

Enhancing Enforcement of Orders of Protection in New Mexico

A Best Practices Guide
for Law Enforcement,
Prosecution and Courts

A Publication of the
New Mexico Attorney General's Office



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and Courts**

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The opinions, findings, and conclusions or recommendations expressed in this publication are those of the authors and do not necessarily reflect the views of the Department of Justice.

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Attorney General of New Mexico

GARY K. KING

Attorney General

ALBERT J. LAMA

Chief Deputy Attorney General

March 25, 2009

Dear Colleague:

As Attorney General, one of my top priorities has been to ensure the safety and protection of victims of domestic violence in our state. As part of that responsibility, I am pleased to provide you with this Best Practices Guide for Enhancing Enforcement of Protection Orders in New Mexico. This guide is the result of a grant that was awarded to the New Mexico Attorney General's Office by the U.S. Department of Justice to encourage the development of best practice policies for arrest and enforcement of Orders of Protection. I believe that the information contained in this guide will be very useful in achieving that goal.

The guide includes information about best practices for the enforcement of protection orders and mandatory arrest policies; the development of appropriate improvement strategies to implement identified best practice models for law enforcement agencies, prosecutors and the judiciary and the appropriate training programs for implementation of best practices. I invite you to use this guide as a compliment to your current procedures in a manner that best suites your organization's needs.

Please join me in thanking the professionals who helped carry out this challenging task. Their insight and dedication to victims was instrumental in developing this important project.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary K." followed by a stylized surname.

GARY K. KING

New Mexico Attorney General

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Abbreviations: AGO, Attorney General's Office; DA, District Attorney; DV, Domestic Violence; NM, New Mexico; PD, Police Department; SD, Sheriff's Department

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Law Enforcement Agencies (in alphabetical order)

We would like to thank all the following jurisdictions that granted us access to their law enforcement Standard Operating Procedures (SOPs) and their field officers for data collection.

Alamogordo	Albuquerque	Angel Fire	Artesia
Aztec	Bayard	Belen	Bernalillo County
Bernalillo	Bloomfield	Bosque Farms	Capitan
Carlsbad	Carizozo	Catron County	Chaves County
Cibola County	Cimarron	Clayton	Cloudcroft
Clovis	Colfax County	Columbus	Corrales
Cuba	Curry County	De Baca County	Deming
Dexter	Doña Ana County	Eddy County	Española
Estancia	Eunice	Farmington	Gallup
Grant County	Grants	Guadalupe County	Hagerman
Harding County	Hatch	Hidalgo County	Hobbs
Hurley	Isleta	Jal	Jemez Springs
Lake Arthur	Las Cruces	Las Vegas	Lea County
Lincoln County	Logan	Lordsburg	Los Alamos County
Los Alamos	Los Lunas	Loving	Lovington
Luna County	Magdalena	McKinley County	Melrose
Mesilla	Milan	Mora County	Moriarty
Mosquero	Mountainair	Otero County	Portales
Pueblo of Acoma	Quay County	Questa	Raton
Red River	Rio Arriba County	Rio Rancho	Roosevelt County
Roswell	Ruidoso	Ruidoso Downs	San Juan County
San Miguel County	San Ysidro	Sandia Pueblo	Sandoval County
Santa Clara	Santa Fe County	Santa Fe	Santa Rosa
Shiprock	Sierra County	Silver City	Socorro County
Socorro	Springer	Sunland Park	Taos County
Taos	Taos Pueblo	Tatum	Texico
Truth or Consequences	Torrance County	Tucumcari	Tularosa
Union County	Valencia County		

Please accept our apologies to all those who participated or gave us essential information and were left out inadvertently.

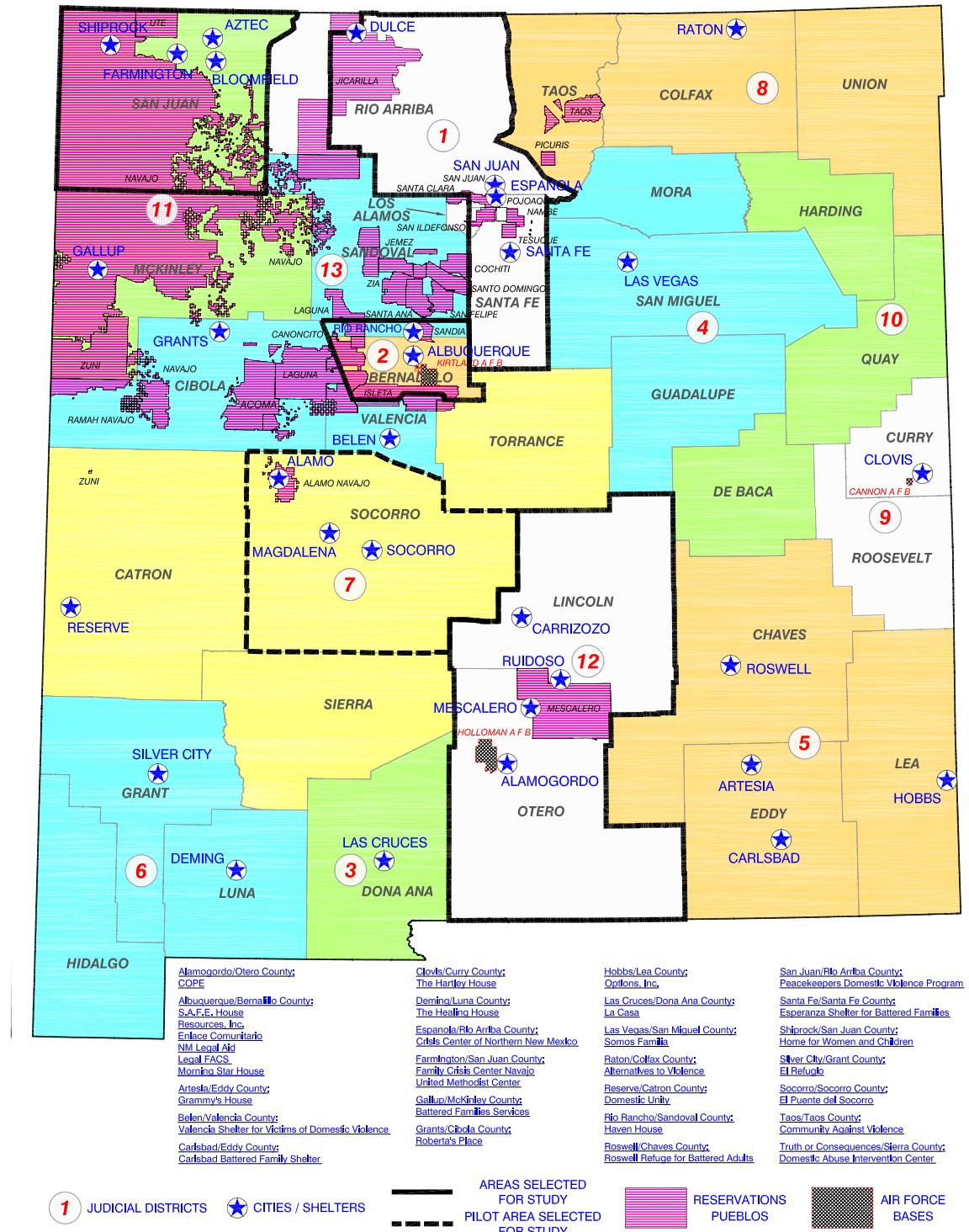


Figure. Map of New Mexico with jurisdictional boundaries and study areas.

Orders of Protection

Best Practices Guide: Purpose

Part I. Introduction

Best Practices Guide: Purpose

In 2006, the New Mexico Attorney General's Office (AGO) received a Department of Justice Grant to Encourage Arrest and Enforcement of Protection Orders (2006-WE-AX-0050). Under this grant, the AGO convened a Task Force of experts and stakeholders from agencies across New Mexico to review existing practices and to develop a set of best practices for enforcing Orders of Protection.

The Task Force acknowledges that this guide may not be appropriate for all agencies or under all circumstances. Each jurisdiction and provider is under different resource and funding constraints and each has a unique set of policies and procedures. Agencies and service providers should instead adapt this guide to best meet the needs of their communities by promoting effective access, issuance and enforcement of Orders of Protection. Where external constraints render a suggested practice inappropriate or impossible, providers are encouraged to work within their existing constraints to find alternative ways to achieve the relevant goals.

In addition, this guide is intended to provide general information about best practices. More details regarding these practices are provided in the curricula and training materials developed for each system provider.

Why Do We Need to Encourage Best Practices?

This best practices guide is based on the premise that a comprehensive coordinated community response is the best way to effectively promote the safety of victims and address their needs while holding perpetrators accountable. Data collected from law enforcement agencies and service providers in New Mexico indicate a number of barriers to the effective enforcement of Orders of Protection. Some of these barriers can be addressed and promoted through the application of best practices established by various organizations and agencies around the country. Many of the best practices proposed here are derived from established guidelines. A list of resources is provided in Part IV Resources and Supplementary Materials beginning on page 51.

Best Practices in Action...



Training Tools

This guide is intended to serve as a resource manual. It outlines principles that can be adapted to a broad range of agencies and disciplines. This guide does not make specific suggestions regarding how to implement these principles.

Accompanying this guide are training tools that can be used to train and implement best practices in various agencies.

Contact the New Mexico Attorney General's Office for more information about these training tools at:

www.nmag.gov

505-222-9000

Orders of Protection

Best Practices Guide: Purpose

This guide is designed to map ways in which law enforcement, prosecution and the courts can work collaboratively and with other community service providers to improve the enforcement of Orders of Protection.

Throughout this guide, results from data collected in New Mexico highlight the strengths and weaknesses of the Order of Protection process. Interviews of experts from across the state and across disciplines provide insights about their experiences with and observations of the Order of Protection system. Additionally, results from law enforcement officer surveys document their knowledge, attitudes and beliefs about Orders of Protection. Sidebars present findings throughout this document to illustrate the relevance of this guide to New Mexico. Part IV (p. 51) presents these results in more detail. The data indicate a lack of consistency in policies and procedures for access, issuance and enforcement of Orders of Protection across the state. This disparity reinforces the need for uniform best practices.

Who Should Use This Guide?

This guide is intended to promote the best practices for the access, issuance and enforcement of Orders of Protection, not for investigating these cases. This guide was primarily developed for law enforcement, prosecution and the courts. Additionally, because of the interconnectedness of the system, best practices are provided for victim service and civil legal providers. Within the above-mentioned agencies, both individuals responsible for setting policies and those tasked with implementing and carrying out these policies should benefit from this guide.

What Victims and System Players Need to Know

This guide outlines steps that victim service providers, law enforcement officers, prosecutors, attorneys and court personnel can take to fulfill their legal duties and maximize the efficacy of Orders of Protection. The following section provides an overview of what victims and those from the various agencies that work with them need to know for the system to function effectively.

Since New Mexico law provides Orders of Protection as a civil remedy, victims of domestic abuse must, at some level, initiate the process of obtaining an order. One of the challenges, however, is that most victims are unfamiliar with the process and anticipate that it will be confusing and

Best Practices in Action...



Terminology

Each system and stage of the Order of Protection process uses specific and sometimes unique terms to refer to involved parties. This variation in terminology can create confusion. Victims may be referred to as survivors, petitioners, applicants, clients or protected parties. Perpetrators may be referred to as offenders, respondents or restrained parties.

To limit confusion, this guide uses consistent terminology to refer to parties at each stage of the process:

Access

- Victim
- Perpetrator

Issuance

- Petitioner
- Respondent

Enforcement

- Protected party
- Restrained party

Orders of Protection

Best Practices Guide: Purpose

overly complicated, or they have limited knowledge about Orders of Protection and what they can do.

Education about Orders of Protection should come early in a victim's contact with service providers and law enforcement. In addition, many victims contact the court directly so court personnel need to educate petitioners and respondents about the procedural process. This is particularly important for individuals who are not represented by civil attorneys.

Clear explanations of the Order of Protection system can promote its proper use. The following list describes information that should routinely be provided to victims to make the process more transparent and to increase the likelihood that they will access and use the system.

What Victims Need to Know

- Why victims should consider petitioning for an Order of Protection.
- What an Order of Protection can and cannot do.
- The jurisdiction(s) in which the victim is eligible to apply.
- Eligibility requirements for each type of order.
- How to obtain an Order of Protection.
- When and how Order of Protection hearings are scheduled.
- Whether and how the information they provide will remain confidential.
- How respondents are notified about Orders of Protection through service of process.
- How protected parties can modify or terminate an Order of Protection.
- Procedures for objecting to or appealing a court's decision to grant or deny an Order of Protection.
- The consequences to the restrained party for violating an Order of Protection.
- How to work with law enforcement and the courts to enforce Orders of Protection.
- Where an Order of Protection is enforceable.

Best Practices in Action...



Assessing Lethality

Factors to consider in determining serious injury and lethality potential:

- Threats of homicide or suicide.
- History of domestic violence and violent criminal conduct.
- Separation of parties.
- Isolation.
- Stalking, including cross-jurisdictional travel to threaten or harass.
- Depression or other mental illness.
- Obsessive attachment to the victim.
- Drug or alcohol involvement.
- Possession or access to weapons.
- Abuse of pets.
- Destruction of victim's property.
- Access to the victim, victim's family and other supporters.

These factors are not listed in any particular order of importance. Each can be helpful, but none are guaranteed predictors of future violence.

www.dangerassessment.org

Orders of Protection

Best Practices Guide: Purpose

What System Players Need to Know

Law enforcement, prosecutors, court personnel, civil legal attorneys and victim service providers all interact with victims who are applying for Orders of Protection, and should possess a basic understanding of the items described above in “What Victims Need to Know.” In addition, every provider should be aware of several general and agency specific issues listed below.

General Issues

Each system player should:

- Be familiar with New Mexico’s Family Violence Protection Act [40-13 NMSA 1978]. (See p. 52)
- Understand the dynamics of domestic violence. In particular, they should be able to identify ‘red flags’ that suggest the potential for injury and lethality. (See sidebar p. 3)
- Address both legal and practical issues regarding language barriers. These include:
 - ♦ Understanding and complying with Americans with Disabilities Act (ADA) requirements, including the hearing- and visually-impaired.
 - ♦ Determining what languages are commonly used in your community and making materials (including court forms, referral lists, educational brochures and videos) available in those languages.
 - ♦ Being aware and using qualified interpreting and translating resources, over-the-phone live interpreting services. Do not use unqualified interpreters, in particular children, family members, friends or witnesses.
 - ♦ Establishing protocols to recognize and address illiteracy.
- Recognize and address compassion fatigue, vicarious trauma and burn out that all providers, regardless of their role, may experience with repeated exposure to domestic violence incidents and victims.

Specific Issues for Each System Player

The following lists are intended to provide a brief overview of the information each system player should possess to effectively fulfill his or her role.

Best Practices in Action....



Interpreting Services for Deaf and Hard-of-Hearing

Individuals who are deaf or hard-of-hearing have the right to “auxiliary aids and services” under Title III of the Americans With Disabilities Act. According to ADA Title III Sec 36.303 (b)(1), Auxiliary aids and services include “[q]ualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD’s), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments.” According to 28 CFR § 104, “[a] qualified interpreter is defined by the ADA to mean an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.”

To find qualified interpreters for victims who are deaf or hard-of-hearing, contact Community Outreach Program for the Deaf (COPD), New Mexico’s statewide interpreter referral program.

www.copdnm.org

1-800-229-4262 (v/tty)

For additional information, contact the New Mexico Commission for Deaf and Hard of Hearing Persons.

www.cdhh.state.nm.us

1-800-489-8536

Best Practices in Action....



Telephone Interpreting Services

Telephonic interpretation services provide live language interpreters in multiple languages. Many services have staff familiar with domestic violence and sexual assault.

Contact the New Mexico Coalition against Domestic Violence about accessing language interpreting services.

www.nmcadv.org

505-246-9240

Orders of Protection

Best Practices Guide: Purpose

WHAT VICTIM SERVICE PROVIDERS NEED TO KNOW

To effectively advocate on behalf of victims, victim service providers should:

- Take appropriate measures to ensure their own safety, as well as the safety of victims.
- Understand the legal system and the process for issuing and enforcing Orders of Protection so that they can assist victims in navigating the system and in making informed decisions.
- Develop relationships with other system players so that other players understand the role of victim service providers and make effective use of their expertise.

WHAT LAW ENFORCEMENT OFFICERS NEED TO KNOW

Law enforcement officers play a pivotal role in the Order of Protection process. To effectively fulfill that role, law enforcement officers should:

- Be aware that responding to incidents involving domestic violence and Orders of Protection can involve increased risk for officers and understand how to ensure their own safety as well as the safety of others at the scene.
- Understand the dynamics of domestic violence to ensure an appropriate response.
- Understand state and federal laws regarding Orders of Protection, particularly the duties these laws specify for law enforcement.
- Develop relationships with counterparts in other municipalities, counties and tribes to facilitate information sharing and effective enforcement.

WHAT CIVIL LEGAL ATTORNEYS NEED TO KNOW

Representing victims of domestic violence requires attorneys to:

- Be familiar with the dynamics of domestic violence to evaluate cases, advise clients and develop the best strategy for each situation.
- Understand state and federal laws regarding Orders of Protection, and related strategies to avoid double jeopardy.
- Understand relevant child custody and support laws and how those laws affect Orders of Protection.

Best Practices in Action...

Working with Applicants with Limited English Proficiency (LEP)

Under Title VI of the Civil Rights Act of 1964, federal law mandates specific requirements for agencies that receive federal assistance. These agencies must provide meaningful access to persons with limited English proficiency (LEP). This includes providing competent interpretation services.

Agencies should not allow friends or family members, particularly children, to act as interpreters for parties with LEP.

Victims may be reluctant to fully and accurately disclose important details when friends or family serve as interpreters for fear that they may disclose the conversation to the offender putting all parties at risk.

Additional information is available at:

www.lep.gov

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Best Practices Guide: Purpose

WHAT PROSECUTORS NEED TO KNOW

Prosecutors are in a unique position in the Order of Protection process; the issuance of an Order of Protection is a civil proceeding initiated by the victim, yet the enforcement of that order is often handled through the criminal justice system. To effectively fulfill their obligations, prosecutors should:

- Understand state and federal laws regarding Orders of Protection and the enforcement of those orders.
- Understand relevant double jeopardy laws and how best to balance the civil and criminal aspects of enforcing Orders of Protection within those constraints.
- Understand the dynamics of domestic violence to develop strategies for an effective response.
- Develop relationships with counterparts in other jurisdictions and with other system players to ensure maximum sharing of information and coordination of response strategies.

WHAT COURT PERSONNEL NEED TO KNOW

Courts have both an administrative role in overseeing the functioning of the court and the court clerk's office and a judicial duty to ensure justice for all parties. To fulfill these obligations, judicial officers and court personnel should:

- Understand the dynamics of domestic violence to properly evaluate the evidence presented to them.
- Conduct a safety review of the court and the court clerk's office and implement any measures needed to ensure the safety of court personnel and all who appear before the court.
- Understand state and federal laws regarding Orders of Protection and ensure that orders comply with both.
- Develop working relationships with other state and tribal judicial officers to facilitate sharing of best practices and proper cross-jurisdictional enforcement of Orders of Protection.

Orders of Protection

Definitions and Statutes

Definitions and Statutes

What Is an Order of Protection?

Orders of Protection are court orders that direct a restrained party to stop threatening or harassing the protected party. They also direct the restrained party to stay away from the protected party. Additional restrictions apply as appropriate for each individual situation.

The procedures for issuing Orders of Protection vary. In New Mexico, Orders of Protection are obtained through special domestic violence proceedings, although New Mexico courts may also issue “no contact” or “stay away” orders as part of other civil and criminal cases.

Nationally, evidence suggests that Orders of Protection can be an effective method in combating domestic violence. The effectiveness of Orders of Protection depends heavily on the existence and consistent use of enforcement mechanisms. Working closely with protected parties, law enforcement and the courts play critical roles in any enforcement procedures. Victim service providers, prosecutors and civil attorneys also have important roles in enforcing Orders of Protection.

Prior to 1994, most jurisdictions did not enforce Orders of Protection issued by other governments. This limitation created a number of problems for persons with Orders of Protection, as the protected party may live in one jurisdiction, work in another, take a vacation, change jobs or move to flee the restrained party. In 1994, the federal government addressed these problems by enacting the full faith and credit provisions of the Violence Against Women Act [18 USC 2265 & 2266]. As currently amended, these provisions mandate that all states, tribes and territories enforce each other’s Orders of Protection. As a result, this guide encompasses enforcement of all Orders of Protection within the state’s borders, not just those issued by the State of New Mexico.

Order of Protection Statutes

The following discussion provides a basic overview of when an Order of Protection is available in New Mexico and a summary of the relevant statutes. Orders of Protection are available through state, tribal and federal courts. Military commanding officers can also issue orders.

Orders of Protection and the Law...

Issuing and Enforcing Governments

Federal law distinguishes between the government issuing the Order of Protection and the government enforcing the Order of Protection.

Issuing government determines:

- Who qualifies for order
- Terms of the order

Enforcing government determines:

- Procedures for enforcing order
- Penalties for violating order

Orders of Protection and the Law...

Federal Crimes Associated with Orders of Protection

It is a federal crime to:

- Cross a government boundary to commit domestic violence or with intent to violate an Order of Protection. [18 USC 2262(a)(1)]
- Cause another person to cross a government boundary in the course of committing domestic violence or violating an Order of Protection. [18 USC 2262(a)(2)]
- Commit interstate stalking (including entering or leaving Indian country). [18 U.S.C. 2261A]
- Possess a firearm while subject to an Order of Protection. [18 USC 922(g)(8)]
- Possess a firearm after conviction of a misdemeanor crime of domestic violence. [18 USC 922(g)(9)]

Orders of Protection

Definitions and Statutes

The following sections are not intended to be a comprehensive explanation of the laws. For a complete understanding, it is important to refer to the statutes themselves, highlights of which are included in Part IV (p. 51).

Who may petition. The New Mexico Family Violence Protection Act, which is codified as sections 40-13-1 through 40-13-12, provides that a household member who is the victim of domestic abuse may petition the district court for an Order of Protection. The definition of a household member in New Mexico is provided in the sidebar on page 8. In addition, victims of stalking and sexual assault may petition for an Order of Protection regardless of their relationship to the perpetrator.

For what conduct. Under New Mexico law, “domestic abuse” is defined as an incident by a household member against another household member consisting of or resulting in several forms abuse that are listed in the sidebar on page 8. Domestic abuse does not include the use of force in self-defense or the defense of another. Domestic abuse also includes stalking or sexual assault whether committed by a household member or not.

Types of orders. New Mexico district courts can issue several types of orders, including *ex parte* temporary orders, *ex parte* emergency orders and extended Orders of Protection. An *ex parte* order is one where only the petitioner’s side has been heard and no notice was given to the respondent. In certain circumstances, the court may issue mutual Orders of Protection. New Mexico law restricts the issuance of mutual orders, which place restrictions on both parties. Mutual orders are only permitted “in cases where both parties have petitioned the court and the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense” [40-13-5 D. NMSA 1978].

A court may also issue “stay away” and “no contact” orders in civil and criminal proceedings, however, these types of orders do not fall under the Family Violence Protection Act and may not extend the same level of protection. These orders are, however, entitled to full faith and credit if they qualify as an Order of Protection under federal law. The

Orders of Protection and the Law...

Definition of Household Member in New Mexico

New Mexico law defines a “household member” as:

- A spouse
- Former spouse
- Family member, including a relative, parent, present or former stepparent, present or former in law, child or co-parent of a child
- A person with whom the protected party has had a continuing personal relationship
- Cohabitation is not necessary to be deemed a household member under New Mexico law

[40-13-2 D. NMSA 1978]

Orders of Protection and the Law...

Definition of Domestic Abuse in New Mexico

New Mexico law defines a “domestic abuse” as:

- Physical harm
- Severe emotional distress
- Bodily injury or assault
- A threat causing imminent fear of bodily injury by any household member
- Criminal trespass
- Criminal damage to property
- Repeatedly driving by a residence or workplace
- Telephone harassment
- Harassment
- Harm or threatened harm to children

[40-13-2 C. NMSA 1978]

Orders of Protection

Definitions and Statutes

federal definition of Order of Protection is very broad. (See sidebar p. 9)

Procedures and Standard of Proof: Emergency Orders.

The district court may issue an *ex parte* emergency Order of Protection when a law enforcement officer states to the court in person, by telephone or via facsimile and files a sworn written statement, setting forth the need for an emergency Order of Protection, and the court finds reasonable grounds to believe that the alleged victim or the alleged victim's child is in immediate danger of domestic abuse following an incident of domestic abuse. These are issued during non-business hours when the court is closed. They afford the party temporary protection until he or she can formally petition for an Order of Protection from the court.

Procedures and Standard of Proof: Temporary Orders.

Once a petition is filed, New Mexico law requires the court to immediately grant an *ex parte* temporary Order of Protection if there is probable cause to believe that an act of domestic abuse has occurred. The court must then hold a hearing within ten days on the question of granting and extended order. If an *ex parte* temporary order is not granted immediately, the law requires that the court hold a hearing with both parties within seventy-two hours.

Procedures and Standard of Proof: Extended Orders. At the hearing that is held within ten days, the court must grant an Order of Protection if the preponderance of the evidence supports the petitioner's claim of domestic abuse. In lieu of a finding of abuse, both parties may stipulate to an Order of Protection. A finding of domestic abuse is not made in this case. An Order of Protection is valid and enforceable regardless of whether there was a finding of domestic abuse or stipulation by the parties. Some jurisdictions refer to extended orders as final orders and stipulated orders as consent orders.

Contents of the Order. An Order of Protection directs the restrained party to refrain from abusing the protected party. The order should specifically describe the acts the court has ordered the restrained party to do or refrain from doing. The statute contains a list of possible provisions, but also allows any injunctive relief the district court judge deems necessary for protection.

Orders of Protection and the Law...

Federal Definition of Orders of Protection

Federal law defines an Order of Protection as:

“...any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court (other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law) whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.” [18 USC 2266(5)]

Orders of Protection

Definitions and Statutes

Emergency Orders of Protection are more limited in scope than other orders. They may 1) restrict the restrained party from threatening to commit or committing acts of domestic abuse against the protected party or any designated household members; 2) restrict the restrained party from any contact with the protected party, including harassing, telephoning, contacting or otherwise communicating with the protected party; and 3) grant temporary custody of any minor child in common with the parties to the protected party, if necessary.

Duration of Order. An emergency order expires 72 hours after issuance or at the end of the next judicial day, whichever time is later. Temporary Orders of Protection are valid for ten days, or until the court holds a hearing. New Mexico law does not limit the duration of extended Orders of Protection, rather the courts define the duration of orders they issue. The portion of an Order of Protection addressing child custody and support issues is limited to six months. In New Mexico, the custody and support provisions of the Order of Protection appear as an attachment to the Order of Protection. The Custody and Support Attachment may have an earlier expiration date than the date appearing on the Order of Protection. The expiration of the Custody and Support Attachment has no effect on the Order of Protection. All orders may be extended for good cause upon motion of the protected party.

Tribal Codes

Within New Mexico there are 23 federally recognized tribes, 21 of which have tribal courts in the state and 18 of which have tribal codes on file with the National Indian Law Library. It is difficult to discuss tribal codes as a whole with any accuracy, as tribal governments have taken a variety of approaches to address domestic violence and Orders of Protection. Two generalizations, however, are possible.

First, tribal governments take a more holistic approach to combating domestic violence. This integrated approach takes many forms. Tribal governments may use a broader definition of family (often including extended family and not just the nuclear family) and a broader definition of who can apply for an Order of Protection. Some codes mandate that law enforcement file reports with social service agencies after responding to a report of domestic violence. Tribal courts may also have authority to issue an Order of

New Mexico Data Show...

Federally Recognized Tribes in New Mexico

There are 23 federally recognized tribes located within New Mexico:

- Acoma
- Cochiti
- Isleta
- Jémez
- Jicarilla Apache Nation
- Laguna
- Mescalero Apache Reservation
- Nambé
- Navajo Nation
- Ohkay Owingeh
- Picurís
- Pojoaque
- Sandia
- San Felipe
- San Ildefonso
- Santa Ana
- Santa Clara
- Santo Domingo
- Taos
- Tesuque
- Ute Mountain Ute
- Zia
- Zuni

Currently, at least six of these tribes (Acoma, Jémez, Laguna, Navajo, Taos and Zuni) have formal Order of Protection codes.

Orders of Protection

Definitions and Statutes

Protection even if the tribe does not have a specific Order of Protection statute.

Second, federal limitations on tribal jurisdiction have complicated the task of tribal courts in issuing and enforcing Orders of Protection. Before a court can issue or enforce an Order of Protection, it must have jurisdiction over the parties. While state courts typically have jurisdiction over all persons located within the state's boundaries, tribal court jurisdiction depends on the parties' ethnicity and whether the case is civil or criminal. Tribal courts possess criminal jurisdiction only over Indians, and whether a tribal court possesses civil jurisdiction over a particular party depends on a complex set of factors.

Thus, while tribal courts have more limited jurisdiction than state courts, if a tribal court does possess jurisdiction over the parties, it may have broader authority than a state court to issue and enforce an Order of Protection. The limitations on tribal jurisdiction also mean that tribal governments should ensure that they provide both civil and criminal penalties for violating an Order of Protection, as tribal courts have no criminal jurisdiction over non-Indians.

Federal

Federal courts are courts of "limited jurisdiction," as opposed to state courts, which are courts of "general jurisdiction." The difference between the two centers around what types of cases each court can hear. Because federal courts are courts of limited jurisdiction, they must be specifically authorized to hear a particular type of case; they do not automatically possess the ability to hear any type of case filed with the court. There is no general federal statute for Orders of Protection and federal courts cannot hear general domestic affairs issues, such as petitions for Orders of Protection. Federal courts can, however, issue Orders of Protection in two situations: when federal land is involved (such as a federal building or national park) or as part of a federal criminal proceeding.

When federal land is involved, the federal court will "borrow" the law of the state where the land is located. When a federal criminal proceeding is involved, federal courts have broad discretion to craft conditions of pre-trial release and probation, including Orders of Protection.

Orders of Protection

Definitions and Statutes

Because federal Orders of Protection are rare, the federal full faith and credit provisions do not encompass them. Full faith and credit provisions require only states, tribes and territories to enforce Orders of Protection issued by other states, tribes and territories.

Military

Military Orders of Protection and the process by which they are issued differ from state procedures. Military Protective Orders (MPOs) are issued by unit commanders rather than by military courts.

Unit Commander Authority

Commanders structure MPOs to each situation. As with a civilian Order of Protection, through an MPO, commanders may prohibit the individual under his or her command from having contact with the victim, from being within a certain distance of the victim, and may require the service member to do or refrain from doing certain activities. An MPO may also require a service member who is the subject of the MPO to move into government quarters, to attend counseling and to surrender his or her government weapons. MPOs may extend to locations beyond the United States. A service member may have both an MPO and a civilian Order of Protection.

A MPO is enforceable only while the service member is attached to the commander that issued the order. Thus, if circumstances warrant the continuation of the MPO after a service member is transferred, the commander who issued the MPO should contact the new commander to advise him or her of the MPO.

Civilians

Civilians cannot be subject to MPOs. A commanding officer may order, however, that a civilian stay away from the base or installation. In addition, the Armed Forces Domestic Security Act, 10 USC 1561(a), states that a civilian Order of Protection has the same force and effect on a military installation as such order would have within the jurisdiction of the civilian court that issued the order.

Full Faith and Credit for Orders of Protection

In 1994, acting pursuant to its powers under the Full Faith and Credit clause of the US Constitution, Congress passed the full faith and credit provisions of the Violence Against

Orders of Protection and the Law...

Orders of Protection and the Military

The Violence Against Women Act does not recognize or provide full faith and credit for Orders of Protection issued on military installations. The Armed Forces Domestic Security Act [10 USC 1561(a)] became law in 2002 and affords civilian Orders of Protection the "same force and effect on a military installation as such order has within the jurisdiction of the court that issued the such order."

These regulations are available online:

www.dtic.mil/whs/directives/corres/pdf/640006p.pdf

Orders of Protection and the Law...

Full Faith and Credit

The federal law requiring full faith and credit for Orders of Protection was designed to:

- Provide nationwide coverage for those with Orders of Protection.
- Eliminate the need for multiple Orders of Protection.
- Increase safety by not requiring notice of relocation.

Orders of Protection

Definitions and Statutes

Women Act [18 USC 2265 & 2266]. As currently amended, that statute mandates that each state, tribe and territory enforce a valid Order of Protection issued by any other state, tribe or territory. It is important to note, however, that full faith and credit does not extend beyond the U.S. border.

An Order of Protection is valid if the issuing court 1) has both personal and subject matter jurisdiction, 2) provides restrained party reasonable notice and opportunity to be heard (in the case of *ex parte* orders, notice and opportunity to be heard must be provided within the time required by law) and 3) complies with the prohibitions regarding mutual orders.

It is important for all victim service providers, law enforcement officers, civil and criminal attorneys and judicial officers to understand the scope of enforcement obligations under federal law.

The jurisdiction enforcing the order should follow the procedures established for enforcing its own Orders of Protection, including the same penalty structure.

The jurisdiction enforcing the order may not refuse to enforce on the grounds that the order could not have been issued by the enforcing jurisdiction. The issuing jurisdiction determines who qualifies for an Order of Protection and the terms of the order, not the enforcing jurisdiction.

Federal law also specifically provides that “a tribal court shall have full civil jurisdiction to enforce Orders of Protection, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe” [18 USC 2265(e)].

Best Practices in Action...

Facial Validity

Many documents are issued by other governments and are accepted as valid.

For example, all states issue driver's licenses, and no state drivers licenses are the same. Drivers can use their licenses in other states.

Officers rarely question the validity of out of state licenses.

Officers should take a similar approach to validating and enforcing Orders of Protection.

Part II: Order of Protection Process

The process of obtaining an Order of Protection starts by providing victims access to the system. This is followed by the issuance of the order and concludes with enforcement of the order. Orders of Protection offer protection for victims who have experienced domestic abuse and perceive themselves in danger of continued abuse. Orders of Protection are court orders that direct a perpetrator to stop threatening or harassing the victim.

Throughout the process, victim service providers, law enforcement officers, prosecutors, civil attorneys and courts all interact with victims in different, yet equally important, ways.

In this section of the guide, we present a list of best practices each group should consider in the access, issuance and enforcement phases of the Order of Protection process.

Access

Access is the initial stage of the Order of Protection process. It is often during this stage that victims make their first contact with the system. This initial interaction can shape their perceptions of and experiences with the system and may increase or decrease their follow through with the Order of Protection process. There are various mechanisms through which victims might first access the Order of Protection process. These include referral from victim service agencies, law enforcement, civil legal attorneys, prosecutors and direct self-referral.

Victim Services

Domestic violence service agencies offer an important support system to victims trying to navigate the court process. Victim service providers work in a variety of settings including in law enforcement agencies, shelters and community organizations. While victim service providers may not represent victims in court, they can assist victims in obtaining Orders of Protection and can usually accompany them to proceedings.

Appropriate assistance from a victim service provider can often expedite the court's response to domestic violence. Their help in filling out a petition for an Order of Protection can eliminate delays from improper completion. Service providers can best help victims when they have a

Best Practices in Action...

Items to Consider when Applying for an Order of Protection

Victims should consider the following needs when applying for an order:

- Child care costs and services
- Transportation costs and services
- Child support
- Stay away provisions that extend to work or school
- Restitution
- Mortgage payments
- Property taxes
- Health insurance
- Medical expenses
- Prescription medications
- Use of car seats
- Civil legal services
- Non-dissipation of assets
- Specific visitation provisions
- Provisions for child care transfers, to include safe locations
- Explicit stay away distances
- Identification of third parties through whom communication can take place
- Church considerations
- Schooling for children
- Ownership of legal documents, including passports, drivers licenses and other important documents
- Disposal or safekeeping of firearms.

clear understanding of the scope of their duties in assisting with court proceedings. In all cases, service providers should respect victims' choices and not direct their decisions about filing for Orders of Protection, requesting specific relief or seeking enforcement of orders.

Best Practices for Victim Services: Access

HELPING VICTIMS ACCESS THE SYSTEM

- Inform victims of the relief available through the Order of Protection process [40-13-5 A. NMSA 1978], including, but not limited to, the ability of an order to:
 - Keep the restrained party from initiating contact.
 - Grant sole possession of the residence or household.
 - Restrict disposal of property.
 - Award temporary child custody and support.
 - Order reimbursement for expenses reasonably related to the occurrence of domestic abuse.
 - Order the restrained party to participate in professional counseling programs.
- Provide information about court proceedings including, but not limited to, local court procedures. Prepare the victim for proceedings.
- Work with victims to determine whether they have outstanding warrants and help them with the steps necessary to take care of these warrants so as not to impede their application for an Order of Protection.
- Develop relationships with tribal domestic violence service provider. Many tribes offer culturally specific services.
- Assist with or provide transportation to the court.
- Educate victims of the importance of attending hearings and the consequences of not attending, regardless of whether the perpetrator was served.
- Apprise victims that their information may be publicly available and where that information is stored, in order to enable them to make the most educated choices about what to disclose and to whom.
- Apprise victims of the Confidential Address Program. (See sidebar p. 15)
- Encourage victims to define their needs and assist them in obtaining orders tailored to those needs; for example, develop checklists and other tools that victims can use

Best Practices in Action...

Confidential Address Program

New Mexico state law establishes an address confidentiality program permitting victims of domestic violence to apply for a post office box through the office of the Secretary of State. The office gives the victim an identification card demonstrating that he or she is registered with the program. This allows the victim to use a substitute mailing address and to receive legal process without disclosing his or her location. [40-13-11 NMSA 1978]

Application forms are available from most domestic violence service providers. The address is sealed for three years.

Additional information is available at the New Mexico Secretary of State website:

www.sos.state.nm.us

1-888-432-5469

to identify what they need from Orders of Protection.
(See sidebar p. 14)

- Educate victims about the importance of collecting documents such as financial statements and copies of police reports for Order of Protection proceedings.
- Educate victims and employers about domestic violence leave protections provided by state law. [50-4 NMSA 1978]

HELPING VICTIMS THROUGH OUTREACH

- Strive to reach all victims who apply for Orders of Protection.
- Coordinate services for rural victims who may be unable to travel. Services might include providing childcare, transportation funds to enable victims to attend court proceedings and making services available in the evenings or by telephone.
- Work with lesbian, gay, bisexual and transgendered communities, communities of color, immigrant communities, religious groups, programs serving teenagers, and tribal nations to increase awareness of Order of Protection relief.
- Provide information about Orders of Protection to individuals with disabilities through disability rights organizations.
- Be familiar with battered immigrants' eligibility for Orders of Protection. (See sidebar p. 35)
- Inform victims that they are not required to pay fees for witnesses, to file for Orders of Protection, serve Orders of Protection or file criminal charges for Order of Protection violations. [40-13-3.1 NMSA 1978]
- Support the development of co-located service delivery models, such as those in Albuquerque and Las Vegas, NM. Co-located service delivery models should offer confidentiality safeguards, safety planning, housing assistance, child support, supervised visitation, counseling and civil legal assistance.

Best Practices in Action...

Co-Located Domestic Violence Services

The Albuquerque Family Advocacy Center offers one location where a victim can find victim service providers, civil attorneys, law enforcement officers and apply for an Order of Protection. With this co-location of services, a victim does not have to travel to numerous places across the city. Additionally, by co-locating agencies, service providers work in close proximity. This encourages collaboration.

www.cabq.gov/police/fac

Law Enforcement

Law enforcement is often the first system contact for victims of domestic violence. Law enforcement is in a position to help victims understand the Order of Protection process and gain access to Orders of Protection. The New Mexico Family Violence Protection Act defines specific duties that law enforcement officers have when responding to domestic violence calls for service. In addition to these statutorily defined duties, there are several best practices that law enforcement can adopt to help victims access the protections afforded by the courts. Law enforcement agencies should develop standard operating procedures (SOPs) that address all of these duties.

Best Practices for Law Enforcement: Access

STATUTORILY DEFINED DUTIES:

- Take all reasonable steps to protect the safety of the victim. (See sidebar p. 17)
- Make Order of Protection forms available to victims [40-13-3 G. NMSA 1978]. These forms should be current and available in the field.
 - Routine inspections should verify that forms in vehicles are available and current.
- Offer emergency Orders of Protection.
 - *Ex parte* emergency Orders of Protection are authorized under the Family Violence Protection Act and afford the unique ability for law enforcement to facilitate the issuance of an emergency order at the time of an incident with the approval of a district court judge. This process is law enforcement initiated and departments should develop standard operating procedures to provide direction for officers. [40-13-3.2 NMSA 1978]
 - Work with victim service providers when issuing these orders.
- Law enforcement agencies may not charge for the cost of reports related to the abuse or pattern of abuse. [40-13-3.1 NMSA 1978]

Orders of Protection and the Law...

Statutorily Defined Steps Law Enforcement Must Take to Assure Victim Safety

A law enforcement officer responding to the request for assistance is required to take “whatever steps are reasonably necessary to protect the victim from further domestic abuse,” including, but not limited to:

- Advising the victim of the remedies available under the Family Violence Protection Act.
- Advising the victim of the right to file a written statement, a criminal complaint and a request for an arrest warrant.
- Advising the victim about the availability of domestic violence shelters, medical care, counseling and other services.
- Providing or arranging for transportation of the victim to a medical facility or place of shelter.
- Accompanying the victim to the victim’s residence to obtain clothing and personal effects.
- Arresting the alleged perpetrator.

[40-13-7 B. NMSA 1978]

New Mexico Data Show...

Supporting Victims

Local experts state that victims with support from both law enforcement and victim service agencies are more likely to seek an Order of Protection. In addition, family and friends are an important source of support.

ADDITIONAL BEST PRACTICES:

- Be familiar with the New Mexico Family Violence Protection Act. [40-13 NMSA 1978]
- Learn how the Order of Protection court process works (see section on “What System Players need to Know” on page and “What Victims Need to Know” on page 2).
 - ♦ Victims often believe that the court system will be overwhelming and complicated. Officers who have a good understanding of how the process works can help alleviate victim concerns and dispel some of their myths. For example, many victims incorrectly believe that it costs money to obtain an order or that a lawyer is required.
- Establish good working relationships and collaborate with local victim service agencies. Link victims to these organizations.
- Include local resource information with the forms provided by field officers.
- Work with dispatch to ensure proper recognition and prioritization of domestic violence calls for service.
- Provide law enforcement-based victim advocates who can respond to the call at the time of the incident.
- Follow up with domestic violence victims to answer question about Orders of Protection.
- Document all domestic violence calls for service as these reports may be used to substantiate alleged abuse at hearings. Incorporate this requirement in departmental standard operating procedures.
- Increase the quality and quantity of training hours devoted to responding to domestic violence and Order of Protection violation calls for new and experienced law enforcement officers.
- Ensure that ongoing educational activities update officers with the latest laws and procedures for Orders of Protection.

Best Practices in Action... **Documenting Domestic Violence Calls**

Domestic violence is characterized by a pattern of abuse that often escalates over time. It is important that officers document each and every contact with their agencies to establish this pattern, regardless of whether an arrest is made.

Avoid changing the classification of calls away from domestic violence to other categories, such as a ‘disturbance,’ unless truly warranted.

Best Practices in Action... **Domestic Violence Liaison**

Law enforcement domestic violence liaisons with victim advocacy training can:

- Review all domestic violence, sexual assault and stalking arrest reports.
- Contact victims for further follow up, investigation and lethality assessment (p. 3).
- Provide investigative information to domestic violence officers who can determine if arrest reports require supplementation or follow-up investigation.
- Inform protected parties who report violations of Orders of Protection about the law enforcement agency's procedure for enforcing Orders of Protection.
- Refer protected parties seeking enforcement of Orders of Protection to culturally appropriate supplementary services (e.g., emergency shelter programs, hotlines, and legal assistance services).

The Bernalillo County Sheriff's Department has implemented a Domestic Violence Liaison program.

Civil Legal

The civil legal system for obtaining Orders of Protection does not require an attorney, but many victims seek legal counsel or are referred to civil attorneys through victim service agencies. Civil attorneys play a vital role in the Order of Protection process, offering attorney advocacy as victims maneuver through the complexities of the Order of Protection system. Civil attorneys should be familiar with the dynamics of domestic violence and understand the benefits and challenges involved in the access, issuance and the enforcement of Orders of Protection. Representing victims of domestic violence can be complicated and attorneys practicing in this area should enroll in continuing legal education courses specific to this area.

Best Practices for Civil Legal: Access

- Obtain training on the dynamics of domestic violence and be familiar with the New Mexico Family Violence Protection Act. [40-13 NMSA 1978]
- Take care to minimize the potential for representation to endanger the victim by escalating violence. Establish safe methods of communication: do not leave messages for, or send mail or email to, the victim at home until instructed that it is safe to do so.
- Understand that advising victims may be better than representing them because *pro se* proceedings can be less formal, allowing judicial officers more flexibility during proceedings.
- Interview victims thoroughly and without children or others present, except if the victim wishes an advocate or other person present (taking care to avoid inadvertently waiving attorney-client privilege). Help obtain childcare, if necessary.
- Work with the victim to identify the appropriate forms of relief that may benefit him or her. (See sidebar p. 14)
- Ensure that victims petition the proper court for their Order of Protection, whether that be state or tribal.
- Work with victims to determine whether they have outstanding warrants and help them with the steps necessary to take care of these warrants so as not to impede their application for an Order of Protection.
- Ask the victim to detail what the perpetrator may say and assist in preparing responses.

New Mexico Data Show...

Do All Victims Need Representation?

Many experts stated attorney representation is not always necessary. Further, representation can be detrimental when victims are represented by ill-prepared counsel unfamiliar with the Family Violence Protection Act and domestic violence dynamics.

Representation by capable counsel may be critical, such as when the perpetrator is represented or when custody issues are at stake. Evaluation should be done on a case by case basis.

Best Practices in Action...

Standards of Practice for Civil Legal Attorneys

The American Bar Association (ABA) has drafted standards of practice for attorneys who represent victims of domestic violence, sexual assault and stalking.

This publication and other relevant resources are available online:

www.abanet.org/domviol

Access

Facilitating Access for Victims

Issuance

Enforcement

- Consider your victim's work record as an additional source of documentation of abuse, as it may detail time taken for sick leave or time needed to attend court hearings.
- Consider children's school records as another source of evidence to help substantiate abuse.
- Reinforce the need for safety planning and identify safety planning resources prior to having perpetrators served with *ex parte* orders or notices of hearings, understanding that each stage of the Order of Protection process creates different concerns for victims. Make sure safety planning is tailored to the various stages of Order of Protection proceedings.
- Encourage victims to contact victim service agencies.
- Fill out the court confidentiality form when applying for an Order of Protection [“Request for order to omit petitioner’s address and telephone number from petition...” Form 4-961B].
- Keep information about the victim’s locations confidential when drafting pleadings.
- Inform victims of the risk of revealing confidential address locations when making reports to law enforcement or other government agencies as these may become public record.
- Use the “any other relief” statutory provision in the petition to request client tailored relief.
- Be familiar with the legal remedies available to undocumented immigrants who are victims of domestic violence, stalking and sexual assault. Consider referring these cases to attorneys who specialize in this area.
- Advise victims of the importance of attending hearings and the consequences of not attending hearings, regardless of whether the respondent was served.
- Advise victims that they are eligible for another temporary Order of Protection if service of process was not completed by the time of the initial hearing.
- Refrain from using the Order of Protection system when domestic violence is not involved.

Best Practices in Action...

Increasing the Number of Qualified Domestic Violence Attorneys

While civil attorneys with expertise in domestic violence provide important services to victims, there are not enough civil attorneys with this training available to assist all the victims who seek their services.

The University of New Mexico School of Law is developing a curriculum to increase the awareness of domestic violence and related legal remedies in training new attorneys.

Further, local bar association *pro bono* committees should encourage their members to obtain training and accept domestic violence cases.

Prosecution

Attorneys who prosecute domestic violence cases often work closely with victims. For a variety of reasons, many victims are reluctant to cooperate with prosecution. Linking victims with victim service agencies and advising them on available civil remedies will help support the victim and may result in cooperation with criminal prosecution. Additionally, an Order of Protection may strengthen a criminal case by reducing the likelihood of victim and defendant contact.

Best Practices for Prosecutors: Access

- Be aware of all civil and criminal remedies available to domestic violence victims and their family members.
- Encourage victims to obtain an Order of Protection, but recognize that the decision to ultimately pursue the Order of Protection is up to the victim.
- Refer domestic violence victims directly to the civil court where they can file for an Order of Protection. Some domestic violence victims may also benefit from civil attorneys or victim service providers.
- Develop working relationships with civil legal service providers and victim service agencies to facilitate referral of domestic violence victims.
- Develop working relationships with counterparts in other jurisdictions, including tribal nations, to facilitate referral of cases to proper jurisdiction.
- Help victims obtain copies of records to substantiate injury or threats of injury, where appropriate.
- Provide information packets to victims that include a list of local victim service agencies and instructions and forms for applying for an Order of Protection.
- Review assault, battery, stalking, sexual assault and other qualifying criminal cases to identify victims who might benefit from an Order of Protection.
- Use victim advocates to educate victims about the Order of Protection process and to escort victims who are interested in applying for an Order of Protection to the courthouse.
- Expand prosecution staff to include victim advocates and consider developing specialized domestic violence prosecution units.

Best Practices in Action...

Office of Violence Against Women

The US Department of Justice Office of Violence Against Women provides an extensive range of resources and funding opportunities for programs that work with victims of domestic violence, sexual assault and stalking.

Numerous publications and other relevant resources are available online:

www.ovw.usdoj.gov

Access

Facilitating Access for Victims

Issuance

Enforcement

Courts

The courts play an important role in helping victims access Orders of Protection. A victim's first contact with the courts often sets the tone and shapes their perceptions of how well the system will meet their needs and help keep them safe.

Not all victims have had contact with law enforcement or victim advocates. A significant proportion of victims who seek an Order of Protection apply in person and without legal counsel. As a result, court personnel, particularly clerks, are put in the position of educating and answering applicant questions about the Order of Protection process.

Best Practices for Court Personnel: Access

- Provide a safe and welcoming environment for individuals seeking Orders of Protection.
- Develop a safety plan individualized to the physical constraints of each courthouse and address the three key elements of 1) keeping both sides separated, 2) ensuring that security officers are aware of which cases involve domestic violence and 3) training security officers to watch family members as well as the parties themselves. (See "Strategies to Improve Courthouse Security" sidebar for examples of security measures, p. 23)
- Partner with agencies to provide advocacy for individuals involved in Order of Protection proceedings.
- Provide workspace for trained victim advocates to assist victims in filling out Order of Protection forms.
- Ensure that victims are not required to disclose their immigration status. For example, requiring a social security number may create a *de facto* disclosure for immigrants who do not have one.
- Implement training and supervision procedures for court clerks and staff members who handle Order of Protection petitions.
- Provide forms and written instructions in plain language that can be understood by those with little or no legal training.
- Provide clear written instructions for court personnel that include directions to refrain from evaluating the credibility of the petition or giving legal advice.

New Mexico Data Show...

First Contact

A significant proportion of applications for an Order of Protection do not have an associated law enforcement report. This suggests that the courts often are the first point of contact for many protected parties.

Local experts said that victims often believe that the court process will be intimidating, complicated and difficult to navigate.

New Mexico Data Show...

Limited English Proficiency in New Mexico

Over 5% of adult New Mexicans report that they do not speak English well or at all. The percentage may be higher among those seeking protective orders for domestic violence.

Source: US Census 2000 data.

New Mexico Data Show...

Prescreening Petitions for Merit

Local experts stated that some court staff would inappropriately 'pre-screen' applications for merit and that victims were told that their allegations of abuse weren't "serious enough" to warrant an Order of Protection.

Access

Facilitating Access for Victims

- Do not place clerks in the position of determining the merit of an application for an Order of Protection and do not permit clerks to assume this role.
- Give clerks adequate time to fulfill their responsibilities to prevent burnout. Burnout can also be avoided if clerks are cross-trained and periodically rotate into other tasks.
- Advise victims of the availability of and how to obtain an Emergency Order of Protection through law enforcement if victims attempt to file a petition at the close of business hours.
- Apprise victims that the information they provide may be publicly available and explain where that information is stored. This will help victims make educated choices about what to disclose and to whom.
- Accept facsimile filing of petitions.
- Make provisions such that a district court judge is available on call to hear and approve Emergency Orders of Protection in cooperation with law enforcement in accordance with law. [40-13-3.2 D. NMSA 1978]

A large proportion of applicants appear *pro se* for Order of Protection hearings. *Pro se*, meaning “on behalf of one’s self,” is the term applied to applicants who appear before the court without attorney representation. New Mexico’s courts have taken a variety of approaches to making the orders accessible to *pro se* applicants.

- Provide *pro se* clinics for applicants.
- Refer unrepresented litigants to civil attorneys with experience in handling domestic violence matters. This may include New Mexico Legal Aid, local bar associations, and domestic violence service agencies. These agencies can provide more detailed information and assistance to unrepresented parties.
- Provide training for judges and commissioners about the dynamics of domestic violence so that they can better address the needs of unrepresented victims. Court officers should be able to recognize imbalances of power, promote safety and work to make the process less intimidating for parties.

Issuance

Enforcement

Best Practices in Action...

Strategies to Improve Courthouse Security

To improve security, courts can:

- Install security cameras in the parking areas.
- Provide for escorts to the courtroom from the victim’s car or other transportation and from the courtroom at the conclusion of the hearing.
- Create secured parking spaces for victims near the courthouse entrances.
- Confiscate weapons upon entrance into the courthouse, and conduct regular sweeps around the perimeter of the courthouse, looking for hidden weapons.
- Provide for secure stairwells.
- Provide for separate elevator banks, entrances, and exits for prisoners.
- Provide security personnel and panic buttons in domestic violence case courtrooms.
- Provide secure areas to fill out and file petitions for Orders of Protection.
- Provide secure hallways by assigning law enforcement officers to monitor the hallways around the courtroom, looking for potential disturbances.
- Establish separate waiting areas for victims and perpetrators.
- Provide extra security during the hearing by assigning a court staff person to stand between the victim and the perpetrator to reduce intimidation, especially if the victim is unrepresented and without an advocate.
- Permit victims to leave the courtroom first and require that the perpetrators remain in the courtroom for at least 15 minutes before being permitted to leave.
- Place signage at courthouse entry and elsewhere to encourage victims with safety concerns to alert security staff.

Issuance

During the issuance stage, judicial officers hear testimony and grant or deny Orders of Protection. Orders of Protection are issued in a formal setting at the court. This environment can be perceived as intimidating, particularly for petitioners with little prior experience.

The courts, particularly judges and commissioners, play the most central role in the issuance phase. Other agencies, however, play important supporting roles during this phase by providing resources and encouragement to petitioners. Victim service providers, law enforcement officers, civil attorneys and prosecutors each can facilitate the issuance of orders.

Victim Services

Victim service providers are an important source of emotional support at this stage of the process. They can help reduce the stress and anxiety often experienced by petitioners. They can also make the process less intimating by explaining to petitioners exactly what to expect. Finally, providers can work closely with petitioners to develop personalized safety plans.

Best Practices for Victim Services: Issuance

- Be familiar with local court procedures used at Order of Protection hearings.
- Explain the process and local court procedures to petitioners.
- Attend temporary order hearings to provide support.
- Help petitioners identify witnesses to appear at Order of Protection hearings.
- Assist with arrangements for witness appearances at hearings.
- Understand meanings of legal terms and be able to explain them in lay terms to petitioners, including the types of orders available and the differences between them.
- Remind petitioners of the limitations of Orders of Protection.
- Assess risk and discuss safety planning with petitioners. Safety planning is a dynamic process and safety plans should be routinely revisited with the petitioner.

Orders of Protection and the Law...

Types of Relief Available

Under the Family Violence Protection Act, judicial officers can specify or order:

- No further abuse
- Stay away / no contact orders
- Orders to vacate
- Orders concerning personal property
- Order concerning weapons
- Respondent treatment
- Custody
- Visitation
- Monetary relief
- Police assistance

Additional detail of the summary of relief available with statutory citations is provided on page 57.

Access

Issuance

Obtaining an Order of Protection from the Courts

Enforcement

- Ensure that petitioners have legible copies of their Orders of Protection.
- Discuss with petitioners the benefits of keeping a copy of their Orders of Protection with them at all times, but make sure they understand they can seek enforcement even without a paper copy of the order.
- Develop and maintain communication with law enforcement agencies to facilitate service of Orders of Protection, particularly when dealing with cross-jurisdictional cases.
- Explain to petitioners that only attorneys are authorized to practice law and that advocates cannot provide legal advice.
- Avoid creating expectations about judicial outcomes for any given case.
- Work with civil legal attorneys so that victim advocacy and legal strategy are not in conflict.

Law Enforcement

Law enforcement officers can be an important resource for petitioners who are seeking an Order of Protection. Police reports and officer testimony can help substantiate domestic abuse, making it more likely that courts will grant an order.

Best Practices for Law Enforcement: Issuance

- Understand the procedures for initiating an emergency *ex parte* Order of Protection [40-13-3.2. NMSA 1978].
- Learn and use the new automated emergency Order of Protection system created by the New Mexico Judicial Information Sharing Council (JISC) to issue emergency orders in the field quickly. (See sidebar p. 26)
- Provide the petitioner with supporting documentation, such as police reports and records of calls for service, at no charge.
- Develop procedures to facilitate the court's access to law enforcement records to help substantiate domestic abuse.
- Attend hearings to grant extended orders if subpoenaed by parties.
- Do not charge petitioners for witness fees, copies of police reports or service of process. This is prohibited by law [40-13-3.1 NMSA 1978].
- Streamline service of process:
 - ◆ Ensure prompt and effective service of process. Complete service within 24 hours, when possible.
 - ◆ Work with victim service agencies to complete service.
 - ◆ Put in place a protocol for service of process.
 - ◆ Develop a system so that petitioners can track whether and when service has been completed.
 - ◆ Be aware that it is unlawful to knowingly obstruct, evade, resist or oppose any officer serving or attempting to serve a court order. [30-22-1 NMSA 1978]

Best Practices in Action...

Emergency Order of Protection Database

The New Mexico Judicial Information Sharing Council (JISC) has developed a real time automated emergency Order of Protection system that officers can use in the field to:

- Search for existing emergency Orders of Protection.
- Issue new emergency Orders of Protection.

The system can be accessed by authorized users at:

www.nmjustice.net

Civil Legal

Although petitioners do not need to have attorney representation at Order of Protection hearings, there are benefits to experienced representation. Civil attorneys can offer objections, conceive and develop litigation strategies and appeal decisions. They can also help ensure that violations of Orders of Protection come to the court's attention. They are also vital for establishing the basis for custody and other related family matters.

Best Practices for Civil Legal: Issuance

- Understand court rules and procedures thoroughly.
- Understand jurisdictional limitations when seeking an Order of Protection from a tribal court and be prepared to establish that the court has jurisdiction over the respondent. If seeking an order from a tribal court, attorneys and tribal advocates must be properly admitted to practice before that court.
- Explain court procedures and legal options thoroughly to petitioners and make sure they understand what to expect.
- Educate petitioners in advance of any hearing about courtroom etiquette and conduct.
- Take petitioners into the courtroom and explain the process, as time permits.
- Always seek a finding of abuse.
- Explain to petitioners the implications of a stipulated order, considering the fact that a finding of abuse may not be included in the order.
- Ask the petitioner about all other related cases and incorporate related cause numbers in case caption notes to inform the court of other related cases.
- Advise petitioners of the importance of attending hearings and the consequences of not attending hearings, regardless of whether the respondent was served.
- Request a new *ex parte* temporary Order of Protection if service was not completed prior to the initial hearing.
- Ask for additional security when necessary, and physically position yourself between the petitioner and the respondent to reduce intimidation during hearings.

- Ensure that any stay-away provisions in an Order of Protection contain specific distances and are individualized to petitioners' needs.
- Ask the judicial officer to have the parties remain at the courthouse while checking the Order of Protection to be certain that it reflects all of the relief the judicial officer ordered and that it is free from errors.
- Ask for all appropriate relief at the hearing, regardless of what relief was requested or granted at the *ex parte* hearing.
- Ask for reconsideration if judicial officers do not order all relief that is reasonably requested and permitted under state law.
- Work with petitioners to determine custody and visitation requests. Remind petitioners that these provisions are temporary and limited to the duration of the Order of Protection.
- Request that the court establish a specific time when the respondent may retrieve personal belongings from the home and to coordinate with law enforcement.
- Talk with the petitioner about and examine the efficacy of requesting economic relief such as child support, restitution, attorney's fees, mortgage payments, property taxes, and the use of vehicles.
- Be aware of the legal defense to eviction for protected parties. [47-8-33 J. NMSA 1978]

Prosecution

Prosecutors working with petitioners should help them understand the civil process and how it relates to their criminal case.

Best Practices for Prosecutors: Issuance

- Understand how local civil courts issue Orders of Protection and how pending criminal charges may affect this process.
- Recognize the potential impact of double jeopardy with both civil and criminal cases pending and ways to avoid it.
- Ask for no contact provisions as part of bond arrangements and no dangerous weapons as conditions of release to complement civil order restrictions.
- Understand federal and state laws, which require full faith and credit for all Orders of Protection, including no contact orders issued in criminal cases.
- Understand the federal definition of Order of Protection and ensure that, whenever possible, no contact provisions qualify for full faith and credit.
- Understand the benefit of having the petitioner obtain an Order of Protection, including the potential for triggering additional state, tribal and federal charges, which can increase prosecutorial options.
- Be familiar with interventions and treatments commonly ordered for respondents so that treatment ordered in criminal processes are complementary and consistent.
- Review the strategies discussed in Special Topics: Firearms (p. 45).

Orders of Protection and the Law...

Double Jeopardy

The US Constitution (through the Fifth and Fourteenth Amendments) prohibits both states and the federal government from subjecting a person to double jeopardy. The Indian Civil Rights Act imposes a similar requirement on tribal governments. [25 USC 1302(3)]

Double jeopardy occurs when a person faces more than one criminal prosecution for the same action. Double jeopardy prohibits multiple prosecutions by the same government (note that counties and cities are subsidiaries of the state and all count as "state government"). It does not prohibit the state, federal or tribal government from each pursuing a criminal prosecution.

Double jeopardy is a complex legal concept subject to many rules and exceptions. Attorneys and judges are strongly urged to attend training to develop a complete understanding of the topic.

In depth discussion and analysis of double jeopardy are provided in State v. Power, 126 NM 114 (Ct. App. 1998) and State v. Gonzales, 123 NM 337 (Ct. App. 1997) and the JEC domestic violence benchbook.

jec.unm.edu/resources/benchbooks/dv_ch_3.htm

Courts

Courts and judicial officers have a unique and central role in issuing and enforcing domestic violence Orders of Protection. Unlike the other professions in the field, judicial officers have both adjudicative and administrative responsibilities. Unlike other professionals, judicial officers have these responsibilities for all persons who come before them. Accordingly, courts have an overriding responsibility to be neutral, to treat all persons equally, to offer them full access to court resources and to ensure that all parties are afforded full constitutional due process.

It is nevertheless imperative that courts are sensitive to the responsibility of protecting victims of domestic violence. The court has broad authority to craft orders tailored to the particular needs of each petitioner. Additionally, courts must remain vigilant regarding the potential danger inherent in domestic violence cases and take appropriate steps to protect the physical safety of petitioners when they come to court.

Best Practices for Courts: Issuance

- Be respectful to all parties.
- Assist *pro se* petitioners and respondents by making sure both parties have a fair and complete hearing.
- Inform petitioners and respondents how the court works. Give them materials to help them take notes and keep track of proceedings.
- Create educational materials in various formats, such as print, video and multimedia explaining how Orders of Protection work and the consequences of violations.
- Provide information about courtroom etiquette, procedures and prohibitions.
- Consider conducting hearings telephonically or via video relay, where appropriate. For example, undocumented immigrants may be unable to appear at hearings if they have to cross border checkpoints to get to the courthouse.
- When issuing temporary orders, explain to petitioners the importance of returning for the Order of Protection hearing, making sure they understand that the temporary order will expire and cannot be extended if they fail to appear for the hearing.

Orders of Protection and the Law...

Roles and Responsibilities of Domestic Violence Commissioners

Domestic violence special commissioners:

- Review petitions for Orders of Protection and motions to enforce, modify or terminate Orders of Protection.
- Interview petitioners on the record.
- Conduct hearings on the merits of petitions for Orders of Protection and motions to enforce, modify or terminate Orders of Protection.
- Prepare recommendations to the district court regarding petitions for Orders of Protection and motions to enforce, modify or terminate Orders of Protection.

All orders must be signed by a district court judge before the recommendations of a domestic violence special commissioner become effective. [40-13-1 NMSA 1978]

- Issue a new *ex parte* temporary Order of Protection if service was not completed prior to the initial hearing.
- Recognize that petitioners may not freely divulge key facts for fear of retribution.
- Be familiar with the petition and related case files before the hearing. Review court databases to identify related cases.
- Be aware of potential concurrent legal proceedings and the impact these may have on the issuance of the Order of Protection and vice versa.
- Issue Orders of Protection that are clear, comprehensive and tailored to the specific needs of the individual petitioner.
- Be aware of offender treatment programs in your area; require respondents to attend and monitor compliance.
- Understand and comply with all relevant laws regarding mutual Orders of Protection. (See sidebar p. 31)
- Before issuing a stipulated order, be sure that both parties understand the significance and consequences of a stipulated order as opposed to an order including judicial findings. If it is not clear that parties understand, consider taking a break to give parties an opportunity to think and perhaps to speak with a victim advocate or consult with an attorney.
- Explain the relevance of full faith and credit as it pertains to the Order of Protection while both the petitioner and respondent are in the courtroom.
- Recite and explain orally on the record, if possible, all conditions that are being imposed and ask both parties whether they have any questions about the order's provisions or enforceability. Remember that while Order of Protection hearings are routine for the court and court personnel, they are likely to be strange and intimidating for the parties. Be sure to explain the conditions and terms clearly and understandably.
- Provide copies of the order to petitioners and respondents. Do not charge for multiple copies.
- Consider providing petitioners with certified copies of their orders. Certified copies may be more readily validated and more easily enforced.
- Provide the respondent with a copy of the order, and if he or she is not present at the hearing, mail the order. A respondent's failure to participate in the hearing does not affect the enforceability of the order.

New Mexico Data Show...



Lack of Uniformity in Issuing Orders

Local experts noted a lack of uniformity in the issuance of Orders of Protection. Many stated that whether or not an order was issued varies depending upon which court officer hears the case. Further, the evidence needed to obtain an order varies across court officers.

Orders of Protection and the Law...



Mutual Orders of Protection

Historically, a "mutual order" was one issued by a court in response to allegations made at a hearing, as opposed to allegations in a formal court petition.

Currently, New Mexico law restricts the issuance of mutual orders and permits them only "in cases where both parties have petitioned the court and the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense." [40-13-5 D. NMSA 1978] This requirement comports with federal law and maximizes enforcement.

Access

Issuance

Obtaining an Order of Protection from the Courts

Enforcement

- Issue bench warrants for respondents who have been served but who fail to appear at Order of Protection hearings.
- Explain to the respondent, in the presence of the petitioner, the consequences for violating the Order of Protection, including provisions related to firearms.
- Explain to petitioners and respondents the requirements for modifying and extending an order once it is issued.
- Ensure that the provisions within the Order of Protection do not conflict with one another.
- Make sure that custody and visitation provisions of the order are crafted in a specific and detailed manner. Explain these provisions to both parties.
- Ensure that Orders of Protection are properly served in a timely manner.
- Do not simply refer to “the relevant provisions of the statute” but include the substance of those provisions on the face of the order.
- Include all items that law enforcement officers need to establish facial validity on the first page of the orders.
- Note on first page whether respondent was provided notice and opportunity to be heard and whether the order complies with federal requirements entitling it to full faith and credit.
- For state courts: Use Supreme Court approved Order of Protection forms and use the approved uniform first page.
- For tribal courts: Develop and mandate the use of Order of Protection forms that are tribal law specific, but which are similar in format to state orders to facilitate cross-jurisdictional enforcement.
- Provide petitioners and respondents with a list of community resources for domestic violence, stalking or sexual assault.
- Offer petitioners the opportunity to speak with an advocate regarding safety issues.
- If it appears that unrepresented parties cannot function in their own best interests, the court might consider:
 - Taking a break or issuing a continuance to allow the parties to seek legal assistance.
 - Utilizing court advocates or victim service providers to assist the litigants.

Best Practices in Action...

Information Law Enforcement Officers Need to Establish Facial Validity

Include on the face of all Orders of Protection:

- Name of protected party
- Name of restrained party
- Date of issue
- Signature of judge
- Name of issuing court
- Terms to be issued against the restrained party
- Duration of order

Best Practices in Action...

Project Passport

A standard, uniform cover sheet for all Orders of Protection provides law enforcement and restrained parties with clear notice and information about who is subject to the order and what constitutes a violation.

In New Mexico, the State and Tribal Judicial Consortium adopted a uniform first page for both state and tribal jurisdictions to facilitate cross recognition of orders. The form (p. 66) has been approved by the New Mexico Supreme Court and is being considered by each tribal court for approval.

- Before denying an *ex parte* Order of Protection due to inadequate documentation, judicial officers may consider going on the record to elicit additional information to substantiate allegations of domestic abuse.
- After going on the record, permit protected parties to amend their petition to include allegations not included in the original petition.
- Use the civil standard (preponderance of the evidence) when deciding whether or not to issue an extended Order of Protection.

Enforcement

Enforcement is triggered when protected parties call upon various agencies to help with the enforcement of an order in response to noncompliance. Enforcement includes both civil and criminal mechanisms.

While studies have shown that Orders of Protection can be an effective means of reducing domestic violence, they are effective only so long as they are enforced. Thus, proper enforcement of Orders of Protection is critical. In addition, the federal government has mandated that all states, tribes and territories enforce valid Orders of Protection issued by other states, tribes and territories. Accordingly, all system players must be able to recognize a valid Order of Protection and understand that all valid orders must be enforced using the same procedures, even if those orders were not issued by the government being asked to enforce them.

Victim Services

Victim service providers should work with other civil and criminal justice professionals and community members to promote effective enforcement of Orders of Protection, according to the wishes and needs of protected parties.

Best Practices for Victim Services: Enforcement

- Educate protected parties about how to pursue civil and criminal remedies for violations of Orders of Protection and generally discuss the pros and cons of each approach.
- Follow up with protected parties and remind them how to have their Orders of Protection enforced or modified. All follow up should be done with the permission of the protected party and only after obtaining safe contact information.
- Support protected parties when they have law enforcement accompany them to retrieve belongings.
- Discuss with protected parties the importance of documenting violations of Orders of Protection. Documentation includes photographs, electronic mail messages, letters, answering machine recordings of threats, telephone records, medical reports and police reports.

Orders of Protection and the Law...

Warrantless Arrest for Misdemeanor Assault or Battery Against a Household Member

Can a law enforcement officer arrest, without a warrant, an offender who committed a misdemeanor domestic violence offense and left the scene prior to the officer's arrival?

Under 31-1-7 NMSA 1978, a law enforcement officer may arrest without warrant "when the officer is at the scene of a domestic disturbance and has probable cause to believe that the person has committed an assault or a battery upon a household member."

The New Mexico Attorney General's Office has issued an opinion on this question:

"Police officers have statutory authority to arrest an offender for these misdemeanors provided that the arrest is reasonably prompt and reasonably necessary to protect the victim. The Family Violence Protection Act embodies strong public policy when it requires officers to take steps to protect the victim of domestic violence, including arrest of the abuser when appropriate. The "at the scene" language in the misdemeanor arrest statute should not be read to contradict this public policy. Although a legislative change to make the law even clearer would be helpful, the arrest authority as provided in current law appears to be only limited by what is reasonable under the circumstances."

[New Mexico Attorney General Opinion 05-05]

www.nmag.gov

Orders of Protection and the Law...

Petitioner, Respondent, Protected, Restrained?

Rather than use the terms petitioner and respondent, the Family Violence Protection Act refers to "protected" and "restrained" parties. These terms are meant to reinforce the fact that Orders of Protection cannot be used against the protected party.

- Help protected parties obtain copies of police reports that document violations.
- Discuss with protected parties the importance of providing prosecutors and courts information about restrained parties' dangerousness, criminal history, access to weapons, substance use and Order of Protection history, including all violations of orders, regardless of whether the violations involved the police or were prosecuted.
- Discuss with protected parties the ability to request reconsideration of, or to appeal Order of Protection decisions and refer them to a civil attorney.
- Understand full faith and credit as it applies to Orders of Protection.
- Build and maintain relationships with local, tribal and federal law enforcement.
- Upon request, assist local police departments in developing enforcement protocols, including training officers to understand on the dynamics of domestic violence.
- Help undocumented protected parties understand the protections that may be available to certain victims of crime. (See sidebar p. 35)
- Educate protected parties about the importance of timely notification with law enforcement if a restrained party violates the order.
- Educate protected parties about the option of requesting increased officer surveillance at their homes or workplaces, or any other needed area.
- Collaborate with courts to produce educational materials that explain the Order of Protection system, what will happen in the hearing, what the order is and what it prohibits, how to have it enforced and what will happen if the restrained party violates it.
- Be aware that healthcare providers must comply with mandated documentation requirements as outlined in the FVPA [40-13-7.1 NMSA 1978]. Healthcare documentation can provide evidence at both civil and criminal hearings. (See sidebar p. 44)

Best Practices in Action... **Domestic Violence and the Workplace**

Employers should have provisions in their employee handbook to address domestic violence.

An Executive Order was issued in 2008 [2008-047] establishing preventive policies for domestic violence, sexual assault, and stalking in all New Mexico state agencies.

Victim service providers should work with nongovernmental employers to develop similar guidelines to protect victims.

www.governor.state.nm.us/orders/2008/EO_2008_047.pdf

Best Practices in Action... **Special Protections for Undocumented Immigrants**

Undocumented victims of enumerated crimes including, but not limited to, domestic violence, sexual assault and stalking who have suffered significant physical or mental abuse and who are able to provide information about the crime may be able to petition for special protections from removal or deportation. Officers should be familiar with these protections. Agencies should identify a designated officer(s) with the authority to sign I-918 Supplement B certification for U Nonimmigrant Status visas.

For more information visit:

www.uscis.gov

Law Enforcement

Law enforcement officers use substantial discretion when called to enforce Orders of Protection and it is therefore important that they understand the dynamics and context of domestic violence. Through their response to violations of protective orders, law enforcement officers can increase the safety of the community and send the message that domestic violence will not be tolerated.

Law enforcement management should demonstrate leadership on Order of Protection enforcement.

Management is in a position to signal to line officers and the public that Order of Protection enforcement is important to public safety and should be treated as a priority. Conflicting messages from management can seriously jeopardize consistent enforcement of Orders of Protection. There are a variety of ways that law enforcement agencies can enhance the safety of the protected parties. Each agency should develop its own procedures. This guide provides general principles that agencies might adopt.

Best Practices for Law Enforcement: Enforcement

- Develop agency standard operating procedures (SOPs) that cover statutory mandates and other best practices. (See sidebar p. 17)
- Ensure that departmental standard operating procedures are consistent with New Mexico Department of Public Safety training standards.
- If officers are at the scene of a domestic disturbance and the protected party states that an Order of Protection has been filed but not served, officers should then serve the protected party's copy to the restrained party and an immediate arrest should be made.
- Establish the validity of Orders of Protection using a facial validity test. (See sidebar p. 13)
- Extend full faith and credit to all valid Orders of Protection, including tribal orders.
- Create and follow procedures for validating orders when facial validity is in question. Some possible sources of validation include:
 - NCIC
 - Statewide registries of orders available through the *Consolidated Offender Query* at www.nmjustice.net

Best Practices in Action...

Immediate Action for Law Enforcement

Whenever law enforcement officers respond to a domestic violence scene, they should:

- Ensure the safety of all involved.
- Seek medical attention for any injured parties, if necessary.
- Safeguard the victim from further abuse.
- Secure and protect the crime scene.
- Seek voluntary surrender of firearms for safekeeping purposes.
- Seize firearms subject to state, territorial, local or tribal prohibitions, where permitted (e.g., felon in possession).
- Evaluate the validity and enforceability of the order.
- Identify whether an Order of Protection has been violated.
- Arrest for any violations of the Order of Protection.
- Arrest for any other criminal offenses.
- Seek an arrest warrant, when required, related to the criminal conduct if the restrained party is not at the scene.
- Attempt to locate and arrest the restrained party.
- Enforce custody provisions in accordance with jurisdictional law and the language of the order.

New Mexico Data Show...

Identifying a Facially Valid Order

Very few officers surveyed could correctly identify the items needed to establish the facial validity of an Order of Protection.

A facially valid Order of Protection is one that has not expired and includes:

- Name of protected party
- Name of restrained party
- Date of issue
- Signature of judge
- Name of issuing court
- Terms to be issued against the restrained party

- ◆ Locally maintained registries
- ◆ Direct contact with the issuing court
- ◆ Other local/departmental systems developed for verification
- “[T]ake whatever steps are reasonably necessary to protect the victim from further domestic abuse[,]” whether or not the protected party’s order can be validated at the scene. [40-13-7 B. NMSA 1978]
- At the scene of a violation, officers should:
 - ◆ Ask about and inventory all firearms or other lethal weapons. Secure these weapons, where appropriate.
 - ◆ Separate the victim and the assailant.
 - ◆ Assess injuries (including injuries that may not be readily visible, such as strangulation). Call emergency medical services, if needed.
 - ◆ Separate witnesses from the protected and restrained parties, keeping them out of hearing range to avoid influencing their statements.
 - ◆ Determine the preferred language of the protected party and proceed accordingly.
 - ◆ Assure that any statement taken from any protected party or witness is signed and dated (with time).
- Charge only restrained parties for Order of Protection violations. [40-13-6 D. NMSA 1978]
- Make an arrest for Order of Protection violations where there is probable cause that a violation has occurred. A warrant is not necessary. [40-13-6 D. NMSA 1978]
 - ◆ Violations of any provision of the Order of Protection are grounds for arrest of the restrained party, given probable cause. This includes provisions related to child support or custody.
- Arrest and charge for all other applicable criminal offenses, in addition to Order of Protection violations. [40-13-6 H. NMSA 1978]
- Assist the protected party in seeking help when an arrest cannot be made; do not simply leave the scene. For example, refer the protected party to agencies that can assist with civil proceedings arising out of offenses that do not qualify as a criminal violation of an Order of Protection.
- Develop relationships with other municipal, county and tribal law enforcement agencies within the state to

Order of Protection and the Law...***Potential Liability for Failing to Enforce***

There is a mandatory duty to enforce Orders of Protection and officers “shall use any lawful means to enforce this order.” [40-13-6 D. NMSA 1978; Civil form 4-965 NMRA]

A negligent breach of the duty to investigate crimes called to a law enforcement officer’s attention can subject the officer to civil liability. [State v. Torres 119 NM 609 (1995)]

New Mexico Data Show...***Standard Operating Procedures***

An analysis of New Mexico Law Enforcement standard operating procedures (SOPs) for Order of Protection enforcement shows that many lack:

- A list of the elements required to establish the facial validity of an order.
- Description of full faith and credit and how to apply it.
- Policies regarding notification of victims when offenders are released.
- Rules for handling firearms at the scene of a violation of an Order of Protection.
- Procedures for NCIC entry of Orders of Protection.
- Description of mandatory arrest policies.
- Procedures for service of process.
- Explicit policies for officer-involved domestic violence.

New Mexico Data Show...***Officer Reluctance to Arrest***

New Mexico law enforcement officers were surveyed on their knowledge and beliefs about arrest practices for violations of Orders of Protection. Data suggest that the majority of officers do not understand or are unwilling to enforce mandatory arrest laws. Common attitudes and beliefs included:

- Unwillingness to arrest for “technical violations” (a violation that would not otherwise qualify as a crime) (See “Enforcing Custody and Child Support Provisions” on page 49.)
- Desire to charge protected parties for “violating” their own order.
- Unwillingness to arrest unless violations include obvious physical injuries to the protected party.

facilitate service of process and enforcement of Orders of Protection.

- Work with jails, detention centers and the Department of Corrections to develop a release notification system. [40-13-7 C. NMSA 1978]
- Notify protected parties when and if firearms are returned to the restrained party at the expiration of the order.
- Understand how jurisdictional boundaries affect law enforcement authority.
- Consider entering into Memorandums of Understanding and cross-deputizing agreements, where permitted between municipal, state and tribal officers to maximize effective response to violations of Orders of Protection.
- Recognize the concerns that might prevent undocumented protected parties from reporting violations to law enforcement.
- Designate officers with authority to sign I-918 Supplement B certifications for U Nonimmigrant Status visas. (See sidebar p. 35)

Best Practices in Action...***When the Protected Party Does Not Have a Copy of the Order***

What if the protected party does not have a copy of the Order of Protection?

- Seek to verify the existence of an order.
- Verify protected party's claim of an Order of Protection through reliable and credible information.
- Confirm through restrained party's statement that an Order of Protection exists.
- Determine whether there is probable cause to believe that the restrained party has committed a criminal offense.
- Arrest restrained party if appropriate under enforcing jurisdiction's law and notify issuing authority of arrest.
- Refer protected party to appropriate court or victim service agencies.
- **Be aware that a physical copy of the order is not required for enforcement.**

Civil Legal

Attorneys should approach domestic violence Order of Protection cases as they would all others, by building a strong and comprehensive case. One way to be as comprehensive as possible is to work closely with victim service providers. Victim service providers can assist attorneys in understanding the unique circumstances domestic violence victims face. Civil attorneys should seek to ensure the safety, well-being and long-term independence of protected parties.

Best Practices for Civil Legal: Enforcement

- Keep protected parties' files active and open after Orders of Protection have been obtained with 'ticklers' to check up on them.
- Assist protected parties who have decided to register their out-of-state orders by completing the registration for them or accompanying them if they choose to undertake the process. Ensure that no notification to the restrained party takes place, unless the protected party wishes for the restrained party to be notified.
- Advise protected parties of the pros and cons of giving copies of their order and photographs of the restrained party to employers, law enforcement officers, children's schools and security in residential buildings.
- Tell protected parties to keep a copy of the order with them at all times.
- Request enforcement for violations of economic or custody provisions, and seek payment for time away from work and for childcare.
- Consider filing a motion for contempt, citing harassment, if a restrained party files repeated frivolous motions requiring numerous court appearances.
- Elicit testimony about the restrained party's dangerousness, criminal background and Order of Protection history.
- Encourage protected parties to promptly contact law enforcement officers when restrained parties violate Order of Protection provisions.
- Advocate with prosecutors on behalf of the protected party during criminal enforcement proceedings. If there is a related criminal case and the restrained party makes an admission during your proceeding, inform the prosecutor or give him or her a copy of the transcript.

- Encourage protected parties to contact law enforcement immediately when a restrained party has abducted children and file for any necessary modifications of custody orders.
- Explain interstate custody issues to protected parties, including the options presented under jurisdictional laws. (See sidebar p. 40)
- Provide or assist protected parties in finding representation in related legal cases in order to make Order of Protection relief meaningful.
- Check the nmcourts.gov website and any other relevant databases to determine if other relevant cases exist. Understand that Orders of Protection do not show up at the nmcourts.gov website.
- Be aware of procedural rules mandating that all relevant information disclosed to the prosecutor will be disclosed to the defense attorney.
- Review with protected parties the advantages and disadvantages of providing their affidavit to probation and parole officers. Officers may use these pleadings in revocation proceedings.
- Keep protected parties informed of any compliance hearings that the restrained party must attend. If not ordered by the court to attend, protected parties have the right to choose whether to attend.
- Be aware of the legal defense to eviction for protected parties. [47-8-33 J. NMSA 1978]

Orders of Protection and the Law... **Interstate Custody Laws**

Custody laws differ in each state. All states have enacted either the Uniform Child Custody Jurisdiction And Enforcement Act (UCCJEA) or the Uniform Child Custody Jurisdiction Act (UCCJA).

- UCCJEA provides for specific rules and procedures involving multijurisdictional parental claims. UCCJEA replaces an older law, the UCCJA that was inconsistent with the Parental Kidnapping Prevention Act (PKPA). Under UCCJEA, states are encouraged to adopt uniform laws to deter interstate parental kidnapping and to promote uniform jurisdiction and enforcement provisions in interstate child-custody and visitation cases.
- UCCJEA vests exclusive and continuing jurisdiction over child custody in the courts of the child's home state, which is defined as the state where the child has lived with a parent for six consecutive months prior to the commencement of the proceeding (or since birth, for children younger than six months).
- The UCCJEA seeks to clarify the circumstances in which a particular state court may have and retain jurisdiction over child custody proceedings in addition to the procedures that courts should follow when multiple states' courts are involved in a single child custody dispute.
- New Mexico has adopted the UCCJEA under Child Custody in Domestic Affairs [40-10A NMSA 1978].

The National Center for Missing and Exploited Children has more information on domestic abduction:

www.missingkids.com

1-800-THE-LOST (1-800-843-5678)

The Legal Resource Center on Violence Against Women works with attorneys to achieve justice and safety for domestic violence victims in interstate custody cases:

www.lrcvaw.org

1-301-270-1550

Prosecution

Throughout the criminal justice process, prosecutors hold restrained parties accountable for violations of local Orders of Protection as well as those issued in other jurisdictions, including tribal lands.

Best Practices for Prosecutors: Enforcement

- Prosecute violations of Orders of Protection as you would any other crime.
- Prosecute violations of Orders of Protection from other jurisdictions, including tribal lands, when these violations occur within your jurisdiction.
- Charge defendants with any other crimes, including, but not limited to, stalking, trespass, false imprisonment and kidnapping, where appropriate.
- Prosecute violations of any provisions of an Order of Protection as a crime. This includes, but is not limited to, provisions regarding child custody, child support, property and contact.
- Obtain records of Order of Protection hearings to review both parties' statements.
- Refer appropriate cases to federal prosecutors where federal domestic violence, sexual assault, stalking or firearms offenses have been perpetrated, or if a governmental boundary line (including tribal boundary) is crossed as part of the violation.
- Seek revocation of a restrained party's probation for violating Order of Protection provisions, particularly those related to safety.
- Notify the civil court once a restrained party's criminal case has been resolved.
- Use the dual sovereignty doctrine, which allows prosecutions by tribal, state, and federal governments for same conduct (provided each criminalizes the activity), where appropriate. [US v Wheeler (1978); US v Lara (2004)]
- Aggressively prosecute all domestic violence cases that involve firearms.
- Coordinate with federal and other authorities to enhance prosecution and sentencing alternatives for domestic violence crimes involving firearms.

Best Practices in Action...

Criminal or Civil Contempt?

Criminal contempt sanctions are punitive, intended to punish the defendant for failing to comply with the court's order. Civil contempt sanctions, however, are remedial; they are intended to coerce the defendant to comply with the court order and to compensate the complainant for losses sustained. The line between the two is blurry and courts have recognized that contempt is often both civil and criminal in nature in the same case.

Two significant practical differences exist between civil and criminal contempt. First, with civil contempt, the defendant is said to "hold the keys to the jailhouse door." Any imprisonment for civil contempt ends when the defendant agrees to comply with the court's order; imprisonment for criminal contempt is for a set period of time. Second, the defendant is entitled to additional protections in criminal contempt proceedings. In addition to notice and an opportunity to be heard, the defendant faced with criminal contempt charges is entitled to the opportunity to be present, conviction only upon proof beyond a reasonable doubt, and other rights not necessarily afforded to civil defendants. The focus of either type of proceeding, however, is on the restrained party's failure to comply with the court's order. Reunification of the parties after issuance of the civil protective order is not a defense to contempt.

jec.unm.edu/resources/benchbooks/dv

Access

Issuance

Enforcement

Enforcing the Conditions of an Order of Protection

- Ask law enforcement to obtain information about or inventory firearms whenever responding to domestic violence scenes.
- Encourage law enforcement and related agencies to support best practices.
- Inform protected parties of the benefits of reporting violations of Orders of Protection to law enforcement and the prosecutor's office.
- Seek to revoke or amend conditions of release if those release conditions or the provisions of an Order of Protection are violated.
- Coordinate effective multidisciplinary trainings on the enforcement of Orders of Protection in local jurisdictions.
- Arrange continuing education credits when providing training sessions on the effective enforcement of Orders of Protection.
- Provide specialized training for handling domestic violence crimes for both new and experienced prosecutors.

Courts

Courts and judicial officers have a vested interest in seeing their orders enforced. Without routine and effective enforcement of orders, the credibility and foundation of the court process is challenged. Effective enforcement also means taking care to remove gaps and close loopholes that compromise victim safety.

Even though Orders of Protection are issued as part of civil proceedings, violations of those orders are potentially punishable through both civil and criminal sanctions. Most of the practices suggested in this section apply to both civil and criminal enforcement proceedings. A few are applicable only to criminal proceedings and are listed at the end of the section.

Best Practices for Courts: Enforcement

- Collaborate with other justice system participants to ensure a seamless process for issuing and enforcing Orders of Protection, including state, tribal and military authorities.
- Refrain from finding protected parties in contempt for violating their own Orders of Protection.
- Develop protocols for circumstances when protected parties request that the court dismiss their Order of Protection. Avoid dismissing with prejudice, when possible and inform protected parties that they may file for a new Order of Protection at any time.
- Conduct regular compliance review hearings, consistent with state law, and schedule the hearings at the time of the issuance of the civil Order of Protection. This ensures that enforcement is predictable and communicates the message that the court takes compliance seriously.
- Differentiate between compliance hearings focused on the Order of Protection itself and compliance hearings focused solely on issues relating to the restrained party, such as whether the restrained party has attended counseling. Protected party should not be required to attend the latter, but should attend the former.
- Adopt protocols that require a hearing take place before firearms or other weapons are returned to the restrained party once the order has expired.

Best Practices in Action...

Compliance Monitoring

For compliance review hearings, courts could:

- Use judicial hearing officers and retired judges to conduct compliance review hearings if dockets are too large.
- Prepare a pre-set compliance review form, so that a judge may check off, with a high degree of specificity and ease, exactly what will be reviewed at the compliance hearing.
- Consider having “stages” of Orders of Protection, and bring back the party or parties for review similar to existing practices for cases involving custody. This may offer an additional way to review compliance.
- Use a web-based program to assist in compliance information.
- Include in the compliance review order forms items that can be ascertained without the protected party’s input.
- Conduct compliance reviews on no-contact provisions only when the protected party is not the sole source of information for the court and is not needed at the hearing.
- Ensure that the restrained party understands that the review is for the Order of Protection compliance only and not for the judge to entertain new allegations against the protected party. This should be made clear when the hearing is conducted and at the time of scheduling.
- Use compliance reviews as another means of enforcing the restrained party’s surrender of firearms and check in with the restrained party and require proof that the surrender has occurred.
- Use compliance reviews as a means of monitoring compliance with child support or other provisions mandated in an Order of Protection, or, as a condition of bail, if there is a concurrent criminal case.
- Understand that court hearings, including compliance review hearings, can increase the risk for protected parties, regardless of whether they are required to attend.

- Obtain funding for probation officers or court employees to assist in monitoring compliance.
- Request and provide information from and to probation and parole officers, where appropriate.
- Grant full faith and credit to orders meeting statutory requirements. If there is ambiguity or reason to question validity, contact the issuing court or request additional information from the protected party, if necessary.
- Conduct hearings promptly on all motions and charges alleging violations of Orders of Protection.
- Treat failure by the restrained party to participate in court ordered treatment or counseling as a violation of the order and potential contempt of court.
- Swiftly issue *sua sponte* orders to show cause on any contempt violations brought to the courts attention by police, probation, service providers, counselors or the protected party.
- Sentence restrained parties found in contempt to increasingly severe penalties with each subsequent contempt.
- Issue coercive sanctions to motivate the restrained party's compliance.
- Require training and participation of magistrates, special commissioners and district judges on effective enforcement of Orders of Protection.
- Cross check all new filings for violations of Orders of Protection for pending criminal cases involving parties.
- Tailor sanctions depending on circumstances of case; consider civil contempt as opposed to criminal contempt in appropriate cases to avoid double jeopardy issues. Defer proceedings when appropriate.
- For criminal enforcement proceedings (both criminal contempt and separate criminal charges):
 - Consider no-bond hold or high bail when person is arrested for violating an Order of Protection.
 - Consider Sixth Amendment rights and encourage appointment of counsel for restrained parties at Order of Protection violation hearings, where appropriate.
 - Arrange for formal supervision of all criminal contempt cases through probation services, where available.

Order of Protection and the Law...**Mandatory Healthcare Provider Documentation**

Healthcare providers are required by New Mexico law to document domestic violence in the medical record. Documentation of physical injuries and the identity of the perpetrator can facilitate a protected party's ability to prove their case at Order of Protection proceedings. [40-13-7.1 NMSA 1978]

New Mexico Data Show...**Limited Sanctions, Limited Effectiveness**

Key informants in New Mexico comment that one significant barrier to the effective enforcement of Orders of Protection is the perceived lack of court sanctions applied to restrained parties who have violated their order.

Law enforcement officers cite the lack of sanctions as a key reason why they do not make arrests.

Most informants feel that the standard to prove a violation is too stringent.

Part III: Special Topics

Several specific topics require special treatment. Part III addresses issues that arise concerning firearms, minors and Orders of Protection, and child support and custody provisions.

Firearms

Federal law restricts the right of some restrained parties to own or possess firearms or ammunition. Federal law also prohibits firearm and ammunition possession for anyone convicted of a misdemeanor domestic violence offense [Gun Control Act 18 USC 922 (g)(8) and (9)].

- A restrained party, who falls under the federal definition of intimate partner (see sidebar p. 45), may not obtain, possess or transport a firearm or ammunition for as long as the Order of Protection is in effect.
 - Law enforcement officers and military personnel may possess their official use weapon and ammunition while on duty. [18 USC 925]
- Law enforcement officers and military personnel are not permitted to possess even official use weapons and ammunition when [18 USC 922(g)(9)]:
 - The officer has been convicted of a misdemeanor domestic violence crime that was a violation of federal or state law; and,
 - There was an element of use or attempted use of physical force; or,
 - There was an element of use or attempted use of a deadly weapon; and
 - Where the officer was represented by counsel or knowingly waived rights to counsel and trial by jury; and
 - The crime was committed against an intimate partner as defined by federal law. (See sidebar “Federal Definition of Intimate Partner” p. 45)
 - Under these conditions a law enforcement officers and military personnel may never own or possess a firearm or ammunition.

Orders of Protection and the Law...



Federal Definition of Intimate Partner

Spouse or intimate partner includes:

- A spouse or former spouse of the abuser
- A person who shares a child in common with the abuser
- A person who cohabits or has cohabited as a spouse with the abuser
- In addition, “any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.” [18 USC 2266(7)]

Special Topics

Firearms

Best Practices: Firearms

- Consider state and federal firearms laws. In some cases, it is mandatory that courts order the surrender of firearms. In others, it is discretionary. Where discretionary, take safety precautions to protect victims.
- Ensure that Order of Protection forms include state and federal firearms restrictions.
- Inquire as to the presence and location of all firearms, including those possessed by family members who may give the restrained party indirect access to weapons.
- Require restrained parties, where authorized by state law, to surrender their firearms and ammunition, being clear and precise as to when, where, how and to whom. Also consider requiring the surrender of gun permits and licenses, especially if these allow for purchases without a background check.
- Recognize that the federal law, 18 USC 922(g)(8), prohibits persons against whom qualifying Orders of Protection have been issued from possessing firearms.
- Inform restrained parties, when applicable, that possession or attempted possession of a firearm or ammunition is a crime under federal law and also may be a crime under state law.
- Consider using a forfeiture form to be turned in by a law enforcement officer or licensed gun dealer within a specified time frame, confirming forfeiture, and then follow up with the restrained party if that form is not received on time.
- Coordinate with law enforcement personnel to determine what agency should be the repository for firearms and ammunition surrendered by restrained parties of Orders of Protection.
- Establish a mechanism for monitoring compliance with firearms relinquishment orders.
- Send a letter to the protected party before returning firearms and ask if there are any reasons why the firearms should not be returned; include a list of disqualifiers.
- Conduct a hearing to determine whether a restrained party is disqualified from possessing firearms and ammunition under other state or federal law before authorizing the return of weapons.

Minors and Orders of Protection

There are two key ways that minors (persons younger than 18 years old) may interact with the Order of Protection system. Minors may be victims of domestic violence or be witnesses to domestic abuse between two adult parties. Minors, through a parent, relative or other adult acting as “next friend” of the court, may also petition the court for an Order of Protection, such as in the case of dating violence. The purpose is to provide protection for children who have been abused by household members, minors who are involved in abusive teen dating relationships and child victims of sexual assault and stalking.

When a child is the primary witness to domestic abuse, it may be difficult to determine the credibility of the allegations. Rather than placing a child on the witness stand and possibly traumatizing the child, it may be best to consider some other options. The court may compel important witnesses to testify to the abuse. The court may also subpoena documents to review safe house interviews, sexual assault nurse examinations and police reports. The Court may also consider appointing a *guardian ad litem* for the child.

New Mexico law requires judges, law enforcement officers and others to report child abuse to the New Mexico Children, Youth and Families Department (CYFD). Many petitions for Orders of Protection filed on behalf of children are filed on the advice of CYFD to the non-offending parent or grandparent. It is very important to have the CYFD social worker testify about department findings. The court may have to seal the case file and recordings from public view in order to allow social worker testimony.

Dating violence presents special problems as well. An Order of Protection may be issued against a minor who has committed domestic abuse. The petition and order must be served upon a parent or guardian of the restrained minor. A parent may request an Order of Protection on behalf of (OBO) a teenager who wants to continue dating the perpetrator. A parent may proceed against the wishes of a minor if the Court determines that granting the order is in the child's best interest. If the protected minor and the restrained minor attend the same school, it may be necessary to contact the school to discuss a safety plan and ensure that the order will be enforced.

Orders of Protection and the Law...

Duty to Report Child Abuse and Child Neglect

New Mexico law requires every person, including nurses and physicians, law enforcement officers, judges, teachers and school officials, social workers and clergy, who knows or has a reasonable suspicion that a child is abused or neglected to immediately report to:

- Local law enforcement agencies,
- CYFD, or
- Tribal law enforcement or social services agency for any Indian child residing in Indian country. [32A-4-3 NMSA 1978]

Contact local law enforcement or CYFD through Statewide Central Intake (SCI):

1-800-797-3260

Special Topics

Minors and Orders of Protection

A victim who is younger than 18 years old may wish to request an Order of Protection against a perpetrator (who may also be younger than 18 years), but may have no adult to file the petition on his or her behalf. In such cases, the court may appoint a *guardian ad litem* to file the petition.

Violations of Orders of Protection by minors should be referred to the Children's Court. If the protected party wishes to request a hearing for contempt of court for violation of the Order of Protection, it is possible to hold the offending minor's parent(s) in contempt of court if they were made parties to the Order of Protection.

Best Practices: Minors and Orders of Protection

- Avoid using children as witnesses, where possible, in cases involving two adult parties. This may set children up for additional trauma or victimization.
- Courts should compel the attendance of important adult witnesses at Order of Protection hearings.
- Be aware that adults may use child witnesses or introduce allegations of child abuse to advantage their case.
- Carefully evaluate all cases involving allegations of child abuse.
- Report any suspicion of child abuse or neglect to legal authorities, including law enforcement and CYFD.
- Expand outreach efforts and services to include minors, where possible.
- Courts should develop a list of attorneys who are willing to serve as *guardian ad litem* at a low cost or *pro bono*.
- Work with school administrators to develop procedures to assure proper enforcement of Orders of Protection.

Orders of Protection and the Law...

Minors and Orders of Protection

New Mexico case law has established that parents may file on behalf of their minor children against a household member accused of domestic abuse.

Darlene Lujan on behalf of Richard Lujan v. Julie Casados-Lujan, 2004-NMCA-036, 87 P.3d 1067 (Ct. App. 2003).

- Mother filed for an Order of Protection on behalf of her fourteen-year-old son in a proceeding against his stepmother. Mother alleged that stepmother subjected son to verbal and physical abuse. Mother was permitted to present the case on son's behalf. The abuse alleged was primarily verbal and consisted of a pattern of name-calling that included foul language. Stepmother also allegedly bragged that she had harmed other people. The child expressed fear of physical abuse, but none had yet occurred. The Order of Protection was issued because the language used by stepmother "could be interpreted as symbolizing an aggressiveness and threat of physical and emotional domination" that comes well within the definitions of severe emotional distress, a threat causing imminent fear and harassment.

The Court may issue Orders of Protection against minors.

Lucero v. Pino, 1997-NMCA-089, 124 NM 28, 946 P.2d 232 (Ct. App. 1997).

Special Topics

Child Support and Custody

Child Support and Custody

The Family Violence Protection Act allows the court to modify existing child support and custody provisions or to establish new ones in cases where such provisions do not exist. These domestic matter provisions present significant challenges to law enforcement officers who are called to enforce them. Many of those challenges can be alleviated by clear and specific orders, placing much of the burden on the courts that draft and issue the orders. Thus, most of the best practices discussed below are addressed to the courts.

All parties and system players should understand that these provisions are temporary and the parties should understand that all long-term support and custody provisions must be addressed in a new or existing domestic matters case.

Civil attorneys should understand the necessity for clear and specific orders and should advocate that orders issued on behalf of their clients contain the requisite information.

Law enforcement officers should understand that child support and custody provisions contained in Orders of Protection are entitled to full faith and credit and must be enforced along with all other provisions.

Best Practices: Child Support and Custody Provisions

- Safeguard victims and children by ordering supervised visitation or exchange when necessary.
- Be specific and detailed about supervised visitation and exchange provisions in Orders of Protection.
- Include in the custody and visitation provisions the children's names, dates of birth, and which child is covered by which provision.
- Be clear about which type of custody the court is granting (legal vs. physical or both).
- Be specific as to place, time, transportation, parties, exchange and what to do for upcoming holidays and birthdays.
- Require third-party supervisors be in court to accept responsibility for supervising visits; suspend visitation until the third party can appear in court.
- State clearly the consequences for the restrained party's failure to attend the visitation as scheduled, how long a

Best Practices in Action...

Enforcing Custody and Child Support Provisions

Law enforcement may be called upon to enforce custody and child support provisions of an Order of Protection. Many officers, however, feel ill-equipped to enforce these provisions and often feel that arrest is not the appropriate course of action.

Officers can only arrest if probable cause can be established. This is often difficult for custody and child support violations. Under circumstances when probable cause cannot be established, officers should refer protected parties to the civil court.

In all cases, officers should ensure the safety of the protected parties and their children.

Special Topics

Child Support and Custody

protected party is required to wait if a restrained party is late.

- Consider the problems that may develop when using families or friends to supervise exchanges and visits. Limit the time and use of such methods to only when necessary and clearly spell out what is expected of the parties and the supervisor.
- Identify safe locations for visitation or exchanges that do not involve family or friends as supervisors.
- If ordering visitation or exchange at a center, provide the center with clear guidelines on how to achieve the court's safety objectives and state in the order the goals for the visitation.
 - Become familiar with the visitation center that the court is ordering be used. Visit the center and know what exact services are provided.
 - Give the visitation center specific safety precaution parameters in the order, as the Order of Protection may be the only information the center receives.
 - Give the visitation center additional information on the family such as intake forms, petitions, or court referral forms that state the reasons for the family's referral to the center when possible.
 - Make provisions for situations in which the supervised visitation center is not accepting clients or refuses an individual case.
 - Inform the restrained party that some violations of center rules could constitute a violation of the Order of Protection when ordering exchange or visitation at a center.
 - Inform the family at the initial hearing that if they are denied services at the visitation center, they are required to return to court and that there will be no visitation in the interim.
 - Make specific findings on the record regarding why the supervised visitation plan ordered by the court is necessary to protect the victim and the children and what services are requested of the center (if applicable).
 - Determine during court proceedings who will pay any costs associated with custody and supervision arrangements.

Resources and Supplementary Materials

Overview

Part IV: Resources and Supplementary Materials

Overview

In determining how to best adapt and implement this guide, it is critical that agencies and service providers understand and comply with all statutes. Section A contains select excerpts from the most pertinent federal and state statutes. These excerpts are provided for quick reference only. Agencies are strongly encouraged to refer to the full text of each statute when developing their best practices. In addition, space constraints make it impossible to include excerpts of military and tribal laws. Those who work in military and tribal jurisdictions are encouraged to familiarize themselves with the relevant provisions.

To assist with cross-jurisdictional enforcement in New Mexico, the State and Tribal Judicial Consortium adopted a uniform first page for both state and tribal jurisdictions. The form, set out below in Section B, has been approved by the New Mexico Supreme Court and is being considered by each tribal court for approval.

Questions will arise that are not addressed in this guide. Section C lists resources and supplementary materials to assist in answering these questions. The list is not intended to be comprehensive, but rather to provide a starting point for additional research.

Resources and Supplementary Materials

Section A. Statutory Material

Section A. Statutory Material

Selected New Mexico Statutes

Selected excerpts from the New Mexico Family Violence Protection Act (the complete statute can be found in sections 40-13-1 through 40-13-12 NMSA 1978):

§ 40-13-3 provides a victim of domestic abuse may petition the court under the Family Violence Protection Act for an order of protection.

§ 40-13-3.1. provides that an alleged victim of domestic abuse shall not be required to bear the cost of:

- (1) the prosecution of a misdemeanor or felony offense arising out of an incident of domestic abuse, including costs associated with filing a criminal charge against the alleged perpetrator of the abuse;
- (2) the filing, issuance or service of a warrant;
- (3) the filing, issuance or service of a witness subpoena;
- (4) the filing, issuance or service of a petition for an order of protection;
- (5) the filing, issuance or service of an order of protection; or
- (6) obtaining law enforcement reports relating to the alleged abuse or pattern of abuse.

§ 40-13-2. Definitions

- A. “co-parents” means persons who have a child in common, regardless of whether they have been married or have lived together at any time;
- B. “court” means the district court of the judicial district where an alleged victim of domestic abuse resides or is found;
- C. “domestic abuse”:
 - (1) means an incident of stalking or sexual assault whether committed by a household member or not;
 - (2) means an incident by a household member against another household member consisting of or resulting in:
 - (a) physical harm;
 - (b) severe emotional distress;
 - (c) bodily injury or assault;
 - (d) a threat causing imminent fear of bodily injury by any household member;
 - (e) criminal trespass;
 - (f) criminal damage to property;
 - (g) repeatedly driving by a residence or work place;
 - (h) telephone harassment;
 - (i) harassment; or
 - (j) harm or threatened harm to children as set forth in this paragraph; and
 - (3) does not mean the use of force in self-defense or the defense of another;
- D. “household member” means a spouse; former spouse; family member, including a relative, parent, present or former stepparent, present or former in-law, child or co-parent of a child; or a person with whom the protected party has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section;
- E. “mutual order of protection” means an order of protection that includes provisions that protect both parties;
- F. “order of protection” means an injunction or a restraining or other court order granted for the protection of a victim of domestic abuse;
- G. “protected party” means a person protected by an order of protection; and
- H. “restrained party” means a person who is restrained by an order of protection.

§ 40-13-3.2. Ex parte emergency orders of protection

- A. The district court may issue an ex parte written emergency order of protection when a law enforcement officer states to the court in person, by telephone or via facsimile and files a sworn written statement, setting forth the need for an emergency order of protection, and the court finds reasonable grounds to believe that the alleged victim or the alleged victim's child is in immediate danger of domestic abuse following an incident of domestic abuse. The written statement shall include the location and telephone number of the alleged perpetrator, if known.
- B. A law enforcement officer who receives an emergency order of protection, whether in writing, by telephone or by facsimile transmission, from the court shall:
 - (1) if necessary, pursuant to the judge's oral approval, write and sign the order on an approved form;
 - (2) if possible, immediately serve a signed copy of the order on the restrained party and complete the appropriate affidavit of service;
 - (3) immediately provide the protected party with a signed copy of the order; and
 - (4) provide the original order to the court by the close of business on the next judicial day.
- C. The court may grant the following relief in an emergency order of protection upon a probable cause finding that domestic abuse has occurred:

Resources and Supplementary Materials

Section A. Statutory Material

- (1) enjoin the restrained party from threatening to commit or committing acts of domestic abuse against the protected party or any designated household members;
 - (2) enjoin the restrained party from any contact with the protected party, including harassing, telephoning, contacting or otherwise communicating with the protected party; and
 - (3) grant temporary custody of any minor child in common with the parties to the protected party, if necessary.
- D. A district judge shall be available as determined by each judicial district to hear petitions for emergency orders of protection.
- E. An emergency order of protection expires seventy-two hours after issuance or at the end of the next judicial day, whichever time is latest. The expiration date shall be clearly stated on the emergency order of protection.
- F. A person may appeal the issuance of an emergency order of protection to the court that issued the order. An appeal may be heard as soon as the judicial day following the issuance of the order.
- G. Upon a proper petition, a district court may issue a temporary order of protection that is based upon the same incident of domestic abuse that was alleged in an emergency order of protection.
- H. Emergency orders of protection are enforceable in the same manner as other orders of protection issued pursuant to the provisions of the Family Violence Protection Act.

§ 40-13-4. Temporary order of protection; hearing; dismissal

- A. Upon the filing of a petition for order of protection, the court shall:
- (1) immediately grant an ex parte temporary order of protection without bond if there is probable cause from the specific facts shown by the affidavit or by the petition to give the judge reason to believe that an act of domestic abuse has occurred;
 - (2) cause the temporary order of protection together with notice of hearing to be served immediately on the alleged perpetrator of the domestic abuse; and
 - (3) within ten days after the granting of the temporary order of protection, hold a hearing on the question of continuing the order; or
 - (4) if an ex parte order is not granted, serve notice to appear upon the parties and hold a hearing on the petition for order of protection within seventy-two hours after the filing of the petition; provided if notice of hearing cannot be served within seventy-two hours, the temporary order of protection shall be automatically extended for ten days.
- B. If the court grants a temporary order of protection, it may award temporary custody and visitation of any children involved when appropriate.
- C. Except for petitions alleging stalking or sexual assault, if the court finds that the alleged perpetrator is not a household member, the court shall dismiss the petition.

§ 40-13-5. Order of protection; contents; remedies; title to property not affected; mutual order of protection

- A. Upon finding that domestic abuse has occurred or upon stipulation of the parties, the court shall enter an order of protection ordering the restrained party to refrain from abusing the protected party or any other household member. The court shall specifically describe the acts the court has ordered the restrained party to do or refrain from doing. As a part of any order of protection, the court may:
- (1) grant sole possession of the residence or household to the protected party during the period the order of protection is effective or order the restrained party to provide temporary suitable alternative housing for the protected party and any children to whom the restrained party owes a legal obligation of support;
 - (2) award temporary custody of any children involved when appropriate and provide for visitation rights, child support and temporary support for the protected party on a basis that gives primary consideration to the safety of the protected party and the children;
 - (3) order that the restrained party shall not initiate contact with the protected party;
 - (4) restrain a party from transferring, concealing, encumbering or otherwise disposing of the other party's property or the joint property of the parties except in the usual course of business or for the necessities of life and require the parties to account to the court for all such transferences, encumbrances and expenditures made after the order is served or communicated to the restrained party;
 - (5) order the restrained party to reimburse the protected party or any other household member for expenses reasonably related to the occurrence of domestic abuse, including medical expenses, counseling expenses, the expense of seeking temporary shelter, expenses for the replacement or repair of damaged property or the expense of lost wages;
 - (6) order the restrained party to participate in, at the restrained party's expense, professional counseling programs deemed appropriate by the court, including counseling programs for perpetrators of domestic abuse, alcohol abuse or abuse of controlled substances; and
 - (7) order other injunctive relief as the court deems necessary for the protection of a party, including orders to law enforcement agencies as provided by this section.
- B. The order of protection shall contain a notice that violation of any provision of the order constitutes contempt of court and may result in a fine or imprisonment or both.
- C. If the order of protection supersedes or alters prior orders of the court pertaining to domestic matters between the parties, the order shall say so on its face. If an action relating to child custody or child support is pending or has concluded with entry of an order at the time the petition for an order of protection was filed, the court may enter an

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initial order of protection, but the portion of the order dealing with child custody or child support will then be transferred to the court that has or continues to have jurisdiction over the pending or prior custody or support action.

- D. A mutual order of protection shall be issued only in cases where both parties have petitioned the court and the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense.
- E. No order issued under the Family Violence Protection Act shall affect title to any property or allow a party to transfer, conceal, encumber or otherwise dispose of another party's property or the joint or community property of the parties.
- F. Either party may request a review hearing to amend an order of protection. An order of protection involving child custody or support may be modified without proof of a substantial or material change of circumstances.
- G. An order of protection shall not be issued unless a petition or a counter petition has been filed.

§ 40-13-6. Service of order; duration; penalty; remedies not exclusive

- A. An order of protection granted under the Family Violence Protection Act shall be filed with the clerk of the court, and a copy shall be sent by the clerk to the local law enforcement agency. The order shall be personally served upon the restrained party, unless the restrained party or the restrained party's attorney was present at the time the order was issued. The order shall be filed and served without cost to the protected party.
- B. A local law enforcement agency receiving an order of protection from the clerk of the court that was issued under the Family Violence Protection Act shall have the order entered in the national crime information center's order of protection file within seventy-two hours of receipt. This does not include temporary orders of protection entered pursuant to the provisions of Section 40-13-4 NMSA 1978.
- C. An order of protection granted by the court involving custody or support shall be effective for a fixed period of time not to exceed six months. The order may be extended for good cause upon motion of the protected party for an additional period of time not to exceed six months. Injunctive orders shall continue until modified or rescinded upon motion by either party or until the court approves a subsequent consent agreement entered into by the parties.
- D. A peace officer shall arrest without a warrant and take into custody a restrained party whom the peace officer has probable cause to believe has violated an order of protection that is issued pursuant to the Family Violence Protection Act or entitled to full faith and credit.
- E. State courts shall give full faith and credit to tribal court orders of protection and orders of protection issued by courts of other states. A protection order issued by a state or tribal court against one who has petitioned, filed a complaint or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if:
 - (1) no cross or counter petition, complaint or other written pleading was filed seeking such a protection order; or
 - (2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.
- F. A restrained party convicted of violating an order of protection granted by a court under the Family Violence Protection Act is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978. Upon a second or subsequent conviction, an offender shall be sentenced to a jail term of not less than seventy-two consecutive hours that shall not be suspended, deferred or taken under advisement.
- G. In addition to any other punishment provided in the Family Violence Protection Act, the court shall order a person convicted to make full restitution to the party injured by the violation of an order of protection and shall order the person convicted to participate in and complete a program of professional counseling, at the person's own expense, if possible.
- H. In addition to charging the person with violating an order of protection, a peace officer shall file all other possible criminal charges arising from an incident of domestic abuse when probable cause exists.
- I. The remedies provided in the Family Violence Protection Act are in addition to any other civil or criminal remedy available to the protected party or the state.

§ 40-13-7. Law enforcement officers; emergency assistance; limited liability; providing notification to victims when an alleged perpetrator is released from detention; statement in judgment and sentence document

- A. A person who allegedly has been a victim of domestic abuse may request the assistance of a local law enforcement agency.
- B. A local law enforcement officer responding to the request for assistance shall be required to take whatever steps are reasonably necessary to protect the victim from further domestic abuse, including:
 - (1) advising the victim of the remedies available under the Family Violence Protection Act; the right to file a written statement, a criminal complaint and a request for an arrest warrant; and the availability of domestic violence shelters, medical care, counseling and other services;
 - (2) upon the request of the victim, providing or arranging for transportation of the victim to a medical facility or place of shelter;
 - (3) upon the request of the victim, accompanying the victim to the victim's residence to obtain the victim's clothing and personal effects required for immediate needs and the clothing and personal effects of any children then in the care of the victim;
 - (4) upon the request of the victim, assist in placing the victim in possession of the dwelling or premises or otherwise assist in execution, enforcement or service of an order of protection;

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- (5) arresting the alleged perpetrator when appropriate and including a written statement in the attendant police report to indicate that the arrest of the alleged perpetrator was, in whole or in part, premised upon probable cause to believe that the alleged perpetrator committed domestic abuse against the victim and, when appropriate, indicate that the party arrested was the predominant aggressor; and
 - (6) advising the victim when appropriate of the procedure for initiating proceedings under the Family Violence Protection Act or criminal proceedings and of the importance of preserving evidence.
- C. The jail or detention center shall make a reasonable attempt to notify the arresting law enforcement agency or officer when the alleged perpetrator is released from custody. The arresting law enforcement agency shall make a reasonable attempt to notify the victim that the alleged perpetrator is released from custody.
- D. Any law enforcement officer responding to a request for assistance under the Family Violence Protection Act is immune from civil liability to the extent allowed by law. Any jail, detention center or law enforcement agency that makes a reasonable attempt to provide notification that an alleged perpetrator is released from custody is immune from civil liability to the extent allowed by law.
- E. A statement shall be included in a judgment and sentence document to indicate when a conviction results from the commission of domestic abuse.

§ 40-13-7.1. Medical personnel; documentation of domestic abuse

- A. When medical personnel who are interviewing, examining, attending or treating a person:
 - (1) receive a report from the person of an act of domestic abuse, the medical personnel shall document the nature of the abuse and the name of the alleged perpetrator of the abuse in the person's medical file and shall provide the person with information and referral to services for victims of domestic abuse; or
 - (2) may have reason to believe or suspect that the person is a victim of domestic abuse, the medical personnel shall provide the person with information and referral to services for victims of domestic abuse.
- B. Medical and other health care related information or communications concerning domestic abuse of a person obtained by or from medical personnel during the course of an interview, examination, diagnosis or treatment are confidential communications unless released:
 - (1) with the prior written consent of the person;
 - (2) pursuant to a court order; or
 - (3) when necessary to provide treatment, payment and operations in accordance with the federal Health Insurance Portability and Accountability Act.
- C. As used in this section, "medical personnel" means:
 - (1) licensed health care practitioners;
 - (2) licensed emergency medical technicians;
 - (3) health care practitioners who interview, examine, attend or treat a person and who are under the guidance or supervision of licensed health care practitioners; and
 - (4) residents and interns.

§ 40-13-9. Domestic violence special commissioners; appointment; qualifications

- A. A domestic violence special commissioner shall be appointed by and serve at the pleasure of the chief judge of the judicial district to which the officer is assigned.
- B. A domestic violence special commissioner shall:
 - (1) be an attorney licensed to practice law in ;
 - (2) have a minimum of three years experience in the practice of law and be knowledgeable in the area of domestic relations and domestic violence matters; and
 - (3) conform to Canons 21-100 through 21-500 and 21-700 of the Code of Judicial Conduct as adopted by the supreme court. Violation of any such canon shall be grounds for dismissal of any domestic violence special commissioner.

§ 40-13-10. Special commissioners; powers; duties

- A. A domestic violence special commissioner shall perform the following duties in carrying out the provisions of the Family Violence Protection Act:
 - (1) review petitions for orders of protection and motions to enforce, modify or terminate orders of protection;
 - (2) if deemed necessary, interview protected parties. Any interview shall be on the record;
 - (3) conduct hearings on the merits of petitions for orders of protection and motions to enforce, modify or terminate orders of protection; and
 - (4) prepare recommendations to the district court regarding petitions for orders of protection and motions to enforce, modify or terminate orders of protection.
- B. All orders must be signed by a district court judge before the recommendations of a domestic violence special commissioner become effective.

§ 40-13-11. Substitute address

- A. A victim of domestic abuse, or the victim's representative pursuant to Section 31-26-3 NMSA 1978, who has good reason to believe that the victim's safety is at risk may apply to the secretary of state for the use of the secretary of state as a substitute address. The application shall be on a form provided by the secretary of state and shall include:
 - (1) a statement that the secretary of state is acting as an agent of the victim for purposes of the forwarding of mail;
 - (2) a mailing address for forwarding received mail and a telephone number where the victim can be contacted by the secretary of state;

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- (3) payment of a seventy-five-dollar (\$75.00) application fee, which may be waived if the applicant is indigent; and
- (4) the signature of the victim or the victim's representative.

B. The secretary of state shall maintain a confidential record of applications for a substitute address and forward any mail received on behalf of a victim of domestic abuse to the new mailing address provided on the application."

§ 40-13-12. Limits on internet publication

A state agency, court or political subdivision of the state, including a magistrate or municipal court, judicial district, law enforcement agency, county, municipality or home-rule municipality, shall not make available publicly on the internet any information that would likely reveal the identity or location of the party protected under an order of protection. A state agency, court or political subdivision may share court-generated and law enforcement-generated information contained in secure, government registries for protection order enforcement purposes.

§ 30-22-1. Resisting, evading or obstructing an officer

Resisting, evading or obstructing an officer consists of:

- A. knowingly obstructing, resisting or opposing any officer of this state or any other duly authorized person serving or attempting to serve or execute any process or any rule or order of any of the courts of this state or any other judicial writ or process;

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Summary of Relief Available under New Mexico Law

Relief	Statute
No further abuse to petitioner to children to other household members	§40-13-5(A)
Stay away/no contact with provisions petitioner child(ren) other household members other locations (e.g., work, church, etc.)	§40-13-5(A)(2)
No contact orders, including personal telephonic by third parties acting on behalf of respondent by mail by electronic mail	§40-13-5(A)(3)
Orders to vacate not re-enter surrender keys not damage premises or petitioner's property not shut off utilities or discontinue mail delivery	§40-13-5(A)(1)
Orders concerning personal property disposition order party not to take, convert, sell, damage, destroy, transfer, or encumber property use of automobile police standby to retrieve belongings	§40-13-5(A)(4)
Orders concerning weapons	18 U.S.C.A. 922 (g) (8)
Orders for abuser to obtain treatment	§40-13-5(A)(6)
Orders concerning custody	§40-13-5(A)(2) and (C)
Orders concerning visitation supervised visitation parenting classes for the perpetrator	§40-13-5(A)(2) and (C)
Orders for monetary relief child support spousal support out-of-pocket expenses counseling expenses cost of seeking temporary shelter replacements or repairs lost wages other monetary relief	§40-13-5(A)(2), (4), (5)
Orders for police assistance serve notice arrest for violations assist with vacate orders police standby procedure	§40-13-1 et seq.

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Selected Federal Statutes

Congress has enacted several statutes that relate to domestic violence, stalking and protection orders. This section highlights some of these federal statutes and is organized into two parts. The first contains an overview of the statutes, organized by topic. The second contains selected text from the statutes themselves.

Overview by subject matter

Enforcement of Protection Order

Congress has mandated, through the Full Faith and Credit provisions of the Violence Against Women Act, that the court and law enforcement personnel of any State, Tribe or Territory shall enforce Orders of Protection issued by other States, Tribes and Territories just as if they were orders issued by the government which is enforcing the order. An Order of Protection is entitled to full faith and credit only if the issuing court had proper jurisdiction and the person against whom the order was sought was given reasonable notice and opportunity to be heard. In the case of *ex parte* orders, notice and opportunity to be heard must be provided within the time required by the issuing government, and in any event, within a reasonable time so as to protect the respondent's due process rights. [18 USC § 2265]

Congress has defined an Order of Protection very broadly—it includes any court order issued for the purpose of preventing violent or threatening acts or harassment against another person, including any temporary or final order issued by a civil and criminal court, other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law. [18 USC § 2266]

VAWA's Full Faith and Credit provisions do not apply to federal officials, and Congress addressed the enforceability of Orders of Protection on military installations in the Armed Forces Domestic Security Act, 10 USC §1561a, which declares, "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."

Gun Control

Congress has expressed concern about the possession of firearms by persons who are the subject of an Order of Protection or who have been convicted of domestic violence crimes and has enacted several statutes limiting their access to guns. Several statutes are worth noting:

18 USC § 922 (d)(8) and (9) make it illegal to provide firearms or ammunition to any person, if you know or have reason to know that the person has been convicted of a misdemeanor crime of domestic violence or that the person is the subject of an Order of Protection. These prohibitions apply only if the person received actual notice of the hearing, and the court made findings that the person represented a credible threat to the physical safety of the person protected by the Order. There are exceptions to the statute, including for licensed importers, manufacturers and dealers.

18 USC § 922(g)(8) and (9) applies to persons subject to a "qualifying" state or tribal protection order and makes it unlawful for such persons, while an Order of Protection is in effect, to: (1) possess a firearm or ammunition; (2) ship or transport firearms or ammunition in interstate or foreign commerce; (3) receive any firearm or ammunition which has been so shipped or transported; or (4) have seized firearms returned. A qualifying Order of Protection is one that prohibits harassing, stalking, or threatening an intimate partner or the child of such partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury.

Child Support and Child Custody

One issue that causes great confusion is the inclusion of child support and custody provisions in Orders of Protection. Because child support and custody provisions are modifiable, they are not automatically entitled to enforcement outside the issuing jurisdiction. Accordingly, a variety of special statutes have been enacted by both the federal and state governments to deal with the issue of cross-jurisdictional enforcement of child custody and support provisions.

The first issue is determining which court possesses jurisdiction to issue a decision regarding child support and child custody. Generally speaking, child support and child custody issues are matters for state and tribal courts, not federal

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courts. Thus, most statutes relating to who has jurisdiction are state statutes. As a result of the need for consistency in these areas, most states have adopted some version of the Uniform Child Custody Jurisdiction Act (UCCJA) or its successor, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Uniform Acts are drafted by the National Conference of Commissioners on Uniform State Laws, but have no effect unless and until adopted by a state's legislature.

The UCCJA is designed to promote interstate cooperation in custody matters and was enacted in one form or another by all 50 states. The Act specifies jurisdictional rules for custody determinations.

The UCCJEA was designed as an updated version of the UCCJA. It specifies which court should decide a custody case, rather than how the court should decide the case. The UCCJEA sets forth several bases for jurisdiction, but prioritizes the jurisdiction of the home state. Except in emergencies, a court may not exercise jurisdiction if a proceeding consistent with the UCCJEA is pending elsewhere. A court may exercise emergency jurisdiction if the child is present in the state and the child has been abandoned, or it is necessary in an emergency to protect the child because the child or a sibling or parent is subjected to or threatened with mistreatment or abuse. Under the UCCJEA, a court can exercise emergency jurisdiction in domestic violence cases where one parent has been abused by the other parent, even if the child has not suffered physical abuse. A court having jurisdiction may declare itself to be an inconvenient forum in deference to another state. Factors in that determination include whether domestic violence has occurred and is likely to continue, as well as which state could best protect the parties and the child. Courts may also decline to exercise jurisdiction if one of the parties has engaged in unjustifiable conduct, such as when an abuser has illegally taken the child across jurisdictional lines. The comments to the UCCJEA make it clear that the provision should not be used to penalize domestic violence victims who flee to escape abuse. The UCCJEA contains additional provisions helpful to domestic violence victims.

The UCCJA and UCCJEA deal with allocating authority between state courts. Congress has allocated jurisdiction between state and tribal courts as part of the Indian Child Welfare Act (ICWA), 25 USC § 1901 et seq. ICWA grants Indian tribes exclusive jurisdiction in specifically enumerated child custody proceedings and also establishes federal standards for the removal of Indian children from their families.

Congress has also enacted some laws providing for full faith and credit for child support and custody provisions. The Parental Kidnapping Prevention Act (PKPA), 28 USC § 1738A, is a full faith and credit law designed to discourage interstate custody conflicts and prevent interstate child abductions. This is a federal law, and it will trump a state law if the state law conflicts with the federal law. The PKPA offers the same jurisdictional bases as the UCCJEA; but, unlike the UCCJEA, it does not tell a court when to exercise jurisdiction in a new custody case. Rather, the PKPA tells a court when to honor and enforce a custody determination made in another state or tribe.

The Full Faith and Credit for Child Support Orders Act, 28 USC § 1738B, provides generally that the appropriate authorities of each state shall enforce according to its terms a child support order consistent with this provision made by a court of another state. The Act also sets forth the requirements for child support orders to qualify as enforceable — the court had subject matter and personal jurisdiction, and the contestants had reasonable notice and opportunity to be heard — as well as choice of law and other relevant provisions.

Federal Crimes

Congress has created a number of federal crimes that relate to domestic violence and stalking. In addition to the gun control crimes discussed above, these include:

Interstate Stalking

18 USC § 2261A makes it a crime to travel in interstate or foreign commerce or enter or leave Indian country, with the intent to kill, injure, harass, or intimidate another person, if in the course of that conduct, the person is placed in reasonable fear of death or serious bodily injury either to themselves or a member of their immediate family. The statute also makes it a crime to use the mail, any interactive computer service, or any facility of interstate or foreign commerce to engage in a course of conduct that causes substantial emotional distress to that person or places that person in reasonable fear of death or serious bodily injury either to themselves or a member of their immediate family.

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Interstate Travel to Commit Domestic Violence

18 USC § 2261: This statute states that it is an offense (1) to travel in interstate or foreign commerce or to enter or leave Indian country with the intent to kill, injure, harass, or intimidate a spouse or intimate partner, and, in the course of or as a result of such travel, to commit or attempt to commit a crime of violence against that spouse or intimate partner or (2) to cause a spouse or intimate partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel, commit or attempt to commit a crime of violence against that spouse or intimate partner.

Interstate Violation of an Order of Protection

18 USC § 2262: This statute states that it is an offense for (1) a person to travel in interstate or foreign commerce, or to enter or leave Indian country, with the intent to engage in conduct that violates the portion of an Order of Protection that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the Order was issued, and subsequently engage in such conduct or for (2) a person to cause another person to travel in interstate or foreign commerce, or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel to engage in conduct that violates the portion of an Order of Protection that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued.

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18 USC § 922. Unlawful acts

- (d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—
 - (8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—
 - (A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and
 - (B)
 - (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
 - (9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

- (g) It shall be unlawful for any person—
 - (8) who is subject to a court order that—
 - (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
 - (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - (C)
 - (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

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- (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 USC § 2261. Interstate domestic violence

(a) Offenses.

- (1) Travel or conduct of offender. A person who travels in interstate or foreign commerce or enters or leaves Indian country or within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).
 - (2) Causing travel of victim. A person who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).
- (b) Penalties. A person who violates this section or section 2261A shall be fined under this title, imprisoned:
- (3) for life or any term of years, if death of the victim results;
 - (4) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;
 - (5) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;
 - (6) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and
 - (7) for not more than 5 years, in any other case, or both fined and imprisoned.
 - (8) Whoever commits the crime of stalking in violation of a temporary or
 - (9) permanent civil or criminal injunction, restraining order, no-contact order, or other order described in section 2266 of title 18, United States Code, shall be punished by imprisonment for not less than 1 year.

Note: “Spouse or intimate partner” is defined in 18 USC § 2266; “intimate partner” is defined differently under these provisions than it is under 18 USC 921(a)(32) for use in 18 USC §922(d) or (g) prosecutions.

18 USC § 2261A. Stalking

Whoever

- (10)(1) travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, or causes substantial emotional distress to that person, a member of the immediate family (as defined in section 115) of that person, or the spouse or intimate partner of that person; or
- (2) with the intent—
 - (A) to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate, or cause substantial emotional distress to a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or
 - (B) to place a person in another State or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of the death of, or serious bodily injury to—
 - (i) that person;
 - (ii) a member of the immediate family (as defined in section 115) of that person; or
 - (iii) a spouse or intimate partner of that person; uses the mail, any interactive computer service, or any facility of interstate or foreign commerce to engage in a course of conduct that causes substantial emotional distress to that person or places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described in clauses (i) through (iii) of subparagraph (B); shall be punished as provided in section 2261 (b) of this title.

18 USC § 2262. Interstate violation of protection order

(a) Offenses.—

- (1) Travel or conduct of offender.— A person who travels in interstate or foreign commerce, or enters or leaves Indian country or within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

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- (2) Causing travel of victim.— A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).
- (b) Penalties.— A person who violates this section shall be fined under this title, imprisoned—
- (1) for life or any term of years, if death of the victim results;
 - (2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;
 - (3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;
 - (4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and
 - (5) for not more than 5 years, in any other case, or both fined and imprisoned.
 - (6) Whoever commits the crime of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in section 2266 of title 18, United States Code, shall be punished by imprisonment for not less than 1 year.

18 USC § 2263. Pretrial release of defendant

In any proceeding pursuant to section 3142 for the purpose of determining whether a defendant charged under this chapter shall be released pending trial, or for the purpose of determining conditions of such release, the alleged victim shall be given an opportunity to be heard regarding the danger posed by the defendant.

18 USC § 2264. Restitution

- (a) In General.— Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.
- (b) Scope and Nature of Order.—
- (1) Directions.— The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).
 - (2) Enforcement.— An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.
 - (3) Definition.— For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for—
 - (A) medical services relating to physical, psychiatric, or psychological care;
 - (B) physical and occupational therapy or rehabilitation;
 - (C) necessary transportation, temporary housing, and child care expenses;
 - (D) lost income;
 - (E) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and
 - (F) any other losses suffered by the victim as a proximate result of the offense.
 - (4) Order mandatory.—
 - (A) The issuance of a restitution order under this section is mandatory.
 - (B) A court may not decline to issue an order under this section because of—
 - (i) the economic circumstances of the defendant; or
 - (ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) Victim Defined.— For purposes of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

18 USC § 2265. Full faith and credit given to protection orders

- (a) Full Faith and Credit.— Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe.
- (b) Protection Order.— A protection order issued by a State, tribal, or territorial court is consistent with this subsection if—

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- (1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and
 - (2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the restrained party's due process rights.
- (c) Cross or Counter Petition.— A protection order issued by a State, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if—
- (1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or
 - (2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.
- (d) Notification and Registration.—
- (1) Notification.— A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal, or territorial jurisdiction unless requested to do so by the party protected under such order.
 - (2) No prior registration or filing as prerequisite for enforcement.— Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.
 - (3) Limits on internet publication of registration information.— A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.
- (e) Tribal Court Jurisdiction.— For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

18 USC § 2265A. Repeat offenders

- (a) Maximum Term of Imprisonment.— The maximum term of imprisonment for a violation of this chapter after a prior domestic violence or stalking offense shall be twice the term otherwise provided under this chapter.
- (b) Definition.— For purposes of this section—
 - (1) the term "prior domestic violence or stalking offense" means a conviction for an offense—
 - (A) under section 2261, 2261A, or 2262 of this chapter; or
 - (B) under State law for an offense consisting of conduct that would have been an offense under a section referred to in subparagraph (A) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States, or in interstate or foreign commerce; and
 - (2) the term "State" means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

18 USC § 2266. Definitions

In this chapter:

- (1) Bodily injury.— The term "bodily injury" means any act, except one done in self-defense, that results in physical injury or sexual abuse.
- (2) Course of conduct.— The term "course of conduct" means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.
- (3) Enter or leave Indian country.— The term "enter or leave Indian country" includes leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government.
- (4) Indian country.— The term "Indian country" has the meaning stated in section 1151 of this title.
- (5) Protection order.— The term "protection order" includes—
 - (A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and
 - (B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of

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Section A. Statutory Material

- protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.
- (6) Serious bodily injury.— The term “serious bodily injury” has the meaning stated in section 2119 (2).
 - (7) Spouse or intimate partner.— The term “spouse or intimate partner” includes—
 - (A) for purposes of—
 - (i) sections other than 2261A—
 - (I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or
 - (II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and
 - (ii) section 2261A—
 - (I) a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or
 - (II) a person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship; and
 - (B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.
 - (8) State.—The term “State” includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.
 - (9) Travel in interstate or foreign commerce.— The term “travel in interstate or foreign commerce” does not include travel from 1 State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.
 - (10) Dating partner.—The term “dating partner” refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser. The existence of such a relationship is based on a consideration of—
 - (A) the length of the relationship; and
 - (B) the type of relationship; and
 - (C) the frequency of interaction between the persons involved in the relationship.

Parental Kidnapping Prevention Act

28 USC § 1738A Full faith and credit given to child custody determinations (Parental Kidnapping Prevention Act (PKPA)):

- (a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.
- (b) As used in this section, the term--
 - (1) “child” means a person under the age of eighteen;
 - (2) “contestant” means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;
 - (3) “custody determination” means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;
 - (4) “home State” means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;
 - (5) “modification” and “modify” refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;
 - (6) “person acting as a parent” means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;
 - (7) “physical custody” means actual possession and control of a child;
 - (8) “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and
 - (9) “visitation determination” means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.
- (c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if--
 - (1) such court has jurisdiction under the law of such State; and
 - (2) one of the following conditions is met:

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- (A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;
- (B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;
- (C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;
- (D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or
 - (E) the court has continuing jurisdiction pursuant to subsection (d) of this section.
- (d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.
- (e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.
- (f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if--
 - (1) it has jurisdiction to make such a child custody determination; and
 - (2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.
- (g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.
- (h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

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Section B. Uniform First Page

Section B. Uniform First Page

District Court Civil
Form 4-965

Supreme Court Approved
October 29, 2008

Judicial District County, New Mexico Case No.	Order of Protection <input type="checkbox"/> Amended Order
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PROTECTED PARTY ([] PETITIONER [] RESPONDENT)

First	Middle	Last
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PROTECTED PARTY IDENTIFIERS

Date of Birth of Protected Party

And/or on behalf of minor family member(s): (list name and DOB)

Other Protected Persons/DOB

V.

RESTRAINED PARTY

First	Middle	Last
Relationship to Protected Party: _____		
Restrained Party's Address _____		

RESTRAINED PARTY IDENTIFIERS

SEX	RACE	DOB	HT	WT
EYES	HAIR	SOCIAL SECURITY #		
		<i>Not used in New Mexico</i>		
DRIVERS LICENSE #	STATE	EXP DATE		

Distinguishing Features _____

CAUTION:

Weapon Involved

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Restrained Party has been provided with reasonable notice and opportunity to be heard.

Additional findings of this order follow on succeeding pages.

THE COURT HEREBY ORDERS:

- That the above named Restrained Party be restrained from committing further acts of abuse or threats of abuse.
- That the above named Restrained Party be restrained from any contact with the Protected Party.
- Additional terms of this order are as set forth on succeeding pages.

The terms of this order shall be effective until

	,	
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WARNINGS TO RESTRAINED PARTY:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands under 18 U.S.C. Section 2265. Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment under 18 U.S.C. Section 2262.

As a result of this order, it may be unlawful for you to possess or purchase ammunition or a firearm, including a rifle, pistol or revolver, under 18 U.S.C. Section 922(g)(8). If you have any questions whether federal law makes it illegal for you to possess or purchase a firearm, you should consult an attorney.

Only the court can change this order.

Page 1 of _____

Judge's signature on last page

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Section C. Sources for Additional Research

Section C. Sources for Additional Research

A number of resources exist providing additional information and training on domestic violence and enforcement of Orders of Protection. Many provide free, downloadable publications on their websites. The following are starting points for additional research:

Violence Against Women Online Resources

www.vaw.umn.edu/library

Contains a document library with extensive resources.

International Association of Chiefs of Police

www.theiacp.org

Contains several publications on domestic violence and enforcement of Orders of Protection.

Tribal Court Clearinghouse

www.tribal-institute.org

Comprehensive website for American Indians and Alaska Natives, tribal justice systems, victims services providers, and others involved in justice in Indian country. Contains extensive resources on domestic violence, stalking, and Orders of Protection.

Tribal Protection Order Website

www.tribalprotectionorder.org

Designed to provide both tribal and non-tribal entities with information and resources pertaining to issuance and enforcement of Orders of Protection.

United States Department of Justice Office on Violence Against Women

www.ovw.usdoj.gov

The Office on Violence Against Women provides federal leadership to reduce violence against women, and to administer justice for and strengthen services to all victims of domestic violence, dating violence, sexual assault, and stalking. Website contains numerous links and resources.

Southwest Indian Law and Policy Center

www.swclap.org

The Southwest Center For Law And Policy is a non-profit organization providing legal training and technical assistance to tribal communities and to organizations and agencies serving Native people. Hosts the National Tribal Trial College, providing free legal training to Attorneys, Judges, Law Enforcement, Advocates and Community Members on domestic violence, stalking, and dating/relationship violence, among other things.

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Section C. Sources for Additional Research

Legal Resource Center on Violence Against Women

www.lrcvaw.org

The mission of the Legal Resource Center on Violence Against Women (LRC) is to improve legal representation for domestic violence survivors. Specifically, the LRC works to obtain legal representation for domestic violence survivors in interstate custody cases and to provide technical assistance to domestic violence victim advocates and attorneys in such cases.

National Center on Full Faith and Credit

www.fullfaithandcredit.org

The National Center on Full Faith and Credit (NCFFC) is a project of the Battered Women's Justice Project. NCFFC's mission is to facilitate implementation of the Full Faith and Credit clause of the Violence Against Women Act in all states, tribes, and territories by raising public awareness of the statue's requirements and by providing problem-solving technical assistance and support to individuals and jurisdictions.

Local and National Research References

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