐ Not bullet proof, just a piece of paper
- ☐ Won't eliminate underlying situation
- ☐ May not deter abuser
- ☐ Victim may know better solution
- ☐ Domestic violence is not a simple legal problem.

High Lethality Checklist

- ☐ Threats of homicide or suicide;
- ☐ Articulation of fantasies and plans for homicide or suicide;
- ☐ Stalking, including cross-jurisdictional travel to threaten or harass;
- ☐ Possession, access to, and threats with firearms;
- ☐ Use of strangulation;

High Lethality Checklist (2 of 3)

- ☐ Obsessive attachment to victim;
- ☐ Depression or other mental illness;
- ☐ Sexual violence toward victim;
- ☐ Extensive drug or alcohol consumption;
- ☐ History of violent criminal conduct, both domestic and to third parties;
- ☐ Destruction of victim's property;

High Lethality Checklist (3 of 3)

- ☐ Severe abuse of pets;
- ☐ Unemployment or withdrawal from workforce;
- ☐ Separation of parties; and
- ☐ Access to victim, victim's family, and other supporters.

Dominant Aggressor

- ☐ Some argue there is "mutual battering" where both individuals are using physical force against each other. Careful fact-finding often reveals that one party is the primary/dominant physical aggressor and the other party's violence is self defense (e.g. she stabbed him as he was strangling her), or where one party's violence is more severe (e.g., punching/choking versus scratching).

Self-Defense

- ☐ Many battered women attempt to physically defend themselves from abuse. Defensive action by battered women to protect themselves or their children may be interpreted by law enforcement as an act of domestic violence.
- ☐ Wyoming's statutory definition of "domestic abuse" specifically excludes acts of self defense to account for the possibility that some abused parents might use violence in self defense or to protect children. *See Wyo. Stat. Ann. §35-21-102(a)(iii)* (LexisNexis 2003).

Effective Direct Examination

- ☐ Have your client:
 - Explain how they qualify
 - Explain the abuse
 - ☐ High lethality – "I want to talk about the more severe instances of abuse"
 - ☐ Explain a pattern of power and control: finances, isolation, etc..
 - Explain IN DETAIL (provide documentation) why they are asking for remedies:
 - ☐ Child custody and support
 - ☐ Spousal support
 - ☐ Counseling
- * Be conscious of time constraints

Violation of Protection Order

- ☐ Willful violation of any provision of the order constitutes a crime and can result in immediate arrest and may result in further punishment. (6-4-404);
- ☐ Can result in immediate arrest, imprisonment of not more than six months, a \$750 fine or both; and/or
- ☐ Civil contempt of court.

Protection by Police

- Police have statutory authority to arrest a person without a warrant upon a determination that there is probable cause of abuse

Applicability

- Protection order granted under the Domestic Violence Protection Act has STATEWIDE applicability;
- Criminal prosecution may be commenced in ANY COUNTY in which respondent violates the protection order.

Ensuring Enforcement

- Petitioners should:
 - Keep Protection Order with them at all times;
 - Notify police immediately of any violation;
 - Request that a police report be made. Obtain information on report number and instructions on how to receive a copy.
 - Obtain the name and badge number of the officer who responds to call.
 - File a contempt motion with the court if needed.
 - Ask prosecutor to charge perpetrator with all crimes involved in the violation.

Other Laws

- Full Faith and Credit
- Interstate violation of Protection Order
- Firearm prohibitions
- Uniform Interstate Enforcement of Domestic Violence Protection Order Act

Other Laws (2 of 2)

- Swift enforcement of protective orders is essential to their effectiveness.
- The more detailed the relief in the Order, the more useful the Order is.
- Civil protective orders, when properly drafted and enforced, are effective in eliminating or reducing domestic abuse.

Effectiveness of Protective Orders

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Separate Orders of Protection

- No Mutual Protection Order, but Separate Orders
- May be granted to each party, provided:
 - (i) Each party has filed a separate written petition for an order of protection; and
 - (ii) The court makes specific findings on the record that both parties have committed acts of domestic abuse and that each party is entitled to a separate order of protection.

Extending a Protection Order in Wyoming

- Extended for “good cause”

WYO. STAT. § 35-21-106(b)

- Good cause is not defined by statute or in any published cases

Extending a Protection Order in Wyoming (2 of 4)

- Expires on date of Order UNLESS extended BEFORE the order expires
- This means the Respondent must be served again

Extending a Protection Order in Wyoming (3 of 4)

- Victim does not, and should not, have to prove the order was violated or another instance of domestic abuse
- Educate court of DV dynamics – process of leaving, separation risk
- Victim still frightened, instance of DV happened within one year
- No requirement of “imminent peril”

Extending a Protection Order in Wyoming (4 of 4)

Gaab v. Ochsner, 636 N.W.2d 669 (N.D. 2001)

- “Low Threshold” of proof
- Petitioner still afraid
- Occurred less than one year previous
- Statute construed “liberally” with a view to protecting Petitioner
- Reviewed under abuse of discretion

Questions?

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