

# Protection Orders and Survivors

## Economic Security of Survivors Overview

- Shelters reported that **74% of victims stayed** with an abuser longer due to financial issues.<sup>1</sup>
- Survivors of sexual violence or stalking at school are more likely to **drop out**.<sup>2</sup>
- Survivors **lose 8 million days** of paid work annually.<sup>3</sup>
- **25%** of survivors were asked to resign or were fired from their jobs due to stalking.<sup>4</sup>
- **82%** of single mother households live in economic insecurity.<sup>5</sup>

## Protection Orders and Safety

Physical safety is of utmost importance to victims and responders of domestic abuse, sexual assault or stalking, but that safety is difficult to achieve and maintain in light of the dependency and staggering cost that abuse creates. Economic security plays a vital role in a survivor's decision to leave an abusive relationship. When supporting her family with one income for the first time, she may be **unable to pay for basic needs, relocation or health care**. Her options are further limited if she is unemployed or has suffered years of economic abuse. Conversely, the lifetime cost of rape can exceed **\$145,000** due to health care, lost wages, property damage and court fees.<sup>6</sup>

As the primary tool for securing physical safety, protection orders must also account for a survivor's economic needs. This can be accomplished in three ways. First, orders can offer the support to leave a relationship and be independent and safe. Next, protection orders allow a victim to keep going to school or work and avoid relocating, which protects her economic stability. Lastly, protection orders can provide financial restitution for the costs of the crimes.

## What are Protection Orders?

Court orders that keep a victim safe from the continued illegal actions of an offender are called protective orders, restraining orders or injunctions depending on the jurisdiction. Orders can restrict contact, prohibit abuse, limit firearm possession and provide economic relief or any other relief as needed.<sup>7</sup>

Both the criminal and civil justice systems can assign protective orders to victims.<sup>8</sup>

In the criminal system, orders are issued by the courts' motion or requested by the prosecutor instead of the victim. They exist in open cases, but can be extended post-conviction through incarceration, parole or probation.<sup>9</sup>

A victim may also pursue civil protection orders (CPO) outside of a criminal case.<sup>10</sup> CPOs give the victim more control over initiating the order and requesting economic relief.<sup>11</sup> States require two steps to get CPOs.<sup>10</sup> First, victims can apply for a temporary or **emergency order** valid for three to 10 days. Next, victims can file for a **permanent order** and present evidence in a hearing for the offender to contest. States determine the burden of proof needed, the length it is in effect, and the protections offered. Duration typically ranges from one to three years, though it can be extended multiple times or be open indefinitely.

## Economic Relief Provisions

All states offer orders with physical safety and stay away provisions.<sup>12</sup> Equally vital, many also authorize various forms of specific economic relief by statute.<sup>13</sup>

- 35 states include **child support** and spousal support
- 27 states include possession or **use of a car** and other personal property
- 20 states include orders to **continue rent/mortgage payments** or to provide alternative housing
- 18 states include **restitution** for medical expenses, household bills, tuition, child care and other losses

Access to a car, house and childcare help a survivor remain employed or in school and, with restitution for the direct costs of the abuse, prevent debt. Most states

## How Many Protective Orders are Issued?

- The FBI receives over 1 million domestic violence final protection orders from state courts yearly. This does not include all states or all counties within states.<sup>8</sup>
- Around 20% of victims of intimate partner violence receive civil protection orders.<sup>14</sup>
- Connecticut issued 9,390 restraining orders in 2004, 66.5% temporary.<sup>15</sup>
- Pennsylvania issued 57,316 Protection From Abuse orders in 2004, 69.8% temporary.<sup>15</sup>
- Arizona received 34,874 petitions for protection in 2011, an increase of 1.6% from 2010.<sup>16</sup>

also have general “catch all” provisions so that judges can act freely to protect a survivor in the short and the long-term by addressing her unique economic needs.<sup>11</sup>

## Ordering Protection

States often have general “no contact” orders as well as separate protection orders for domestic violence, stalking and sexual assault. Eligibility depends on the relationship between the parties (e.g., married or dating, cohabitating, shared children) and the crime history (e.g., number of unwanted contacts, length of abuse).<sup>10</sup> For example, 12 states offer Sexual Assault Protection Orders,<sup>10</sup> 19 allow youth to file petitions alone and 33 grant orders to dating violence victims regardless of the relationship.<sup>17</sup> They also differ in the length and scope of protection. A survivor can seek more than one type and in multiple locations to maximize her economic protection.

*“Protection orders are only as helpful as they actually meet the need of victims.”*

Darren Mitchell, Esq.<sup>22</sup>

It is at the discretion of the prosecutor and victim to request the necessary economic relief specific to the case and show how it is essential for her safety. The burden of proof ranges from a “preponderance of the evidence” to “clear and convincing”.<sup>10</sup> Evidence can be collected at the crime scene by police officers and during intake interviews by prosecutors and victim advocates. VAWA prohibits states from charging survivors for any costs associated with protection orders and most states have complied.<sup>18</sup> Some now even charge the abuser for court costs if the order is granted.<sup>17</sup>

Whether a court issues a protection order depends on the jurisdiction and if the CPO is temporary or permanent. Judges can also make economic relief payment a **condition of release or probation**. If the total economic cost of the abuse is unknown at the time of the

hearing, a survivor may file a motion to modify the order to include the new costs as a “change in circumstances”.<sup>11</sup>

## Enforcing Protection Orders

Orders of protection fail to ensure safety if they are not enforced. Tools to enforce protection orders vary by state, but it is the responsibility of law enforcement, prosecutors and court systems.<sup>7</sup> Violating a court order of protection is a crime in almost every state, though the crimes vary.<sup>8</sup> Several studies show that while the majority of recipients observe a decrease in violence or abuse,<sup>19</sup> roughly **half of all orders are still violated**.<sup>20</sup> Rates of economic relief violations are unknown.

One of the simplest ways to ensure enforcement is to construct the order with a great deal of specificity. Economic relief provisions can and should detail exactly what the offender is expected to do and what will happen if he does not comply. For example, there is a better chance that an abuser will return the personal property of the survivor **without further violence** if the order outlines what items to return and the time, location and method of the transfer.<sup>11</sup>

If an abuser violates a protection order, the survivor can call the police or return to court.<sup>19</sup> The ability of police to arrest an abuser at the scene depends on the available evidence and if the state has a mandatory arrest law for protection order violations, which may not apply to economic relief. If brought before the court, judges have many tools to address violations. Common responses include to hold the abuser in contempt, impose fines or imprison him.<sup>7</sup> However, many states also hold **regular review hearings** for the courts to monitor compliance that remove this responsibility from the survivor. The number of economic relief violations actually decreases when there are regular compliance reviews.<sup>22</sup>

Courts commonly use criminal sanctions to enforce protection orders, such as charging the violator with a felony, a

*“When police fail to enforce protective orders, it means that the women who hold these orders may be endangered by a false sense of security.”*

(Women’s Rights Project, 2007)

## Cost-Benefit Analysis

A group of researchers and economists conducted an analysis of CPOs and costs associated with abuse for the state of Kentucky.<sup>20</sup>

Costs included:

- Health and mental health services, shelters and advocacy
- Time lost from work, school, childcare productivity
- Property lost/damaged
- Participation in the justice system
- Quality of life impact

Every dollar spent on the CPO produces **\$30.75** in “avoided costs to society”.

The resulting decline in violence saved Kentucky **\$85 million** in one year.<sup>21</sup>

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misdemeanor or contempt of court.

However, most courts only charge felonies for repeat violations.<sup>8</sup> In some states, violations can even be considered a new offense. Several states impose mandatory minimum terms of confinement for violators. Other unique state strategies include bail forfeiture, probation revocation, required supervision, electronic monitoring, counseling and paying additional court costs to the victim.<sup>7</sup>

The full faith and credit statute of VAWA stipulates that every protection order issued by a court be **recognized and upheld in every other state**.<sup>7</sup> The state that issues the order decides who to cover, what relief to provide and how long it is in effect. Conversely, the enforcing state determines whether to make arrests, what sanctions to impose for violations and any notification procedures.<sup>18</sup> In some states, foreign orders must be filed formally or with an affidavit to be enforced. However, if shown an order, officers are not required to verify its validity before arresting an offender.<sup>10</sup>

## Survivor Barriers to Protection

State policies that too narrowly define domestic violence, sexual assault and stalking court-orders can inhibit a survivor from receiving the economic protection she needs.<sup>10</sup> Certain economic provisions may not be available for enforcement across jurisdictions<sup>18</sup> or to those who are not married or cohabiting.<sup>12</sup> Beyond the legal barriers, judges and courts can also show substantial **reluctance to order economic relief** at all,<sup>11</sup> citing the following reasons: family court or torts are better venues, abusers often cannot pay it, enforcement is too challenging, and they have incomplete information with an overly full caseload.<sup>9</sup>

Beyond issuance, overcoming barriers to enforcement is critical to victim safety. In fact, issuing but not enforcing an order is more dangerous for the survivor than to not issue one at all. If an abuser violates the order without consequence, he is more likely to escalate his abuse and the victim is less likely to call the police in an

emergency. A survivor is **most at risk of violence** after or while ending an abusive relationship, so it is essential to prioritize her safety when crafting and enforcing the relief terms.<sup>9</sup> Moreover, fear of retaliation or **economic and physical victim intimidation** can lead a survivor to stop participating in a criminal case or withdraw charges in a civil case, reducing her chances of future safety.<sup>11</sup>

The inability to verify the existence and conditions of an order present a major barrier for enforcement within and across state lines. Some states have succeeded with efforts to standardize verification policies, forms and procedures for different types of orders, which increase the chance that a survivor will request economic relief. Led by Massachusetts, other states have created **statewide central registries** for protection orders. Though underused, they help law enforcement, prosecutors and judges make educated decisions and provide much needed data.<sup>7</sup> The FBI’s National Crime Information Center serves a similar function, but many jurisdictions cannot or do not submit orders to the database. Furthermore, it does not indicate economic awards.<sup>18</sup>

*“Registration or filing of protection orders **cannot be a prerequisite for enforcement.**”*

18 U.S.C. § 2265(d)(2)

Some policies can place a burden on the survivor or even retraumatize her. After a permanent order expires, most extension processes force a survivor to re-face the offender in court. For a survivor in hiding, receiving further court-ordered relief means revealing her location to an abuser.<sup>7</sup> Similarly dangerous for survivors are rules on registering or filing foreign orders. Though VAWA prohibits it, some states still notify abusers if an order is registered against them.<sup>18</sup> This can induce retaliation or expose a survivor’s location, possibly requiring further relocation or safety planning that imperils economic security.

## Making Progress

No policy system is perfect and policy implementation can be challenging. However, it is important to recognize where successes and improvements are happening. This brief highlights three states below that exhibit the majority of our policy recommendations in a cohesive manner, though these are not the only states that implement strong, victim-supportive protection order policies.

California, Colorado and New Jersey have all taken steps to protect both the physical and economic security of survivors by giving courts discretion to meet victims' needs, creating simpler processes for protection, and keeping orders in effect longer than the national average. Their policies all also created a centralized state registry and support enforcement.

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## Recommendations

- Conduct research and collect data on the use of economic relief in protection orders.
- Expand eligibility for each type of protection order to include minors without a parent representative and those unmarried, not living together and without a child in common.
- Craft economic relief orders with specificity to the case and extreme detail on payment amount/method and how to retrieve/exchange belongings to maximize enforceability.
- If ordered to vacate shared housing, also require the abuser to help pay for new or existing housing to decrease the victim's vulnerability.
- Standardize forms and procedures to improve enforcement (i.e. *Project Passport* model)
- Create state registries for protection orders, mandate the use the FBI's NCIC, and start including child support and economic relief awards in the database.
- Make duration indefinite or do not make the victim face her abuser in court to renew.
- Allow separating the liability and damages phases or ordering payments in installments instead of one sum to minimize retaliation from the abuser and increase compliance.
- Specify payment methods that minimize contact with the survivor and her family, such as the abuser sending payments to the court or the court withholding from his wages.
- Implement regular compliance review hearings that the victim is not required to attend.
- Use graduated sanctions to improve compliance (reduce to judgment, liens, daily visits).
- Add economic relief provisions in state statutes if and where they do not already exist.
- Include economic relief in training for law enforcement, prosecutors, court staff, CCRs.

## Innovative State Policies

**California:** (PENAL CODE § 273.6 § 646.9 § 13701 § 136.2; Fam. Code §6324 § 6380; CIV. PROC. CODE §527.8)

- Specifically authorized to award possession and use of personal property, housing vacation, and payment of medical costs, liens/encumbrances and child support.
- Stalking order in effect for 10 years and domestic violence order for three years.
- Created state registry and standardized policies for verifying protection orders.
- 30 days minimum sentence for second violation of a protection order.
- Double jeopardy doesn't limit later prosecution if abuser found guilty of contempt.
- Employers can seek a protective order for an employee's if threatened at work.

**Colorado:** (COLO. REV. STAT. § 13-1-136, § 18-1-1001, §19-2-707, § 16-3-402, § 18-6-803)

- Standardized forms, created a statewide registry, and consolidated procedures for getting domestic violence, elder abuse and stalking civil protection orders.
- Permanent domestic violence orders are open indefinitely/to the judge's discretion.
- Automatic issuance of no-contact orders in open criminal and juvenile cases.
- Filing a protection order from another jurisdiction is voluntary.
- Violation of criminal orders may reverse a release order or add contempt charges.
- Sentences for violation are consecutive not concurrent to the original sentence.

**New Jersey:** (N.J. STAT. ANN. § 2C:25-30, §2C:25-13(b)(6); N.J. REV. STAT. § 2C:12-10.1, §2C:28-5.2)

- Specifically authorized to award all types of economic relief: child and spousal support, housing vacation and payments, use of personal property, and restitution.
- Specifically authorized to award financial compensation for pain and suffering.
- Permanent civil restraining orders are open indefinitely.
- Stalking convictions automatically result in permanent restraining orders.
- 30 day mandatory minimum sentence for repeat violations.
- Violators of protection orders may be charged with contempt of court.

For case law and state statutes, see [Aequitas: The Prosecutors' Resource on Violence Against Women](#) and [www.victimlaw.com](http://www.victimlaw.com)

For recommendations on integrating economic security into the work of the criminal justice system, see WOW's [Economic Security and Safety Guide for the STOP Grant Program](#).

For further resources, visit the [ESS Project webpage](#).

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