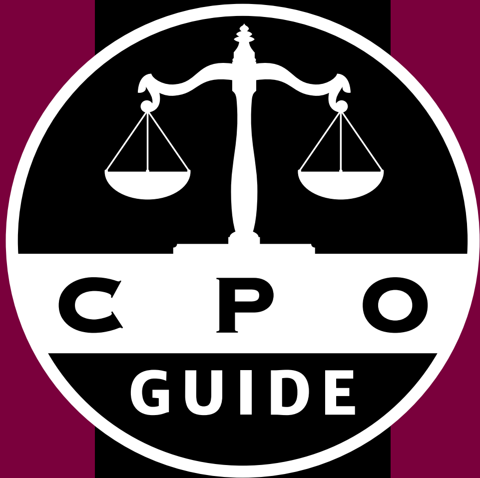
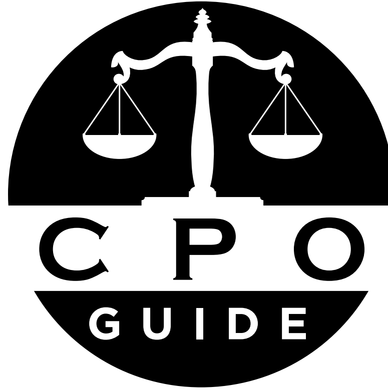


Civil Protection Orders:

A Guide for Improving Practice

ISSUES IN FOCUS



Civil Protection Orders:
A Guide for Improving Practice

National Council of Juvenile and Family Court Judges
Family Violence Department

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For training and technical assistance on these topics and their relation to civil protection orders, please contact the NCJFCJ's Civil Protection Order Guide Training and Technical Assistance Project at civilprotectionorders@ncjfcj.org.

ISSUE IN FOCUS: Firearms

LEGAL AUTHORITY TO ADDRESS FIREARM[1] LAWS

Under what circumstances do federal and state laws prohibit the possession of firearms by a person restrained by a civil protection order?

The federal Gun Control Act, in section 18 U.S.C. § 922(g)(8), prohibits the possession of a firearm by any person who is subject to a civil protection order that meets specified requirements.[2] To prohibit firearm possession under § 922(g)(8), the order must contain conditions that restrain the respondent from harassing, stalking, or threatening an intimate partner of the respondent or child of the intimate partner or respondent, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child. The order must include a finding that the respondent represents a credible threat to the physical safety of the intimate partner or child, or it must explicitly prohibit the use, attempted use, or threatened use

[1] This document uses the term "firearm[s]" throughout, but the federal law and most state laws in this area address both firearms and ammunition. In addition, the terms "firearm" and "ammunition" are defined broadly under federal law, see 18 U.S.C. §§ 921(a)(3) and (a)(17)(A).
[2] 18 U.S.C. § 922(g)(8) also prohibits possession of firearms by individuals subject to protection orders issued against the defendant in a criminal case, (sometimes called "criminal protection orders,") provided the requirements of the statute are met.

of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury. The term "intimate partner" is defined as a current or former spouse of the respondent, an individual who is the parent of the child of the respondent, or a person who is cohabiting or has cohabited with the respondent.

A protection order qualifies for the prohibition only if issued after a hearing of which the respondent received actual notice and at which the respondent had an opportunity to participate.[3] Many states have revised their protection order forms to ensure compliance with the federal requirements and the vast majority qualify under 18 U.S.C. § 922(g)(8), provided the victim and respondent have a qualifying relationship.

Federal law does allow one class of respondents an exemption from this prohibition. The prohibition does not apply to the official use of firearms by certain federal, state, and local government employees (including military or law enforcement personnel) while on duty ("official use exemption," 18 U.S.C. § 925(a)(1)). The prohibition still applies to personal firearms owned by those covered by the official use exemption, and some agencies have implemented policies that require re-assignment of officers

[3]Federal courts have interpreted the requisite "opportunity to participate" broadly. *See, e.g.*, *United States v. Banks*, 339 F.3d 267 (5th Cir. 2003) (finding that an order issues by consent of the respondent without an actual hearing qualifies under 18 U.S.C. § 922(g)(8)); *United States v. Edge*, 238 F. App'x 366 (10th Cir. 2007) (unpublished) (citing *United States v. Wilson*, 159 F.3d 280, 289-90 (7th Cir. 1998) and finding that having an attorney present is not necessary for "opportunity to participate" to be satisfied); *United States v. Calor*, 172 F. Supp. 2d 900 (E.D. Ky. 2001), aff'd, 340 F.3d 428 (6th Cir. 2003) (rejecting argument that participation in a court hearing only to consider whether to grant an extension of time (without addressing the merits of the protection order) does not constitute an opportunity to participate; respondent could have objected to the *ex parte* order).

who have become prohibited persons to positions that do not require firearms possession.[4]

18 U.S.C. § 922(d)(8) makes it 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 is subject to a court order which meets the above requirements. This limitation on sale or disposal includes licensed gun dealers, private sellers, judges, police officers, neighbors, friends, relatives, and anyone else who knows or has reason to believe that someone is prohibited from possessing a firearm under federal law.

Most states have laws prohibiting possession of firearms by a person restrained by a civil protection order (CPO).[5] Some state laws go beyond federal law and include ex parte civil protection orders and/or a broader category of petitioners. In many states, these laws also expressly authorize the issuing court to include a firearms surrender provision that specifies the time, place, and manner of surrender.

It is important for professionals to understand their own state laws on firearm restrictions. Although both state and federal law can apply to the same person, following the most restrictive law available will help minimize the risk to the victim.

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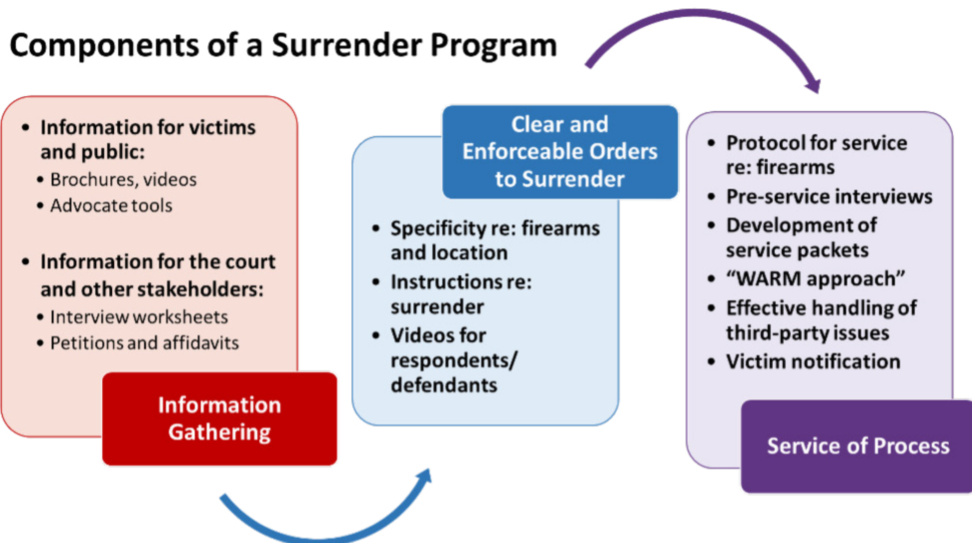
[4]For an example of a model law enforcement protocol incorporating these and additional elements, see National Center on Protection Orders and Full Faith and Credit, *Model Law Enforcement Policy: Serving and Enforcing Protection Orders and Seizing Firearms in Domestic Violence Cases* (2005). For information on innovative law enforcement programs, including one implemented by an agency responsible for service of protection orders, see Klein, *supra* note 2. For additional examples, please contact the National Council of Juvenile and Family Court Judges [hereinafter NCJFCJ] at contactus@ncjfcj.org.

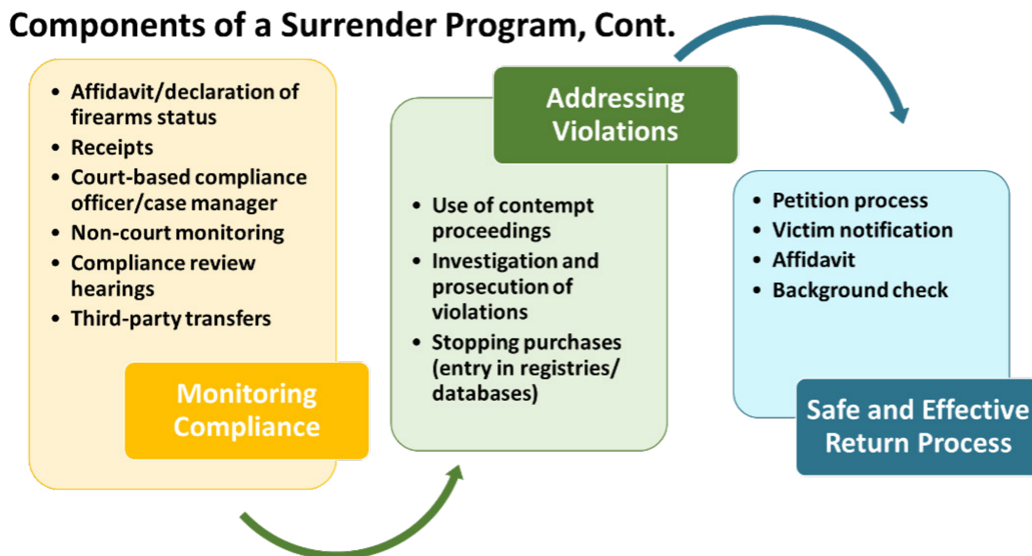
[5]For an up-to-date description of the firearms laws related to civil protection orders in each state, see the Giffords Law Center's compilation here.

Several of the remaining questions in this Issues in Focus section explore strategies for effective, collaborative implementation of these state,Tribal, and territorial statutes.

COMPONENTS OF AN EFFECTIVE FIREARMS SURRENDER PROGRAM

What should my court and community include in our firearm surrender process in protection order cases to increase its effectiveness?





Each court system and community is unique in terms of the statutory framework and legal authority under which it operates, the court structure, the resources available to survivors, the means for holding offenders accountable, and many other important characteristics. So any firearms surrender process must be tailored to those particular characteristics, and designed and implemented to draw on the strengths and overcome the challenges presented. Nonetheless, in working with communities across the country, the National Council of Juvenile and Family Court Judges (NCJFCJ) and its partners have identified a set of essential components of successful programs. This graphic provides an overview of these components, all of which should be considered by courts and communities as they develop or enhance their existing processes.

Each component encompasses a set of processes, policies, and forms that should be tailored to the court and community. Guidance regarding each of the components is provided below, in the responses to the remaining questions that make up this Issues in Focus section.

Communities interested in adapting the suggested components described below should recognize that collaboration is a key ingredient for success. No one stakeholder group, including the court, can unilaterally implement these strategies and expect to generate meaningful improvement, given the complexities and multiple interacting systems involved. We recommend that those interested in incorporating the guidance in this document into their court and community's response to firearms in civil protection order cases bring these ideas to multi-disciplinary teams, such as local coordinated community response teams or task forces. Ideally, these

groups will include all relevant stakeholders, including judicial officers, court staff, attorneys, advocates, prosecutors, the defense bar, probation/parole/community supervision professionals, community-based service providers, and others. The meaningful input and buy-in of these stakeholders are crucial to achieving safety, accountability, and other goals of these efforts.

EQUIPPING VICTIMS TO MAKE INFORMED DECISIONS ABOUT SEEKING PROTECTION FROM FIREARMS THROUGH THE CPO PROCESS

What strategies may be implemented to educate the general public and survivors about firearms and domestic violence and the use of the CPO process to seek protection?

Survivors frequently do not know where to seek assistance or to learn about their options when they fear for their and their children's safety because the person causing them harm has access to firearms. In addition, potential helpers in the community often lack an understanding of the potential pathways to safety available through the legal system, so they cannot provide meaningful guidance at what may be a critical point in time. These challenges may be overcome through the development and dissemination of accessible and understandable information about the danger posed by abusers' access to firearms, sources of safety and support,

- **Information for victims and public:**
  - Brochures, videos
  - Advocate tools
- **Information for the court and other stakeholders:**
  - Interview worksheets
  - Petitions and affidavits

Information Gathering

and how protection orders may be used as a safety tool. Such informational materials can help connect victims to safety planning resources and advocacy support, and help them to begin to make informed decisions about whether and how to seek protection through the legal system and/or non-legal system sources of support.

Positive, helpful community responses to a topic as challenging and serious as firearms violence perpetrated by domestic violence abusers benefits from an infusion of both concern about the issue and hope that a more protective environment can be created through individual and community action.[6]

This can be accomplished through the development and dissemination of information, including such activities as:

- Creating web-based and social media informational materials[7] and public-service announcements aimed at the broader public, explaining the danger posed by perpetrators' access to firearms (raising concern) and providing information about what community members and organizations can do to help individual survivors and to address the broader problem (creating hope).

[6]See *Promoting Positive Community Norms*, Centers for Disease Control.
[7]Examples of informational materials may be found in this compilation.

- Engaging with the community through presence at events such as parades, resource fairs, etc.

- Working with faith community leaders, civic organizations, and other groups to disseminate information regarding the issue and how to pursue safety through the legal system.

No matter what strategies are implemented to increase public and survivor awareness of the issue and the options for safety-seeking, language access and cultural responsiveness must be fundamental elements in the work. This includes, of course, ensuring that any communications and informational resources are provided in all common languages spoken in the community. But language access and culturally responsive efforts also should involve meaningful collaboration with community-based organizations to ensure that the perspectives, needs, and concerns of all populations, including historically marginalized and/or underserved communities, inform the development and dissemination of informational resources (as well of the legal system's response to firearms in civil protection order cases, as described in more detail below).

What can advocates do to assist survivors considering a CPO in a case in which the respondent has access to firearms?

In cases that may involve firearms access by the person causing harm, advocates can play a crucial and unique role in assisting survivors to assess their options, plan for their and their loved ones' safety, and take the initial steps down a path toward a safer and more autonomous future. Strategies for providing effective advocacy in this context include:

- Equipping advocates with the training and tools necessary to ask questions and identify cases in which firearms violence is a potential issue. See this compilation for examples.

- Ensuring that advocates are aware of both the legal-system options (including protection orders) and community-based options available, and that they can explain processes and provide support as survivors navigate them.

- Providing advocates with safety planning strategies and tools for use in cases in which firearms violence is a possibility.[8]

- Ensuring advocates are in a position to assist survivors to make informed choices about the actions they take, and that they do not substitute their own preferences for those of a well-informed survivor.

- Engagement by advocates in system-change work and participation in collaborative efforts to improve the response to firearms in domestic violence cases, to help ensure predictability and reliability of the processes (for example, of firearm surrender programs in protection order cases), helps advocates to provide accurate and reliable information to survivors about their options.

[8]The National Domestic Violence Hotline has developed an online safety planning tool addressing firearms, available here.

What strategies can maximize the information available to the court and legal system professionals about respondents' access to firearms?

An effective response to firearms in domestic violence cases depends heavily on the system's ability to obtain accurate and timely information about abusers' access to firearms.[9] The most well-conceived, highly coordinated firearms surrender system is destined to fail unless key stakeholders learn about which abusers have access to firearms and the identity and location of each weapon. As many have observed, relying solely on abusers who are prohibited from possessing firearms to disclose their access to firearms is tantamount to an "honor system" without meaningful accountability and protections. Thankfully, many strategies are available beyond seeking voluntary disclosure from abusers about their access to firearms. While none, standing alone, ensures that the justice system will obtain a comprehensive picture of abusers' firearms access, together they can go a long way toward creating a firearms surrender program that holds abusers accountable for compliance with court orders.

In the protection order context, courts equipped with more extensive information about the respondent's access to firearms can issue more detailed and specific orders to surrender and engage more effectively in compliance monitoring and enforcement. Myriad strategies are available to elicit this information, including:

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[9] For additional information, see this guide from NCJFCJ on information gathering regarding firearms in CPO cases.

- Implementation of improved court forms (both petitions for protection orders and supplemental forms, such as affidavits) designed to encourage and enable petitioners to provide detailed information about respondents' use of and access to firearms. Forms should include space for petitioners to opt to provide specific information, where available, about the types and locations of firearms.[10]

- Information-sharing strategies that enable the court and other system professionals to learn about access and use of firearms, including from police reports, criminal history, case information from relevant courts (criminal and civil), databases of firearms sales (in the very limited jurisdictions in which these are available), concealed-carry license databases, and other sources that do not rely on survivor or respondent disclosure. To the extent that this information can be gathered and shared within the overall court system (e.g., between courts hearing civil and criminal cases, with full disclosure to the involved parties), it will be easier to use and incorporate at key decision-making points.

- Although dependent on the respondent to provide the information, some jurisdictions have had success in learning about firearms access by requiring that the respondent file with the court a sworn statement or affidavit of firearms possession. For instance, the Miami-Dade County Domestic Violence Court requires respondents to complete a

[10] See, for example, the compliant and affidavit used in Vermont. Additional examples can be found in this compilation.

"Sworn Statement of Possession of Firearms and/or Ammunition," in which the respondent affirms whether or not he possesses firearms and provides specific identifying information regarding any firearms possessed.[11] In response, the court issues an order to surrender the firearms upon issuance of a protection order and monitors compliance through a process that includes requiring the respondent to provide a receipt showing that the guns have been surrendered to law enforcement.

ISSUING EFFECTIVE AND ENFORCEABLE FIREARMS SURRENDER ORDERS

How can judges maximize the effectiveness of protection orders addressing firearms?

Clear and Enforceable Orders to Surrender

- **Specificity re: firearms and location**
- **Instructions re: surrender**
- **Videos for respondents/defendants**

When judicial officers issue protection orders, they should exercise all available authority to include firearms provisions in the orders, including prohibitions on possession and provisions for firearms surrender, as authorized by the governing protection order code and other laws of the jurisdiction. In addition, they should use the information about respondents' access to firearms obtained through the processes described above to include specific, enforceable provisions regarding firearms.

[11] Available here. Please note that the creation and implementation of these forms, as is true of all suggested practices in this document, should involve a diverse group of stakeholders. In this case, members of the defense bar should be included to share their perspectives on the implications for their clients and contribute to the development of an effective accountability tool.

Clarity and specificity are hallmarks of effective protection orders that include firearms-related provisions. Clear non-possession and surrender provisions set respondents up for successful compliance with the order by providing instructions on where to surrender firearms and by what date and time.[12] Likewise, providing specific identifiers for the firearms to be surrendered and their location, if the court has been provided that information, facilitates enforcement of the orders' terms and can set the stage for a search warrant if the respondent fails to comply. Regardless of whether the court has specific information regarding the firearms involved, it should include language referring to "all firearms" and/or "including but not limited to" any listed firearms, to ensure inclusion of all firearms to which the respondent has access.

Instructions about how to surrender firearms may be provided in a supplemental form, developed by the court in collaboration with the law enforcement agency responsible for receiving the firearms. Some jurisdictions have produced videos explaining to respondents the process and their responsibilities under the court order.[13] Respondents can be required to view the video immediately after issuance of the order, which can provide the protected person time to safely leave the courthouse.

Pursuant to state or Tribal law authority, judges should include protection order provisions requiring the relinquishment of the respondents' firearm permits and/or licenses. In states lacking such authority, it may be possible for courts to use "catch-all" provisions (e.g., "any

[12] See this compilation of firearms surrender language from orders across the country for examples.
[13] King County, WA has developed such a video, available here.

other relief the court determines necessary to protect the petitioner and other household members") to order the surrender of permits and licenses, although to date there are no court decisions addressing this question.

It is especially important to require surrender of a firearms license and permit. In many cases, the holder does not undergo a criminal background check when purchasing a new firearm while the license or permit is in effect.

Courts should clarify for respondents that no exemption applies to firearms used for hunting purposes only. Even though a judge may have the discretion under state law to authorize a respondent to possess otherwise prohibited firearms during hunting season, the federal prohibition on firearms possession does not exempt hunting firearms. The respondent would be in violation of the federal law if they possessed firearms while the protection order is in effect.

Administrative offices of the court or other entities responsible for development of protection order forms should ensure that they include clear language to implement the suggestions described above and that they provide notice to respondents that possession of a firearms while being subject to the order may be a violation of federal and/or state law.[14]

Are there other steps that may be taken to set respondents up to successfully comply with orders to surrender firearms?

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[14]To be eligible for certain funding under the Violence Against Women Act, the state must certify that such judicial notification is provided upon issuance of protection orders. See 34 U.S.C § 10449(e).

Some courts have created compliance officer or case manager roles and have created a process in which respondents meet with that staff member after issuance of an order that includes surrender provisions. The staff member explains the prohibition on possession of firearms and how the respondent is to relinquish any firearms they own, and answers any questions the respondent may have. In addition to those conversations, compliance officers and case managers often play a role in monitoring respondents' subsequent compliance with the protection order's terms, including ensuring that any forms regarding compliance have been filed with the court, making follow-up calls where necessary, and coordinating with law enforcement responsible for service of orders and surrender of firearms. Below, we provide additional details about the elements of effective compliance monitoring processes.

To the extent that a respondent is under community supervision (e.g., by criminal pre-trial services or probation/parole officers), compliance with court orders may be facilitated through communication with those professionals about the entry of the order and any firearms-related provisions.

What steps can be taken to ensure that prohibited respondents cannot purchase firearms while a protection order is in effect?

The most critical step that the court and law enforcement agencies can take to prevent purchase of firearms by prohibited respondents while a protection order is in effect is to ensure that all orders are entered immediately into state or tribal registries or databases, and that the information is immediately transmitted to the federal databases that house protection order data. When a person

attempts to purchase a firearm from a federally licensed dealer, the requisite background check includes a search of several databases to determine whether any court orders, criminal history, or other prohibitors apply. The two FBI-managed databases relevant to protection orders are the National Crime Information Center Protection Order File (NCIC POF) and the National Instant Criminal Background Check System (NICS) Indices. The NCIC POF serves as a database of protection orders issued to prevent acts of domestic violence, stalking, intimidation, and harassment. Entry of orders into the NCIC POF requires, among other things, a unique "numerical identifier" for the prohibited person to ensure that individuals are not mis-identified. Courts should, through their forms (including petitions and supplemental forms[15]), collect as many numerical identifiers as possible, including the respondent's date of birth, social security number, and driver's license number, to facilitate entry of orders into the NCIC POF, as well as state and local registries.[16]

For orders that are not eligible for NCIC POF entry, the NICS Indices provide an alternative repository for protection order information that is accessible when an individual attempts to purchase a firearm at a federally licensed dealer.[17]

The 2022 reauthorization of the Violence Against Women Act included a new requirement that the FBI notify the appropriate local law enforcement agency within 24 hours when NICS denies a person's attempt to purchase a firearm

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[15]For an example, see Ohio's form here.
[16]Although only one numerical identifier is necessary for entry in the NCIC POF, collecting multiple identifiers can help assure entry if there is an error and can also assist law enforcement in identifying a respondent and enforcing an order or other criminal violation.
[17]The FBI provides information about the NICS Indices here.

because they are disqualified under 18 U.S.C. § 922.[18] Upon such notification, the agency should take steps to investigate and intervene, where appropriate, to prevent further harm by the prohibited person.

USING SERVICE OF PROCESS EFFECTIVELY IN CPO CASES INVOLVING FIREARMS

How can serving agencies set officers up to successfully serve orders and obtain firearms?

Law enforcement agencies responsible for service of protection orders should develop and implement a protocol for firearms and domestic violence (which can be part of a broader departmental domestic violence protocol). Such a protocol should include several elements governing the service of orders and steps to be taken regarding the respondent's potential access to firearms. NCJFCJ has developed a resource describing suggested components of effective law enforcement protocols, available here.

- **Protocol for service re: firearms**
- **Pre-service interviews**
- **Development of service packets**
- **"WARM approach"**
- **Effective handling of third-party issues**
- **Victim notification**

Service of Process

Strategies that agencies should consider adopting to set up serving officers for safe and effective service of process include:

[18] 18 U.S.C. § 925B. In some states responsible for conducting their own background checks that information should already have been made available to local agencies.

- Assigning victim-witness personnel or officers to conduct pre-service interviews with petitioners, to obtain information about lethality indicators, firearms access, identification, and location, as well as other information relevant to service and recovery of firearms.

- Gathering information from all available sources, including criminal history, license/permit information, and agency records, to assess the respondent's potential lethality and access to firearms.

- Adopting the so-called "WARM" approach to the service of orders, in which officers (in plain clothes, if possible) use a low-key, conversational strategy to convince respondents to hand over their firearms, explaining the benefits of doing so and the fact that they will have an opportunity to be heard in court.[19]

- Encouraging officers to seek consent to search for firearms by a person authorized to provide such consent.

- Taking appropriate steps to recover firearms when the respondent indicates that they are with a third-party, consistent with governing legal authority. Strategies to do so are addressed below in the next section.

- Establishing mechanisms to notify victims of the result of service, including whether weapons

[19]This report describes the WARM approach (page 41).

were recovered. When implemented through collaboration with victim advocates, victims can engage in safety planning based on the information shared.

For additional guidance regarding service of process, see this checklist developed by the National Sheriff's Association and the National Center on Protection Orders and Full Faith and Credit.

Do local law enforcement officers have the authority to seize firearms from a respondent at the time a temporary (ex parte) protection order is served?

Some states explicitly authorize officers to obtain firearms at the time an ex parte protection order is served.[20] In New Jersey, officers are authorized to do so, and the protection order itself includes a search regarding firearms possessed by the respondent.[21]

Seizure decisions are guided by a number of criteria: the nature of the call, the history of the respondent, and state law. Officers can gather important information about the respondent by completing a criminal history check prior to serving an order. This check may uncover an existing protection order or a previous conviction for a qualifying misdemeanor crime of domestic violence that may prohibit the respondent from possessing firearms. Under such circumstances, state law may authorize officers to seize the firearms and to arrest the respondent.

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[20]The Giffords Law Center to Prevent Gun Violence website provides information on state firearms laws, including a list of states that authorize taking of firearms at the *ex parte* stage here.

[21]N.J. Stat. Ann. §§ 2C:25-28f.

If the firearm constitutes evidence of a crime, arguably including federal crimes such as the firearms prohibition in 18 U.S.C. § 922(g)(8), law enforcement officers most likely have the authority to seize the firearm as contraband. Departments that maintain the firearm during the pendency of any criminal investigation and court proceeding, or until it is turned over to the appropriate federal authorities, protect important evidence for prosecution purposes and help support victim safety.

Federal law does not provide authority for seizure at the time of service of a temporary or ex parte order, because 18 U.S.C. § 922(g)(8) requires an opportunity for the respondent to be heard before the federal prohibition applies, as described previously.

What can officers do if the firearm is being held by a third party and not located at the location of service?

If the respondent informs officers that their firearms are at another location at the time of service, and the governing law requires that all firearms be surrendered to law enforcement upon service or at a specified time thereafter (and that they may not be held by a third party), officers should reduce risk of potential harm and lethality by transporting or following the defendant to retrieve all firearms. If that is not possible, officers should inform them that the firearms must be turned over immediately to the law enforcement agency (or to a federally licensed firearms dealer, if permitted by law). Officers should follow up with the respondent and third party if the firearms are not surrendered as directed.

What if the respondent refuses to relinquish firearms?

Courts may have the authority to issue a search warrant if there is probable cause to believe that a firearm is in a specified location and has not been surrendered in accordance with a protection order. In jurisdictions with such judicial authority, officers should gather evidence, drawing upon the pre-service investigation described above, and complete an application for a search warrant. Including the protected person in the decision-making process can help ensure that obtaining a search warrant is responsive to their safety and other needs and keeps them informed of what is happening, so they can engage in further safety planning as needed.

Can law enforcement officers search a residence for firearms upon the consent from one of the tenants/ homeowners? Do all tenants/homeowners need to consent? What if one party involved says yes and another says no?

It depends upon the facts surrounding the consent. The United States Supreme Court has held that where one of the co-occupants is physically present at the scene and expressly refuses to consent, even in the face of another co-occupant's consent, a warrantless search is unreasonable and invalid as to the refusing co-occupant.[22] Although the decision was not in response to a firearms issue, the precedent applies to consent for searches broadly.

A different rule applies, however, to the situation in which only one of the co-occupants is present at the time consent is given. Under those circumstances, if the co-

[22]*Georgia v. Randolph*, 547 U.S. 103 (2006).

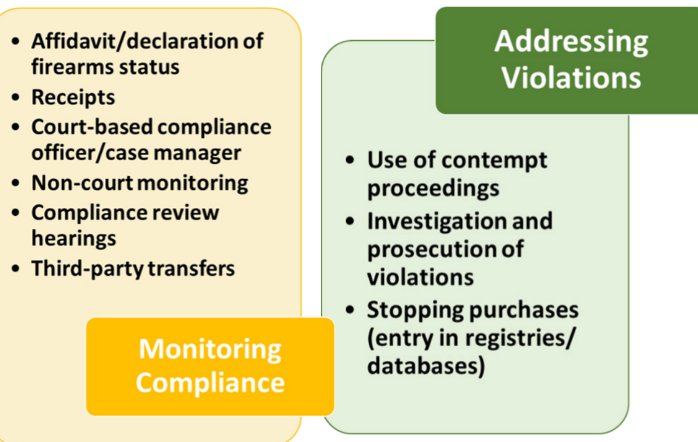
occupant present at the dwelling consents to the search, law enforcement may conduct a search of the areas that the consenting co-occupant uses exclusively or in common with another co-occupant. The other co-occupant cannot later attack the validity of the search by insisting that he would not have consented to the search had he been present.

If officers cannot conduct a search by consent because a co-occupant is present and objects to the search, they may still be able to secure firearms by obtaining a search warrant if probable cause exists to search for and seize firearms.

MONITORING COMPLIANCE WITH SURRENDER ORDERS AND ADDRESSING VIOLATIONS

How can courts set respondents up for successful compliance with orders to surrender firearms?

Failure to comply with orders to surrender firearms should never be the result of respondents' lack of knowledge of surrender procedures and deadlines. To prevent this, judges can explain respondents' responsibilities in plain language upon issuance of orders that include surrender provisions, and courts can take a variety of steps to ensure understanding of the surrender process and deadlines. These can include the development of instructional resources, including instruction sheets and video materials (see examples here), as well as assigning a court staff member to meet with respondents after the



issuance of orders to explain their responsibilities. It is very helpful to collaborate with law enforcement agencies to ensure that procedures are fully understood by the court and can be conveyed clearly to respondents. A description of the potential consequences for non-compliance with orders should be part of any informational resource used.

How can jurisdictions store surrendered or seized firearms?

One effective way to alleviate potential storage problems is by the use of private, bonded storage facilities. Respondents surrender the firearms directly to the private storage facility (or the facility collects them from the agency) and the facility collects payment from the owner for the storage of the firearms. Several states have passed legislation that allows for the collection of storage fees from offenders who have been required to surrender their firearms.[23] Other communities also have devised creative solutions, including the use of decommissioned armories and other buildings.

Jurisdictions have begun developing "safe firearm storage" interactive maps to provide the public with information about private firearms dealers, law enforcement agencies, and other entities willing to accept firearms for storage (usually with a fee). This information can be helpful for those seeking safe storage of firearms away from a home or other location, and can be used in cases involving domestic violence as well as to prevent suicides. Examples may be found here, here, and here.

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[23] *See* Cal. Civ. Proc. Code § 527.9; Mass. Gen. Laws Ann. ch. 140, § 129D; N.H. Rev. Stat. Ann. § 173-B:5; N.C. Gen. Stat.Ann § 50B-3.1.

How can courts effectively monitor respondents' compliance with surrender orders?

Courts should consider implementing compliance review hearings as a mechanism to monitor compliance with firearms provisions and to address violations. Some courts set every protection order case in which a firearms surrender provision is entered for a review hearing to assess whether all requirements have been satisfied. The review hearing may be cancelled if the respondent files required paperwork (such as an affidavit and receipt from law enforcement) demonstrating compliance with surrender orders. Judges have found that compliance hearings can serve several helpful functions, including demonstrating to the respondent and to all present in the courtroom that the court takes its orders seriously and non-compliance will be identified and addressed, and providing clear instructions where respondents fail to comply due to lack of understanding of their responsibilities or the process. See this resource for more information about review hearing implementation.

What role can other stakeholders play in monitoring compliance with surrender orders?

Some courts have employed compliance officers or case managers to facilitate the compliance monitoring process. As previously mentioned, such personnel can explain to respondents their responsibilities to turn in firearms pursuant to court orders, answer any questions they or petitioners have, manage paperwork associated with demonstrating compliance (such as affidavits and receipts from law enforcement), follow-up with non-compliant respondents before hearings, and gather all relevant information for judges to consider during compliance hearings.

Stakeholders beyond the courthouse also have roles to play in effective compliance monitoring programs. Law enforcement agencies responsible for service of process and filing return of service paperwork with the court can document all firearms surrendered (as well as requests for surrender), and agencies responsible for accepting or seizing firearms can provide a receipt or other documentation to the respondent and, in some communities, communicate directly with the court about firearms surrendered. In addition, law enforcement can conduct follow-up investigations regarding firearms retained in violation of orders.

Advocates and attorneys working with petitioners can provide information to the appropriate agencies—the process for communicating information about firearms access by respondents should be developed collaboratively among advocates, attorneys, law enforcement, and prosecution agencies.

Community supervision personnel can play an effective role in monitoring whether respondents under supervision comply with orders to surrender firearms. And attorneys representing respondents can help ensure that their clients understand the potential ramifications of non-compliance and can encourage full compliance.

What can courts and other stakeholders do to ensure that firearms transfer to third parties is safe and lawful?

Regulation of the transfer of firearms to eligible third parties is necessary to ensure safety for several reasons. Most importantly, the respondent could attempt to transfer firearms to a person who will allow him or her access to (i.e.,

constructive possession of) the weapons. In addition, the third party may not know the consequences of permitting access, or the reasons why the respondent has asked the third party to take the firearms. Also, without a background check being conducted on the third party, it is impossible to be certain that he or she is not prohibited from possessing firearms under state or federal law.

Courts and other stakeholders should incorporate measures to effectively regulate the transfer of firearms to third parties. Ideally, the court would require that the initial transfer be to a law enforcement agency or licensed firearms dealer, to allow for a background check to ensure that the third party is eligible to possess the firearms. As part of this process, both the respondent and the third party should be required to complete affidavits acknowledging the fact that the respondent is a prohibited person and that it is criminal violation to knowingly permit the respondent to have access to a firearm.[24]

Some courts order that the respondent and third party both appear at a hearing before the judge will approve the transfer. The courts use that opportunity to ensure that the background check has confirmed the third party's eligibility, that both the respondent and third party understand the consequences of allowing access to the firearms, and to provide the victim with the opportunity to object to the transfer if desired.

What are the options for handling violations of surrender orders?

[24]Examples of affidavits used by courts are available here: Louisiana; Pennsylvania; Vermont.

If, despite the use of compliance review hearings or other means of pressuring respondents to comply with surrender orders, they continue to fail to comply, additional steps should be taken to handle the ongoing violation.

If law enforcement has sufficient grounds based on its investigation of the respondent's firearms access, it may be able to pursue a search warrant regarding known firearms. In some states, the court's authority to issue a search warrant for firearms is explicit in the law; in other, more general search warrant authority is invoked.

Of course, criminal prosecutions for violation of a protection order and its surrender provisions are the primary mechanism to hold violators accountable. At least one jurisdiction, Multnomah County (Portland), Oregon has implemented a memorandum of understanding among the court, law enforcement, and the prosecutor's office to identify and share information about respondents' failure to surrender firearms, with the prosecutor's office exercising its discretion to bring prosecutions where appropriate. But courts themselves have the authority to set the case for a contempt hearing on the failure to comply with firearm surrender provisions. For example, in St. Louis County, MO, protection order cases are transferred to a specialized contempt docket when compliance staff have reported non-compliance with special conditions, including failure to comply with firearms provisions. See this document for a description of the St. Louis DV Court's processes.

What if the respondent possesses firearms while subject to a protection order in violation of the federal prohibition? Can a state or local law enforcement officer (as opposed to federal officers) arrest a respondent for the violation?

In the vast majority of states, there is no definitive answer to this question. Attorneys general or other authorities who oversee the work of law enforcement agencies provide the necessary guidance for law enforcement to determine when they can legally make arrests and seize firearms pursuant to violations of federal firearm laws.

Several federal court decisions have found that state law enforcement officers may make arrests for violations of federal law provided such arrests are permitted under the state's law. One such decision specifically addresses arrest and seizure of firearms for a violation of the federal firearm prohibitions.[25]

Even when officers may not be able to arrest for a violation of federal law, officers should be encouraged to seize all firearms and provide the ATF with formal notice within 30 days of the seizure.

What enforcement procedures should law enforcement use if a defendant possesses firearms in violation of a protection order in a jurisdiction outside of the issuing jurisdiction?

The general principles of full faith and credit, as mandated by the Violence Against Women Act's (VAWA) Full Faith and Credit provision, dictate proper procedure. VAWA's Full Faith and Credit provision directs the enforcing state to address violations using the enforcement mechanisms it uses to address violations of protection orders issued by its own courts, including through arrest for a misdemeanor, a contempt action, or seizure of the firearms by law enforcement, where authorized by the enforcing state's laws.

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[25] *United States v. Haskin*, 228 F.3d 151 (2d. Cir. 2000) (finding that officers in Vermont and New York have the authority to arrest and seize firearms based upon violations of federal law).

Federal criminal law provides an additional avenue for disarming and holding the respondent accountable if the possession is in violation of 18 U.S.C. § 922(g)(8). That statute prohibits possession of a firearm – within or outside of the issuing jurisdiction – while a respondent is subject to a protection order that meets the statute's requirements. Because only federal prosecutors can prosecute the respondent in federal court, relationships with federal prosecutors are central in facilitating information sharing and increasing the likelihood of federal prosecutions. Suggestions for achieving successful collaboration with federal agencies are described below.

SAFE AND EFFECTIVE RETURN OF SURRENDERED/ SEIZED FIREARMS WHEN PROHIBITIONS END

What steps should a court or law enforcement agency take to release firearms to a respondent after a protection order has expired?

Some states' statutes or court rules may specify a procedure for the return of firearms after expiration of a civil protection order.[26] Even absent such specific requirements, courts can adopt a return mechanism that safeguards victims and prevents release of firearms to persons prohibited from possessing firearms under state or federal law. New Hampshire provides an effective model that includes the following elements:[27]

- **Petition process**
- **Victim notification**
- **Affidavit**
- **Background check**

Safe and Effective Return Process

- Before any firearms may be returned, the court must

[26] *See*, *e.g.*, Cal. Civ. Proc. Code § 527.9; Mass. Gen. Laws Ann. ch. 140, § 129D; N.C. Gen. Stat. Ann. § 50B-3.1.

conduct a hearing, with notice to the victim, the defendant, and the relevant law enforcement agency currently in possession of the firearms.

- The defendant is required to complete a Motion and Affidavit for Return of Firearms, which requires the defendant to attest that the defendant knows of no reason why he or she is not entitled to return of such weapons.

- The Department of Safety runs a records check to determine whether there is any reason the firearms should not be returned, including the existence of any orders of protection on behalf of a different victim and qualifying misdemeanor crimes of domestic violence or any other disqualifier.

- All parties have the opportunity to participate at the hearing if desired, although such participation is not required except for the defendant.

- If any disqualifier is found, the defendant has the opportunity to rebut the evidence at a hearing.

- If no reason to deny return is discerned, the court issues an order authorizing the return of the firearms.

- If the court identifies a disqualifier, the court issues an order denying the requested return.

COLLABORATION WITH FEDERAL COUNTERPARTS

[27] Judicial Branch Family Division & District Court, State of New Hampshire, Domestic Violence Protocols, Protocol 14.

How can a better relationship be developed with federal authorities to help facilitate the effective enforcement of the federal laws related to firearms and domestic violence?

Effective enforcement of the federal firearms prohibitions often requires close collaboration among officials at the local, state, Tribal, and federal levels.[28] For example, a local law enforcement officer or prosecutor may have information and evidence necessary to establish a violation of the federal prohibitions, but may not have the necessary jurisdiction. Similarly, a federal agent may have the exclusive jurisdiction over violations but remain unaware of the federal offense. Creating a coordinated approach to addressing domestic violence related firearm offenses, including improving communication and information sharing among relevant agencies at all levels of government, is essential.

Ideally, this partnership should be developed before a critical incident occurs. Professionals at the local level should consider reaching out to their federal counterparts in the U.S. Attorney's Office, each of which has a Violence Against Women Act Point of Contact, to explore how to work collaboratively to prevent firearms possession by prohibited persons. In the jurisdictions in which successful partnerships have been created, the process often started with an initial introductory phone call.

Using federal funding under the Project Safe Neighborhoods

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[28]National Resource Center on Domestic Violence and Firearms, *Promising Practices: Federal-State-Local Coordinated Justice System Responses to Domestic Violence and firearms*, Battered Women's Justice Project (2024).

(PSN) initiative, several jurisdictions have succeeded in developing such a coordinated approach among local, state, and federal authorities. For example, in the Western District of Oklahoma, the PSN collaborative partners have implemented "Operation 922" to investigate and prosecute violent offenders who have violated the domestic violence federal firearm prohibitions under 18 USC 922(g)(8) and (9).[29] In other jurisdictions, cross-deputization of local officers and/or prosecutors as federal officers/prosecutors has been used as a successful strategy.[30]

This project was supported by Grant No. 15JOVW-21-GK-02257-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings,

[29]*See* Press Release, U.S. Att'y Off. W.D. Okla., Third Anniversary of "Operation 922" Sees 149 Defendants Charged with Federal Crimes in Domestic Violence-Derived Cases (Apr. 9, 2021).
[30]The 2022 VAWA Reauthorization included a provision explicitly authorizing this approach for prosecutors. See 18 U.S.C. § 925D.

ISSUE IN FOCUS: Military Protective Orders

ISSUANCE OF PROTECTION ORDERS WHICH RESTRICT MILITARY PERSONNEL[1]

How do military protective orders[2] (MPO) differ from Civil Protection Orders (CPO)? Do MPOs provide the same level of protection as CPOs?

MPOs are orders from a commanding officer to an abusive service member issued, "when necessary, to safeguard a victim, quell a disturbance, and maintain good order and discipline."[3] They are also intended to either provide "the victim time to pursue a protection order through a civilian court (should they choose to do so) or . . . support an existing CPO."[4] Unlike in the CPO process, the victim does not seek their own MPO. Often, the victim first reports abuse to the military victim advocate.[5] Depending on who they report the abuse to, victims may be able to choose between restricted or un-restricted reporting options.[6] While making

[1]As of November 2023, changes to how the military responds to domestic and sexual violence are forthcoming and updates to DoD Instruction Number 6400.06 and others are expected to follow. Once they become available to the public, the new DoD Instructions can be located here.
[2]This CPO Guide uses the term "military protective order" to reflect the language most commonly used by the military. This section of the CPO Guide will continue to use the term "civil protection order" to refer to all other non-criminal protection orders issued by a civilian court.
[3]DoD Instruction 6400.06, "DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," 3.5.d.(2)., May 16, 2023.
[4]*Id.*

a restricted report still allows victims the full services of the Family Advocacy Program "FAP",[7] such as advocacy, counseling, and resource referrals, only an un-restricted report provides notification to the service member's command and military law enforcement of the abuse. Once aware of abuse, a commander may choose to issue an MPO. There is no requirement, however, that a victim or a victim advocate initiate the MPO process or that an investigation occur. Regardless of whether the commander decides to issue a MPO, the victim can still get a CPO from the local state, Tribal, or territorial court and should not be discouraged from doing so if they choose.[8]

Commanders may issue an MPO at any time and do so without a petition by the victim and without a hearing. The order does not have to be in writing to be enforceable, but, according to Department of Defense Instruction (DoDi) 6400.06, the issuing commander will "[i]mmediately upon issuance, provide a copy of the signed MPO to:

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[5]Victims, whether they report the abuse to a military advocate or not, can seek services from civilian advocacy programs as well as civil protection orders. It is important to note, however, that seeking services from a civilian advocate instead of reporting to a military advocate will not assist them in receiving a military protective order. Additionally, seeking a civil protection order may be considered an un-restricted report of the abuse and lead to notification of a service member's command.

[6]For more information on restricted vs unrestricted reporting options, see National Crime Victim Law Institute & National Organization for Victim Assistance, *Military Members and Families Project Tip Sheet: Military Protective Orders and No Contact Orders* (2022); *Domestic Abuse: Military Reporting Options*, Military OneSource (Nov. 29, 2022); and DoD Instruction 6400.06, "DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," 5., May 16, 2023.

[7]In the military, a Family Advocacy Program (FAP) is "[a] program designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up, and reporting of child abuse and neglect, domestic abuse, and problematic sexual behavior in children and youth. FAP's consist of coordinated efforts designed to prevent and intervene in cases that impact military family readiness by promoting healthy relationships and families." DoD Instruction 6400.01, "Family Advocacy Program (FAP)," G.2., May 1, 2019.

[8]A victim still must qualify for the CPO under the laws of the court where they are seeking an order, and the court would likely need personal and subject matter jurisdiction. If, for instance, both parties live on the installation, have not established residency in the local jurisdiction, and the abuse has solely taken place on the installation, which court has jurisdiction may depend on the laws of the state, Tribe, or territory.

> 1. The Service [sic] member who is subject to the order,
> 2. Protected person (or the custodial parent or guardian of the protected person, if the protected person is a child victim),
> 3. Installation LEA [law enforcement agencies] for submission to the protection order file of the NCIC."[9]

The written order should be on standardized DD MPO form 2873.[10] MPOs can contain similar relief as CPOs, including ordering the service member to not contact the victim or the victim's family; to stay away from the victim's residence, workplace, and childcare facilities; to temporarily move out of the military residence shared by the parties (and into barracks); attend counseling; and surrender firearms.[11] Like most CPO statutes, MPO forms have a catchall provision that provides the authority to order other provisions deemed necessary for the victim or their family's safety.[12] MPOs are effective until canceled by command as long as the service member subject to the order remains under the same command that issued the order. But they are effective only between the commanding officer and the service member. Therefore, civilian law enforcement cannot enforce MPOs off the installation, but the military commander may enforce off-installation order violations.[13] If the service member is transferred or their command otherwise changes while

[9]DoD Instruction 6400.06, "DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," 3.5.d.(3)(b), May 16, 2023; Further, 32 CFR § 635.19 (a) states that "[t]he commander should provide a written copy of the order within 24 hours of its issuance to the person with whom the member is ordered not to have contact and to the installation LE activity."

[10]DD Form 2873, "Military Protective Order," (Feb. 2020); DoD Instruction 6400.06, "DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," 3.5.d.(3)., May 16, 2023; 32 CFR § 635.19.

[11]DD Form 2873, "Military Protective Order," (Feb. 2020).

[12]DD Form 2873, "Military Protective Order," 7(m) (Feb. 2020).

[13]DoD Instruction 6400.06, "DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," 3.5.d.(5)(b)., May 16, 2023.

an MPO is in place and the MPO is still necessary for the safety of the victim, command should contact the gaining command and recommend they issue a new MPO.[14]

A CPO, by contrast, is entitled to enforcement by both military and civilian law enforcement and is usually broader in scope. Because a majority of military-connected families live off an installation and in a nearby community,[15] a victim should consider seeking a CPO in addition to a MPO because it is effective on and off the installation. A civilian CPO may last longer, and it often can include greater protections regarding firearms, custody, and other financial support provisions. Further, a CPO supersedes military orders as the terms of an "MPO may not contradict or be less restrictive than the CPO."[16] Orders by civilian courts can therefore help to establish financial supports at amounts above the amount provided by branch policy as military branches vary on how they calculate support.

Can a state, Tribal, or territorial court issue a CPO while a respondent service member serves overseas or in a combat zone?

It depends. Because protection orders are generally issued to protect the petitioner from harm, the petitioner, in most cases, must show that the respondent poses a threat. Some judges will not issue a CPO if they do not believe the petitioner is in imminent danger; others might continue issuing temporary orders until the service member returns;

[14]*Id.* at 3.5.d.(4).

[15]National Organization for Victim Assistance & National Crime Victim Law Institute, *Building a Coordinated Community Response (CCR) to Address Domestic Violence, Dating Violence, Sexual Assault and Stalking Impacting Military Members and Families*, 1 (2018).

[16]DoD Instruction 6400.06, "DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," 3.5.d.(5)(a).1., May 16, 2023.

and others might stay the proceedings or ask the victim to seek the order closer to the time of the service member's return. If the respondent service member is continuing harassment and abuse using technology[17] or third parties such as friends or family members, courts may be inclined to provide more robust protections before the service member's return home. This inconsistency adds to the complexity of the MPO/CPO processes which can create more challenges for a victim seeking assistance. It also can result in confusion among the coordination of response between between military and civilian law enforcement agencies. This is an example of why military representation on coordinated community response (CCR) teams is important to addressing these issues before a crisis arises.

If the service member is unable to participate in court proceedings because of their military duties, they may be able to stay the final proceedings or re-open the case when a default order has been issued against them through the Servicemembers Civil Relief Act.[18] Temporary *ex parte* orders, however, may continue to be in place during this time.[19]

SERVICE OF PROTECTION ORDERS

Can a civilian law enforcement officer enter a military installation and serve a civil protection order issued by a state, Tribal, or territorial court?

[17]For more information on the use of technology to further harass, abuse, and stalk victims, see the Technology Section of this document.

[18]Servicemembers Civil Relief Act, 50 U.S.C.A. § 3901 *et seq*.

[19]Christine Zellar Church, *The Servicemembers Civil Relief Act: Protecting Victims of Domestic Violence in Protection Order Cases Involving the Military*, 12 T.M. Cooley J. Prac. & Clinical L. 335, 360 (2010).

No. On many installations, the civilian law enforcement officer (or process server[20]) would need to report to the military police or the provost marshal's office[21] to serve the respondent. The military police or provost marshal's office would then work with the service member's commanding officer to ensure the respondent is escorted to the installation gate to be served by the civilian law enforcement officer. The Department of Defense has established a policy requiring formal memoranda of understanding be developed between installations and local civilian jurisdictions to allow for the service of these orders.[22] This is important to ensure that service member respondents cannot evade service of process simply by staying on the installation. No matter who serves the order, care should be taken to ensure that the affidavit or certificate of service is properly filed with the court and entered into the National Crime Information Center Protection Order File (NCIC-POF). For more information on the NCIC-POF, see the Firearms section of this document.

PROSECUTION OF PROTECTION ORDER VIOLATIONS

Does the military have the ability to prosecute MPO violations occurring off the installation or other federal property?

Yes. A commander may enforce a MPO for violations either on or off the installation.[23] Violations of MPOs may be prosecuted under UCMJ Article 90 (Willfully Disobeying

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[20]Some jurisdictions treat private process servers differently and some survivors may choose to employ a private process server when the respondent is evading service. Professionals should check their local policies as well as the policies of the installation where the respondent is stationed for how to effectuate service through a private process server.
[21]The provost marshal is the head of the military police on an installation.
[22]DoD Instruction 6400.06, "DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," 3.7.a.(4)(c)., May 16, 2023.
[23]*Id.* at 8 (see section 6.1.2.6.).

a Superior Commissioned Officer) or Article 92 (Failure to Obey Order or Regulation.[24] Any punishment or lack of punishment does not guarantee the outcome of a civilian criminal case, conviction, or subsequent punishment.).

Does the military have the ability to prosecute violations of a CPO that occur off the installation or off other federal property?

No. The military may prosecute violations of CPO only if a violation occurs on the installation. Because service members are generally required to comply with lawful court orders and provide financial support to their dependents, there may be other options for seeking enforcement of certain CPO provisions that are not dependent on the location of the violation.[25] The victim can pursue a remedy through the state, Tribal, or territorial court system as well.

The military can enforce CPOs for violations that happen on the installation pursuant to the Armed Forces Domestic Security Act which states, "[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."[26] Service members and their dependents that are victims of domestic violence, sexual assault, or stalking should be eligible to receive services from the FAP and may also qualify for advocacy and assistance through the military justice system from the installation's Victims' Legal Counsel (VLC) or Special Victims' Counsel (SVC).

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[24]National Organization for Victim Assistance & National Center on Protection Orders and Full Faith and Credit, *Toolkit for Serving Military-Connected Victims/Survivors of Domestic Abuse*, 5 (2023).
[25]National Council of Juvenile and Family Court Judges, *A Judicial Resource Guide on Military Families and the Courts, A Judicial Resource Guide on Military Families and the Courts*, 28-33 (2023).
[26]10 U.S.C. § 1561a (a).

ENFORCEMENT OF MPOs BY CIVILIAN OFFICERS

Can a civilian law enforcement officer arrest someone for violating a MPO?

No. As discussed above, although military orders can have provisions similar to civilian protection orders, they are effective only between the commanding officer and the service member. MPOs, however, should be entered into the NCIC-POF[27] and civilian law enforcement can inform the military person of contact listed in the file of the violation. The issuing commander may request that the civilian officer remain on the scene or hold the service member until a military officer can respond. To facilitate enforcement, law enforcement may enter into memoranda of understanding with local installations to establish protocols for these violations. Also, communities with military installations nearby can invite commanders and other military stakeholders to participate in collaborative efforts around domestic violence issues, such as coordinated community response (CCR) teams to improve enforcement more broadly.[28] In addition, civilian law enforcement can and should arrest for violations of state, Tribal, or territorial criminal law that occur in conjunction with the violation of the military order.

[27]DoD Instruction 6400.06, "DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," 3.7.(3)., May 16, 2023.
[28]Hon. Peter MacDonald & Deborah Tucker, *The War on Violence: Improving the Response to Domestic Violence in the Military*, 54 Juv. & Fam. Ct. J. 121, 125 (2003). For more information on building a CCR responsive to military-connected families, see National Organization for Victim Assistance & National Crime Victim Law Institute, *Building a Coordinated Community Response (CCR) to Address Domestic Violence, Dating Violence, Sexual Assault and Stalking Impacting Military Members and Families* (2018).

EFFECT OF PROTECTION ORDERS ON MILITARY PERSONNEL AND SPOUSES AND CHILDREN[29]

If a victim seeks a protection order against an abuser, will the abuser be discharged?

Probably not. A protection order alone is not enough to have a service member discharged. However, a serious act of domestic violence may be sufficient.

If the military discharges a service member because of an act of domestic violence, the victim may qualify for transitional compensation. Under 10 U.S.C. § 1059, the law provides compensation for dependents or former dependents of a service member who separate from the service member because of dependent abuse (abuse of a spouse or dependent child)[30]. To qualify, the service member must have been on active duty for at least thirty days and be (1) "convicted of a dependent-abuse offense" that resulted in either them "(A) being separated from active duty pursuant to a sentence of a court-martial; or (B) forfeiting all pay and allowances pursuant to a sentence of a court-martial;" or (2) "who is administratively separated, voluntarily or involuntarily, from active duty in accordance with applicable regulations if bases for the separation includes a dependent-abuse offense."[31] While the dependent abuse must be a listed reason for the separation from the military or forfeiture

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[29]For more information on serving military-connected families experiencing abuse, see National Organization for Victim Assistance & National Center on Protection Orders and Full Faith and Credit, *Toolkit for Serving Military-Connected Victims/Survivors of Domestic Abuse* (2023).

[30]10 U.S.C. § 1059 (c)(1).

[31]10 U.S.C. § 1059 (b).

of pay and allowances, it does not have to be listed as the primary reason.[32] The dependents seeking compensation cannot later cohabitate with the offending service member and any remarriage will end their eligibility. Transitional compensation is available for at least a year and may be available for up to three years.[33] While this compensation can be important to the economic wellbeing of the victim and their family, seeking and maintaining transitional compensation can be difficult to navigate. Victims who want to separate from an abusive service member and meet the eligibility requirements outlined above may want to discuss transitional compensation with a military victim advocate for more information.

Can service members possess a service firearm when subject to a protection order?

Yes. A CPO or a MPO does not necessarily prohibit a service member from possessing a service-issued firearm while on duty. The Federal Gun Control Act includes an official use exemption under 18 U.S.C. §925(a)(1).[34] This exemption applies to the use of firearms by certain federal, state, and local government employees while on duty. Many installations, however, choose to put service members subject to a protection order on duties that do not require them to possess a firearm while the order is in place.

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[32] *Transitional Compensation: Support for Victims of Abuse*, Military OneSource (Sept. 26, 2022).
[33] DoD Instruction 1342.24, "Transitional Compensation (TC) for Abused Dependents, 3.2.b., Sept. 23, 2019.
[34] For more information on the "official use exemption," see the Issues in Focus Firearms section.

Under the Federal Gun Control Act, certain misdemeanor domestic violence convictions also prohibit individuals from possessing firearms and do not qualify for the official use exemption.[35] DoD policy includes "a conviction for a crime of domestic violence tried by general or special court-martial which otherwise meets the definition of a misdemeanor crime of domestic violence" as an offense that triggers the federal prohibition.[36]

Further, a service member subject to a CPO cannot possess personally owned firearms. If the respondent lives on a military installation or a military-managed community that is off-installation, military personnel may be able to search for and seize personal firearms. While service members and members of their family living on base should register with the installation any personal firearms brought and stored on the installation, there is no guarantee a service member has complied. If they feel safe doing so, the petitioner should note any personally held firearms and where they are stored in the civilian protection order petition. Professionals working with military-connected families should familiarize themselves with the firearms and weapons regulations of installations in their area.[37]

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[35]See 18 U.S.C. §922(g)(9), sometimes referred to as the Lautenberg Amendment.
[36]For more information on implications of the Lautenberg Amendment for a service member, see Section 9: The Lautenberg Amendment to the GCA Responsibilities and Procedures, DoD Instruction 6400.06, "DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," 9.1.–9.6., May 16, 2023.
[37]32 C.F.R. §552.18 (e). For an example of installation regulations, see *Privately Owned Weapons, Explosives and Ammunition*, Fort Riley Regulation 190-1 (2018).

Are there other collateral consequences if a CPO or MPO is issued against a service member?

It depends. A service member is issued military housing in the barracks (dorms) or, if receiving Basic Allowance for Housing (BAH), can choose to live in on-base or off-base housing. If the protection order, civil or military, restrains the service member respondent from having contact with the victim, the service member may be removed from their current living status and to a designated barracks. Since a service member is no longer living in the home, the dependent spouse and any children may be given 30 days to vacate the home and may have to leave the installation. Military benefits and processes can be very complicated and difficult to navigate. Often military spouses or intimate partners do not know what benefits they or their children may be entitled to depending on their situation. It is important for military victim advocates or legal counsel familiar with military practices to help victims understand fully the collateral consequences of seeking particular types of relief.

However, if the victim is a service member and the abuser is a civilian, the commanding officer may require the service member to live in the barracks until the abuser leaves the installation. Barring a civilian abusive spouse from an installation is difficult, but not impossible. In cases where the abuser is barred, they may leave the installation with the children. Therefore, military advocates should advise the victim to consult with a civilian victim advocate about getting a state, Tribal, or territorial court CPO that includes custody or a stand-alone custody order.

Should a victim who is targeted both on and off a military installation request assistance from authorities on the military installation or obtain a protection order from a judge in the jurisdiction where the violence and threats are also occurring?

It depends. There are risks and benefits to reporting abuse to a service member's commanding officer and understanding the reality of what might happen on the specific installation is essential. Advocates can help provide necessary guidance about the likely response by the particular installation and those in command. An important component of safety planning will include explaining to a victim the difference between making a restricted or unrestricted report, the effect of seeking a CPO on restricted reports, and the limits of confidentiality.[38] In addition to working with military advocates, a victim also may want to work with a civilian domestic violence advocate around available community resources, safety planning, and, if they choose, pursuing a CPO in the state, Tribal, or territorial system. A CPO may be especially important to consider if the parties share children or if the victim has concerns about their physical safety off the installation.

For more information, see the National Organization for Victim Advocacy (NOVA). NOVA is the Training and Technical Assistance (TTA) provider for a Department of Justice Office on Violence Against Women grant-funded project, "Advocating for Military Connected Survivors." The mission

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[38]For more information on restricted vs unrestricted reporting options, see National Crime Victim Law Institute & National Organization for Victim Assistance, *Military Members and Families Project Tip Sheet: Military Protective Orders and No Contact Orders* (2022); *Domestic Abuse: Military Reporting Options*, Military OneSource (Nov. 29, 2022); and DoD Instruction 6400.06, "DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," 5., May 16, 2023.

of this project is to provide trauma-informed, survivor-centered, and culturally responsive TTA that empowers legal personnel, victim advocates, and allied professionals to support military-connected survivors of domestic violence, dating violence, sexual assault, and stalking (DVSAS). The project can guide communities in developing and straightening partnerships between military and civilian agencies for comprehensive Coordinated Community Response Teams. To request TTA on military-connected survivors of DVSAS, contact militarytta@trynova.org.

ISSUE IN FOCUS: Technology

PART I: PROFESSIONALS' USE OF TECHNOLOGY

How can technology improve the protection order system's ability to issue and enforce orders effectively?

Technology can be used in a variety of ways to reduce the gaps in issuance, service, and enforcement of civil protection orders (CPOs) and to expand the availability of support and services for victims of domestic and sexual violence and stalking. The investment in and expansion of these technologies by CPO systems was greatly accelerated as a response to the COVID-19 pandemic. While the pandemic led to giant strides toward more readily accessible and user-friendly court procedures in many areas, lessons regarding the use of these technologies and barriers they may unintentionally create are continuing to be learned. It is important for systems to continue to evaluate the technologies and procedures used, including gathering feedback from court users, systems professionals, and the community at large, the accessibility of these technologies and procedures, and any safety or privacy risks that may be associated with their use. Examples of how technology has been used in the CPO system include:

Portals and E-filing[1]

E-filing, or electronic filing, is the submission of a document in electronic form to a court in an existing case or to initiate a new action.[2] For years, courts around the country have been steadily increasing the availability of e-filing for attorneys—some requiring its use. Unfortunately, many courts were not initially prepared to accept filings from self-represented litigants (SRLs) at the start of the pandemic. While many jurisdictions implemented temporary methods to allow SRLs to file CPOs, others created more permanent options for CPOs by creating or expanding guided e-filing portals. Guided e-filing portals often include electronic interviewing tools available online that help users fill out forms for certain types of cases regularly filed by SRLs such as divorce, CPOs, and eviction cases.[3] These portals ask a series of questions and provide helpful information to litigants, including referrals to pro bono, legal aid services, and victim advocacy programs. Once completed, these forms can be submitted electronically to the court or printed and filed in person at the courthouse.[4] Some of these programs also include methods for advocates working with victims seeking CPOs to access files and assist with the completion of petitions.[5] Advocate availability, either remotely or in-person, provides SRLs in CPO cases the opportunity to talk with a legal advocate about how to obtain an order and any potential

[1]For more information on electronic filing, see *Frequently Asked Questions about Electronic Filing in Cases Involving Domestic Violence*, National Council of Juvenile and Family Court Judges (2022); See also the National Center for State Courts website VAWA and the Courts.
[2]Circuit Court of New Hampshire, *Supplemental Rules of the Circuit Court of New Hampshire for Electronic Filing* (last visited Oct. 25, 2023).
[3]Minnesota Guide & File, Minnesota Judicial Branch (last visited Oct. 25, 2023).
[4]For examples of portals and e-filing options used in civil protection order cases, see National Center for State Courts et al., *Protection Order Repositories, Web Portals, and Beyond: Technology Solutions to Increase Access and Enforcement* (2020).
[5]*Id.*

safety concerns and unintended consequences that may arise. Advocates can also safety plan with victims, whether or not they ultimately file a petition with the court. Some portal systems have features that allow victims to request notice of service of the order or when the order is about to expire via text or email,[6] two critical points of potential danger for victims of intimate partner violence.

Access to Advocates and Legal Services

Technology can also make information and services more readily accessible to victims. The pandemic pushed service providers to look for new ways to provide victims efficient remote service. Advocacy programs updated policies for safer, more private, or secure ways to communicate through technology.[7] Remote hearings reduced an attorney's need to travel long distances to represent clients in rural areas, travel between courthouses in urban areas, and wait in the courthouse for cases to be called, increasing victims' access to legal aid and networks of pro bono or low-cost representation throughout a state or territory,[8] and lowering the costs of representation by a private attorney.

[6]*Id.*
[7]*Agency's Use of Technology: Best Practices and Policies Toolkit*, National Network to End Domestic Violence (last visited Oct. 25, 2023).
[8]Ad Hoc Workgroup on Post-Pandemic Initiatives, *Interim Report: Remote Access to Courts*, Judicial Council of California (Aug. 16, 2021); Pew Charitable Trusts, *How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations* (Dec. 1, 2021); *Remote Legal Connect Eliminates Physical Barriers to Justice*, probono.net (last visited Oct. 25, 2023); South Carolina Victim Assistance Network, Legal Services Program, *Reaching Rule Project* (last visited Oct. 25, 2023); Brooke Trottier, *Providing Access to Justice Through Technology in Rural Communities*, Equal Justice Works (Jan. 14, 2022); The Legal Kiosk Project, Minnesota Legal Services Coalition (last visited Oct. 25, 2023).

Ensuring Victims Get Referrals to Advocates and Legal Aid if Accessing the Court Online

When the CPO process moves online, it is critical that information and referrals to advocacy services are also included. Ideally information and referrals would appear in multiple places, with a description of the types of services offered, and up-to-date contact information. Victims may not be familiar with the role of the victim advocate and the services they provide. For victims already in crisis, directories without much explanation can seem overwhelming and out-of-date referrals can discourage them from seeking help.

Further, victims may not know the types of legal assistance available to them. Information on legal aid, pro bono or reduced fee representation, assistance from non-attorney court navigators, self-help centers, attorney assistance hotlines, and other resources can be helpful for all litigants to assist in triaging their legal needs and finding the right level of legal support needed to address them.

Electronic Service of Process

Another emerging use of technology in CPO systems is the use of electronic service of process.[9] Personally serving CPO orders can be challenging for law enforcement and present safety risks for petitioners, who are unprotected until the order is served, especially when respondents actively avoid

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[9]For more information about service of process, see *Civil Protection Orders: Strategies for Safe and Effective Service of Process*, National Council of Juvenile and Family Court Judges (2022).

service. Staffing shortages also can burden law enforcement departments, making multiple attempts at serving an evading respondent even more of a challenge. The pandemic exacerbated these issues and renewed discussions of effective methods of alternative service. Some states already included alternative means of service in their CPO statutes while others permitted alternative means of service in their court rules or in case law, often relying on service by publication. Service by publication, however, rarely achieves actual notice to the respondent.[10] One promising option is electronic service, which can include service through email, text message, social media, or other electronic methods. Washington State codified electronic service in CPO cases in 2022 under Wash. Rev. Code § 7.105.150, which requires personal service only when cases involve the surrender of firearms or prohibit weapons, the transfer of children from respondent to petitioner, the removal of the respondent from the parties' shared residence, incarcerated respondents, and cases for vulnerable adults when someone other than the vulnerable adult is seeking the order. After two unsuccessful attempts at personal service in such cases, service is permitted by electronic means in accordance with the rest of the statute.[11] As more jurisdictions implement electronic service, as an alternative to more traditional methods of service, more information on effective implementation and procedures will become available.

[10] *Mullane v. Central Hanover Bank and Trust*, 339 U.S. 306, 315-16 (1950) (discussing how publication alone is not a reliable means of providing notice to an interested party).
[11] Wash. Rev. Code § 7.105.150 (2022).

Victim Notification

In the context of CPOs, there are two main events that have prompted some states to provide notice to petitioners about the status of their order. These are 1) the status of service of the order and 2) the upcoming expiration of the order. While notification of the pending expiration of an order can be sent to petitioners ahead of time, notification of service of process is more time sensitive and provides important information for a victim's safety planning as service of an order can be a time of increased danger. Law enforcement agencies responsible for service and victim advocacy organizations should work collaboratively to ensure that victims obtain notice of service attempts (successful and unsuccessful) as well as information about any concerning responses or reactions by the respondent at the time of service and, when applicable, the status of firearms surrender. To help effectuate this notice, some states use victim notification systems similar to those used to notify crime victims of a change in an incarcerated individual's status.[12]

Remote Hearings

Courts had to adapt quickly to the COVID-19 pandemic to keep CPO relief available to victims in need of the safety they provide while maintaining social distancing. Many courts have continued to offer some form of remote hearings since the pandemic. Examples of remote hearing options include:

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[12]For examples, see Kentucky, Maryland, New York, Oregon, and Washington.

- Litigants appear remotely from any location by video or telephonically;
- Litigants appear remotely from designated community locations (e.g. library, victim services/advocacy office, attorney's office, help center, family justice center);
- Litigants appear remotely from another part of the courthouse such as offices or kiosks set up for litigant use;
- Some litigants or witnesses appear remotely while others appear in the courtroom (a hybrid of the above options and in-person).

Remote hearings can benefit litigants by reducing missed time from work, travel to the courthouse (which may not even be located in their community), childcare costs, parking or transportation, and attorneys' fees for travel and waiting times.[13] Remote hearings also may increase the ability of litigants to secure low fee or pro bono legal representation, especially in rural areas that may lack the volume of attorneys willing to provide such services, which may require significant travel time to and from the courthouse.[14] Expert

[13]Ad Hoc Workgroup on Post-Pandemic Initiatives, *Interim Report: Remote Access to Courts*, Judicial Council of California (Aug. 16, 2021); Pew Charitable Trusts, *How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations* (Dec. 1, 2021); Kevin S. Burke & Steve Leben, *Procedural Fairness in a Pandemic: It's Still Critical to Public Trust, 68 Drake Law Review 685* (2020).
[14]Ad Hoc Workgroup on Post-Pandemic Initiatives, *Interim Report: Remote Access to Courts*, Judicial Council of California (Aug. 16, 2021); Pew Charitable Trusts, *How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations* (Dec. 1, 2021); *Remote Legal Connect Eliminates Physical Barriers to Justice*, probono.net (last visited Oct. 25, 2023); South Carolina Victim Assistance Network, Legal Services Program, *Reaching Rule Project* (last visited Oct. 25, 2023); Brooke Trottier, *Providing Access to Justice Through Technology in Rural Communities*, Equal Justice Works (Jan. 14, 2022); The Legal Kiosk Project, Minnesota Legal Services Coalition (last visited Oct. 25, 2023).

and lay witnesses also may be more willing and able to testify if they do not need to set aside a whole day in their schedule to attend court. Some law enforcement agencies have created dedicated stations within their agencies specifically to allow law enforcement to testify without leaving the office.[15]

Remote CPO processes can introduce some challenges. For instance, it can be harder for judicial officers and court personnel to maintain control of court processes and to ensure appropriate access for litigants. Courts do not know who is viewing proceedings, or if they are being recorded, if witnesses are properly sequestered, who else may be in the room with witnesses (potentially intimidating or coaching them), or whether witnesses are using notes when testifying. Courts can experience difficulty maintaining control as participants speak out of turn or turn their cameras off, or ensuring immediate personal service of final orders after a hearing.[16] Lack of formality can also impede the court's ability to communicate to respondents the important and serious nature of the proceedings and any court orders that arise from them.

For remote access to benefit litigants, they must have access to reliable free or affordable high-speed internet or cell phone data plans, safe and compatible devices to connect from, and a level of comfort using technology (or easy-to-

[15] Ad Hoc Workgroup on Post-Pandemic Initiatives, *Interim Report: Remote Access to Courts*, Judicial Council of California (Aug. 16, 2021).
[16] *Id*; California Commission on Access to Justice, *Remote Hearings and Access to Justice During Covid-19 and Beyond*, National Center for State Courts (last visited Mar. 25, 2022); Alicia L. Bannon & Douglas Keith, *Remote Court: principles for Virtual Proceedings During the COVID-19 Pandemic and Beyond*, 115 Northwestern University Law Review. No. 6, 1875 (2021); Shalini Nangia et. al., *The Pros and Cons of Zoom Court Hearings*, National Law Review (May 20, 2020); Huo Jingnan, *To Try or not to Try – Remotely. As Jury Trials Move Online, Courts See Pros and Cons*, National Public Radio (Mar. 18, 2022).

understand instructions for using required technology).[17] A larger discussion of the "digital divide" can be found at the end of this section.

How can systems better address victim's safety and privacy during remote proceedings?

In cases involving domestic and sexual violence and stalking, remote proceedings may be more or less safe for victim litigants, depending on the circumstances. Victims, children, and other witnesses may feel safer not being in the same physical room as the respondent. But, if the victim still lives with the respondent and is asking that they be removed from the home, they may not have a safe space to appear from. Victims who have left the respondent may unintentionally reveal information about their safe location when appearing remotely.[18] Further, some victims may feel safer in the courthouse where they know the location of the respondent, that the respondent has gone through security, and where security officers are available.

Remote proceedings make it easier to avoid threatening looks or behaviors from the respondent during the proceedings.[19] However, some victims and children have indicated it felt more traumatic during the pandemic to

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[17]Ad Hoc Workgroup on Post-Pandemic Initiatives, *Interim Report: Remote Access to Courts*, Judicial Council of California (Aug. 16, 2021); Pew Charitable Trusts, *How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations* (Dec. 1, 2021); David Hodson, *The Role, Benefits, and Concerns of Digital Technology in the Family Justice System*, 57 Family Court Review, No.3, 425 (2019); Richard Zorza, *Principles and Best Practices for Access-Friendly Court Electronic Filing*, Legal Services Corporation (2013); Webinar: Washington State Bar Association, *Justice and Technology: An Overview of the Updated Access to Justice Technology Principles*, Access to Justice Board (Sept. 29, 2020).
[18]United Kingdom Family Justice Council, *Safety from Domestic Abuse and Special Measures in remote and Hybrid Hearings* (Nov. 2020).
[19]National Center for State Courts, *Domestic Relations and Domestic Violence in Times of Crisis* (Oct. 6, 2020); Ad Hoc Workgroup on Post-Pandemic Initiatives, *Interim Report: Remote Access to Courts*, Judicial Council of California (Aug. 16, 2021); United Kingdom Family Justice Council, *Safety from Domestic Abuse and Special Measures in remote and Hybrid Hearings* (Nov. 2020).

testify from their home or other safe location because it felt like letting the respondent into their safe space.[20] Not everyone experiences trauma the same way. Flexibility and transparency as to what to expect during the hearings, potential privacy risks associated with the technology, and options for litigants to protect against those risks are important to creating trauma-responsive policies and procedures.

As more of the court process goes online, victims may be deterred from seeking relief from the court out of fear that their privacy may be violated.[21] Privacy violations and disclosures of confidential information can be especially dangerous for victims of domestic and sexual violence and stalking. Privacy concerns may include the unintended release of confidential personally identifiable information, safe addresses, or financial account numbers, or making victim testimony or evidence publicly available online.[22] Further, while technology does allow for confidential communication between victims and their advocate or attorney during remote hearings, simple missteps in using the technology, such as accidentally sending an instant message to the wrong participant, can lead to unintentional disclosures. It is important to be aware of these challenges to make sure that confidentiality between litigants and attorneys, and in some states, victims and advocates, is respected and maintained.

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[20]United Kingdom Family Justice Council, *Safety from Domestic Abuse and Special Measures in remote and Hybrid Hearings* (Nov. 2020).
[21]Richard Zorza, *Principles and Best Practices for Access-Friendly Court Electronic Filing*, Legal Services Corporation (2013).
[22]National Center for State Courts, *Guiding Principles for Post-Pandemic Court Technology: A Pandemic Resource from CCJ/COSCA* (Jul. 16, 2020); National Center for State Courts, *Domestic Relations and Domestic Violence in Times of Crisis* (Oct. 6, 2020); United Kingdom Family Justice Council, *Safety from Domestic Abuse and Special Measures in remote and Hybrid Hearings* (Nov. 2020); Stephanie Satkowiak, *COVID-19 Remote Hearings Resource For Domestic Violence Matters*, North Carolina Administrative Office of the Courts (May 5, 2020); Richard Zorza, *Principles and Best Practices for Access-Friendly Court Electronic Filing*, Legal Services Corporation (2013).

With proper consideration of these concerns, transparency in policies and procedures, and flexibility when appropriate, courts can mitigate many of the potential challenges and allow litigants to make informed decisions about their safety risks and how they interact with the court.[23]

Below are some basic considerations for CPO systems when implementing new or improving existing remote proceedings policies and practices.[24]

- Consider allowing litigants to choose the safest option for participating in a hearing.
    - Be flexible and consider what options would be appropriate for the type of hearing to be conducted (for example, status hearings, hearings on motions, hearings on extensions of orders, or hearings without significant witness testimony or physical evidence where the court is unlikely to need to make difficult credibility determinations may favor remote proceedings).
    - Whether abuse proceedings are held remotely, in person, or hybrid, make sure that adverse parties are not left alone together.

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[23]Washington State Access to Justice Board, Access to Justice Technology Principles, adopted by the State of Washington Supreme Court in order no. 25700-B-627 (June 4, 2020); Webinar: Washington State Bar Association, *Justice and Technology: An Overview of the Updated Access to Justice Technology Principles*, Access to Justice Board (Sept. 29, 2020).

[24]For more considerations regarding remote proceedings, see *Courts During Community Crisis: Reflections on System Resilience and Reforms: A Focus on Cases Involving Abuse*, National Council of Juvenile and Family Court Judges (last visited Nov. 2, 2023).

    - For remote abuse proceedings, make sure court personnel are in the virtual room before admitting both parties.

- Provide timely information to litigants to help them and their attorneys or advocates assess if their remote location is safe and allows for privacy during the hearing.

    - Include contact information for the court clerk or other personnel that litigants can contact about safety and privacy concerns and how to address them.

    - Consider offering preliminary calls between court staff and parties before their remote hearing to problem solve any special needs around technology, accommodations for disabilities, interpretation needs, and any privacy and safety concerns.[25]

- If there are concerns about witness intimidation or inappropriate influence in remote proceedings, have court personnel ask parties independently and in private to show their surroundings before starting the hearing to ensure they are alone.

    - Asking witnesses or litigants to do so in view of other participants could allow an abuser or others to glean information about the safe location the witness or litigant is remotely appearing from.

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[25]California Commission on Access to Justice, *Remote Hearings and Access to Justice during COVID-19 and Beyond*, 10 (May 18, 2020).

- Consider how to balance meeting local requirements regarding open courts with litigants' privacy and safety concerns.

- For judicial officers, consider how the litigant's background or home surroundings may provoke implicit biases and be aware of how those biases may affect decision making.

- Whether proceedings are held remotely, in-person, or hybrid, avoid setting multiple proceedings at the same time, such as "cattle call" dockets.[26]

    - Use of such dockets in remote proceedings can increase the "digital divide" by unnecessarily using up litigant's access to data usage or phone minutes, battery power for devices, or impeding their use of community technology resources.

    - Use of such dockets in-person can cause litigants to spend large amounts of time in the courthouse which can require them to take more time off of work and pay more in childcare, attorney fees, and parking costs.

[26]Supreme Court of Illinois, *Supreme Court Guidelines for Resuming Illinois Judicial Branch Operations during the COVID-19 Pandemic*, (last visited Oct 25, 2023).

    - If courts must schedule multiple hearings at the same time, consider asking litigants for contact information after a check-in and ask them to be alert for a call from the court so that they can be connected to the remote hearing closer to the time of their appearance.

- Consider community broadband issues and work with stakeholders and community partners to offer secure, confidential, and private locations with internet access for litigants that lack access to reliable broadband.

- Regularly evaluate the platforms used by the court to conduct remote hearings or other remote court services.

    - Consider whether the platform meets the needs of the court and litigants, what user data the platforms collect and how they use it, and what safety and privacy features or precautions the platforms offer to safeguard user information.

    - Make sure the software for remote hearings platforms is up-to-date to ensure the use of all available privacy features.[27]

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[27]Press Release, Mass. Att'y Gen. Off., *AG's Office Issues Tips for Safe Video Conferencing During COVID-19 Pandemic* (April 10, 2020).

Considerations for Language Access[28]

Courts must ensure meaningful access for those with limited English proficiency (LEP).[29] For meaningful access to be achieved, not only must appropriate and trained interpreters be available during proceedings, but also information about the court and its policies and procedures must be available and up-to-date in the languages commonly spoken in the community. While technology has the potential to provide new and improved methods of ensuring language access, this potential has largely gone unrealized.[30] During the pandemic, remote hearings made it easier to find interpreters of less frequently spoken languages in some jurisdictions while some jurisdictions struggled to find a platform for effective interpretation. Courts must consider language access from the start and include members of the LEP community in the testing and evaluation of platforms, policies, and procedures.[31]

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[28]For more information on language access, see the Asian Pacific Institute on Gender-Based Violence webpage, *Language Access, Interpretation, and Translation* (last visited Oct. 25, 2023); *see also* the National Center for State Courts webpage, *Language Access Services Section* (last visited Oct. 25, 2023).

[29]For more information on courts and their duties regarding language access, see *Ensuring Language Access in the Courts*, U.S. Dep't of Just. Civ. Rts. Div. (last visited Nov. 2, 2023).

[30]Pew Charitable Trusts, *How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations* (Dec. 1, 2021).

[31]Id; National Center for State Courts, *Guiding Principles for Post-Pandemic Court Technology: A Pandemic Resource from CCJ/COSCA* (Jul. 16, 2020); Richard Zorza, *Principles and Best Practices for Access-Friendly Court Electronic Filing*, Legal Services Corporation (2013); Washington State Access to Justice Board, *Access to Justice Technology Principles*, adopted by the State of Washington Supreme Court in order no. 25700-B-627 (June 4, 2020); Webinar: Washington State Bar Association, *Justice and Technology: An Overview of the Updated Access to Justice Technology Principles*, Access to Justice Board (Sept. 29, 2020).

Accommodations for Victims Experiencing Disabilities

Courts have a duty to ensure accessibility and compliance with federal and state non-discrimination laws and policies such as the Americans with Disabilities Act and Section 508 of the Rehabilitation Act of 1973. As with language access, technology has the potential to provide new and expanded accommodations for litigants, however, much of this potential has yet to be realized.[32] Courts should think about accommodations from the beginning when choosing, designing, and implementing platforms, policies, and procedures for remote proceedings. Courts should also enlist the expertise of disability experts and those experiencing disabilities in the design, testing, and ongoing evaluation of platforms, policies, and procedures.[33] Some examples include ensuring that the platform or software is compatible with screen-reading software, that webpages can be easily magnified and still navigable, and use of closed captioning with any instructional videos.[34]

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[32]Pew Charitable Trusts, *How Courts Embraced Technology, Met the Pandemic Challenge, and Revolutionized Their Operations* (Dec. 1, 2021) (citing the National Center for Access to Justice's Justice Index); National Center for State Courts, *Guiding Principles for Post-Pandemic Court Technology: A Pandemic Resource from CCJ/COSCA* (Jul. 16, 2020).

[33]*Id*; Richard Zorza, Principles and Best Practices for Access-Friendly Court Electronic Filing, Legal Services Corporation (2013); Washington State Access to Justice Board, Access to Justice Technology Principles, adopted by the State of Washington Supreme Court in order no. 25700-B-627 (June 4, 2020); Webinar: Washington State Bar Association, *Justice and Technology: An Overview of the Updated Access to Justice Technology Principles*, Access to Justice Board (Sept. 29, 2020); California Commission on Access to Justice, *Remote Hearings and Access to Justice during COVID-19 and Beyond*, 10 (May 18, 2020).

[34]*Guiding Principles for Post-Pandemic Court Technology: A Pandemic Resource from CCJ/COSCA*, National Center for State Courts (July 2020).

Court Records Databases or Management Systems[35]

As more information is shared and stored electronically, more information can be made readily available to the public. Easy access to information can create more risks for victims to be harassed or intimidated. More than ever, courts must balance the rights of the public to access information with the privacy rights of the litigant.[36] Involvement with the justice system is rarely completely voluntary and requirements to opt into certain electronic systems or processes without rigorous privacy and confidentiality safeguards in place can undermine access to justice because the "fear of [a] violation of [a litigant's] rights of privacy may deter [their] full participation in the justice system."[37]

How can systems better help victims understand their options and obligations regarding private and confidential information?

The Violence Against Women Act (VAWA) prohibits courts from making "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 in either the issuing or enforcing state, Tribal or territorial jurisdiction" that might disclose the identity or

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[35]While beyond the scope of this publication, it is also important to take the privacy and safety of survivors of domestic and sexual violence and stalking into account in the collection and use of court data and the design and maintenance of court databases and case management systems. For more information, see the National Center for State Courts website, VAWA and the Courts.

[36]Richard Zorza, *Principles and Best Practices for Access-Friendly Court Electronic Filing*, Legal Services Corporation (2013); Jannet A. Okazaki, *Evidence Based Public Access: Balancing Access and Privacy*, National Center for State Courts (Dec. 2021).

[37]*Id.* at 33.

location of protected parties.[38] Further, the term "protection order" is defined by VAWA to include orders issued by a civil or criminal court.[39]

Courts should inform petitioners of what elements of a CPO proceeding's are considered public information in their particular jurisdiction. Often, CPOs are public documents and many of the accompanying forms used for service or contact information are stored in the public court file. This allows the public, including the perpetrator, to access this information. Some information in pleadings may require redaction or confidential filing. Court rules may require victims and minors to be referred to in pleadings by their initials only. Courts should strive to be as transparent as possible regarding these requirements or options. Courts often put the onus on the CPO petitioner to ensure all confidential information is properly submitted including any required or permissible redactions. It can be particularly challenging for SRLs to follow these procedures. If a case includes sensitive evidence, including intimate images or child testimony, SRLs may not know how to ask for portions of remote hearings or court records to be sealed or other legal options. Providing easy to follow instructions in CPO cases can avoid some of the safety and privacy risks associated with expanded online access to public records by allowing victims to avail themselves of relevant court rules and procedures.[40] Examples include:

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[38] 18 U.S.C. § 2265(d)(3).
[39] 18 U.S.C. § 2266(5).
[40] For more discussion of this issue, see *Frequently Asked Questions about Electronic Filing in Cases Involving Domestic Violence*, National Council of Juvenile and Family Court Judges (2022) and Jannet A. Okazaki, *Evidence Based Public Access: Balancing Access and Privacy*, National Center for State Courts (Dec. 2021); also see the National Center for State Courts website, VAWA and the Courts.

Confidential Address and/or Contact Information: There are a multitude of reasons why a litigant may want to protect their address and contact information from the general public, but for victims of family violence or stalking it can be vital to protect their confidential information from the other party. Courts should provide information to litigants on how to secure confidential addresses and contact information as well as whether litigants can use state address confidentiality programs like Safe at Home on their legal pleadings.[41]

Redaction Instructions: Another issue regarding privacy is redaction of certain sensitive information from court documents. Redaction policies can vary and even some attorneys struggle with properly redacting the documents they file. Because SRLs are at a great disadvantage when it comes to knowing what information to redact and how to redact it, "e-filing and document assembly systems must be built to help litigants make sure that information that they need to keep confidential, such as social security numbers and health information, is so treated."[42] Instructions should be readily available and include information about any privacy requirements for specific case types or litigants, such as whether the names of minors or victims of crime must be designated with initials only.[43] Courts should also provide contact information for those that have questions regarding

[41]For a list of state statutes regarding address confidentiality see National Center on Protection Orders and Full Faith and Credit, *State Address Confidentiality Statutes*, Battered Women's Justice Project (2020).
[42]Richard Zorza, *Principles and Best Practices for Access-Friendly Court Electronic Filing*, Legal Services Corporation, at 34 (2013).
[43]For examples of court redaction instructions for attorneys and/or self-represented litigants, see Wisconsin, Missouri, Pennsylvania, Legal Voice in Washington. For further information on privacy and confidentiality and court records, see Jannet A. Okazaki, *Evidence Based Public Access: Balancing Access and Privacy*, National Center for State Courts (Dec. 2021); *see also* the National Center for State Courts' Protecting Privacy Course available in English and Spanish.

redaction of documents, as well as information regarding what to do should a litigant suspect their personally identifiable information (PII) has been wrongfully released either by the court or the other party.[44] Many courts have complicated procedures for filing confidential information and failure to follow those procedures can result in an unwanted release.[45] Once information is released on the internet, it can be nearly impossible to guarantee it has been safely removed.

Closed or Sealed Hearings or Documents: For documents that contain particularly intimate information—e.g. victim's testimony about a sexual assault—it may be important to take more drastic steps to keep information from being readily available to the public.[46] Clear plain language instructions about processes to close or seal hearings or documents and how to request them should be readily available. Failing to thoughtfully consider an appropriate balance regarding the public's right to access court records and the privacy and safety of victims can dissuade victims from seeking the legal relief they need.

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[44]Richard Zorza, *Principles and Best Practices for Access-Friendly Court Electronic Filing*, Legal Services Corporation (2013).
[45]*Id.*
[46]Jannet A. Okazaki, *Evidence Based Public Access Balancing Access and Privacy*, National Center for State Courts (Dec. 2021).

Electronic Monitoring

States can also use electronic monitoring, or global positioning system (GPS), to enforce CPOs more effectively. Some states[47] allow this form of monitoring in conjunction with either the issuance or violation of an order. States vary on the requirements, if any, that must be met for the court to order electronic monitoring. States also vary on the use of technology providing real time notification of a respondent in a restricted location or whether that information is provided to law enforcement at regular intervals. For electronic monitoring to be most efficient for victim safety, systems that also provide notification to the victim in real time should be used. While this technology does not ensure compliance, it may provide law enforcement and victims early notice of violation and, in doing so, prevent a tragedy.

Databases and Registries

Many states have passed legislation creating statewide CPO databases to assist with the service and enforcement of orders.[48] Some require orders to be entered into the National Crime Information Center Protection Order File (NCIC POF) database, a national registry for protection orders issued in all 50 states, Tribes, military installations, and U.S. Territories. Databases vary on what types of orders

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[47]For examples, see Ark. Code Ann. § 9-15-2017 (2009); 725 Ill. Comp. Stat. Ann. 5/110/5 (2023); Ind. Code Ann. § 34-26-5-9 (2023); N.D. Cent. Code § 14-07.1-19 (2009); Ohio Rev. Code Ann. § 2903.214 (2023); Okla. Stat. Ann. tit. 22, § 60.17 (2019); Tex. Code Crim. Proc. Ann. art. 17.292 (2023); Utah Code Ann. § 77-36-5 (2022); Wash. Rev. Code Ann. § 7.105.310 (2022).

[48]For an overview of state and U.S. territories that have enacted laws regarding the entry of protection orders into databases or registries, see National Center on Protection Orders and Full Faith and Credit, *State and Territorial Protection Order Registry/Database and Registration Statutes*, Battered Women's Justice Project (2019).

are entered and may only allow for summary information but should always include as much comprehensive information as possible.[49] All state CPO repositories include domestic violence protection orders, but also can include orders of protection for sexual assault, stalking, elder abuse and juvenile orders of protection, as well as emergency and *ex parte* orders, notice of service, criminal protection orders, and criminal pretrial release and sentencing orders.[50] Including information in databases and repositories about ex parte orders and service of process can aid in the service of orders, especially when they include a method for a law enforcement officer to obtain a copy of the order information to serve on scene.[51] Policies should be developed to set standards for timeliness,[52] accuracy, data quality, and security, and to require use of technology standards for designing, implementing, and maintaining data exchanges. Policies should be developed in collaboration with a wide range of CPO system stakeholders, including advocates and community-based service providers.[53]

If a state creates a statewide protection order registry, which professionals in the justice system should have access to statewide databases?

[49]National Center for State Courts et al., *Protection Order Repositories, Web Portals, and Beyond: Technology Solutions to Increase Access and Enforcement* (2020).
[50]*Id*. at 27; For more information on what type of orders are included by state, see National Center on Protection Orders and Full Faith and Credit, *State and Territorial Protection Order Registry/Database and Registration Statutes*, Battered Women's Justice Project (2019).
[51]*Id.* at 10.
[52]National Center on Protection Orders and Full Faith and Credit, *State and Territorial Protection Order Registry/Database and Registration Statutes*, Battered Women's Justice Project (2019).
[53]National Center for State Courts et al., *Protection Order Repositories, Web Portals, and Beyond: Technology Solutions to Increase Access and Enforcement*, 27 (2020).

Access to protection order registries should be limited to the appropriate professionals in the protection order system.[54] Many states provide guidance or frameworks for who should have access to enter or view data.[55] Some states have different levels of access depending on the user's role. The most common professionals included statutorily are courts or court personnel, law enforcement, and prosecutors.[56] User roles and levels of access should be developed and used in conjunction with established privacy policies to ensure that users only have access to the appropriate records and only under necessary circumstances.[57] This is important to better ensure system professionals, especially those that may be friends or family of a respondent in a CPO or a respondent themselves, are not misusing the registry or database. Monitoring software or application logs may be used to monitor access times, frequency, and other user account access information to provide an alert of suspicious activity or to conduct general audits of activity.[58]

If a victim moves to a new jurisdiction, do they need to register their order in the new location, and if so, will the respondent be notified?

Victims may, but are not required to, register their CPOs in a new jurisdiction.[59] Further, VAWA includes a provision against notifying or requiring notification of the respondent that an order has been registered or filed in

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[54] *Id.* at 6.
[55] *Id.*
[56] National Center on Protection Orders and Full Faith and Credit, *State and Territorial Protection Order Registry/Database and Registration Statutes*, Battered Women's Justice Project (2019).
[57] National Center for State Courts et al., *Protection Order Repositories, Web Portals, and Beyond: Technology Solutions to Increase Access and Enforcement*, 8 (2020).
[58] *Id.*
[59] This section applies to the registration of orders issued within the United States, its territories, and Tribal lands.

a jurisdiction other than the issuing one.[60] Professionals can explain the pros and cons of registering an order in a new location, highlighting that registration is not required for enforcement.[61] For instance, if the victim has an order from Puerto Rico that is in Spanish, registering a certified translated copy in the new jurisdiction, while not required, may assist with the enforcement of the order. However, if the new jurisdiction does not comply with the VAWA prohibition on notification, the court may inform the respondent that the order has been registered in the new court's jurisdiction, alerting the respondent to the new location.[62] Professionals also can explore with victims the possibility of providing a copy of the order to law enforcement agencies without registration to facilitate enforcement. Courts, law enforcement, and other CPO system professionals should also ensure that their jurisdiction is in compliance with VAWA's provision against notifying respondents of registration. Otherwise, they may be unintentionally revealing or at least narrowing down the victim's new, safe location.

What is the NCIC POF Database?

The National Crime Information Center Protection Order File (NCIC POF) Database is a voluntary national registration system intended to facilitate the enforcement of protection orders and federal firearm laws. The NCIC POF is designed to:

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[60] 18 U.S.C. § 2265(d)(1).
[61] 18 U.S.C. § 2265(d)(2).
[62] Despite the VAWA prohibition against notifying the respondent that an order has been registered in a new location, some jurisdictions may still notify the respondent. Notifying the respondent would inform them of the location of the court where the order is being registered. Such notification could be a safety risk for a victim if they, for example, have relocated to the new jurisdiction or are otherwise spending a significant amount of time there without the respondent's knowledge.

- Enable civil and criminal courts to receive timely and accurate information on active as well as historical protection order records;

- Allow law enforcement agencies to access information regarding the existence and terms of an order entered into the system; and

- Assist in the possible identification of persons prohibited from purchasing or possessing firearms as a result of federal, state, local, Tribal or territorial law.

It currently contains protection orders from 53 contributing states and territories along with some Tribes and military installations; however, entry is generally voluntary and not all of the current protection orders issued by the courts of participating states, territories, and Tribes are contained in the NCIC POF Database for a number of reasons.[63]

Historically, Tribes have had difficulty gaining access to national criminal information systems such as NCIC and NICS (discussed in the firearms section). This creates problems with interjurisdictional enforcement as well as ensuring information regarding respondents' disqualification from purchasing or possessing firearms under 18 U.S.C. § 922 are included in NICS searches. To address this problem, the U.S. Department of Justice (DOJ) created the Tribal Access Program for National Crime Information (TAP) in 2015. While not all Tribes currently participate, this program continues to be expanded, providing "selected federally recognized Tribes

[63]National Center for State Courts et al., *Protection Order Repositories, Web Portals, and Beyond: Technology Solutions to Increase Access and Enforcement* (2020).

access to national crime information systems for federally authorized criminal and non-criminal purposes. TAP allows Tribes to more effectively serve and protect their nation's citizens by ensuring the exchange of critical data across the Criminal Justice Information Services (CJIS) systems and other national crime information systems."[64] More information on the TAP program can be found here.

How can the NCIC POF, state, or local databases assist in facilitating enforcement of CPOs?

A CPO is valid even if it is not entered into the NCIC POF or state or local databases; however, these databases can be tools to use in verifying that a valid order exists when the victim does not have a copy available, allowing authorized professionals to verify the existence of orders and their provisions.

The NCIC POF, state, and local databases can also greatly assist law enforcement in cases where the respondent asserts that, although there may be a valid order, they have not yet been served. Law enforcement that has access can note or verify service in the database.

However, not all jurisdictions enter proof of service information into databases at all or in a timely manner. As a result, officers should use other means of verifying that the order has been served. Strategies can include contacting the issuing jurisdiction or reviewing proof of service provided by the petitioner. Officers can also interview the respondent to gather more information. Some respondents avoid service for long periods of time, but they may have learned about

[64] Tribal Access Program for National Crime Information Ensuring the Exchange of Critical Data, Overview, U.S. Dep't of Just. (June 2019).

the order and therefore have constructive knowledge of the order. If constructive knowledge is sufficient notice in the jurisdiction, the officer should enforce the order.

If the officer learns that the respondent has not been served, they may be able to provide notice of the order and its terms or serve a copy of the order at that time. Officers should be trained on how to obtain a copy of an order, whether through a registry, a court access website, or other means, so that service can be accomplished. Proof of service should then be recorded as prescribed by local law.

Other Considerations

How else can technology be used to promote victim safety?

Technology can increase awareness of domestic and sexual violence and stalking, remedies available to victims, and available services in the community.[65] Further, technology can build community, connection, and peer support for victims and their families. Victims and those that work with them often find new ways to use technology as part of safety planning. Each victim's experience is unique and different technologies provide a range of risks and potentials based

[65]For example, many local domestic violence programs and state coalitions have significant social media presences where they share awareness campaigns about gender-based violence and local resources as well as providing resources and support through text or chat; the National Domestic Violence Hotline provides assistance through phone, chat, or text as does their project for young people, Love is Respect; WomensLaw.org, a project of the National Network to End Domestic Violence, includes an email hotline for support; Many state courts, like Arizona, have created easily navigable webpages and portals to help survivors determine their qualifications for certain remedies while also providing referrals and safety planning information; Legal aid organizations, such as the Legal Aid Center of Southern Nevada, have also created easily navigable websites dedicated to self-help and attorney referrals for common case types including CPOs.

on that experience. While security cameras may be a risk in one case where the respondent has access to their controls (see the Respondent's Use of Technology Section), they may provide comfort and safety in another. Helping victims be creative with their safety plans and how technology can play a part can be important support, but should also include discussions regarding any risks or unintended consequences those technologies may also carry with them.

What are some of the challenges in using technology to improve the CPO process?

When employing a technological solution, it is important for professionals to assess the full nature and scope of limitations and the range of remedies available to address them. Technological improvements require resources beyond physical technology, such as sufficient staff to design, manage, or support the technology initiatives. Sometimes, a low technology and low-cost solution may solve the problem with less staff time and funding expended.

In addition to the challenges experienced by professionals in implementing technology in the CPO process, litigants are also impacted by many challenges. Some litigants may not have access to or feel comfortable using technology. Also, technology may not always be available for many reasons. Instructions for using technology should be offered in plain language, contact information should be provided for any needed assistance or accommodation requests, and professionals should have a non-technology option for litigants seeking CPOs.

How can the CPO system address the digital divide and ensure that litigants have access to technology-based resources?

Many victims struggle to make use of electronic court systems because they lack access to safe, reliable technology. Additionally, victims of technology facilitated abuse may not have access to devices that are safe to use for tasks such as e-filing or communicating with the court. "No matter how accessible an e-filing site is, if litigants cannot get to the Internet, or if the Internet service is too slow to allow completion of the work in a reasonable period of time, the system is functionally inaccessible."[66] A few of the considerations for addressing the digital divide include:

- Broadband Availability: For litigants to e-file, access services remotely, or meaningfully participate in remote court proceedings, they need to be able to connect to the Internet. There are many rural areas in the United States that do not have reliable broadband access. Further, many litigants in urban and rural communities cannot afford personal internet services or have limited data. Some communities have been able to work together to provide innovative solutions to these problems. Community locations such as libraries, community centers, and even courthouses have been used to not only provide internet access but also access to safe devices such as tablets or computers for litigants who either do not have their own compatible devices or who have concerns that their devices may be compromised by the respondent.[67]

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[66]Richard Zorza, *Principles and Best Practices for Access-Friendly Court Electronic Filing*, Legal Services Corporation, 27 (2013).
[67]For more information on technology safety for survivors of technological abuse, including who suspect their devices or accounts are being monitored or otherwise compromised by their abuser, see Safety Net Project, *Technology Safety & Privacy: A Toolkit for Survivors*, National Network to End Domestic Violence (last visited Oct. 25, 2023).

- Mobile Compatibility: Even litigants with access to reliable internet may not have access to a safe computer to use to access e-filing portals, remote services, or to participate in remote court proceedings. More and more, people are depending on their smartphones to do all their online business. It is important for fillable forms, guided interviews, platforms used for hearings, and other services are accessible from a tablet or smartphone.[68]

- Physical Alternatives: Another important way to address the digital divide is to continue to also provide filing options, services, and hearings in person. This helps to ensure that remote access provides litigants with broader access to justice instead of widening the barriers created by the digital divide.

[68]Richard Zorza, *Principles and Best Practices for Access-Friendly Court Electronic Filing*, Legal Services Corporation (2013).

ISSUE IN FOCUS: Technology

PART II: RESPONDENTS' USE OF TECHNOLOGY

As technology use has become ubiquitous in today's society, perpetrators increasingly misuse a wide range of technology to contact, threaten, terrify, and further harass their victims. While technology can be used by perpetrators to maintain power and control, technology itself is not "bad." As illustrated in Part I, technology has the potential to increase litigants' access to tools and resources, including legal remedies like civil protection orders (CPOs). Technology can also be a part of a victim's safety plan.[1] Technology can be used to empower victims and counteract isolation, especially for immigrant or military-connected victims who may be geographically far away from their family, friends, and support systems. Technology is also an increasingly important tool for banking, bill pay, finding jobs, communicating with teachers and schools, participating in educational opportunities, and interacting with healthcare professionals. Victims should not be told "just don't use that app," "just

[1]For more information on talking to victims about technological abuse, safety planning with technology, and on how technology can be used to empower victims and increase their safety, see the National Network to End Domestic Violence's Safety Net Project.

delete your account," or "stay off the internet." Remember, it is not the technology that is the problem, it is how the perpetrator is choosing to use that technology. Further, some of those actions, like deleting accounts, may escalate the abuse as the perpetrator attempts to regain their power and control, especially for victims who may still be living with or recently separated from the perpetrator. The rest of this section will focus on the use of technology by perpetrators as respondents in CPO cases.

How do respondents use technology to harass, terrorize, or further abuse their victims?

As a seminal article on technological abuse explained, "[E]veryday more advanced technologic tools make stalking easier and more effective. The increasingly affordable and available variety of phone, surveillance, and computer technologies provide a wide array of dangerous tools for abusers to use to harass, intimidate, and stalk their current and former intimate partners."[2] Most commonly, perpetrators use everyday technology, like sending harassing emails, texts, and posting harassing comments on social media, to continue to contact a victim.[3] However, they may also use more sophisticated software and hardware to hide their identity, impersonate, stalk, or monitor victims.[4] The use of technology by perpetrators of domestic and sexual violence and stalking has become such an issue that "technological

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[2]Sarah Tucker et al., *A High-Tech Twist on Abuse*, 3 Fam. Violence Prevention & Health Practice 1 (2005).
[3]*Id.*
[4]Cindy Southworth & Sarah Tucker, *Technology, Stalking and Domestic Violence*, 76 Miss. L. J. 667 (2007) (analyzing ways perpetrators have used technology to increase surveillance and control of victims).

abuse”[5] was added to the definition of “domestic violence” in the Violence Against Women Act Reauthorization Act of 2022.[6] Technological abuse is defined by the reauthorization as “an act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology, including but not limited to: internet enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.”[7]

Types of Technological Abuse

Technological abuse may be the underlying behavior that leads a victim to seek a CPO and multiple types of orders may be available to those experiencing technological abuse depending on the type of relationship between the parties.[8]

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[5]Many terms are used to describe the use of technology to perpetrate intimate partner violence. Because this publication is intended to be used by professionals in the CPO system, the publication will use the term “technological abuse” codified in the Violence Against Women Act Reauthorization Act of 2022, 34 U.S.C.A. § 12291.

[6]Violence Against Women Act Reauthorization Act of 2022, 34 U.S.C.A. § 12291 (a)(12), defining “domestic violence” as “felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior . . .” (emphasis added).

[7]*Id.* at (a)(40).

[8]Protection from abuse or domestic violence protection orders, protection from stalking orders, anti-harassment orders, to name a few.

Tactics[9] used in technological abuse are the same or similar to those used in non-technological domestic violence and stalking; technology just makes them easier, less time-consuming, and provides a more expansive reach.[10] This can create a sense of omnipresence, as perpetrators seem to be everywhere – they know where their victims are at all times, they appear seemingly out of nowhere, they know about conversations their victims have had with others, and they find ways to let the victim know that there is nowhere safe from their reach.[11] This can exacerbate a victim's already significant feelings of hypervigilance and can leave them feeling unsafe anywhere, and, as some victims have described it, hunted. While there are no universally agreed upon terminology for the types of behaviors perpetrators use in technological abuse,[12] tactics often overlap and can include, but are not limited to, the following:

Surveillance: Surveillance or monitoring of a victim's daily activities and communications has long been a tactic that perpetrators of intimate partner violence and stalking have used to control and terrorize their victims. Technological advances have made this significantly easier. Surveillance can take on many forms, including:

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[9]While online harassment and cyberbullying may have many overlapping strategies and tactics, when discussing technological abuse, this document is looking at technology that is being used to further harass, control, monitor, and threaten victims of domestic and sexual violence and stalking.
[10]Cynthia Fraser et al., *The NewAge of Stalking: Technological Implications for Stalking*, 61 Juv. and Fam. Ct. J. 39 (2010).
[11]*Id.* at 44; Michaela M. Rogers et al., *Technology-Facilitated Abuse in Intimate Partner Relationships: A Scoping Review*, 0(0) Trauma, Violence, and Abuse 1, 10 (2022); Renee Fiolet et al., *Exploring the Impact of Technology-Facilitated Abuse and Its Relationship with Domestic Violence: A Qualitative Study on Experts' Perceptions*, 8 Global Qualitative Nursing Res. 1, 4 (2021).
[12]Jill Mesing et al., *Intersections of Stalking and Technology-Based Abuse: Emerging Definitions, Conceptualization, and Measurement*, 35 J Fam. Violence, 693 (2020).

Account monitoring: While technology companies provide security features to keep accounts safe from nefarious strangers, these companies tend to offer fewer if any protections from someone the victim at one time loved and trusted. Perpetrators may have physical access to the victim's devices, be able to guess the victim's passwords, or they may be able to answer the victim's security questions. Or, they may have simply shared their account access information with each other either voluntarily or based on coercive pressure from the perpetrator. Access to one of these types of accounts can often provide assistance in accessing other accounts, such as with some methods of two-factor authentication. Or, as discussed below, some cases may involve spyware installed on a computer or phone which can provide information on activities related to any accounts accessed on the compromised device. Even new, apparently safe accounts, such as those set up for use in communicating with the court, an advocate, or the victim's attorney, may be compromised if an unsafe account or device was used to set it up.[13]

Cameras and Microphones: Cameras are not new tools for perpetrators of domestic violence and stalking, but advances in technology have led to their inclusion in an ever-increasing number of "smart" devices beyond just phones. They can be included and remotely accessed in home security systems, in pet feeders, and refrigerators, and they can be attached to doorbells to let users know who is at their door. Many devices

[13]It can be important for CPO system professionals to discuss these potential dangers with victims who have technological abuse concerns that are seeking services or court remedies. As many courts have developed remote options for seeking protection orders, some courts have provided warnings or information regarding these types of security concerns on their websites or portals. Advocates, attorneys, court help center staff, or potentially community services such as at public libraries may be able to provide access to safe devices and/or help walk victims through setting up safe accounts. For more information, see the National Network to End Domestic Violence's Safety Net Project.

have microphones built in to enable voice commands, such as smart speakers, televisions, or smart home hubs that give users virtual control over lighting, thermostats, and even door locks. While all of these can provide convenience and added safety for users, perpetrators can use some of these technologies to monitor their victims, especially if the perpetrator set these devices up for the victim while they were still together. They may be able to watch, listen in, or otherwise monitor activities in the victim's home or presence. Or, they may lock the victim out of devices in their own home.

Location tracking: Sometimes, a victim's device may be sharing location information without their knowledge, such as attaching a location to a social media post or to the metadata[14] of a photo they share through email or text messaging. Shared family phone plans or iCloud accounts can provide respondents access to location and device trackers meant to help users find their missing phones or keep track of their children's whereabouts. Other apps or software with tracking abilities may be installed on a victim's phone without their knowledge. These apps, often referred to as spyware, may also provide real time access to text messages, emails, internet searches, and call logs from the infected phone.[15] This can include features such as geofencing that alerts the user when the infected device leaves a certain geographical area. Certain GPS devices that adhere to a victim's car as well

[14]According to Merriam-Webster, *Metadata* is "data that provides information about other data." This can include a variety of information such as GPS coordinates imbedded in digital photographs or information about when a document was created or modified. Metadata, Merriam-Webster (last visited Apr. 2, 2024).
[15]It is important to note that spyware should not be the first assumption when a victim suspects a respondent of tracking their location or accessing their communications with others. There are many ways that a perpetrator may access this type of information about a victim based on the intimate nature of their past or current relationship. For more information on spyware, see Safety Net Project, *Spyware/Stalkerware Overview*, National Network to End Domestic Violence (last visited Nov. 2, 2023).

as built-in tracking services to locate stolen cars, devices intended for auto insurance purposes, or to monitor a teen's driving habits may provide the perpetrator access to location information. Bluetooth trackers intended to help users find lost keys or luggage, such as AirTags or Tiles, are small devices with significant battery life that may be hidden in a car or on a victim's person. Further, smart watches or other wearable technology may provide GPS information, such as mapping out the wearer's daily runs, that could be accessed by the perpetrator.

Children and devices: The victim and respondent's children in common can create another layer of technological abuse.[16] Respondents may hide Bluetooth trackers in children's toys or belongings during visitation, or they may gift them devices with tracking capabilities enabled. They may use virtual visitation to glean information about the victim's safe or confidential residence. A court may order a perpetrator to maintain a cellphone for the minor child which may give the perpetrator access to family trackers or other features.

The Safe Connections Act of 2022[17] and other state specific statutes may require a mobile service provider to separate a victim's cellular phone line from an account shared with the abuser based on a separation request from the victim and accompanying documentation such as a civil or military protection order. However, this remedy is not necessarily helpful for victims that cannot afford to take over sole financial responsibility for their and their children's mobile accounts.

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[16]Renee Fiolet et al., *Exploring the Impact of Technology-Facilitated Abuse and Its Relationship with Domestic Violence: A Qualitative Study on Experts' Perceptions*, 8 Global Qualitative Nursing Res. 1 (2021).
[17]Safe Connections Act of 2022, Pub. L. No. 117-223, 136 Stat. 2280, 2280-2288 (2022).

Harassment: Harassment can entail many different types of technological abuse but will be discussed in this context as repeated unwanted contact intended to intimidate, threaten,[18] and terrorize victims. Depending on the history between the parties and the context of the contact, this may include constant or repeated unwanted phone calls, text messages, or direct messages through social media accounts, sometimes including a threat of harm. These may come from the respondent's own accounts or from a fake account or anonymizing app or program, such as those used in spoofing, discussed below under impersonation. They may also use such methods to continue to harass their victim after being blocked or otherwise prohibited from contacting them directly. Perpetrators of technological abuse may also enlist the assistance of third parties, such as family and friends, in the harassment or abuse through technology.[19] Perpetrators might even enlist the assistance of strangers by doxing the victim, defined as "to publicly identify or publish private information about (someone) especially as a form of punishment or revenge."[20] As discussed below under impersonation, a perpetrator may also impersonate someone

[18]Many practitioners have questions about how the Supreme Court of the United States's 2023 decision in *Counterman v. Colorado*, 600 U.S. 66 (2023), may affect orders of protection based solely on the communication of threats. While *Counterman* involved a criminal conviction of stalking based on threats, it is unclear whether this will significantly affect any state CPO statutes. The Court held that for a stalking conviction based solely on the communication of "true threats" to pass constitutional muster, there must be a showing that the defendant knew the threats could be perceived as threatening and was at least reckless in communicating them. In states where a petitioner must prove the criminal elements of a stalking statute to qualify for an order, this may require petitioners to show some evidence that the threats were made with a reckless intent. In the *Counterman* case, a showing of how Counterman had created new, fake accounts to contact the victim after being blocked by the victim may have been sufficient to establish the necessary intent. Other circumstantial evidence, such as being told by a law enforcement officer or others that certain communication would be considered threatening and the respondent disregarding such warnings may also be sufficient.
[19]Renee Fiolet et al., *Exploring the Impact of Technology-Facilitated Abuse and Its Relationship with Domestic Violence: A Qualitative Study on Experts' Perceptions*, 8 Global Qualitative Nursing Res. 1, 4-5 (2021).
[20]*Doxing*, Meriam-Webster (last visited Nov. 2, 2023).

else, such as a trusted friend, family member, or employer in an attempt to get the victim to answer their calls or to hide their identity. They may even impersonate the victim through the victim's accounts or by setting up fake ones in the victim's name and soliciting contact from strangers such as unwanted contact and/or images of an intimate or sexual nature.

Impersonation: As mentioned above, there are a number of reasons why a perpetrator may use technology to impersonate someone else.They may use technology such as "spoofing" to make it appear as if their calls or texts are coming from another source, like a trusted friend, an employer, or even the court. Spoofing allows a perpetrator to "mask the caller's phone number on Caller ID, making the victim think she is receiving the call from someone else."[21] They may do so to get the victim to answer their calls or they may do so in hopes that the victim will adversely rely on the false information provided, hurting their case against the respondent. They may also use their access to a victim's email or social media accounts to send messages that appear to be coming from the victim to hurt their relationships with their family, friends, or employers. They may create accounts impersonating the victim in an effort to ruin their public reputation or even their credit score, increasing a victim's economic dependence on the perpetrator. In extreme cases, perpetrators have even created fake dating or personal ads on sites such as Craigslist to make it seem as if the victim is interested in receiving contact from others interested in sex or encouraging, even inviting, sexual assault of the victim.[22]

[21]Cynthia Fraser et al., *The NewAge of Stalking: Technological Implications for Stalking*, 61 Juv. and Fam. Ct. J. 39, 42 (2010).
[22]*Id.* at 47–48; *U.S. v. Sayer*, 748 F.3d 425 (First Cir. Ct of App. 2014).

Reputational Harm: Reputational harm can also include shaming, violations of privacy, and even sexual abuse when intimate images, information, or recordings are shared without the victim's consent. Again, reputational harm is not a new tactic used by perpetrators of domestic and sexual violence and stalking, but technology has made it more devastating to victims. The internet allows a perpetrator to quickly disseminate personal or embarrassing information about the victim, whether true or not, across the globe. Even if attempts are made to remove the material, it is almost impossible to ensure that information on the internet has not been saved by another user or program and will never appear again. Because of this, victims may spend the rest of their lives in fear of images or information reappearing at any time. Information or images shared, whether accurate or not, can do more damage than just embarrass the victim, they can cause harm to their relationships with friends, family, or support systems, and they can hurt victims' job or educational opportunities. The information also could discourage other future potential intimate partners from pursuing relationships with the victim, or the information may even be used by the respondent against the victim in CPO or custody cases.

Information or images of an intimate nature shared by the respondent can be a violation of the victim's privacy and may violate some state and federal statutes regarding the nonconsensual sharing of intimate images. Whether criminal or not, these violations of a victim's privacy can have long lasting consequences and should be taken seriously by professionals working with them. Threats to disclose information can even be used to intimidate victims in an effort to get them to return to the perpetrator or to dismiss or "drop" legal action against them.

Isolation: Isolation has long been used as a tactic of perpetrators to gain coercive control over their victims. While the COVID-19 pandemic illustrated how technology can be used to build connections from afar and break down feelings of isolation, being cut off from technology can have the opposite effect. Destroying devices can isolate victims from emergency and victim services as well as family, friends, and support networks. Constant harassment or sharing information intended to harm the victim's reputation through text messages, phone calls, emails, etc., to family, friends, and employers can cause the victim to take on feelings of shame or guilt for bringing the perpetrator into the lives of their support networks. Constant contact and surveillance can isolate victims by making them feel as if nowhere is safe, perpetuating feelings of terror, loneliness, and hypervigilance.[23]

Financial Harm: Perpetrators can use technology to cause financial harm to victims in a variety of ways including, impersonating the victim to commit fraud, ruining their credit, breaking their devices, or locking them out of accounts. The harms to victims include, "lack of or limited access to finances and online banking; loss of employment; restrictions and prevention in securing employment; the accrual of debt; payment of hefty fees for the removal of sexual images from social media and web-based platforms; financial implications of purchasing new or replacement devices."[24] Causing financial harm has long been a coercive tactic used by perpetrators to gain and maintain power and control. Its purpose in technological abuse is no different.

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[23]Michaela M. Rogers et al., T*echnology-Facilitated Abuse in Intimate Partner Relationships: A Scoping Review*, 0(0) Trauma, Violence, and Abuse 1, 10 (2022); Renee Fiolet et al., *Exploring the Impact of Technology-Facilitated Abuse and Its Relationship with Domestic Violence: A Qualitative Study on Experts' Perceptions*, 8 Global Qualitative Nursing Res. 1, 4 (2021).
[24]Michaela M. Rogers et al., T*echnology-Facilitated Abuse in Intimate Partner Relationships: A Scoping Review*, 0(0) Trauma, Violence, and Abuse 1, 9 (2022).

Gaslighting: According to Merriam-Webster, "gaslighting" is "psychological manipulation of a person usually over an extended period of time that causes the victim to question the validity of their own thoughts, perception of reality, or memories and typically leads to confusion, loss of confidence and self-esteem, uncertainty of one's emotional or mental stability, and a dependency on the perpetrator."[25] There are many ways a perpetrator may use technology to gaslight their victim. They may gain access to the victim's accounts and send messages as if they were the victim or delete content such as photos or messages. They may continue to control internet-connected devices, or "smart" devices.[26] When smart technology, from a smart household appliance to an internet-connected car, is purchased or registered jointly or under the perpetrator's name, it can be challenging to restrict the perpetrator's access or to remove them from the account. With that control, perpetrators can turn off the heating or air conditioning through a smart thermostat; turn on and off the lights or play loud music while the victim and children try to sleep; they may eavesdrop through microphones in smart home hubs, smart speakers, or other internet-connected devices and share their gained knowledge with the victim making them feel constantly watched and vulnerable. It can be challenging to keep up with innovations in internet-connected devices and how they are misused, but when professionals in the CPO system do not know or understand the capabilities of these technologies, they may provide inappropriate responses to victims that compound the self-questioning and confusion that the perpetrator has created.[27]

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[25] *Gaslighting*, Merriam-Webster (last visited Nov. 2, 2023).

[26] These types of everyday devices that can be connected and controlled through the internet are often referred to as "internet of things" or "IoT;" Michaela M. Rogers et al., T*echnology-Facilitated Abuse in Intimate Partner Relationships: A Scoping Review*, 0(0) Trauma, Violence, and Abuse 1, 10 (2022).

[27] Cynthia Fraser et al., *The NewAge of Stalking: Technological Implications for Stalking*, 61 Juv. and Fam. Ct. J. 39, 40 (2010).

Technological Abuse in CPO Cases

Technological abuse may be the behavior that finally brings a victim to seek assistance from the CPO system. Some forms of technological abuse, however, are not an obvious fit within a particular jurisdiction's statutory language. States, Tribes, and territories have varying definitions and statutory frameworks for their CPOs. Some explicitly include "cyberstalking"[28] or "cyber-harassment"[29] in their CPO statutes,[30] some refer to their criminal stalking[31] and domestic violence statutes for definitions, while other courts apply the legislative intent of the language in their code to the behaviors, whether technology was used or not. It is important for professionals working in the CPO system to be aware of the qualifying behaviors for orders in their jurisdiction.[32] As always, context is important when determining whether the respondent's use of technology rises to the level contemplated by legislatures within CPO statutes. The following are a small sample of how courts have applied the misuse of technology to their definitions of "abuse" or "stalking" in CPOs:

- The Louisiana Court of Appeals held that a respondent sending repeated unwanted "non-physical threats and harassment" to the victim through text messages and emails, disparaging text messages and emails about the victim to her friends and family, publicly posting disparaging messages

[28]Miss. Code Ann. § 93-21-3; R.I. Gen. Laws § 15-15-1.
[29]N.J. Stat. Ann. § 2C:33-4.1.
[30]For more information on definitions in CPO statutes, see National Center on Protection Orders and Full Fatih and Credit, *Definition of Domestic Violence/Abuse for Civil Protection Orders*, Battered Women's Justice Project (2020).
[31]For a breakdown of criminal stalking statutes, including how they contemplate technological abuse, see Stalking Prevention, Awareness, and Resource Center (SPARC), *Stalking Statutes in Review*, AEquitas (Jan. 2022).
[32]For another helpful resource for professionals interested in learning about a specific state's CPO laws, see National Network to End Domestic Violence's Womenslaw.org.

about the petitioner on social media, as well as threats to disseminate private photographs of her were sufficient to meet the definitions of stalking and cyberstalking as defined in the criminal code and therefore were sufficient to warrant the entry of a protection order.[33]

- The Tennessee Court of Appeals found that a petitioner who had previously testified against the respondent in an unrelated case was entitled to an order based on the crime of stalking because the respondent's "repeated video and written posts [on social media] to and about [the petitioner] were part of his course of conduct of stalking. His repeated posts were clearly meant to harass, degrade, intimidate, threaten, and humiliate [the petitioner], and they had the desired effect of causing her fear and emotional distress."[34]

- The Superior Court of Pennsylvania found that a public post on social media that was clearly directed at the victim conveying a threat to her physical safety, although not mentioning the victim by name, was sufficient in light of previous abusive behavior by the respondent to issue a protection order.[35]

- A Florida District Court of Appeals held that two public posts on social media, one containing the lyrics to a song the petitioner was listening to on her private computer out of the presence of the

[33]*Shaw v. Young*, 199 So.3d 1180 (La. Ct. App. 2016).
[34]*Purifoy v. Mafa*, 556 S.W. 3d 170, 192 (Tenn. Ct. App. 2017).
[35]*E.K. v. J.R.A.*, 237 A.3d 509 (PA. Super. Ct. 2020).

respondent and the other containing the text of a private message the petitioner had sent a third party on her social media account, which she believed showed he had "hacked" her accounts, were insufficient to establish, on their own, cyberstalking for an injunction.[36]

- A California Court of Appeals found that a respondent's downloading the contents of the petitioner's mobile phones and publicly sharing her private diary style notes saved there along with her communications with third parties, including her attorney, and redirecting messages from her social media account to his own email account causing the petitioner "extreme embarrassment, fear, and intimidation" was sufficient to establish abuse under the Domestic Violence Prevention Act.[37]

- The Oregon Court of Appeals found that evidence of respondent's use of the "Find My iPhone" tracking app and unapproved access to the petitioner's email account paired with text messages illustrating the respondent's knowledge of where the petitioner was located "at anytime" was sufficient to establish that the respondent was tracking the petitioner. Further, the court determined that, despite "tracking" not being specifically enumerated in the statute, "tracking" is akin to "following" and is within the type of conduct the statute was intended to cover.[38]

[36] *Horowitz v. Horowitz*, 160 So3d 530 (Fla. Dist. Ct. App. 2015).
[37] *In re Marriage of Evilsizor & Sweeney*, 237 Cal. App.4th 1416, 1421 (2015).
[38] *A.A.C. v. Miller-Pomlee*, 440 P.3d 106 (Or. Ct. App. 2019).

- As for determining course of conduct, the Massachusetts Supreme Court held that posting a single rap song with lyrics about how the respondent wanted to inflict physical and sexual violence on petitioners, who were fellow students, through two different platforms constituted only one act for the purposes of establishing a pattern of behavior sufficient to warrant a stalking protection order.[39]

- The Illinois Court of Appeals found multiple texts and calls, which included at least two threats of violence or intimidation, in one night over a two-hour period were sufficient to establish a "course of conduct" as required to qualify for a stalking no-contact order.[40]

What are challenges related to digital evidence in CPO proceedings?

Evidence to corroborate technological abuse frequently is in digital form. One of the most challenging aspects of digital evidence in CPO proceedings is that most litigants are self-represented, the vast majority of whom lack legal education and experience. When it comes to digital evidence, most courts accept printouts, screenshots, or other replications of digital evidence. Some, especially those equipped with document cameras in their courtrooms or other means of memorializing the evidence for the court record, will consider evidence presented on a digital device, such as a litigant's cell phone, if the evidence is relevant and also made available to the opposing party. It is important for CPO systems to make litigants aware of any

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[39] *F.K. v. S.C.*, 115 N.E.3d 539 (Mass. 2019).
[40] *Coutant v Durell*, 193 N.E.3d 754 (Ill. App. Ct. 2021).

limitations to the formats of digital evidence that the court will accept. Further, plain language resources on how to gather, preserve, and present digital evidence are helpful to ensure proper access to justice.[41] Self-represented litigants (SRLs) can struggle with "laying foundation" (telling the court how they know the evidence is accurate and why it makes their argument more likely)[42] for the admissibility of evidence. While it is important to authenticate evidence for admissibility, victims should not be denied relief because they are not legally trained. Courts can consider how to get the information they need while recognizing the limitations of SRLs to act as their own counsel. Courts should be consistent in how they address these challenges and publicize what is needed for them to consider digital evidence.

Another challenge can come from the use of anonymous or fake accounts. Courts have determined that circumstantial evidence can be used to show that "anonymous" communications came from a particular party (e.g. IP addresses[43] and context clues from the content of the communication[44]).Courts have also determined there was sufficient circumstantial evidence to establish that respondents have used the accounts of others to communicate with victims. Examples include showing respondent's access to the accounts along with the timing and content of the messages[45] or through other communications revealing the intent of the respondent to use another's account.[46]

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[41]National Network to End Domestic Violence, *How to Gather Technology Abuse Evidence for Court*, National Council of Juvenile and Family Court Judges (2018).
[42]Nancy Ver Steegh, *10 Steps for Presenting Evidence in Court*, National Council of Juvenile and Family Court Judges (2016).
[43]*Swearngin v. Rowell*, 846 S.E.2d 263 (Ga. Ct. App. 2020).
[44]*Commonwealth v. Danzey*, 210 A.3d 333 (Pa. Super. Ct. 2019).
[45]*State v. Clemons*, 852 S.E.2d 671 (N.C. Ct. App. 2020).
[46]*ARM v. KJL*, 995 N.W.2d 361 (Mich. Ct. App. 2022) (jailhouse calls revealed conversations where respondent asked family and friends to continue posting through the social media account in question while he was in jail).

Courts and system professionals also may have concerns about the reliability of digital evidence. It is possible perpetrators choose to engage in technological abuse over other tactics for these reasons. While manipulation of digital evidence, such as photoshopped images or "deepfakes,"[47] faked text messages, spoofed phone calls, or fake accounts are concerning, it is also important to remember these concerns exist around other types of evidence that have regularly been accepted by the court, such as typed documents, handwritten notes, and especially oral testimony. As the Georgia Court of Appeals wrote, "we acknowledge that every form of electronic communication can be 'spoofed,' 'hacked,' or 'forged,' but this does not and cannot mean that courts should reject any and all such communication. Indeed, the vast majority of these electronic communications are just as they appear to be—quite authentic."[48] Courts and judicial officers are regularly charged with making credibility determinations based on all the evidence in front of them, and the task is no different when dealing with digital evidence.

How can CPOs effectively address technological abuse in their provisions?

Each order should take into consideration the unique ways technology may be used in a particular case.[49] Orders should be specific as to what they prohibit so as to put the respondent on notice of the prohibited behaviors but also

[47]According to Merriam-Webster, a "deepfake" is an image or recording that has been convincingly altered and manipulated to misrepresent someone as doing or saying something that was not actually done or said." *Deepfake*, Merriam-Webster (last visited Mar. 27, 2024).
[48]*Johnson v. State*, 824 S.E.2d 561 (Ga. Ct. App. 2019) (quoting *Pierce v. State*, 807 S.E.2d 425 (Ga. 2017)) (internal punctuation omitted).
[49]For considerations when drafting orders, see National Council of Juvenile and Family Court Judges, *Drafting Technology Responsive Dispositions Guide*, National Network to End Domestic Violence (last visited Nov. 2, 2023).

broad enough to encompass the many ways perpetrators can manipulate their behavior to fall within a perceived gray area. This is especially true when the parties share children. Orders involving child custody and visitation should consider safety risks related to the respondent's access to the children and their devices, ownership and control of the children's mobile and online accounts, or any other monitoring of children through technology while they are in the care of the victim. Orders should also consider how communication about the children should be conducted. Orders such as "no contact except for communication by text message or email regarding the children" can often lead to unreasonably repetitive or abusive messages being perpetuated under the false pretense of concerning the children. It is also important to focus limitations and prohibitions on preventing future harassment and abuse by the perpetrator, not the victim's use of technology. When the technological abuse focuses on what the respondent says online, there may be additional considerations to ensure that orders do not violate the respondent's First Amendment rights.

How might the First Amendment of the U.S. Constitution be implicated in CPOs involving technological abuse?

Prohibiting direct communication with a protected person through a civil protection order has not been found to violate a respondent's First Amendment rights. The expansion of the online world, however, has complicated how courts balance the government's interest in protecting victims of domestic and sexual violence and stalking and the respondent's freedom of speech. The challenge was articulated by United States Supreme Court Justice Sonia Sotomayor when she wrote, "Our society's discourse occurs more and more in the 'vast democratic forums of the

Internet' in general, and social media in particular. Rapid changes in the dynamics of communication and information transmission have led to equally rapid and ever-evolving changes in what society accepts as proper behavior."[50] An unfortunate consequence of this is that "the internet has also made stalking and harassment even easier. Stalking can be devastating and dangerous. Lives can be ruined, and in the most tragic instances, lives are lost. Harassers can hide behind online anonymity while tormenting others. This happens in the context of intimate relationships, and it happens with strangers. Overly constraining our society's ability to respond to stalking would come at a real cost."[51] Courts across the country have struck different balances in addressing these countervailing forces.

Are restrictions on speech in CPOs content-neutral or content-based?

Some courts have held that restrictions on what a respondent can post online in CPOs are content-neutral (meaning the restriction is not based on the message it conveys and therefore requiring a lower level of scrutiny from the court)[52] because they include both expressive and non-expressive activities.[53] According to *Commonwealth v. Lambert*, "An abuser's mere posting of any reference to his

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[50]*Counterman v. Colorado*, 600 U.S. 66, 87 (2023) (Sotomayor, J., concurring) (internal quotation marks and citations omitted).
[51]*Id.* at 89.
[52]Scrutiny in this context refers to the balancing of the important governmental interest the regulation or restriction advances, the amount or type of speech being curtailed, and how narrowly tailored the regulation or restriction is to meet the stated governmental interest. According to *United States v. O'Brien*, such a content-neutral regulation of speech is justified if 1) the regulation is within the power of the government; 2) the regulation furthers an important or substantial governmental interest; 3) the governmental interest is unrelated to the suppression of the speech; and 4) the restriction on speech is no greater than needed to further the stated interest. *Commonwealth v. Lambert*, 147 A.3d 1221, 1228 (Pa. Super. Ct. 2016) (citing *United States v. O'Brien*, 391 U.S. 367 (1989)).
[53]*Commonwealth v. Lambert*, 147 A.3d 1221 (Pa. Super. Ct. 2016); *State v. Ryan*, 261 P.3d 1189 (Or. 2011) (Kistler, J., concurring).

or her victim on social media, regardless of content, is . . . automatically considered targeting tantamount to making impermissible contact with the victim. For an adjudged abuser to refer to a victim in publicly trafficked electronic forums, for whatever reason, is to exercise control over the victim in public, thus perpetuating the abuse of the victim."[54] Therefore, a protection order does not prohibit expression of ideas, but rather to whom those ideas cannot be expressed—the protected parties.[55]

The Ohio Supreme Court in *Bey v. Rawawehr*, however, rejected this reasoning, finding that restrictions on the respondent's online speech in CPOs are content-based because the target of the speech (the protected party) is part of the subject matter of the speech and therefore the content of the speech must be examined to determine if the order has been violated.[56] Content-based restrictions on speech must pass a higher level of scrutiny from the court, meaning that the restriction must be necessary to meet a compelling governmental interest and that there are not less restrictive ways to accomplish that governmental interest.

Does the speech fall within a category that is exempt from First Amendment protection?

Some courts have found that even if they are content-based, restrictions on speech in CPOs are not a violation of a respondent's First Amendment rights when issued

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[54] *Commonwealth v. Lambert*, 147 A.3d 1221, 1229 (Pa. Super. Ct. 2016); Similarly, in *Rew v. Bergstrom*, the Minnesota Supreme Court found that protection orders do not impermissibly restrain a respondent's speech because the respondent/speaker is not prevented from expressing a message in other ways and because the regulation of their speech is based on prior unlawful conduct, not the content of the expression. *Rew v. Bergstrom*, 845 N.W.2d 764 (Minn. 2014).
[55] *Rew v. Bergstrom*, 845 N.W.2d 764 (Minn. 2014).
[56] *Bey v. Rasawehr*, 161 N.E.3d 529 (Ohio 2020).

to prevent speech already adjudicated as abusive,[57] threatening[58] or causing the victim substantial emotional distress.[59]

Other courts have gone further and found that restrictions on online speech in CPOs or speech that may be criminalized under stalking statutes fall within an exempt category of speech, speech integral to criminal conduct.[60] For example, The Louisiana Court of Appeals in *Raymond v. Lasserre* upheld restrictions on online speech in a CPO that was issued based on a finding that the respondent's speech was unprotected because it amounted to the criminal offenses of stalking and cyberstalking.[61]

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[57]*Childs v. Ballou*, 148 A.3d 291 (Me. 2016); *State v. Brown*, 85 P.3d 109 (Ariz. Ct. App. 2004) (requiring a showing of intent to harass); *A.R.M. v. K.J.L.*, 995 N.W.2d 361 (Mich. Ct. App. 2022) (finding that tagging the petitioner in a post removed it from First Amendment protection); *Piester v. Escobar*, 36 N.E.3d 344 (Ill. Ct. App. 2015); *In re Marriage of Evilsizor and Sweeney*, 237 Cal.App.4th 1416, 1427 (2015) (holding that the nonconsensual collecting and sharing of the petitioners personal information and communications that was "determined after a hearing to constitute abuse is not the type of "speech" afforded constitutional protection."

[58]A note on the United States Supreme Court's 2023 decision in *Counterman v. Colorado*, 600 U.S. 66 (2023). The *Counterman* case involved Colorado's prosecution of the defendant under their criminal stalking statute based solely on unwanted online communications from the defendant to the victim. Under an argument that the communication in this case was not protected by the First Amendment because it communicated a true threat to the victim, the court held that to prosecute someone for a true threat, "[t]he State must prove . . . that the defendant had some understanding of his statements' threatening character" and for that proof, "a recklessness standard is enough." *Id.* at 2109. Because this case involved a prosecution based on a criminal stalking statute and the proper level of intent the defendant must have had to commit that crime, it is uncertain if this ruling will have any effect on lower court rulings regarding CPOs based on allegations of stalking.

[59]*State v. Hefron*, 190 A.3d 232, 236 (Me. 2018) (citing and affirming its holding in *Childs v. Ballou*, 148 A.3d 291 (Me. 2016)) (internal citations omitted).

[60]*Buchanan v. Crisler*, 922 N.W.2d 886 (Mich. Ct. App. 2018) (citing several courts that have relied on speech integral to criminal conduct as the basis for upholding criminal stalking statutes as constitutional); *Purifoy v. Mafa*, 556 S.W.3d 170 (Tenn. Ct. App. 2017); *U.S. v. Sayer*, 748 F.3d 425 (First Cir. Ct of App. 2014) (holding that a cyberstalking statute did not violate the first amendment as applied and was neither impermissibly vague or overbroad); *Counterman v. Colorado*, 600 U.S. 66, 87 (2023) (Sotomayor, J., concurring) (noting that the Court could have avoided determining the proper mens rea for prosecuting true threats, which can be a crime based solely on one threatening communication, and instead could have decided the case under another category of historically recognized unprotected speech, speech-integral-to-criminal-conduct (stalking)).

[61]*Raymond v. Lasserre*, 368 So.3d 82 (La. Ct. App. 2023); However, the Ohio Supreme Court rejected this type of analysis in *Bey v. Rasawehr* because, even if there was a finding that prior speech was not protected, there was no judicial determination that the future speech being restricted would be as well. *Bey v. Rasawehr*, 161 N.E.3d 529, 542 (Ohio 2020).

What about State Constitutions?

State courts must also consider whether their state constitutions provide greater freedom of speech protections than the First Amendment and how that may impact CPO provisions restricting online speech. For instance, the Oregon Court of Appeals determined "when a contact is expressive—either oral or in writing—the Oregon Constitution, Article I, section 8, requires that the contact constitute a threat of serious personal violence—a communication that instills in the addressee a fear of imminent and serious personal violence from the speaker, is unequivocal, and is objectively likely to be followed by unlawful acts."[62] This differs from the explicit language of their CPO statute. When the contact is, however, not expressive, no finding of a credible threat is required.

Does it matter if the speech is of public concern?

When determining how much protection to give online speech in the context of a CPO, many courts also consider whether the speech to be regulated is of public concern or whether the person to be protected is a public official. The Michigan Court of Appeals addressed this challenge in *Buchanan v. Crisler*, noting that "[W]hile messages posted to harass a private individual may be enjoined, cyberstalking laws may not be used to restrict speech that relates to public figures or matters of public concern," and finding that "it must be determined whether the postings are intended solely to cause conduct that will harass a private citizen in connection with a private matter or whether the publication of the information relates to a public figure and an important public concern."[63]

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[62] *J.C.R. v. McNulty*, 467 P.3d 48, 50 (Or. Ct. App 2020) (citing *State v. Rangel*, 977 P.2d 379, 384 (Or. 1999)).
[63] *Buchanan v. Crisler*, 922 N.W.2d 886, 900 (Mich. Ct. App. 2018) aff'd by *TT v. KL*, 965 N.W.2d 101 (Mich. Ct. App. 2020).

The California Court of Appeals also considered this issue in determining whether restrictions in a CPO that prohibited the respondent from sharing online private communication with third parties and personal notes of an intimate nature collected from the petitioner's phones without her consent violated the First Amendment. The court found that "the First Amendment interests served by the disclosure of purely private information ... are not as significant as the interests served by the disclosure of information concerning a matter of public importance. . .Here, [respondent] has not identified any public concern in [petitioner's] text messages and other information that he surreptitiously took from her phones."[64]

Is there a distinction between orders that prohibit talking to the protected party and orders that prohibit talking about the protected party?

Speech about the protected party often garners more First Amendment protection than speech directed to the protected party for a variety of reasons. Restrictions on speech directed to the protected party are more content-neutral because the restriction is based on the contact with the protected person, not the content of the communication.[65] The message of the speech is not being curtailed, just to whom the message can be directed—the protected party.[66] Furthermore, the protected party has a greater privacy right in not being harassed by unwanted contact than in protecting themselves from embarrassing or uncomfortable public conversations.[67] Although some

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[64] *In re marriage of Evilsizor and Sweeney*, 237 Cal.App.4th 1416, 1429 (2015) (internal citations omitted); *See also*, *Neptune v. Lanoue*, 178 So.3d 520 (2015).
[65] *Bey v. Rasawehr*, 161 N.E.3d 529 (Ohio 2020).
[66] *Rew v. Bergstrom*, 845 N.W.2d 764 (Minn. 2014); *Neptune v. Lanoue*, 178 So.3d 520 (2015).
[67] *Childs v. Ballou*, 148 A.3d 291 (Me. 2016); *Best v. Marino*, 404 P.3d 450 (N.M. Ct. App. 2017); *Catlett v. Teel*, 477 P.3d 50 (Wash. Ct. App. 2020); *Coleman v. Razete*, 137 N.E.3d 639 (Ohio Ct. App.).

decisions[68] have identified circumstances where restrictions on what a respondent can say about a protected person have been found appropriate,[69] CPOs have generally required a more narrowed restriction on prohibited speech, focusing on communication to the protected person.

How can the court ensure restrictions in CPOs do not violate the respondent's First Amendment Rights?

While there is no clear national guidance on how to ensure restrictions on online communication in CPOs comport with the First Amendment, it is important for system professionals, especially judicial officers, attorneys, and prosecutors, to understand how their jurisdiction interprets these issues. This will help professionals ensure that when orders are issued any necessary findings are made, any restrictions on online communication or communication about the protected party are properly tied to the facts and findings of the individual case as may be necessary based on local law, and any prosecutions of such violations consider the elements necessary to overcome First Amendment concerns. Because restrictions on communication to the protected party generally require less scrutiny, it is important to remember that contact in the CPO context has long been understood to include both direct and indirect contact with the protected party, which expands the scope of prohibitions that can withstand a First Amendment challenge. Likewise,

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[68]*Oliva v. Jones*, 360 So.3d 573 (La. Ct. App. 2023); *Commonwealth v. Lambert*, 147 A.3d 1221 (Pa. Super. Ct. 2016).

[69]For example, prohibitions on the sharing of private or intimate information about the protected person without their consent, (*In re marriage of Evilsizor and Sweeney*, 237 Cal. App.4th 1416 (2015)), making credible threats of physical violence, (*Childs v. Ballou*, 148 A.3d 291 (Me. 2016)), proxy stalking (*Buchanan v. Crisler*, 922 N.W.2d 886 (Mich. Ct. App. 2018)), specific behavior adjudicated as abusive (*Phillips v Campbell*, 2 Cal.App.5th 844 (2016); *In re marriage of Evilsizor and Sweeney*, 237 Cal.App.4th 1416 (2015)), or defamatory statements about the protected person (*TT v. KL*, 965 N.W.2d 101 (Mich. Ct. App. 2020)).

as described above, courts in many cases have used an expansive definition of contact in the online world. It is also important to remember that even where a CPO restriction involves protected speech, it is not per se unconstitutional. The prohibition may nonetheless survive strict scrutiny—that the regulation is the "least restrictive means" of advancing a "compelling" governmental interest.[70] This is a relatively high, but not insurmountable hurdle, especially where the prohibitions on online communication about the protected person are expressly and tightly tied to the compelling interest of protecting an individual from significant distress and other harms.

If the Respondent is committing technological abuse towards the victim in another state, can the victim seek a CPO in their own state?

It depends. Technology provides the means to continue harassment and intimidation of victims across states and other jurisdictional lines with minimal effort. But due process requires that "individuals have fair warning that a particular activity may subject them to" the jurisdiction of another state, Tribe, or territory.[71] This requires that there be "certain minimum contacts" between the respondent and the jurisdiction and that the respondent defending themselves in the other jurisdiction does not "offend traditional notions of fair play and substantial justice."[72] But, the United States Supreme Court has also determined that due process cannot be used to avoid being held accountable for actions

[70]*Sable Commc'ns of Cal. v. FCC*, 492 U.S. 115, 126 (1989).
[71]*Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (internal citations and punctuation omitted).
[72]*International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal citations and punctuation omitted).

across state lines[73] and that in cases involving "intentional conduct . . . calculated to cause injury" in another state, that other state may have jurisdiction based on the "effects" of the out of state conduct being felt within the courts' jurisdiction.[74] In addition, courts can consider whether it is reasonably foreseeable that a case could be brought against the respondent in the state where the petitioner lives or works, such as when the respondent engages in intentional, harmful actions that they knew could have a significant impact on the petitioner there.[75] Because technology makes it so much easier for respondents to perpetrate abuse and harassment across state lines, courts have had to reconsider how to apply these due process principles and their own laws to the facts of CPO petitions based on technological abuse in order to balance the rights of the victim to seek protection from the court with the due process rights of the respondent. Courts have taken different approaches in addressing these issues.

Some courts have determined that their statutes do not confer jurisdiction based on phone calls or other electronic communication alone.[76] Numerous courts, however, have found personal jurisdiction over out of state residents based on electronic communication.[77] Courts first look to the

[73] *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).
[74] *Calder v. Jones*, 465 U.S. 783, 789 (1984).
[75] *Id.* at 789–91.
[76] *Huggins v. Boyd*, 697 S.E.2d 253 (Ga. Ct. App. 2010); *Becker v. Johnson*, 937 So.2d 1128 (Fla. Dist. Ct. App. 2006) (holding that because the respondent did not know where the petitioner was located at the time of the electronic communication, the court did not have jurisdiction over them); *Mucha v. Wagner*, 861 S.E.2d 501 (N.C. 2021) (holding that because the respondent did not know the petitioner was in North Carolina when he made the calls, the court could not exercise jurisdiction).
[77] *Peterson v. Butikofer*, 139 N.E.3d 519 (Ohio Ct. App. 2019); *Parocha v. Parocha*, 418 P.3d 523 (Colo. 2018); *Stober v. Harris*, 332 So.3d 1079 (Fla. Dist. Ct. App. 2022); *Dobos v. Dobos*, 901 N.E. 2d 248 (Ohio Ct. App. 2008); *Hughs on Behalf of Praul v. Cole*, 572 N.W.2d 747 (Minn. Ct. App. 1997); *McNair v. McNair*, 856 A.2d 5 (N.H. 2004); *Rios v. Ferguson*, 978 A.2d 592 (Conn. Super. Ct. 2008) (holding a threatening video posted on the internet aimed at the petitioner who the respondent knew resided in New Hampshire was sufficient to establish minimum contacts).

language of their long arm statutes, or statutes that set out when a court may exercise jurisdiction over an out of state resident.[78] Many states include tortious acts committed by a non-resident against a resident in their long arm statutes, especially when the injury of the act is felt in the resident's state.[79] Courts have also applied this reasoning to cases involving posts of videos online threatening a resident within the court's jurisdiction even though the videos were not directly sent to the victim.[80]

In applying due process requirements to cases involving an out of state respondent's technological abuse, courts have looked at such considerations as "(1) whether the defendant purposefully caused important consequences in [the state]; (2) whether the cause of action arises from those consequences; and (3) whether the consequences of the defendant's actions are substantial enough to make jurisdiction reasonable."[81] Courts exercising jurisdiction in CPO cases through long arm statutes often require a nexus between the act that implicates the long arm statute and the conduct that is alleged to be abusive or harassing. Courts often consider whether the respondent knew the petitioner was in the state looking to exercise jurisdiction when they initiated the threatening or harassing communications.[82] Courts then consider if exercising personal jurisdiction over the defendant would be reasonable or whether it

[78] *Parocha v. Parocha*, 418 P.3d 523 (Colo. 2018); *Dobos v. Dobos*, 901 N.E. 2d 248 (Ohio Ct. App. 2008).
[79] *Stober v. Harris*, 332 So.3d 1079 (Fla. Dist. Ct. App. 2022).
[80] *Id.* (finding the respondent had sufficient minimum contacts with Florida because he knew the petitioner resided there, he directed viewers to confront her in public there, he invited the petitioner to sue him, and he solicited donations to further the dispute); *Rios v. Ferguson*, 978 A.2d 592 (Conn. Super. Ct. 2008) (finding exercising jurisdiction over the respondent was proper because the threatening video was targeted at the victim resident).
[81] *Parocha v. Parocha*, 418 P.3d 523, 529 (Colo. 2018).
[82] *Mucha v. Wagner*, 861 S.E.2d 501 (N.C. 2021).

would offend "traditional notions of fair play and justice."[83] Considerations may include, "(1) the burden on [the respondent] of litigating the matter in [the state]; (2) [petitioner's] interests in obtaining convenient and effective relief; (3) the state's interest in adjudicating disputes of this type and vindicating the rights of its citizens; (4) the interstate judicial system's interest in the efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental social policies."[84] Inconvenience in appearing in court in another state is not dispositive to the determination of fairness.[85] This is especially true since the COVID-19 pandemic and the popularity of remote hearings in CPO cases. Further, this inconvenience must be weighed against the state's "strong interest in protecting its citizens from domestic abuse, and the [plaintiff's] . . . obvious interest in obtaining convenient and effective relief" in their home state.[86]

Some states have determined that CPOs confer a protected status on the victim within their jurisdiction and therefore do not require personal jurisdiction over the respondent to issue an order.[87] However, only the protected status can be conferred on the resident party through the CPO. When orders are issued without personal jurisdiction, they are often prohibited from including relief that affirmatively compels action from the respondent and are limited to no contact provisions.[88] Other jurisdictions have rejected this

[83] *Parocha v. Parocha*, 418 P.3d 523, 525 (Colo. 2018).
[84] *Id.* at 529 (internal citations omitted).
[85] *Hughs on Behalf of Praul v. Cole*, 572 N.W.2d 747 (Minn. Ct. App. 1997); *Dobos v. Dobos*, 901 N.E. 2d 248 (Ohio Ct. App. 2008).
[86] *Rios v. Ferguson*, 978 A.2d 592, 601 (Conn. Super. Ct. 2008).
[87] *Bartsch v. Bartsch*, 636 N.W.2d 3 (Iowa 2001); *Spencer v. Spencer*, 191 SW3d 14 (Ky. Ct. App. 2006); *Caplan v. Donovan*, 879 N.E.2d 117 (Mass. 2008); *Shah v. Shah*, 875 A.2d 931 (N.J. 2005) (finding personal jurisdiction is not needed to issue an emergency CPO but is required to issue a final CPO).
[88] *Id.*

argument or have found their state statutes require the court to have personal jurisdiction over the respondent.[89]

Because jurisdictional considerations are incredibly fact specific and the means of communication are ever changing, it is important for professionals to understand how a specific jurisdiction handles such issues before discussing options with a victim.

How do respondents use technology to violate orders?

Respondents may use technology to violate orders in ways they believe will be untraceable or unprovable such as using spoofing, anonymous messaging apps, or creating fake accounts or social media profiles, such as those discussed above. While these technologies may complicate cases, often other circumstantial evidence can be used to effectively establish the respondent as the responsible party. Respondents also use third parties to contact victims and perpetuate the abuse. This can be as simple as enlisting friends and family to harass the victim or posting about the victim in places where the victim's friends and family will likely see and relay the message back to them. Or they can be more complex endeavors such as creating fake dating profiles impersonating the victim and soliciting contact from strangers or doxing their information in forums with the intent that other members will carry on the abuse. When advocates, attorneys, law enforcement, and others do not have a clear understanding of these methods of technological abuse it can lead to victims, at best, being told that there is nothing they can do or, at worst, being treated like they are lying.

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[89]*Fox v. Fox*, 106 A.3d 919 (Vt. 2014); *Mannise v. Harrell*, 791 S.E.2d 653 (N.C. Ct. App. 2016); *Mucha v. Wagner*, 861 S.E.2d 501 (N.C. 2021); *T.L. v. W.L.*, 820 A.2d 506 (Del. Fam. Ct. 2003).

Is a web post a violation if it is on a personal account page and it relays a message to the petitioner?

Maybe. Depending on the wording of the CPO provisions and the wording of the post about or to the victim, a respondent may be violating a CPO. The Supreme Court of Maine held that a post on a respondent's social media page that was directed at the victim by name was a violation of a protective order even though the parties were no longer "friends" on the platform.[90] Tagging a protected party in a social media post also has been found to be a "contact" for the purposes of violating a CPO because doing so notified the victim of the post.[91] Additionally, posting a public message on social media asking "someone tell my BM she was a bird for me" was found to be contact in violation of a CPO in Virginia.[92]

Which court has jurisdiction in cases where a CPO is violated via email or web posting if the petitioner lives in one state and the respondent lives in another or sends or posts the information in a third state?

It depends. When a respondent violates one state's order by contacting the victim in another state, the language of each state's statute will determine where the violation can be prosecuted.[93] In light of the increasing use of the internet and other electronic means of communication to commit crimes across jurisdictions, it is not surprising that states have often amended their statutes to define a crime involving telephones or computers to have been

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[90] *State v. Heffron*, 190 A.3d 232 (Me. 2018).
[91] *A.R.M. v. K.J.L.*, 995 N.W.2d 361 (Mich. Ct. App. 2022); *Adams v. State*, 594 S.W.3d 884 (Ark. Ct. App. 2020); *Buchanan v. Crisler*, 922 N.W.2d 886 (Mich. Ct. App. 2018).
[92] *Green v. Commonwealth*, 843 S.E.2d 389 (Va. Ct. App. 2020).
[93] Steven D. Hazelwood & Sarah Koon-Magnin, *Cyber Stalking and Cyber Harassment Legislation in the United States: A Qualitative Analysis*, 7 Int'l. J. Cyber Criminology 155 (Dec. 2013).

committed where the harm occurs (the victim's location) or where the harm originates (the respondent's location when initiating the violation). It is also possible that there could be a contempt proceeding in the court that issued the order. In addition, because the crime is interstate, the FBI or federal prosecutors could also pursue a prosecution in federal court.[94] It is a federal crime to transmit in interstate or foreign communications any threat to kidnap or injure another person.[95]

How can professionals respond to perpetrators' technological abuse?

Professionals can collaborate with each other and victims to develop policies that address the challenges of documenting technological abuse and preserving evidence of technological violations. Cross-training on technological abuse is an important first step. For example, advocates can work with law enforcement and prosecution units to ensure they understand the ways perpetrators use technology and the effects of technological abuse on victims. Law enforcement, prosecutors, and courts can benefit from additional training on technology and access to a technology crime unit or a computer forensics laboratory. Prosecutors and law enforcement can also help prepare advocates to educate victims on best practices for documentation and collection of evidence based on the rules and regulations of the jurisdiction.[96] Advocates, attorneys, and law enforcement can help a victim with how to save and document all original emails, text messages, and online

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[94] *Id.*
[95] 18 U.S.C. § 2261A (2).
[96] For more information on collection of evidence, see *Legal Systems Toolkit: Understanding and Investigating Technology Misuse*, National Network to End Domestic Violence Safety Net Project (last visited Oct. 26, 2023).

posts or contacts in a manner that includes information relevant to authentication, such as showing the phone number or email address that sent the communication instead of the name the victim has saved their contact information under.

Finally, professionals can safety plan with victims regarding technological abuse at every meeting. As victims address the respondent's technological abuse, respondents may adapt what technologies they use and how. Therefore, it is important to continue conversations with victims around how the respondent is using technology, what their safety concerns are, and how they can best collect evidence or otherwise document the abuse. For more information on working with victims experiencing technological abuse, see the National Network to End Domestic Violences' Safety Net Project website, TechSafety.org.

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