

**Model Domestic Violence Protocol for
Law Enforcement, Prosecution,
and the Judiciary**

**Domestic Violence Training and Curriculum Task Force
Illinois Criminal Justice and Information Authority**

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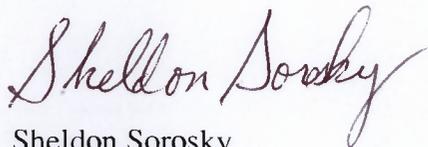
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Reminder: All of the statutes, cases and other legal materials that are cited in this protocol are current as of the date it was sent to the publisher.

Illinois Model Domestic Violence Protocol for Law Enforcement, State's Attorney and the Judiciary

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Chapter 1

Introduction

Chapter 1: Introduction

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I. Background

The epidemic of domestic violence across Illinois, has required the state to act to create safety for victims and accountability for abusers. It is the belief of all involved in this protocol that with a coordinated and consistent approach we can bring about a reduction in family violence across our state. Over the past two decades Illinois has made remarkable strides in addressing this crisis. Model legislation has been passed and updated, policies and protocols have been created, and unsurpassable coordination efforts have been organized. These efforts have brought us a long way on our journey toward safety and accountability. It is our hope that this updated protocol will take us one step closer to ending domestic violence.

Recognizing that coordinated intervention by the justice system is a significant factor in reducing domestic violence, in 1993 the legislature created the Task Force on Domestic Violence Training and Curricula to develop model protocols and training curricula for law enforcement, prosecutors, and judges.

Task force appointees represented a variety of agencies with an interest in the justice system's response to domestic violence. They met monthly to conduct research and create the protocols and training curricula. Some meetings featured guest presentations specific to particular issues. Task force committees and individual members drafted materials, attended law enforcement trainings, consulted specialists in various parts of the criminal justice system, and presented drafts to statewide criminal justice associations. Drafts of the protocol were circulated to more than 1,000 police chiefs, sheriffs, prosecutors, chief judges, victim advocates, and service providers. Comments were reviewed and incorporated into the final document.

The Illinois Model Domestic Violence Protocol for Law Enforcement, Prosecution, and Judiciary was originally published in fall 1996. Since then there has been new research and other information on the criminal justice response to domestic violence, as well as the enactment of new legislation. Thus, it became pertinent to the fulfillment of the Illinois Criminal Justice Information Authority's mission, as well as to the functioning of law enforcement, prosecution, and the judiciary across the state, that the protocol be fully updated to include the latest research findings, knowledge in the field, and related Illinois legislation.

In September 2004, ICJIA convened a group of law enforcement, prosecutors, judges and service providers from across Illinois to start the process of updating the Illinois Model Domestic Violence Protocol for Law Enforcement, Prosecution, and Judiciary. Again, meetings were held, suggestions for updates made, and new research was gathered. In 2005, a consultant was brought on to coordinate the accumulation of updated research findings and best practice information and streamline the drafting of a new protocol. Drafts of the newly revised protocol were circulated around the state to law enforcement professionals, prosecutors, judges, and victim advocates whose suggestions and feedback were incorporated into the final document.

The task force acknowledges that it is not possible to create blanket policies for the varied communities across the state. This protocol is intended to serve as a solid foundation of best practices upon which local communities can build local protocols that take into account local

needs, resources, and systems. The task force recommends taking into account the uniqueness of issues, needs and resources within each community when creating local protocols.

This document is organized into chapters. The Background chapter includes this Introduction, Goals and Intentions, Guiding Principles, and Statement of the Problem, which set the foundation upon which the policy recommendations within this protocol are based. The three professional components of the protocol, Law Enforcement Component, State's Attorney Component, and Judicial Component, follow. Each component contains attachments specific to its profession. Finally, the Appendices include materials relevant to all three components, including a bibliography, and a myth/fact sheet.

II. Goals and intentions

The intentions of this protocol are to:

- A.** Promote model policies and procedures for responding to domestic violence.
 - 1.** The Illinois Domestic Violence Act requires all law enforcement agencies to develop and implement written policies regarding domestic violence incident arrest procedures. Written policies also aid prosecution and the judiciary.
 - 2.** When developing these policies, law enforcement agencies, prosecutor's offices and the judiciary should consult with community organizations and other law enforcement agencies, prosecutor offices and judiciary branches with expertise in recognizing and handling domestic violence incidents.
- B.** Ensure that law enforcement and the courts recognize domestic violence as a serious violent crime that hurts both individuals and society, and respond in a manner consistent with other violent crimes.
- C.** Deter and prevent future domestic violence.
- D.** Promote victim safety.
- E.** Hold offenders accountable.
- F.** Ensure that the law enforcement and the courts are both sensitive and responsive to all victims.

When creating policies, the courts and law enforcement should respond sensitively to all victims of domestic violence, their needs, and the needs of their families. The majority of domestic violence involves men battering women in adult intimate relationships. However, the system should also be appropriately responsive and sensitive to domestic violence cases involving lesbian, gay, bisexual and transgender partners, elderly or disabled adults and their caretakers, parents and children, siblings, other relatives, roommates, men battered by women, and teenage dating partners. The

system should also be appropriately responsive to immigrant victims and offenders, to those with a primary language other than English, and to victims and offenders of all races, ethnicities and religions.

- G.** Enhance investigation and evidence collection.
- H.** Reduce the barriers to victim participation in prosecution.
- I.** Provide a structured framework for the response to domestic violence by law enforcement and the courts across Illinois, while still allowing for each community to approach the issue from the perspective of their own unique needs and resources.
- J.** Provide implementation directions that are flexible.
- K.** This protocol is a foundation, a tool that each community can use to develop its own implementation strategies and policies based upon victim safety, abuser accountability, and its own unique set of needs and resources.

III. Guiding principles

These guiding principles are the universal benchmarks upon which this protocol is based. When a situation arises for which a policy has not been established, the guiding principles provide a philosophical foundation upon which to base judgments and actions. They include:

- A.** Domestic abuse is a serious crime against the individual and society.
- B.** Domestic abuse is about power and control wrongfully exercised by an abuser against a victim.
- C.** Domestic abuse is a learned behavior used to gain and maintain control. It is used because it works and because society is not consistent in naming this abuse as wrong.
- D.** Alcohol, drugs, stress, and anger are aggravating factors rather than causes of domestic violence. They cannot be accepted as excuses for abusing others.
- E.** The priority in responding to domestic violence is the safety and empowerment of the victim.
- F.** All victims deserve to be treated with respect and dignity and given support appropriate for their own individual needs and situations.
- G.** Domestic violence abusers and victims come from all ethnic, economic, age, and social categories and do not fit a specific personality profile. Their primary commonality is that they abuse as a means of maintaining power and control over a victim.

- H. Abusers must be held accountable and assume responsibility for their violence.
- I. Arrest, prosecution, incarceration, and education of abusers can reduce further abuse.
- J. An effective system for addressing domestic violence must entail a proactive, consistent, and coordinated community response. Developing and implementing a coordinated community response must include law enforcement, prosecutors, judges, domestic violence advocates, abuser treatment services, and probation officers, as well as other community agencies including healthcare providers, child welfare agencies, and substance abuse treatment services, etc.

IV. Statement of the problem

A. Scope of domestic violence

Domestic violence, also referred to as spouse abuse, woman battering, intimate partner violence, domestic abuse, and family violence, is a problem of epidemic proportions. According to *Extent, Nature and Consequences of Intimate Partner Violence*, a report published by the National Institute of Justice and the Centers for Disease Control and Prevention (Tjaden and Thoennes, 2000), nearly 25 percent of women surveyed indicated they were physically assaulted and/or raped by a current or former spouse, cohabiting partner, or date at some time in their lives. Each year in the United States, it is estimated that physical violence occurs in 4 to 6 million intimate relationships (Rodriguez, Bauer, McLoughlin, and Grumbach, 1999). In 2003 10 percent of violent crimes reported to law enforcement were committed by an intimate partner of the victim. From 1998 until 2002, 11 percent of all violent crimes reported to law enforcement were violent crimes against a family member (Bureau of Justice Statistics, 2005). Intimate partner crimes were committed much more frequently against women, at a rate of 19 percent, than against men, at a rate of 3 percent (Catalano, 2004). In a report released in 2001, the Bureau of Justice Statistics found that 85 percent of 790,000 victims of intimate partner violence were women.

Evidence shows that a significant portion of all homicide victims are killed by an intimate partner (Frye, 2001). In 2002, about 22 percent of all murders were of family members (Bureau of Justice Statistics, 2005). Of all murders in 2003, 9 percent were victims murdered by an intimate partner or spouse. Of these victims 79 percent were women (Federal Bureau of Investigation, 2004). On average, more than three women each day are murdered by a spouse or intimate partner in the U.S. (Rennison, 2001). Violence frequently increases in abusive relationships when the woman is pregnant. One recent study found that pregnant women are more likely to die as victims of homicide than from any other cause (Horon and Cheng, 2001).

One of the most dangerous times for a victim in a violent relationship is when they try to leave the relationship, as a victim's attempts to separate from an abuser can trigger an escalation of violence. A study of domestic violence homicides in Florida (1997) revealed that in 65 percent of intimate partner homicides the victim had physically

separated from their partner prior to the murder. Abusers who kill their partners are a great danger to others as well. The Florida Mortality Review found that in 38 percent of murders of an intimate partner the perpetrator killed at least one other person. Other victims included children, bystanders, and those who intervened to assist the victim.

Finally, statistics show that our state prisons are full of offenders of family violence. In 1997, 15 percent of men and women in state prisons for a violent crime were there for a crime against a family member (Bureau of Justice Statistics, 2005).

The Illinois Domestic Violence Act (IDVA) recognizes the many forms of violence as abuse. The IDVA defines abuse as physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation. 750 ILCS 60/103(1). The party that is protected by the act is any person abused by a family or household member and any child or dependent that is the care of such person. 750 ILCS 60/201(a)(i,iii). The definition of family and household members includes spouses, former spouses, parents, grandparents, siblings, children, stepchildren and other relatives, by either blood or marriage, both former and current. 750 ILCS 60/103(6). Same-sex partners, dating relationships, roommates, and relationships between caregivers and adults with disabilities or older adults are also classes of people that are protected by IDVA. *Id.* Men are also victims of domestic violence. Men are more likely to be victimized by other men, and are rarely abused by women, (Tjaden and Thoennes, 2000).

There is great diversity among both victims and abusers. Some groups of victims will have additional barriers to accessing services, reaching out to the courts, or finding safety. Victims facing more challenges in their every day lives may require a more specialized approach from the courts and from service providers. These victims include:

- The elderly.
- Immigrants.
- Youth.
- People with physical, cognitive or mental disabilities.
- People in rural communities.
- Lesbian, gay, bisexual, and transgender people.
- People of color.
- People who practice non-dominant religions.
- Prostituted or trafficked women, children, and men.
- Families with economic disadvantages.
- People affiliated with gangs.
- People with HIV/AIDS.

In addition, providing translation services (including American Sign Language and materials in Braille), access to advocates with experience with diverse groups of people, and access to specialized services are imperative to assist diverse families in obtaining justice and safety.

B. Child witnesses, child abuse, and domestic violence

The rate of child abuse in homes where domestic violence occurs is very high. Therefore it is extremely important for law enforcement and the courts to look for signs of child abuse when working with domestic violence cases involving families with children. The U.S. Department of Justice (2000) tells us that approximately 4 in 10 victims of domestic violence live in households with children under the age of 12. Further, the children who live in these violent homes are at an increased risk of abuse or injury, either directly at the hands of the abusive parent, or in the process of trying to defend the non-abusive parent from the abuser (Hall and Lynch, 1998). Numerous research studies have found that in 30 percent to 60 percent of families with children where domestic violence occurs, child abuse also occurs (Edleson, 1999). One study found that 97 percent of children referred by a parent to a program for children who had witnessed domestic violence had been directly abused themselves (Kolbo, 1996). Further, domestic violence is a known factor in reoccurring child maltreatment reports (English, Marshall, Brummel and Orne, 1999). Though the national rate of homicide is decreasing for all age groups in the United States, homicide is still the leading cause of death for young children (U.S. Department of Justice, 2000). Finally, children who witness domestic violence, even when not directly abused themselves, can suffer serious consequences. Research tells us that witnessing domestic violence can be stressful enough to children to cause post-traumatic stress disorder (Kipatrack, Litt, and Williams, 1997).

C. Elderly Victims

Elder abuse is the abuse, neglect or financial exploitation of a person, 60 years or older. 320 *ILCS* 20/2(e). Abuse can be physical, sexual, or mental injury, and includes financial exploitation. 320 *ILCS* 20/2(a). Neglect is the failure of a caregiver to provide the elderly with or willfully withhold from them the necessities of life, including, but not limited to, food, clothing, shelter, or medical care. 320 *ILCS* 20/2(g).

The abuse can also be in the form of financial exploitation, which includes the misuse or withholding of resources of an older person by another to the disadvantage of the older person and the profit of the person withholding (Illinois Department on Aging, 1999). According to the Illinois Department on Aging, in 2005 in Illinois there were 8,586 elder abuse victims in the state. Family members accounted for 76 percent of the abusers of these elders, including 16 percent spouses, 43 percent adult children and 18 percent other relatives. The most common form of abuse for elderly victims in Illinois was financial exploitation (58 percent), followed by emotional abuse (44 percent), passive neglect (38 percent), physical abuse (22 percent), willful deprivation (10 percent), confinement (7 percent), and sexual abuse (5 percent). Victims of elder abuse are more likely to be women (70 percent) (Illinois Department on Aging, 2000) but older men are also at risk. Like many other victims of domestic violence, elderly victims of domestic violence are often afraid to reach out for help. Many may be physically dependent upon the person who is abusing them, as is true with many domestic violence victims with disabilities. Services for elderly victims of domestic violence are harder to find since elderly victims may need caregiver assistance they cannot obtain at a domestic violence or homeless

shelter. Elderly victims may be more mistrustful and misunderstanding of the system and unaware of laws to protect them than their younger counterparts.

Symptoms of abuse or neglect in an older person include (Hofer, 2006):

- Injuries that are unusual or unexplained, such as bruises, cuts, or burns.
- An unkempt appearance.
- Pressure or bed sores.
- Confinement against their will, such as evidence of being locked into a room or tied to a bed.
- Fear.
- Dehydration or malnutrition without adequate medical explanation.
- Withdrawal.
- Depression.
- Anxiety.
- Visits to many doctors or hospitals.
- Inconsistent or unlikely explanations for injuries.
- Helplessness.
- Hesitation to talk openly.

D. Costs to society

The impact domestic violence has upon society reaches far beyond the devastation of the lives of victims and children. The costs to society are immense. Domestic violence greatly impacts the health care system, criminal justice system, courts, child welfare system, mental health system, and social service systems. Costs to the nation's workforce include poor work performance, lost productivity, and lost work days. According to the Center for Disease Control and Prevention National Center for Injury Prevention and Control (2003), domestic violence costs society \$5.8 billion each year, \$4.1 billion directly for health care and medical costs. The impact of domestic violence upon communities and society at large is significant.

V. Pattern of abuse

In order to understand domestic violence, one must understand the dynamics as well as the legal implications and definitions. Domestic violence is a pattern of abusive behaviors, including physical abuse, emotional abuse, threats, intimidation, isolation, and economic coercion, used by one person against another to exert power and control. This abuse takes place in the context of a dating, family or household relationship. Societal and cultural attitudes, institutions and laws are not consistent in naming this violence as wrong, and, therefore can act to maintain and support the continuance of domestic violence (Wright, 2005). Three main points to focus upon within this definition include (Schechter and Ganley, 1995):

- The reason for the abuse is to maintain power and control.
- Abuse is a pattern of behaviors.
- Abusive behavior happens within a relationship.

Domestic violence is intentional and functional behavior. It is not just a fight that goes out of control, or an incident that happens when someone loses their temper. It is purposeful, with the intention of gaining and maintaining power and control within a relationship. The behavior is used to gain the victim's compliance, to force the victim to submit to fulfilling the needs, the desires, of the abuser. Some of the behaviors look abusive, such as physical abuse and name calling. Some of the behaviors may, on the surface, look like romance – constant phone calls, gifts, jealousy. But all behaviors have the same intention – to control the victim.

Domestic violence is not an individual event, but rather a series, or pattern of behaviors. Together, these behaviors establish the abuser's role as the one with power and control over the victim. An instrument was developed in 1987 by the Domestic Abuse Intervention Project in Duluth, Minn., as the outcome of conversations with battered women whose partners were receiving abusers' intervention services. The women reported a decrease in physical violence as a result of their partner's involvement in abuser treatment services, but reported that they still felt abused and controlled. The Power and Control Wheel defines the types of abuse described by the women in this group and has become a tool used across the world to understand the dynamics of domestic violence (Pence and Osberg, 1987; see the Appendix for a Power and Control Wheel). The following are the types of abuse referred to by the Power and Control Wheel (Wright, 2005):

A. Types of abuse

1. Physical abuse is the most commonly recognized form of domestic violence. It includes hitting, kicking, shoving, pinching, strangulation, the use of weapons, sleep deprivation, withholding food or medication, restricting movement, forced use of drugs and alcohol, and other forms of physical violence. Physical abuse is generally what comes to the attention of the courts.
2. Sexual abuse includes forced and coercive sex, forcing or intimidating the partner to engage in sexual activities they find distasteful or painful, giving the partner a sexually transmitted disease (including HIV/AIDS), using sex to “make-up” after a beating, not taking “no” for an answer, making fun of the victim's body, needs or sexuality, sadistic acts during sex, forcing the partner to watch or engage in pornography, forcing the partner to have sex with others, and other coercive and forced activities. Sexual abuse can have very serious and damaging effects upon a victim, yet it is one of the least talked about forms of violence.
3. Emotional abuse is a series of behaviors that forces victims to question their own thoughts, interpretation of events, and value as a person. Emotional abuse includes making the victim think that they are crazy, causing the victim to not trust their own judgment, put downs and name calling, mind games, ignoring the victim, their needs and desires; and making fun of the victim.
4. Isolation is a very powerful tool of control that forces the victim to be dependent upon the abuser and removes from the victim sources of support, assistance, and safety. Isolation includes keeping the victim from family and friends, turning family and friends against

the victim, controlling who the victim sees, where they go, and what they do, and not allowing the victim privacy, personal space, or independent activities.

5. **Minimizing, denying and blaming:** Another tactic used by abusers is to minimize and deny abuse, and blame problems in the relationship on the victim. Abusers rarely accept responsibility for their actions and are adept at blaming others, particularly the victim, when anything goes wrong. They also minimize the abuse. For example, the abuser refers to a punch as a slight push, a broken arm as a little fight, a bloody nose as a scratch. Denial is common. For example, a fall down the stairs caused by a push from the abuser is called an accident. Displacing blame is a common tactic, and abusers often weave tales that may make the abuse seem justified to others. Accepting responsibility for their actions is rare. They may make statements such as, "I only hit you because you ..." or, "If you wouldn't do such and such this wouldn't happen."
6. **Using children:** A tactic that produces great fear in victims with children is the abusers use of the children as tools of control. Child abuse is frequent in homes where domestic violence takes place (Edleson, 1999; Kolbo, 1996). The abuser may also use the children as go-betweens, talk poorly about the victim to the children, abuse the victim in front of the children, criticize the victim's parenting skills, and/or threaten to report the victim to the Department of Child and Family Services for abuse. The abuser may use visitation to harass or abuse the victim, and many seek and receive custody as a means of maintaining control over the victim (Chesler, 1986). More seriously, the abuser may threaten to or may actually abduct the children to further abuse the victim.
7. **Using privilege:** Abusers will use any type of privilege they have over the victim to control the victim. This includes the use of "male privilege," or acting like the man of the castle, treating the victim like a servant, demanding traditional sex roles, and exhibiting other dominant abusive behaviors. Other examples of using privilege include using heterosexual privilege, such as outing a lesbian, gay, bisexual, or transgender victim, using immigration status, such as threatening to have an immigrant victim without legal status deported, and using able-bodied privilege, such as restricting a disabled victim access to a wheel chair.
8. **Economic abuse:** By controlling all the money, not allowing the victim to have a job, taking the victim's paycheck, keeping the survivor's name off property, real estate, and life insurance, or spending all the money while the family's needs go unmet, the abuser can keep very strict control over the victim. When the victim is forced to be dependent upon the abuser for any financial need, the victim's ability to leave the abuser is very restricted because of lack of access to resources.
9. **Coercion and threats:** Abusers are often adept at the ability to maintain control through the use of coercion and threats. Once violence has been used, the threat of further violence is always there, even if unspoken. Abusers frequently use threats to coerce the victim into doing whatever it is the abuser wants. These include threats to harm or kill the victim, their children, or other family members; threats made with a firearm, threats to

have the victim arrested and prosecuted for domestic violence, threats to harm pets, threats to report the victim to child welfare, immigration, welfare, probation, or any other agency the victim fears, threats to commit suicide; and threats to destroy property, especially anything of sentimental value. Abusers frequently follow through on some of the threats, making the use of any threat more powerful and making the victim more likely to be coerced by all of the abuser's other threats.

10. Using intimidation: Abusers often use intimidating looks, gestures, actions, a loud voice, firearms, abusing pets, smashing things, or destroying property to intimidate their victims and force them under control.

Individually the use of some of these behaviors may or may not be an abusive act. Together however, the abuser's use of these tools creates a pattern of abusive behavior that serves both to gain and to maintain power and control over the victim.

Finally, the abuse is taking place within an intimate relationship. The majority of domestic violence that comes to the attention of the courts involves men battering women in adult intimate relationships. However, domestic violence also happens in relationships involving lesbian, gay, bisexual, and transgender partners, elderly or disabled adults and their caretakers, parents and children, siblings, other relatives, roommates, men battered by women, and teenage dating partners.

The relationship between victim and abuser is particularly important because of how it influences the ways in which abuser and victim relate to the violence, and how they are affected by it. While victims of domestic violence are traumatized in many of the same ways that victims of stranger violence are, this trauma does not just happen once, but is repeated over and over again. The trauma is also greatly influenced by the nature of the relationship being intimate, a relationship in which one is particularly vulnerable. Finally, the family, fiscal, and emotional connections between the parties often act as barriers to the victim's participation in the legal process.

B. Intimate partner sexual assault

Although studies show us that intimate partner sexual assault is not uncommon, it is often overlooked and under estimated. The myth that sexual assault cannot occur in an intimate relationship is still prevalent. Intimate partner sexual assault happens in heterosexual relationships and relationships involving lesbian, gay, bisexual, and transgender people. Research on intimate partner sexual assault (which is extremely limited considering the believed pervasiveness of the issue) tells us that 7.7 percent of women and 0.3 percent of men have been raped by a current or former intimate partner at some time in their lifetime (Tjaden and Thoennes, 2000), and 10 percent of married women have been raped by a husband (Basile, 2002). Of those women who reported being raped by their husband, 50 percent reported being raped five times or more, and 33 percent reported 20 or more incidents (Russell, 1990). In studies that used clinical samples of battered women, between 20 percent and 70 percent of the women reported being sexually assaulted by their partners at least once (Bergen, 2006). Studies have shown that men who both batter and rape their

partners are especially dangerous, and are more likely to inflict serious injury or death (Bergen, 2006). A national study found that 6.2 percent of women raped by an intimate partner sustained an injury other than the rape itself during their most recent victimization (Tjaden and Thoennes, 2000).

There seem to be different types of perpetrators who commit sexual assault in intimate relationships (Russell, 2002; and Bergen, 2006). The different types of intimate partner sexual assault perpetrators fall into three categories, including:

- Those who abuse and sexually assault their partners.
- Those who do not batter otherwise in the relationship, but use only enough physical or emotional force necessary to rape.
- Those who are sadistic and obsessive, frequently use porn, and often force painful, deviant, or unusual sexual acts.

The psychological impact of intimate partner sexual assault can be severe. Symptoms include (Russell, 2002):

- Anxiety.
- Depression.
- Lack of sleep.
- Eating disorders.
- Lack of interest in sex.
- Fear of men.
- Other social phobias.
- Substance abuse to self-medicate.
- Suicidal ideation.
- Post-traumatic stress disorder.

Further, victims of sexual assault by an intimate partner report greater or equal impact to that of sexual assault by an acquaintance or stranger, which contradicts the myth that sexual assault by an intimate is not a serious crime with serious implications. Victims of sexual assault in intimate relationships report higher levels of anger, depression and sexual distress, feelings of betrayal, humiliation, and guilt, and the fear that they would be killed during the attack (Russell, 2002).

There are many reasons why many victims fear reporting sexual assault by an intimate partner. Victims may be financially dependent upon the perpetrator and have children in common. They may fear further violence, even death, as well as fear of losing custody of their children, being deported, or being outed. Many victims simply do not identify the sexual assault as a crime because they are married or in an intimate relationship where they have given prior consent for sex.

The National Victimization Survey found that victims of intimate partner rape chose not to report it to law enforcement for a variety of reasons (Tjaden and Thoennes, 2000). According to the survey:

- 21.2 percent of the female rape victims said they were afraid that their attacker would retaliate.
- 20.3 percent said the rape was a one time or minor incident.
- 16 percent said they were too ashamed or wanted to keep the incident private.
- 13 percent said law enforcement could not do anything.

C. Stalking

Stalking is a behavior long utilized by abusive partners to control and terrorize their victims. Only recently has the term stalking been used. This behavior was referred to as harassment, threats, annoyance, or domestic terrorism, and was misunderstood for many years. California passed the first antistalking law in 1990, and since then all 50 states have followed suit. Illinois has one of the most powerful stalking laws.

The National Violence Against Women Survey found that one in 12 women will be stalked in their lifetime, accounting for 1,006,970 women stalked annually (Tjaden and Thoenes, 1998). One in 45 men will be stalked in their lifetime, accounting for 370,990 men stalked annually. The report found that 75 percent of stalking victims were female, and 22 percent male, which show a higher number of male victims of stalking than of domestic violence.

Men accounted for 94 percent of stalkers of women, 60 percent of stalkers of men, and 87 percent of all stalkers. Of women victims of stalking, 87 percent who were stalked by a current or former partner were also physically abused by that person, and 31 percent stalked by a current or former partner were sexually abused by that person. The majority of stalkers are current or former partners, unlike domestic violence, as smaller number of stalkers are either just acquaintances or are unknown to their victims. Finally, while all stalking does not lead to physical or sexual violence, the act is often a precursor to homicide of women (National Center for Victims of Crime, 2002), and is, therefore, frequently a warning sign of a particularly dangerous situation.

Cyberstalking is a relatively new phenomenon, whereupon the stalker uses the Internet, e-mail, and other electronic means to stalk a victim. It is primarily perpetrated by someone who has the desire to exert control over the victim. The majority of cyberstalking victims are women, and the majority of cyberstalkers are men. Though cyberstalking opens new avenues for stalking by strangers or acquaintances, it is committed most frequently by intimates. While seemingly less dangerous because of a lack of physical contact, cyberstalkers have access to incredible amounts of information on their victims, and cyberstalking can lead to physical violence in the future (National Center for Victims of Crime, 2002).

Stalking (including cyberstalking) is different from other crimes. First, stalking is not an individualized act, but a series of behaviors, causing repeated victimization. Second, stalking is often partly defined by its effect upon the victim (National Center for Victims of Crime, 2002).

D. Causes of domestic violence

Domestic violence is a learned behavior that is used to gain and maintain control (Schechter and Ganley, 1995). It is used because it works, and because society is not consistent in naming this violence as wrong. The use of violent behavior within an intimate relationship is learned through the observation of violence within the home, in the media, in communities, schools, peer groups, and throughout society. Abusers continue to receive the message that the abuse is acceptable because they are not held accountable by society for their actions in a consistent manner. The fact that this pattern of abusive behaviors works so well to gain power and control with little consequences only continues to reinforce the behavior.

Domestic violence is NOT caused by alcohol or drugs, mental illness, genetics, out-of-control behavior, anger, stress, the behavior of the victim, or problems within the relationship (Schechter and Ganley, 1995).

Both domestic violence abusers and victims come from all ethnic, racial, economic, age, orientation, religious, and social categories. They are a heterogeneous group. What they have in common is the domestic violence.

E. Obstacles to leaving

The most frequently asked question about domestic violence is, “Why doesn’t the victim just leave?” The truth is, many victims do leave, and many others leave and return. For a victim of domestic violence, leaving is not a one-time act, it is a process (Schechter and Ganley, 1995).

There are many obstacles victims face when contemplating leaving a violent relationship. For some, these obstacles can be overcome but for others, they can not. Fear of violence is the number one reason victims give for staying in a violent relationship. Violence often escalates when a victim tries to leave, making leaving sometimes more dangerous than staying (Florida Governor's Task Force on Domestic and Sexual Violence, 1997). Some abusers will do anything to stop the victim from leaving. Victims often fear for their lives, or for the lives of their children.

There are as many reasons for not leaving, or for taking their time in leaving, or for leaving and returning, as there are victims of domestic violence. Some of those reasons include (Wright, 2005):

1. Fear of increased violence or death.
2. Children: The abuser may threaten to take the children, kill the children, or report the victim for child abuse or neglect if the victim leaves. Many follow through on these threats as a means of further control of a woman who does leave (Chesler, 1986). Further, many victims, as many others in our society, feel that it is important for children to have two parents.

3. Money: Abusers are frequently in control of the finances in an abusive relationship. Without access to money or resources, it can be difficult or impossible to leave.
4. No place to go: One of the tactics abusers use to control victims is isolation. Many victims are left without family or friends to turn to for help. Domestic violence shelters exist, but most are frequently full, and the duration a victim can stay can be too short for the victim to find the resources to start over. Further, going to a shelter often means leaving the community where the victim resides. This could mean the loss of a job, changing schools for the children and leaving any existing support system.
5. Not violent all the time: Many abusers are kind and loving at times, and violent and controlling at other times. The victim may love the abuser and look forward to the good times. This is another way the abuser controls and manipulates the victim.
6. Promises of change: The abuser may promise to seek help and to never harm again. The abuser may make changes temporarily, even seek help, long enough to get the victim to return.
7. Family, cultural, or religious pressure: Pressure from family, friends and the community, and cultural and religious beliefs may convince a victim that they have no choice other than to stay. Many cultures consider family the priority, and consider it a duty to work as hard as one can to stay married. Victims from marginalized cultures may fear seeking help from the courts or community services for fear of discrimination, misunderstanding, or simply because they do not wish to bring shame on their community. Religious leaders of all faiths have been slow to develop sensitivity and respond appropriately to domestic violence.
8. Guilt, shame, and embarrassment: Abusers blame victims for the violence. Society blames victims for staying. Victims often internalize the blame, becoming full of guilt, shame, and self-doubt. They may try harder to change their behavior so that the abuser reacts to them differently, or to change the abuser. Society stigmatizes victims, whether blaming them for the abuse, or believing that they are forever damaged by the abuse, causing victims to not want to admit that the abuse is happening to them.
9. Only life they know: The victim may be so preoccupied with daily survival that they cannot even envision any other life. They do not have the time, energy, and resources to formulate an escape plan.
10. Denial: Denial is a survival strategy for the victim. Both the abuser and the victim may deny that the abuse is taking place, and may see it only as “fighting.”
11. Love: The victim may still love their partner. Abusers are not abusive all of the time, and may be loving and kind some of the time.

12. **Crazymaking:** One of the tactics used by abusers is to make the victim feel that they are responsible for the abuse and anything else in their lives that goes wrong. Abusers may lie, manipulate, confuse, tell the victim that their recollection of the abuse is inaccurate, and do things to make the victim feel that they are crazy. Some have called this behavior 'gas lighting'. The victim can become too confused to make any moves other than daily survival when dealing with the erratic behavior of an abuser.
13. **Leaving is a process:** It can take months or even years to leave an abusive relationship. It is a process that can involve many steps, and many missteps may occur along the way. Patience is absolutely necessary when working with victims of domestic violence.

VI. The Victim of domestic violence

A. The victim of domestic violence

Victims of domestic violence come from all age, racial, economic, educational, occupational, religious, and social groups. The only victim precipitant regularly found in the research is that the majority of victims are female (Catalano, 2004; Schechter and Ganley, 1995; Hotaling and Sugarman, 1986). Victims of domestic violence may or may not have been previously abused in childhood. There is not substantial evidence to suggest that people who are abused in childhood are more likely to become victims of domestic violence (Schechter and Ganley, 1995; Hotaling and Sugarman, 1986). Though it may be of use to a victim of domestic violence who was abused as a child to explore both experiences during her healing process, it is victim blaming to assume that a previous experience of abuse was a precipitating factor in the adult domestic violence experience (Schechter and Ganley, 1995). Personality and symptom characteristics of victims of domestic violence are the result of the experience of the domestic violence rather than precipitating factors (Catalano, 2004; Schechter and Ganley, 1995; Hotaling and Sugarman, 1986).

Victim responses to domestic violence are varied, with some victims experiencing extreme consequences, and others surviving relatively unscathed. What may appear to be dysfunctional reactions to abuse are often survival strategies and normal reactions to the abnormal situation of abuse. For example, what may appear to be submissiveness, such as doing what the abuser asks, lying to protect the abuser, or refusing to leave the relationship or involve the courts, may be attempts to stop the violence that are sometimes *temporarily* successful.

Effects commonly experienced by some victims of domestic violence include (Wright, 2005):

- Physical injuries.
- Sense of hopelessness about the situation.
- Numbness.
- Low self-esteem.
- Lack of sense of self.
- Denial of the seriousness of the abuse.

- Living in fear.
- Self blame and feelings of guilt.
- Feelings of anger.
- Depression and/or suicidal thoughts.
- Physical problems and illnesses related to stress.
- Post-traumatic stress disorder (in more severe cases of violence), which includes flashbacks, nightmares, intrusive thoughts of violence, hypervigilance, exaggerated startle response, difficulty sleeping, and/or difficulty concentrating.

A small number of men also are victimized by domestic violence. Male victims are generally in relationships with other men (Tjaden and Thoennes, 2000). It is believed that domestic violence happens as frequently in relationships involving gay, bisexual and transgender men as it does in heterosexual relationships (National Coalition of Anti-Violence Programs, 2000). A very small number of men are battered by female partners, as well (Tjaden and Thoennes, 2000; U.S. Department of Justice, 1998).

Responses to domestic violence may be different, depending upon the relationship. It seems that men battered by other men experience many of the same responses as women battered by men, but have fewer resources (Island and Letellier, 1991). Research shows that most heterosexual men who experience violence from female partners do not react to abusive tactics by women with the same levels of fear, are often not as controlled, and do not generally experience the same levels of serious injury or emotional upset as women do (Molidor and Tolman, 1998; Gelles, 1996).

Elderly men and men with disabilities are more vulnerable to abuse by women as well as by other men. When men are abused, there are fewer resources to assist men victimized by domestic violence. Few shelters will assist men with a safe place to stay, and those that do usually only allow male victims a few nights in a hotel before they must find another place to go. This is usually not an option for elderly men and men with disabilities. The majority of domestic violence programs, however, do provide counseling and advocacy services, including legal advocacy, for male victims of domestic violence, and elderly men over 60 can access services through the Illinois Department on Aging.

B. The domestic violence abuser

Domestic violence abusers come from all age, racial, economic, educational, occupational, religious and social groups. Domestic violence abusers are more likely to be male (Catalano, 2004; Tjaden and Thoennes, 2000; and Schechter and Ganley, 1995). The majority of abusers do not have personality disorders, and the personality profile of an abuser is not homogeneous. Research performed by Edward Gondolf (1988) found that 65 percent of abusers who exhibited either sporadic or chronic battering did not batter outside the family, while 35 percent of abusers battered both within and outside of the family and showed signs of sociopathic or antisocial behaviors. Numerous other researcher studies, including Gondolf (2002), have supported these findings.

Though there is no simple profile that can be used to identify an abuser and predict their behavior, a number of personality traits are commonly seen in abusers. The hallmark trait displayed by an abuser is their staunch unwillingness to accept responsibility for their behavior, particularly for their violence. Abusers minimize the violence, deny that it happened, blame the victim, lie, and attempt to justify their abusive behavior (Schechter and Ganley, 1995). Many abusers are very believable, particularly if they believe themselves and believe that they were justified in their use of violence.

Common traits found in abusers include (Wright, 2005):

1. **Controlling:** Using controlling behavior is a trademark of abusers. This controlling behavior may appear nice on the surface, such as buying flowers, chivalrous behavior, or other romantic demonstrations, but is actually helping to create a power imbalance in the relationship. It may involve more overtly abusive forms of control involving physical force or emotional abuse, such as making all of the decisions, not allowing the victim a life outside of the relationship or repeatedly checking up on the victim.
2. **Jealous:** Another key characteristic of abusers is their extreme jealousy, and insistence that this jealousy is a sign of their love. Abusers are often not only jealous of what they deem as potential affairs, but of family, friends, co-workers, and children. They often use their jealousy to isolate the victim from others.
3. **Isolates partner:** Abusers often control who their partner sees, where they go, who they talk to, if and when they work, etc. The effect is often destroyed social supports, and isolation, which force the victim to rely on the abuser.
4. **Contradictory personality:** Many abusers display the confusing behavior of being nice, charming, and loving one moment, and abusive the next. They may be viewed outside the relationship as warm and stable, while their behavior at home is just the opposite. Some have called this behavior a 'Dr. Jeckyll and Mr. Hyde' personality.
5. **Claims to be the victim:** Abusers are notorious for claiming to be the victim in the relationship. They blame their partner for the abuse, and accuse their partners of being abusive, unfaithful, mean, or crazy. They claim that their use of violence was in self defense. Abusers are increasingly becoming savvy about using the courts to assist them in their abuse, filing domestic abuse charges and/or applying for orders of protection.
6. **Blames others for problems, feelings, and actions:** Many abusers blame others, and most frequently their partner, for everything, including their problems, feelings and behaviors. They fail to take responsibility for their actions.
7. **Overly sensitive:** Abusers are frequently easily upset and angered, hypersensitive, and quickly blame others for any discomfort they may feel.

8. Unrealistic expectations: It is common for an abuser to expect their partner to meet all their needs both emotionally and physically, which no partner can do. They may be perfectionists, expecting their partner to be perfect, and sometimes expecting the same from themselves and blaming their partner when they can not meet their own expectations.
9. Quick romantic involvement: Romance quickly becoming very serious is common in domestic violence relationships. It may be wonderful and exhilarating in the beginning.
10. Often believes in rigid gender roles: Heterosexual male abusers frequently believe in rigid gender roles and expect to be taken care of by their female partner. They generally see women as inferior and subservient.
11. Verbally and emotionally abusive: Abuse may begin with verbal and emotional abuse, with the physical violence added later. Frequently, even when an abuser stops the physical violence, they continue the verbal and emotional abuse to control their partner. Many victims find the verbal and emotional abuse to be more damaging than the physical abuse.
12. Uses intimidating tactics: Abusers rely on intimidating looks, gestures, and actions to instill fear and maintain control.
13. Use of *playful* force during sex: The use of force or cruelty during sex, behind the veil of playfulness, is a confusing tactic frequently used by many abusers.
14. Use of force in an argument: The use of any force in an argument, such as holding on to a wrist, not allowing the victim to leave the car or house, or pushing, are early warning signs of an abusive relationship. Though such signs of force are abusive, they may not be interpreted as such.
15. Promises: Abusers are notorious for making promises that they do not keep. The most frequent: "I'll never do it again."
16. Stalking: Abusers frequently stalk their partners or ex-partners, following and watching them, tracking them through their cell phones, calling to check-up on them at all times, and tracking their whereabouts online (cyberstalking).

Abusers believe they are entitled to the use of power and control tactics and violence against their partners and/or other family members. However, they are aware that it is not acceptable to assault bosses, friends, or acquaintances and, therefore, they find alternative methods to solve problems while at work or with friends. They find the use of power and control tactics, including physical violence, to be an effective means of getting what they feel is their entitlement. The violence is reinforced when they achieve this goal without any negative

sanctions for their behavior. Without sanctions for the use of violence, abusers will continue to use it as an effective means of maintaining control over the victim. They continue to use it because it works.

The belief that batterers, particularly the most dangerous ones, have personality disorders and will be noticeably different, allows dangerous people to fall through the cracks. Unfortunately, some of the most dangerous batterers may appear stable, even rational and charming, to law enforcement officers, prosecutors, judges, and everyone else outside the home.

Female abusers in intimate partner relationships are generally women in relationships with other women. Women are also found to be abusers in relationships with other family members, such as elderly parents or siblings. It appears that women who abuse female partners or other family members use similar tactics as male abusers.

The number of women domestic violence abusers of male partners appears to actually be very low. As stated earlier, the majority of abusers in heterosexual relationships are male (Catalano, 2004; U.S. Department of Justice, 2000; and Schechter and Ganley, 1995). Heterosexual women constitute 5 percent to 15 percent of those arrested nationally (this number is increasing in recent years), and approximately 5 percent of referrals to partner abuse intervention programs across the United States. However, intervention programs surveyed nationally found that only about 2 percent of all the women referred to partner abuse intervention services were abusers, the remaining 98 percent of women referred were victims who fought back, retaliated, or were falsely accused by their abusers (U.S. Department of Justice, 1998). In other words, female abusers actually only constituted about .1 percent of all referrals to abusers programs nationally.

An informal study in 2001 of abuser's services programs in Cook County found that the vast majority of women in court mandated services were not abusers, but victims. Service providers stated that they were actually providing victim services to the vast majority of women mandated to these groups. According to the professionals surveyed, it appears that the only actual abusers amongst all the women referred to the groups were women in relationships with other women or women abusing family members other than their partner (Wright, 2005).

Women in heterosexual relationships use violence for very different reasons than do men. A study conducted in 2001 found that women use violence in response to their partner's violence and in reaction to their relative powerlessness, while men use violence in relationships to control their partners (Miller, 2001). This finding is backed by numerous other researchers (Dasgupta, 2001; Molidor and Tolman; 1998).

VII. Cultural competency regarding protected persons

A. Factors to keep in mind

The tactics of power and control used by abusers are surprisingly similar across demographic lines, age, race, ethnicity, economic status, education, employment status or occupation, religious affiliation, urban, suburban or rural residency, immigration status, sexual orientation, gender identity, physical and mental disabilities, and marital status. However, the way in which a domestic violence victim experiences abuse can be greatly impacted by how the system, family, and community responds, how the abuse is identified, what barriers are faced by the victim, and what resources are available to the victim.

Sujata Warrior (1992) of the New York State Office on Domestic Violence defines culture in the following way:

“...the shared experience or other commonalities that a group of individuals based on race, ethnicity, sexuality, class, disability status, religion, age, immigration, and other axes of identification have developed in relation to changing social and political contexts. These guidelines use the contemporary concept of culture, recognizing that it is multifaceted, often changing and contains contradictory elements.”

And cultural competency as:

“...the process by which the provider combines general knowledge with specific information provided by the victim about her/his culture, incorporates an awareness of one’s biases, and approaches the definition of culture with a critical eye and open mind.”

Law enforcement officers, prosecutors, and judges must approach cultural competency with open mindedness toward learning about cultures other than one’s own, exploring one’s own biases, and the willingness to see each person, regardless of what community they come from, as an individual.

There are specific ways the criminal justice system can address the challenges faced by particular cultural and demographic groups. Professionals within all aspects of law enforcement, the courts, and the criminal justice system must have some understanding of the barriers faced by groups that are marginalized within our society in order to better understand how to create policies and procedures that help to eliminate many of the obstacles. Best practices policies for increasing accessibility will be offered later in this document within the chapters for each professional.

B. Immigrant victims

Immigrant victims of domestic violence face numerous barriers to reaching out to law enforcement and courts for safety from domestic violence, making abusers within these communities far less likely to be held accountable for their crimes. These barriers include a

lack of knowledge about and fear of law enforcement, language barriers, fear of deportation for self or for the abuser, cultural, religious and gender barriers, and economic barriers. The fear and distrust immigrant women feel towards law enforcement may also be because law enforcement in their country of origin were abusive and corrupt. These barriers serve to keep victims from accessing law enforcement that could lead to greater safety in their lives (Pendleton, 2003). With such a magnitude of barriers, when a victim does reach out to law enforcement, it is generally because the situation has become quite severe, making a culturally sensitive response crucial.

The Violence Against Women Act (VAWA), which was passed in 1994 and reauthorized in 2000 and 2005, includes a number of provisions designed to ensure that immigrant victims of domestic violence could report violence to law enforcement without the fear of deportation. Included in these remedies is self petitioning to become a citizen, which allows immigrant victims of domestic violence who have been “battered or subject to extreme cruelty” by their citizen or lawful permanent resident spouse to petition to become a citizen without the assistance of their abuser. U visas and T visas give protection from deportation to immigrant victims of certain violent crimes and trafficking when they participate in investigations and prosecutions of these crimes.

C. Victims with disabilities

People with physical or cognitive disabilities or mental health issues are especially vulnerable to domestic violence (Chapman, 1996). One large, national study found equal rates for abuse by husbands for women with disabilities and women without disabilities. However, the researchers found that for women with disabilities, the abuse lasted longer and was frequently inflicted by a greater number of perpetrators, including healthcare workers. Options to escape the abuse were far fewer for women with disabilities, leaving them essentially trapped in the cycle of violence (Young, et. All, 1997).

Victims with disabilities often have a hard time accessing assistance from law enforcement and the courts. Assistance provided with access to an American Sign Language interpreter, written materials provided in Braille, transportation services for people with physical disabilities, and truly wheelchair or crutch accessible buildings are rare, even with the 1990 passage of the Americans with Disabilities Act. Women with developmental delays or mental health issues have a difficult time being believed or finding law enforcement, court personnel or domestic violence service providers that understand their issues.

D. Lesbian, gay, bisexual, and transgender victims

Lesbian, gay, bisexual, and transgender people experience domestic violence at similar rates as heterosexual people (Baum, 2000). However, lesbian, gay, bisexual, and transgender victims often find law enforcement and the courts less accessible and may be fearful of calling law enforcement or reaching out to the courts for assistance. Lesbian, gay, bisexual, and transgender people find that their relationships are misunderstood and taken less seriously by many within these systems, and fear exposure to homophobia and insensitivity. They have fewer legal options than heterosexual married couples. Further, domestic violence amongst lesbian, gay, bisexual, and transgender people offers special challenges to law

enforcement to identify the aggressor within the relationship, leading to a greater likelihood that the victim may be arrested rather than the perpetrator.

Within the lesbian, gay, bisexual, and transgender community, victims of domestic violence often find a lack of understanding of domestic violence and the belief that it is only an issue for heterosexual people. Another reason cited for avoiding law enforcement and the courts is the fear of being “outed.” Lesbian, gay, bisexual, and transgender victims who have not told family, friends, employers, landlords, and others in their lives of their sexual orientation or gender identity may be extremely fearful of the consequences and discrimination they might experience upon revelation of a law enforcement report or court case. Consequences for reporting abuse and pursuing a court case may include the loss of family and friends, a job, or a place to live.

Male victims of domestic violence and sexual assault are most often assaulted by other men (for sexual assault, this is true regardless of sexual orientation). These victims have fewer resources for safety. Few domestic violence programs have staff experienced in working with male victims. No domestic violence shelters exist in Illinois for male victims.

Domestic violence victims who identify as transgender face unique challenges seeking safety. A transgender person is one whose gender identification does not match the sex they were born with or assigned at birth. Transgender victims may be in homosexual or heterosexual relationships. They are uniquely at risk for isolation because of an extreme lack of understanding within society. Transgender victims of domestic violence often have fewer safety options – few shelters accept transgender victims.

E. Teen victims

According to a large study conducted by Harvard researchers, teen dating violence happens to one in five teen girls (Silverman, Raj, Mucci and Hathaway, 2001). Teen girls are 3.5 times more likely to experience sexual assault than are members of the general population (Bureau of Justice Statistics, 2001). Barriers to safety and the use of the courts for teens include:

- The fact that teens rarely tell an adult that abuse is happening.
- Inconsistencies in how courts interpret the accessibility of the IDVA, particularly orders of protection, to teen victims.
- The failure of some professionals to take teen dating violence as seriously as adult domestic violence.

F. Rural victims

Rural victims of domestic violence face numerous additional barriers to seeking safety when experiencing domestic violence. Issues such as poverty, lack of public transportation and limited access to resources (such as jobs, education and childcare) and services (such as domestic violence programs, counseling, and children’s programming) make escape from an abusive relationship difficult for rural victims. Cultural values such as strong allegiances to the land, kinship ties, and traditional gender roles, as well as geographic isolation, add to the barriers. Additional risks and danger are present with the increase in the likelihood that

weapons, such as firearms and hunting knives, are present in rural households. Further, rural law enforcement, prosecutors, judges, health care providers and domestic violence or other social service providers are more likely to be neighbors, relatives or acquaintances of the victim and/or the abuser, making confidentiality and objectivity difficult (Johnson, 2000).

G. Cultural and religious considerations

Many cultural and religious groups hold strong values around family and community integrity, and may also hold to strict gender roles. These values can create additional pressures on victims of domestic violence to maintain a marriage at all costs, or not violate the community's image within the larger mainstream culture, creating additional barriers for women from these communities to seeking help from the courts. However, being a member of a particular cultural or religious group can also be a great strength for many battered women, providing understanding supports or personal values that help a victim hold a sense of self. Social service agencies that specialize in working with particular cultural or religious groups will often take into account particular community values when offering services, safety, and support.

H. Homeless victims

It is not uncommon for a victim of domestic violence to flee the abuser and find themselves and their children homeless. The abuser's efforts at isolating the victim can leave few, if any, options for support and housing from friends or family. Some victims go to domestic violence shelters, but because beds are so scarce and there are accessibility issues for many victims, many end up in homeless shelters. In Chicago in 2003, 56 percent of women residing in homeless shelters had been victims of domestic violence, and 22 percent of women in homeless shelters were there as a direct result of the domestic violence (Center for Impact Research, 2004). Policies adopted by landlords and public housing facilities that allow zero tolerance for crime result in eviction notices for victims who experience violence at the hands of a partner in their home (Chicago Homeless Coalition, 2005). Such landlord policies give victims of domestic violence a difficult choice of either calling law enforcement for assistance, and possible ending up being homeless, or not seeking assistance and keeping their apartment.

I. Substance abusing victims

Substance abusing women who are victims of domestic violence present unique challenges to the courts. Victims of violence may find themselves using substances to self-medicate for the physical and emotional pain caused by the domestic violence (Bennett, 1997). Some abusers purposefully addict their partners to substances to make them more dependent and further prevent the victim's ability to leave. Women who abuse substances often find themselves with less financial and social resources to leave an abusive partner, and find that they are not believed when they do try to seek safety and assistance. Further, women who abuse substances tend to be more likely to fight back against their abusers, making an assessment of the situation far more complicated for law enforcement professionals (Bennett, 1997). Finally, domestic violence programs, especially shelter programs, are often inaccessible to women with substance abuse problems.

J. Victims involved with gangs

Victims of domestic violence who are involved with gang-affiliated partners have particularly challenging safety issues. A victim whose partner is in a gang knows that the partner can carry out violence against them through other gang members regardless of whether the partner is in jail. This victim is in extreme danger, and is unlikely to seek the help of or cooperate with law enforcement or the courts. The victim also may be enduring forced involvement by the abusive partner in illegal activities.

K. Prostituted or trafficked victims

There are few groups with greater barriers to safety and resources than prostituted victims of domestic violence. A survey conducted by the Chicago Coalition for the Homeless (2001) found that 86 percent of women in prostitution had experienced domestic violence, and 74 percent had been sexually assaulted. Prostituted victims do not feel that they can contact law enforcement or the courts because they fear being arrested themselves, and they fear they will not be believed. Victims who have been trafficked and are being used in the sex industry or as illegal laborers often fear contacting the courts for help because they have been smuggled into the United States illegally and fear deportation. In addition, they may not speak English, have no understanding of the courts, and may be kept under prison-like conditions, making such contact impossible.

For victims of trafficking, U visas and T visas were created to give protection from deportation to immigrant victims of certain violent crimes and trafficking when they participate in investigations and prosecutions of these crimes.

L. Conclusions regarding cultural competency

Law enforcement officers, prosecutors, and judges should develop policies that respect the varying needs of victims from different cultural backgrounds. The wide diversity and experiences of victims of domestic violence challenge law enforcement and the courts to develop best practices that leave room for individualized responses based upon the specific needs and experiences of each victim. While learning about the challenges to justice and safety for various groups is useful and necessary, assuming that all members of a particular culture or group will react the same when confronted by domestic violence or when interacting with law enforcement or the courts is not helpful. Stereotyping will cloud the ability of criminal justice professionals to hear the individual experiences of the victim and adequately pursue the accountability of the abuser. The most helpful way to address the needs of all victims is to listen to each victim's story and needs, and ensure that resources are available.

VIII. Legal response

A. Recent history of the legal response

Advocates in the domestic violence movement worked for many years throughout the 1980s and 1990s to push for reforms in the courts. Goals of advocates included creating more responsive, fair, consistent, and coordinated systems to better address the needs of victims and their children and to hold offenders accountable (Shepard, 1999). Efforts like these, and a growing knowledge of the issue within the legislature and the courts, led to the passage of

the Illinois Domestic Violence Act (IDVA) of 1986. The IDVA recognized the nature and extent of domestic violence in stating its purpose in Section 102:

This Act shall be liberally construed and applied to promote its underlying purposes, which are to: (1) recognize domestic violence as a serious crime against the individual and society which produces family disharmony in thousands of Illinois families, promotes a pattern of escalating violence which frequently culminates in intra-family homicide, and creates an emotional atmosphere that is not conducive to healthy childhood development;... (3) recognize that the legal system has ineffectively dealt with family violence in the past, allowing abusers to escape effective prosecution or financial liability, and has not adequately acknowledged the criminal nature of domestic violence; that, although many laws have changed, in practice there is still widespread failure to appropriately protect and assist victims;... [and] (6) expand the civil and criminal remedies for victims of domestic violence, including, when necessary, the remedies which effect physical separation of the parties to prevent further abuse.750 ILCS 60/102.

The IDVA has undergone a number of updates since 1986, with the last significant revision effective in 1993. The IDVA is considered model legislation across the country.

Initially, domestic violence advocates focused their systems advocacy efforts on reforming particular aspects of the courts. However, it became clear that the “absence of a shared vision and public accountability” amongst the various components of the courts made a successful response difficult. This led to a focus on a coordinated community response (Shepard, 1999; and Hart, 1995).

Law enforcement, prosecutors, judges, domestic violence advocates, and probation officers must join forces with child welfare agencies, healthcare providers and substance abuse treatment services to develop and implement policies in a coordinated community response (Shepard, 1999). Further, coordinating with child welfare systems, child abuse investigators, law enforcement, and prosecutors provides the foundation for an effective response to child witnessing/child abuse and domestic violence (Turkel and Shaw, 2003). A number of components are frequently a part of a coordinated community response, though design and implementation varies (Shepard, 1999; Hart, 1995; National Council of Juvenile and Family Court Judges, 1994). These components include:

- Pro-arrest policies.
- Advocacy for victims.
- Pro-prosecution strategies, including prompt prosecution.
- Active monitoring of probation compliance.
- Court mandated compliance in partner abuse intervention programs.
- Improved access to and enforcement of orders of protection.
- Development of policies to monitor this system-wide response.

Though the research is limited and difficult to perform, it is evident that the use of a coordinated community response model is effective in reducing future incidents of violence (Shepard, 1999). The response to domestic violence in Illinois follows a coordinated community response model.

B. Research on the legal response

Research indicates that effective law enforcement response, prosecution, and conviction for domestic violence has the effect of reducing recidivism. A large 2005 study indicated that a conviction of domestic violence or related charge significantly reduced the likelihood of future charges of domestic violence or other related charge (Ventura and Davis, 2005). Research on criminal justice system experiences in other jurisdictions can give Illinois practitioners insight into improving criminal justice strategies, and assist the state in further developing and implementing model policies.

A 2005 U.S Bureau of Justice report indicated that approximately six in 10 family violence incidents come to the attention of law enforcement. In interviews with the 40 percent of victims that did not report family violence to law enforcement, 34 percent of victims said they felt the matter was private or personal, and 12 percent said they wanted to protect the perpetrator (Durose, Harlow, Langan, Motivans, Rantala, and Schmitt, 2005).

A Battered Women's Justice Project (BWJP) audit of communities within Minnesota found that while evidence was well collected by law enforcement and often placed in case files by the prosecutor, it was often unused. Prosecutors had large caseloads and little time for preparation. The audit revealed that case outcomes were the same regardless of whether the file contained excellent evidence or not (Martinson, Sponsler, Lizdas, and Avalon, 2002). Another large study similarly found that relevant evidence about the actual abuse experienced and injuries sustained was rarely presented before the judge (Belknap, Graham, Hartman, Lippen, Allen, and Sutherland, 2000). BWJP concluded that while many jurisdictions are succeeding at evidence collection, better policies and practices in the prosecutorial use and application of the evidence could lead to more effective outcomes. They recommended the need for smaller caseloads and more prosecuting attorneys to attend to domestic violence cases (Martinson, Sponsler, Lizdas, and Avalon, 2002).

A large study examining the court experiences of victim/witnesses found that during prosecution, victim/witnesses felt the need for more contact and information from the prosecutor's office in order to be adequately prepared to testify (Ventura and Davis, 2005).

Another 2005 study revealed that the majority of victims interviewed responded positively to the court process and outcome. The study, conducted by the Center for Court Innovation, found that 64 percent of victims who followed through with the court process were satisfied with the outcome, 26 percent were dissatisfied and 10 percent had mixed feelings.

Of the 26 percent who were dissatisfied, 49 percent said the sentence was not severe enough, 30 percent said that the abuser needed treatment, 9 percent said that the sentence was too severe, and 9 percent said that the court did not follow-up with them.

In the area of safety, 77 percent of victim respondents said that the court process had made them safer, while only nine percent said that the court process had made them less safe. A full 95 percent said that they would call law enforcement again if they found themselves in a similar situation (Labriola, Rempel and Davis, 2005).

Finally, research supports the use of a coordinated community response to domestic violence (McGuire, 2001; Hart, 1995; Shepard, 1999).

C. Effective response to domestic violence

Law enforcement officers are frequently the first professionals to come into contact with families experiencing domestic violence. They play a very important gate-keeping role, in addition to being an avenue for safety in the midst of an abusive incident. Arresting an offender is a societal statement that such behavior is a crime that will not be tolerated.

However, law enforcement cannot do it alone. A pro-arrest policy and other good law enforcement practices become meaningful when fully supported by prosecution. Proactive prosecutors who pursue charges against domestic abusers encourage law enforcement officers to fulfill their role in making arrests.

Proactively prosecuting domestic violence is a priority for the following reasons:

1. Prosecution is the formal expression of social norms. If domestic violence is to stop, those who commit abuse must be prosecuted. When offenders are not prosecuted, they are given tacit permission to continue.
2. Law enforcement cannot be effective unless there is prosecution following arrest. The prosecutor and the judge must continue to exercise authority over an arrested defendant.
3. Domestic violence is a particularly dangerous form of violent crime. In no other category of violent crime does one find the offender going home to live with the victim. The violence is often serious and usually chronic. Without intervention, the same victim will often be assaulted again by the same offender, and any children within the home will continue to witness the violence. Proactive prosecution may assist in preventing future violence both for those whose cases are presented and for future generations.

Judges are in the best position to impose long-term control over an abuser's behavior by using their authority to protect victims and secure a cessation of the abuse. Incarcerating offenders, compelling perpetrator's treatment (and treatment for substance abuse, when

appropriate), issuing orders, and ensuring an orderly court process communicates the seriousness of the process to the offender and to society.

Finally, the experience of a growing number of communities across Illinois demonstrates what recent history across the country and research tell us -- the system is most responsive to victims of domestic violence when law enforcement, prosecutors, and judges work with community agencies, domestic violence advocates, probation officers, perpetrator treatment programs, healthcare providers, child welfare agencies, and substance abuse treatment services in a coordinated community response. Justice is best served when these components of the community work together to set goals and develop a coordinated approach to domestic violence, and then to communicate those policies and procedures to those who are charged with bringing them to life. Such a process allows for an approach to domestic violence which takes into account the unique needs and resources of a particular community. It has the added benefit of fostering discussion and promoting consensus on how to handle domestic violence offenses.

IX. Definitions

The successful implementation of the protocol requires understanding of terms that may be unfamiliar or may be subject to more than one interpretation. The following sections include definitions of terms that often apply to domestic violence listed by their *Illinois Compiled Statutes* citations.

B. Definitions under the Illinois Domestic Violence Act (IDVA)

- 1. Abuse** means physical abuse, harassment, intimidation of a dependent, interference with personal liberty, or willful deprivation, but does not include reasonable direction of a minor child by a parent or person in loco parentis. 750 *ILCS* 60/103(1). Additionally, under the act **domestic violence** has the same definition as abuse. 750 *ILCS* 60/103(1).
- 2. Family or household members** includes spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly have a child in common, persons who share or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, persons with disabilities and their personal assistants, and caregivers. Dating relationship does not include casual acquaintanceship nor ordinary fraternization between two individuals in business or social contexts. 750 *ILCS* 60/103(6).
- 3. Harassment** means knowing conduct which is not necessary to accomplish a purpose which is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the petitioner. Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct should be presumed to cause emotional distress:

- a. Creating a disturbance at petitioner's place of employment or school.
 - b. Repeatedly telephoning petitioner's place of employment, home, or residence.
 - c. Repeatedly following petitioner about in a public place or places.
 - d. Repeatedly keeping petitioner under surveillance by remaining present outside his or her home, school, place of employment, vehicle, or other place occupied by petitioner or by peering in petitioner's windows.
 - e. Improperly concealing a minor child from petitioner, repeatedly threatening to improperly remove a minor child of petitioner's from the jurisdiction or from the physical care of petitioner, repeatedly threatening to conceal a minor child from petitioner, or making a single such threat following an actual or attempted improper removal or concealment, unless respondent was fleeing from an incident or pattern of domestic violence.
 - f. Threatening physical force, confinement or restraint on one or more occasions.
750 *ILCS* 60/103(7).
4. **Interference with personal liberty** means committing or threatening physical abuse, harassment, intimidation, or willful deprivation so as to compel another to engage in conduct from which she or he has a right to abstain or to refrain from conduct in which she or he has a right to engage. 750 *ILCS* 60/103(9).
5. **Intimidation of a dependent** means subjecting a person who is dependent because of age, health or disability to participation in or the witnessing of: physical force against another or physical confinement or restraint of another which constitutes physical abuse as defined in this Article, regardless of whether the abused person is a family or household member. 750 *ILCS* 60/103(10).
6. **Physical abuse** includes sexual abuse and any of the following:
- a. Knowing or reckless use of physical force, confinement or restraint.
 - b. Knowing, repeated, and unnecessary sleep deprivation.
 - c. Knowing or reckless conduct which creates an immediate risk of physical harm.
- 750 *ILCS* 60/103(14).
7. **Stay away** means the respondent must refrain from both physical presence and nonphysical contact with the petitioner whether direct, indirect (including, but not limited to, telephone calls, mail, email, faxes, and written notes), or through third parties who may or may not know about the order of protection. 750 *ILCS* 60/103(14.5).
8. **Willful deprivation** means willfully denying a person who because of age, health, or disability requires medication, medical care, shelter, accessible shelter or services, food, therapeutic device, or other physical assistance, and thereby exposing that person to the risk of physical, mental or emotional harm, except with regard to medical care and treatment when such dependent person has expressed the intent to forgo such medical care or treatment. 750 *ILCS* 60/103(15).

B. Orders of protection can also protect elder adults with disabilities and high-risk adults with disabilities, and these and other terms have special definitions:

1. **Elder adult with disabilities** means an adult prevented by advanced age from taking appropriate action to protect himself or herself from abuse by a family or household member. *750 ILCS 60/103(4)*.
2. **Exploitation** means the illegal, including tortious, use of a high risk adult with disabilities or of the assets or resources of a high-risk adult with disabilities. Exploitation includes, but is not limited to, the misappropriation of assets or resources of a high-risk adult with disabilities by undue influence, by breach of a fiduciary relationship, by fraud, deception, or extortion, or the use of such assets or resources in a manner contrary to law. *750 ILCS 60/103(5)*.
3. **High-risk adult with disabilities** means a person aged 18 or over whose physical or mental disability impairs his other ability to seek or obtain protection from abuse, neglect, or exploitation. *750 ILCS 60/103(8)*.
4. **Neglect** means the failure to exercise that degree of care toward a high-risk adult with disabilities which a reasonable person would exercise under the circumstances and includes but is not limited to:
 - a. The failure to take reasonable steps to protect a high-risk adult with disabilities from acts of abuse.
 - b. The repeated, careless imposition of unreasonable confinement.
 - c. The failure to provide food, shelter, clothing, and personal hygiene to a high-risk adult with disabilities who requires such assistance.
 - d. The failure to provide medical and rehabilitative care for the physical and mental health needs of a high-risk adult with disabilities.
 - e. The failure to protect a high-risk adult with disabilities from health and safety hazards.*750 ILCS 60/103(11A)*.

Nothing in the definitions of neglect should be construed to impose a requirement that assistance be provided to a high-risk adult with disabilities over his or her objection in the absence of a court order, nor to create any new affirmative duty to provide support to a high-risk adult with disabilities. *750 ILCS 60/103(11B)*.

C. Common domestic violence crimes

1. **Assault** is committed when, without lawful authority, the actor engages in conduct, which places another in reasonable apprehension of receiving a battery. *720 ILCS 5/12-1*.
2. **Aggravated assault** is committed when in committing an assault, the person:
 - a. Uses a deadly weapon or anything substantially similar in appearance of a firearm.
 - b. Is hooded, robbed, or masked in such manner as to conceal his identity or to conceal anything substantially similar in appearance of a firearm.

- c. Knowingly assaults a teacher or school employee on school grounds, grounds adjacent to, or any part of a building that is used for a school purposes.
- d. Knowingly assaults a park district employee on park grounds, grounds adjacent to, or a building that is used for park purposes.
- e. Knowingly assaults a public aid worker on work grounds, grounds adjacent to, or a building that is used for public aid purposes, or while the worker is, visiting or investigating another location for work related to their duties as a public aid worker.
- f. Knowingly assault a peace officer, a community policing volunteer, or a fireman while engaged in their official duties, to prevent the officer from performing their official duties, or in retaliation for the officer performing their official duty.
- g. Knowingly assaults any emergency medical worker while they are working or to prevent them from working.
- h. Knowingly assaults any transportation worker or passenger.
- i. Assaults anyone on a public way, public property, or public place of accommodation or amusement.
- j. The individual assaulted is on a private or publicly owned sports or entertainment arena and the assault occurred within the 24-hour period in which the professional, collegiate, or Olympic sporting event occurred.
- k. Knowingly assault any government worker while they are working.
- l. Knowingly and without legal justification commits an assault on a physically handicapped person.
- m. Knowingly and without legal justification commits an assault on a person 60 years of age or older.
- n. Discharges a firearm.
- o. Knowingly assaults a correctional officer while they are working or to prevent them from working or in retaliation for working.
- p. Knowingly assaults someone supervising sexually dangerous persons or sexually violent persons while they are working or to prevent them from working or in retaliation for working.
- q. Knowingly assaults a law enforcement's employee while they are working.
- r. Knowingly assaults a sports official or coach at an athletic facility while they are working or near a facility where they were working. "Sports official" means a person at an athletic contest who enforces the rules of the contest, such as an umpire or referee."Coach" means a person recognized as a coach by the sanctioning authority that conducted the athletic contest.
- s. Knowingly assaults an emergency management worker, while they are working or to prevent them from working or in retaliation for working.
- t. A person commits an aggravated assault when he or she knowingly and without lawful justification shines or flashes a laser gun sight or other laser device that is attached or affixed to a firearm, or used in concert with a firearm, so that the laser beam strikes near or in the immediate vicinity of any person.

720 ILCS 5/12-2 (et. seq.).

3. **Battery** is committed when the actor intentionally or knowingly without legal justification and by any means, causes bodily harm to an individual, or makes physical contact of an insulting or provoking nature with an individual. 720 ILCS 5/12-3
 - a. **Battery of an unborn child** 720 ILCS 5/12-3/1 is committed when a person intentionally or knowingly and without legal justification and by any means cause bodily harm to an unborn child.
 - An unborn child in this section is defined as any individual of the human species from fertilization until birth
 - The definition of person does not include the pregnant woman of the unborn child who is harmed
 - This act does not apply to any acts that cause bodily harm if the acts were committed during any abortion as defined at 720 ILCS 510/2(4).
 - b. **Domestic battery** is committed when a person intentionally or knowingly and without legal justification by any means commits one of the following acts:
 - Causes bodily harm to any family or household member, defined at 725 ILCS 5/112A3(3).
 - Makes physical contact of an insulting or provoking nature with any family or household member, defined at 725 ILCS 5/112A3(3). 720 ILCS 5/12-3.2 (*et. seq.*).
 - c. **Aggravated domestic battery** is committed when a person who, in committing a domestic battery, intentionally or knowingly causes great bodily harm, permanent disability, or disfigurement. 720 ILCS 5/12-3.3
4. **Interfering with the reporting of domestic violence** is committed when a person, after having committed an act of domestic violence, prevents or attempts to prevent the victim of or a witness to the act of domestic violence from calling a 9-1-1 emergency telephone system, obtaining medical assistance, or making a report to any law enforcement official. 720 ILCS 5/12-6.3(a).
5. **Stalking**
 - a. Stalking is committed when person, knowingly and without lawful justification, on at least two separate occasions follows another person or places the person under surveillance or any combination thereof:
 - At any time transmits a threat of immediate or future bodily harm, sexual assault, confinement, or restraint, and the threat is directed toward that person or a family member of that person.
 - Places that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint.
 - Places that person in reasonable apprehension that a family member will receive immediate or future bodily harm, sexual assault, confinement, or restraint. 720 ILCS 5/12-7.3a(1-3).

b. A person commits stalking when he or she has previously been convicted of stalking another person and knowingly and without lawful justification on one occasion commits all of the following:

- Follows that same person or places that same person under surveillance.
- Transmits a threat of immediate or future bodily harm, sexual assault, confinement or restraint.
- The threat is directed towards that person or a family member of that person.
720 ILCS 5/12-7.3(a-5)(1-3).

c. For the purpose of this section, the following definitions are applied to the terms in the section:

- A defendant places a person under surveillance by remaining present outside the person's school, place of employment, vehicle, other place occupied by the person, or residence other than the residence of the defendant. *720 ILCS 5/12-7.3(d).*
- "Follows another person" means (i) to move in relative proximity to a person as that person moves from place to place or (ii) to remain in relative proximity to a person who is stationary or whose movements are confined to a small area. "Follows another person" does not include a following within the residence of the defendant. *720 ILCS 5/12-7.3(e).*
- "Transmits a threat" means a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements or conduct.
720 ILCS 5/12-7.3(g).

d. Aggravated stalking

Aggravated stalking is committed when a person in conjunction with committing the offense of stalking, also does any of the following:

- Causes bodily harm to the victim.
- Confines or restrains the victim.
- Violates a temporary restraining order, an order of protection, or an injunction prohibiting the behavior described at *750 ILCS 60/214(b)(1).*
720 ILCS 5/12-7.4(a)(1-3).

e. Cyberstalking

1. Cyberstalking is committed when a person, knowingly and without lawful justification, on at least 2 separate occasions, harasses another person through the use of electronic communication and commits one of the following acts:

- At any time transmits a threat of immediate or future bodily harm, sexual assault, confinement, or restraint and the threat is directed towards that person or a family member of that person.
- Places that person or a family member of that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint.

720 ILCS 5/12-7.5(a)(1-2).

2. For the purpose of this section, the following definitions are applied to the terms in the section:
 - "Harass" means to engage in a knowing and willful course of conduct directed at a specific person that alarms, torments, or terrorizes that person. *720 ILCS 5/12-7.5(b)*.
 - "Electronic communication" means any transfer of signs, signals, writings, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system. Electronic communication includes transmissions by a computer through the Internet to another computer. *720 ILCS 5/12-7.5(b)*.

D. Sexual Assault

1. Definitions

a. Sexual conduct means:

- Any intentional or knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus, or breast of the victim or the accused.
- The touching of any body part of a child under 13 years of age, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or the accused. *720 ILCS 5/12-12(e)*.

b. Sexual penetration means:

- Any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person.
- Any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another including but not limited to cunnilingus, fellatio, or anal penetration.
- Evidence of emission of semen is not necessary. *720 ILCS 5/12-12(f)*.

2. Criminal sexual assault is committed when a person commits any of the following acts:

- Commits an act of sexual penetration by the use of force or threat of force.
- Commits an act of sexual penetration and the accused knew that the victim was unable to understand the nature of the act or was unable to give knowing consent.
- Commits an act of sexual penetration with a victim who was under 18 years of age and the accused was a family member.
- Commits an act of sexual penetration with a victim who was 13 - 18 years old and the accused was 17 years old or over and held a position of trust, authority, or supervision in relation to the victim.
720 ILCS 5/12-13(a)(1-4).

3. Aggravated criminal sexual assault is committed when the accused commits criminal sexual assault plus one of the following aggravating circumstances existed:

- The accused displayed, threatened, or used a dangerous weapon, other than a firearm, or another object the victim reasonably believed to be a dangerous weapon.
- The accused caused the victim great bodily harm.
- The accused acted in a manner such as threatened the life of the victim or any other person.
- The criminal sexual abuse was perpetrated during the course or attempted course of any other felony.
- The victim was 60 years of age or over.
- The victim was physically handicapped.
- The accused delivered to the victim in any matter and without his/her consent, or by threat or deception, any controlled substance except for a medical purpose exception.
- The accused was armed with a firearm
- The accused discharged a firearm.
- The accused during the commission of the crime discharged a weapon that proximately caused great bodily harm, permanent disability or disfigurement, or death of another person. 720 *ILCS* 5/12-14(a)(1-10).
- The accused was 17 years or older and the victim was 13 or younger. 720 *ILCS* 5/12-14(b)

4. Predatory criminal sexual assault of child is committed if

- The accused is the age of 17 or over and commits an act of sexual penetration with a victim who was under the age of 13 at the time the act is committed.
- The accused is the age of 17 or over armed with a firearm and commits an act of sexual penetration with a victim who is under the age of 13 at the time the act is committed.
- The accused is the age of 17 or commits an act of sexual penetration with a victim who is under the age of 13 at the time the act is committed and during the commission of the offense personally discharged a firearm.
- The accused is the age of 17 or over and commits an act of sexual penetration with a victim who is under the age of 13 at the time the act is committed causing great bodily harm to the victim.
 - The harm resulted in permanent disability.
 - The harm was life threatening.
- The accused is the age of 17 or over commits an act of sexual penetration with a victim who is under the age of 13 at the time the act is committed, and the accused delivered by any means, and without the victim's consent, a controlled substance not for medical purpose. 720 *ILCS* 5/12-14.1(a)(1-3).

5. Criminal sexual abuse is when a person commits any one of the following acts:

- Sexual conduct by the use of force or threat of force.
 - The accused knew victim was unable to understand the nature of the act or was unable to give knowing consent and committed an act of sexual conduct.
 - If the accused is under the age of 17, the victim is 9 to 17 years old and the accused commits an act of sexual penetration or sexual conduct.
 - If the victim is 13 to 17 years old and the accused is less than five years older than the victim and commits an act of sexual penetration or sexual abuse.
- 720 ILCS 5/12-15.

6. Aggravated criminal sexual abuse is committed when the accused commits criminal sexual abuse, as defined above, plus one of the following aggravating circumstances existed during the commission of the crime:

- The accused displayed, threatened, or used a dangerous weapon or another object the victim reasonably believed to be a dangerous weapon.
 - The accused caused the victim great bodily harm.
 - The victim was 60 years of age or over.
 - The victim was physically handicapped.
 - The accused acted threatened the life of the victim or any other person.
 - The criminal sexual abuse was perpetrated during the course of any other felony or the attempted commission of a felony.
 - The accused delivered, by any means, the victim without his/her consent, or by threat or deception, any controlled substance.
 - The victim was under 18 years old and the accused is a family member.
 - The accused was over 17 years old and the victim was under 13.
 - The victim was 13 to 17 years old and the accused used force or threat of force.
 - The accused was under the age of 17 and the victim was under the age of 9 at the time the act was committed.
 - The accused was under the age of 17 and the victim was at least 9 years old but under the age of 17 when the act was committed and the accused used force or the threat of force to commit the act.
 - The victim was 13 to 17 years old and the accused was less than five years older than the victim and commits an act of sexual penetration or sexual abuse.
 - The victim was severely or profoundly mentally retarded person at the time the act was committed.
 - The victim was 13 to 18 years old and the accused was 17 years of age or over and held a position of trust, authority, or supervision in relation to the victim.
- 720 ILCS 5-12-16(a-f).

Attachment A

Domestic violence personalized safety plan

DOMESTIC VIOLENCE PERSONALIZED SAFETY PLAN

Name: _____ Date: _____

The following steps represent my plan for increasing my safety and preparing in advance for the possibility for further violence. Although I do not have control over my partner's violence, I do have a choice about how to respond to him/her and how to best get myself and my children to safety.

STEP 1: Safety during a violent incident. *Women cannot always avoid violent incidents. In order to increase safety, battered women may use a variety of strategies.*

I can use some of the following strategies:

- A. If I decide to leave, I will _____.
(Practice how to get out safely. What doors, windows, elevators, stairwells, or fire escapes would you use?)
- B. I can keep my purse and car keys ready and put them (location) _____
_____ in order to leave quickly.
- C. I can tell _____ about the violence and request that she or he call the police if she or he hears suspicious noises coming from my house.
- D. I can teach my children how to use the telephone to contact the police, the fire department, and 911.
- E. I will use _____ as my code with my children or my friends so they can call for help.
- F. If I have to leave my home, I will go to _____.
(Decide this even if you don't think there will be a next time.)
- G. I can also teach some of these strategies to some or all of my children.
- H. When I expect we're going to have an argument, I'll try to move to a place that is low risk, such as _____. *(Try to avoid arguments in the bathroom, garage, kitchen, near weapons, or in rooms without access to an outside door.)*
- I. I will use my judgment and intuition. If the situation is very serious, I can give my partner what he/she wants to calm him/her down. I have to protect myself until I/we

STEP 2: Safety when preparing to leave. *Battered women frequently leave the residence they share with the battering partner. Leaving must be done with a careful plan in order to increase safety. Batterers often strike back when they believe that a battered woman is leaving a relationship.*

I can use some or all of the following strategies:

- A. I will leave money and an extra set of keys with _____ so I can leave quickly.
- B. I will keep copies of important documents or keys at _____.
- C. I will open a savings account by _____, to increase my independence.
- D. Other things I can do to increase my independence include: _____
_____.

- E. I can keep change for phone calls on me at all times. I understand that if I use my telephone credit card, the following month's phone bill will show my batterer those numbers I called after I left. To keep my phone communications confidential, I must either use coins, or I might ask to use a friend's phone card for a limited time when I first leave.
- F. I will check with _____ and _____ to see who would be able to let me stay with them or lend me some money.
- G. I can leave extra clothes or money with _____.
- H. I will sit down and review my safety plan every _____ in order to plan the safest way to leave the residence. _____ (domestic violence advocate or friend's name) has agreed to help me review this plan.
- I. I will rehearse my escape plan and, as appropriate, practice it with my children.

STEP 3: Safety in my own residence. *There are many things that a woman can do to increase her safety in her own residence. It may be impossible to do everything at once, but safety measures can be added step by step.*

Safety measures I can use:

- A. I can change the locks on my doors and windows as soon as possible.
- B. I can replace wooden doors with steel/metal doors.
- C. I can install security systems including additional locks, window bars, poles to wedge against doors, an electronic system, etc.
- D. I can purchase rope ladders to be used for escape from second floor windows.
- E. I can install smoke detectors and fire extinguishers for each floor of my house/apartment.
- F. I can install an outside lighting system that activates when a person is close to the house.
- G. I will teach my children how to make a collect call to me and to _____ (name of friend, etc.) in the event that my partner takes the children.
- H. I will tell the people who take care of my children which people have permission to pick up my children and that my partner is not permitted to do so. The people I will inform about pick-up permission include:
 - _____ (name of school)
 - _____ (name of babysitter)
 - _____ (name of teacher)
 - _____ (name of Sunday-school teacher)
 - _____ (name[s] of others)
- I. I can inform _____ (neighbor) and _____ (friend) that my partner no longer resides with me and that they should call the police if he is observed near my residence.

STEP 4: Safety with an Order of Protection. *Many batterers obey protection orders, but one can never be sure which violent partner will obey and which will violate protective orders. I recognize that I may need to ask the police and the courts to enforce my protective order.*

The following are some steps I can take to help the enforcement of my protection order:

- A. I will keep my protection order _____ (location). *Always keep it on or near your person. If you change purses, that's the first thing that should go in the new purse.*
- B. I will give my protection order to police departments in the community where I work, in those communities where I visit friends or family, and in the community where I live.
- C. *There should be county and state registries of protection orders that all police departments can call to confirm a protection order.* I can check to make sure that my order is on the registry. The telephone numbers for the county and state registries of protection orders are:
_____ (county) and _____ (state).
- D. I will inform my employer; my minister, rabbi, etc.; my closest friend; and _____ that I have a protection order in effect.
- E. If my partner destroys my protection order, I can get another copy from the clerk's office.
- F. If the police do not help, I can contact an advocate or an attorney and file a complaint with the chief of the police department or the sheriff.
- G. If my partner violates the protection order, I can call the police and report the violation, contact

STEP 5: Safety on the job and in public. *Each battered woman must decide if and when she will tell others that her partner has battered her and that she may be at continued risk. Friends, family, and co-workers can help to protect women. Each woman should carefully consider which people to invite to help secure her safety.*

I might do any or all of the following:

- A. I can inform my boss, the security supervisor, and _____ at work.
- B. I can ask _____ to help me screen my telephone calls at work.
- C. When leaving work, I can _____.
- D. If I have a problem while driving home, I can _____.
- E. If I use public transit, I can _____.
- F. I will go to different grocery stores and shopping malls to conduct my business and shop at hours that are different from those I kept when residing with my battering partner.
- G. I can use a different bank and go at hours that are different from those kept when residing with my battering partner.

STEP 6: Safety and drug or alcohol use. *Most people in this culture use alcohol. Many use mood-altering drugs. Much of this is legal, although some is not. The legal outcomes of using illegal drugs can be very hard on battered women, may hurt her relationship with her children, and can put her at a disadvantage in other legal actions with her battering partner. Therefore, women should carefully consider the potential cost of the use of illegal drugs. Beyond this, the use of alcohol or other drugs can reduce a woman's awareness and ability to act quickly to protect herself from her battering partner. Furthermore, the use of alcohol or other drugs by the batterer may give him an excuse to use violence. Specific safety plans must be made concerning drugs or alcohol use.*

If drug or alcohol use has occurred in my relationship with my battering partner, I can enhance my safety by some or all of the following:

- A. If I am going to use, I can do so in a safe place and with people who understand the risk of violence and are committed to my safety.
- B. If my partner is using, I can _____ and/or _____.
- C. To safeguard my children I might _____.

STEP 7: Safety and my emotional health. *The experience of being battered and verbally degraded by partners is usually exhausting and emotionally draining. The process of building a new life takes much courage and incredible energy.*

To conserve my emotional energy and resources and to avoid hard emotional times, I can do some of the following:

- A. If I feel down and am returning to a potentially abusive situation, I can _____.
- B. When I have to communicate with my partner in person or by telephone, I can _____.
- C. I will try to use "I can ..." statements with myself and be assertive with others.
- D. I can tell myself, " _____ " whenever I feel others are trying to control or abuse me.
- E. I can read _____ to help me feel stronger.
- F. I can call _____ and _____ for support.
- G. I can attend workshops and support groups at the domestic violence program or _____ to gain support and strengthen relationships.

STEP 8: Items to take when leaving. *When women leave partners, it is important to take certain items. Beyond this, women sometimes give an extra copy of papers and an extra set of clothing to a friend just in case they have to leave quickly.*

Money: Even if I never worked, I can take money from jointly held savings and checking accounts. If I do not take this money, he can legally take the money and close the accounts.

Items on the following lists with asterisks by them are the most important to take with you. If there is time, the other items might be taken, or stored outside the home. These items might best be placed in one location, so that if we have to leave in a hurry, I can grab them quickly. When I leave, I should take:

- *Identification for myself
- *My birth certificate
- *School and vaccination records
- *Checkbook, ATM card
- *Key - house, car, office
- *Medications
- *Welfare identification, work permits, green cards
- *Children's birth certificate
- *Social Security cards
- *Money
- *Credit cards
- *Driver's license and registration
- *Copy of protection order

Passport(s), divorce papers
Medical records - for all family members
Lease/rental agreement, house deed, mortgage payment book
Bank books, insurance papers
Address book
Pictures, jewelry
Children's favorite toys and/or blankets
Items of special sentimental value

Telephone numbers I need to know:

Police/sheriff's department (local) - 911 or _____
Police/sheriff's department (work) _____
Police/sheriff's department (school) _____
Prosecutor's office _____
Battered women's program (local) _____
National Domestic Violence Hotline: 800-799-SAFE (7233)
800-787-3224 (TTY)
www.ndvh.org
County registry of protection orders _____
State registry of protection orders _____
Work number _____
Supervisor's home number _____

I will keep this document in a safe place and out of the reach of my potential attacker.

Review date: _____

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Attachment B

Domestic violence personalized safety plan for stalking

DOMESTIC VIOLENCE SAFETY PLAN FOR STALKING

WHAT IS STALKING?

Stalking is one person's obsessive behavior directed toward another person, behavior that causes the victim to fear for his/her safety. The stalker usually starts with annoying, obscene, or threatening phone calls or written communications within a short time after separation or divorce. The stalker may move from harassing communication to following the victim, and staking out workplaces and home. There may be acts of violence targeted at the victim's property, pets, and the victim herself/himself. But keep in mind that human behavior cannot be accurately predicted, so it is impossible to gauge when and if a stalker will become violent. However, remember that stalking is rooted in obsessive behavior, which in and of itself is dangerous.

WHAT SHOULD A STALKING VICTIM DO?

- 1) Do your best to safely avoid all contact with the stalker.
- 2) Inform family, friends, and co-workers of what is going on regarding the stalking behavior.
- 3) Report the stalking to the police and follow their advice.
- 4) Keep a journal or log of all stalking incidents.
- 5) Keep all letters, packages, e-mails messages, facsimiles, and taped telephone messages received from the stalker.

WORKING WITH LAW ENFORCEMENT

The police or sheriff's department will actively investigate matters concerning _____ (depends on state statute).

Although it is their intention to provide you with a professional investigative service, please be advised that the police or sheriff's department cannot guarantee that your situation will be resolved, nor can they guarantee your safety.

Unfortunately, there is no way to predict human behavior. Suspects may be mentally disordered or may be substance abusers. A lethality assessment is always situational, based upon an evolving and changing set of factors.

Based upon available information, the police or sheriff's department can provide you with security recommendations, which will help you make your own decisions on how to best secure your safety. Should you feel that additional security measures are required, such as a domestic violence shelter, you are certainly entitled to avail yourself of these measures.

Your cooperation by working within the criminal justice system is necessary for the proper investigation of this matter and is greatly appreciated. Please do not hesitate to contact the police or sheriff's department should any questions or concerns arise.

RESIDENTIAL SECURITY

- ~ All adults in the house should be trained in the use of any firearm kept for protection. The firearm should be stored safely and away from children.
- ~ Household staff/employees should have a thorough background check before employment. Institute and strictly enforce a policy that prohibits the staff from discussing family matters.
- ~ Be aware of any unusual packages, boxes, or devices found on the premises. Do not investigate strange objects; call the police or sheriff's department immediately.
- ~ Install smoke detectors and maintain fire extinguishers on all levels of the residence.
- ~ Tape emergency contact numbers on each phone in the residence.
- ~ When leaving the residence for a period of time, have lights, television, and radio set on a timer.
- ~ Have a thorough safety plan that incorporates an emergency evacuation plan.
- ~ Purchase a dog; dogs are an inexpensive alarm system. Hint: Dogs purchased by or familiar with

the stalker provide no protection!

- ~ Know the daily schedule/whereabouts of all family members.
- ~ Accompany children to school or bus stops.
- ~ Vary daily routines, such as your route to work, etc.
- ~ Require identification from all servicepeople and salespeople before permitting them to enter the residence.
- ~ Try to park in a secured area such as a garage when possible. Inform a trusted neighbor of the situation and provide her or him with a vehicle and suspect description.

SECURITY RECOMMENDATIONS

- ~ Be alert at all times for suspicious persons.
- ~ Positively identify persons before opening the door -- install wide-angle viewers in primary doors.
- ~ Install a porch light at a height that discourages removal.
- ~ Install dead-bolt locks on all outside doors. If keys are missing, replace all locks. You may want to replace all the locks regardless, assuming the stalker may have made a copy of the key(s).
- ~ Keep the garage door locked at all times. Use an electric garage-door opener.
- ~ Install floodlights around your residence that are on a timer or that have motion activation.
- ~ Trim shrubbery, especially away from doors and windows.
- ~ Keep your fuse box locked. Have flashlights, candles, and lanterns throughout the house.
- ~ Install a loud exterior alarm that can be activated from several places within the residence.
- ~ Maintain an unlisted phone number.
- ~ Any written, e-mailed, or telephone threats should be treated as legitimate and the police or sheriff's department should be notified.
- ~ Inform trusted neighbors of any anticipated vacation and/or business trips, and arrange for someone to pick up the mail, newspapers, etc.
- ~ If residing in an apartment complex, provide the manager and security guard with a picture of the suspect.
- ~ If you are considering purchasing a gun for your protection, weigh your decision based on these cautions:
 1. The offender may use it against you.
 2. Most people hesitate to shoot an intruder.
 3. There is potential for accidental injury, especially if you have children in the house.

(You should consider taking handgun lessons to learn proper weapon handling, safety, and familiarity, as well as the legal aspects of deadly force. Some states may require this in order to purchase the handgun.)

WORKPLACE SECURITY

- ~ If you have a security guard or agency, inform them of the situation and provide them with a photograph and a description of the suspect.
- ~ Have a secretary or co-worker screen calls.
- ~ Have a secretary or security screen all incoming mail and packages.
- ~ Be aware of people following you to and from work.
- ~ Do not accept any packages unless you personally ordered them.
- ~ Central reception should handle all visitors and packages.
- ~ Office staff should be aware of the situation so they are alert to suspicious people, parcels, or packages.
- ~ Establish lock-and-key control: Change locks if the keys of terminated employees are unaccounted for.

- ~ Park in a secured area if possible.
- ~ Have your name removed from your reserved parking spot, if applicable.

PERSONAL SECURITY

- ~ Obtain a mailbox address and file a change of address with the Post Office.
- ~ Send a note to friends, businesses, etc., giving them your new address and requesting that they remove your old address from their files.
- ~ All current creditors should be given the new address and remove the old from their system.
- ~ Obtain a new driver's license and file a change of address with the motor vehicle department,
- ~ Remove your home address from personal checks and business cards.
- ~ Destroy discarded mail.
- ~ Telephone lines can be installed in a location other than your residence and call forwarded to your home.
- ~ Place residential agreements in a trusted friend's or relative's name.
- ~ Your name should not appear on service or delivery orders to the residence.
- ~ Record activities such as vandalism or property damage.
- ~ Keep a log of the stalker's activities.
- ~ Leaving a violent relationship is oftentimes dangerous and a safety plan is necessary.
- ~ Discuss with the police or sheriff's department whether you qualify for a protection order. (Protection orders, when properly enforced, enhance your safety and aid law enforcement in holding the offender accountable for his behavior.)

WHAT IS A PROTECTION ORDER? (Consult state statute for specifics.)

- ~ Contact a shelter or district attorney for details on protection orders, the application process, and related details.
- ~ A protection order is a paper signed by a judge to protect a victim from certain people who have battered or threatened them. In some states, protection orders are available against stalkers as well. The protection order may be able to be obtained without having a lawyer.
- ~ Persons abused by family or household members are eligible.
- ~ All courts can issue orders of protection.
- ~ Typical process of obtaining the order:
 - Victim files petition with clerk of the court
 - Clerk provides forms and assistance
 - Emergency protection order is issued by judge at ex-parte hearing
 - Full hearing is held within 30 days; if continuance is necessary, the emergency protection order is extended for 30 days
 - Full order is issued after the hearing, is in place for one year, and can be renewed
- ~ Possible terms of the order:
 - Enjoin from abuse, harassment, direct, or indirect contact
 - Stay away orders
 - Award possession of the residence
 - Temporary child custody and visitation arrangements
 - Payment of shelter costs
 - Awarding custody of property
 - Counseling
- ~ The respondent (suspect) must be served before a full hearing can be held. Service is done by the sheriff or another law enforcement officer.

~ Violation of the protection order is contempt of court, a Class B misdemeanor (depending on the state statute). Subsequent violations may induce felony charges.

NOTE: Please be aware that you are not necessarily safe because you have filed for a protective order. The suspect may choose to violate the order like s/he has the criminal statutes. Remain safety conscious.

RESOURCE NUMBERS

Emergency numbers:

Local police/911 _____

State police _____

Victim/witness services _____

Emergency shelter:

YWCA shelter _____

Local domestic violence shelter _____

Legal help:

Victim/witness services _____

Local domestic violence shelter _____

Lawyer referral services _____

Prosecutor's office _____

Court clerk (protection order) _____

National Domestic Violence Hotline: 1-800-799-SAFE (7233) www.ndvh.org
1-800-787-3224 (TTY)

National Stalking Resource Center: 1-800-FYI-CALL (394-2255) www.ncvc.org/src
(Monday to Friday, 8:30 a.m. - 8:30 p.m. EST)

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Chapter 2:
Law Enforcement Component

Chapter 2: Law Enforcement Component Table of Contents

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I. Introduction

The *Law Enforcement Component* of the Illinois Model Domestic Violence Protocol is intended to be utilized in conjunction with the first chapter of the Protocol.

The *Goals and Intentions* and *Guiding Principles* found in Chapter I: *Background* form the basis of the beliefs upon which this protocol was designed. When a situation arises for which the protocol has no answer, law enforcement officers can look to the *Guiding Principles* and make decisions that fit within that framework.

The Illinois Domestic Violence Act of 1986 requires that:

Every law enforcement agency shall develop, adopt, and implement written policies regarding arrest procedures for domestic violence incidents consistent with the provisions of this Article. In developing these policies, each law enforcement agency is encouraged to consult with community organizations and other law enforcement agencies with expertise in recognizing and handling domestic violence incidents. 750 ILCS 60/301.1.

It is the desire of the task force that this protocol provide guidelines and information to assist law enforcement agencies across the state with strengthening and updating the protocols with which they are currently working, and developing new protocols as needed. These guidelines, incorporated with local knowledge of best practices, were designed to help law enforcement officers develop the skills necessary to provide a compassionate and safe response, conduct skilled investigation and evidence collection, and make informed decisions.

II. Law enforcement liability

In Illinois both statutory and case law have consistently stated that law enforcement officers have a special duty to protect domestic violence victims. Therefore, the General Assembly gave law enforcement limited liability when enforcing the Illinois Domestic Violence Act (IDVA). IDVA specifies that:

Any act of omission or commission by any law enforcement officer acting in good faith in rendering emergency assistance or otherwise enforcing this Act shall not impose civil liability upon the law enforcement officer or his or her supervisor or employer, unless the act is a result of willful or wanton misconduct. 750 ILCS 60/305.

The Illinois Supreme Court has found that this limited liability is a two-way street. In addition, to protecting law enforcement when they are enforcing the provisions of the IDVA it also creates liability for law enforcement. In *Calloway v. Kinkelaar*, the court upheld a victim's ability to sue the county and sheriff for willful and wanton misconduct when the sheriff's office failed to respond to numerous calls for assistance just prior to her abduction by her husband. 168 Ill. 2nd 312, 322 (1995). The court held that the IDVA created a "specially protected class of individuals to whom statutorily mandated duties are owed." *Id.* A domestic violence victim has a right of action against a law enforcement department if the victim can demonstrate all of the following:

- He or she is a person in need of protection under the Act.
- The statutory law enforcement duties owed to him or her were breached by the willful and wanton acts or omissions of law enforcement officers.
- Such conduct proximately caused the plaintiff's injuries.

Id. at 324.

Willful or wanton conduct is defined as "action" which if not intentional, shows an utter indifference to or conscious disregard for the safety of oneself or others." *Id.* at 323.

In 2006 the Illinois Supreme Court confirmed that law enforcement officers have a special duty to protect domestic violence victims. In *Moore v. Green* the court held that the limited immunity-provided in the IDVA, rather than the absolute immunity-providing Tort Immunity Act, should be applied when two Chicago law enforcement officers failed to assist a domestic violence victim who was then murdered by her husband. 219 Ill. 2nd 470, 484 (2006). This ruling effectively upholds *Calloway* and should serve as a remainder to law enforcement of their duty to affirmatively act to protect victims of domestic violence.

III. Domestic violence dynamics

Officers should have a basic understanding of the dynamics of domestic violence and abuser and victim behaviors in order to accurately assess a domestic disturbance.

Failure to properly understand the dynamics of domestic violence could result in officers being misled by an abuser, leading the officers to make an improper arrest decision. This improper decision, in turn, could result in more danger to the victim and civil liability to the officers and their agency.

A. Training

All officers should receive basic training in domestic violence dynamics, aggressor identification, safety planning, child abuse, elder abuse, and their jurisdiction's domestic violence policies. Law enforcement agencies should provide annual in-service training for all law enforcement officers and 911 operators.

B. Safety planning

Law enforcement officers should have a basic understanding of completing a safety plan (Chapter 1, page 37) with a victim of domestic violence. This may be the victim's only opportunity for the creation of a safety plan.

C. Abuser behavior

Law enforcement officers may find the abuser seems reasonable and willing to cooperate with them when they arrive. Abusers are notorious for calming themselves when intervention arrives and using charm and reasonable behavior to attempt to manipulate the system into believing that they are innocent. The abuser may try to convince the officer that no abuse has taken place or that the couple was just having a disagreement, or give some other excuse for the disturbance.

Another tactic frequently employed by abusers is to claim that they are the victims and that their partners are actually the abusers. Since abusers frequently see themselves as not responsible for their behavior and believe that the victim is to blame, they can be quite convincing. They may even self-inflict wounds, or claim injuries caused by the victim in self-defense are attack wounds. Officers must be acutely aware of this abuser tactic. A thorough aggressor investigation is necessary when confronted by both parties claiming to be the victim (see sub-section on conducting an aggressor investigation).

D. Victim behavior

Officers may find that a victim's response to their arrival is confusing or contradictory. Again, officers must have a thorough understanding of the dynamics of domestic violence to accurately interpret what has taken place at the scene and proceed with the investigation. The following are some behaviors victims may display:

1. While the abuser may appear calm and reasonable when law enforcement officers arrive, some victims may appear out of control and unreasonable. Some victims appear angry and irrational, and do not readily cooperate with officers who have come to assist them. They may be so hurt, traumatized or angry at the abuse that they yell, throw objects, or act violent themselves. Next to an abuser who is calm and reasonable, the victim may appear to be the problem. Some victims will finally feel safe enough to inflict violence upon the abuser when law enforcement officers arrive. In such situations, it is of utmost importance that officers conduct a thorough aggressor investigation. Thorough investigation will assist officers in properly identifying who is the aggressor/abuser and who is the victim.
2. Another confusing reaction of victims to the arrival of law enforcement is the denial that abuse is taking place. The officer may see the signs of abuse, but the victim may deny that abuse has taken place. The victim may fear that if they report the abuse, the abuser will retaliate. The victim is especially likely to deny the abuse if asked in front of the abuser. This is why separate interviews for both parties, and children, are so important.

The victim may also deny the abuse because they wish to protect the abuser and not have them arrested. Officers must remember that this is a normal reaction to an abnormal situation, and that the abuser may not be abusive all of the time. Admitting that the abuse is taking place, seeking help, and leaving an abusive situation is a process faced by victims of domestic violence.

3. Officers must also be aware that the victim may recant, refuse to sign a complaint, or may later refuse to testify. The victim may have been threatened by the abuser and, therefore, afraid to cooperate with the court system. The victim also may still be willing to believe the abuser will change become a loving partner. Victims may not trust the courts to be fair or protect them if they cooperate. Economics may

also play a role. If the victim is dependent upon the abuser for economic support, bail, fines, or jail time could hurt the victim as much as or more than the abuser.

This behavior may cause a law enforcement officer to conclude that the victim wants to remain with the abuser and is choosing to be abused rather than to do something about it. Officers have the power to intervene on behalf of domestic violence victims, and therefore must suspend judgment in order to assist a victim who is responding in this way. Focusing on the crime committed against the victim, on the abuser's behavior, will help guide officers toward the appropriate response.

IV. Communications response procedures

This section describes the expected response of law enforcement, dispatchers, and communications personnel when receiving a report of a domestic violence incident.

A. Obtain information

Upon receiving a call involving domestic violence, communications personnel should obtain minimal response information. This information should include:

1. The caller's identity.
2. The exact location of the incident.
3. Whether there are any injuries.
4. The description of any weapons involved in the incident or on the scene.
5. The identity of the victim and the perpetrator.
6. Whether the perpetrator is still at scene if not; the possible whereabouts.
7. Whether there are any children present.
8. Whether the victim has a current order of protection.
9. History of domestic violence calls at the residence or location.

B. Cross reference name and address

The names and address should be cross-referenced if possible to establish any previously reported incidents, from which any potential danger involved should be determined and relayed to the responding unit.

C. Check on officer at the scene

Communications personnel should make periodic checks on officer(s) at the scene.

D. Give top priority

Domestic violence should be handled as a top priority. Therefore, the closest available law enforcement unit should be assigned.

E. Listen for special issues that indicate extreme danger

Communications personnel should listen for indications of stalking, strangulation, firearms, or sexual assault when taking a domestic violence call. Communications personnel should inform law enforcement officers sent to the scene if they have indication of any of these issues.

Be aware, however, that accurate prediction of dangerousness with the limited information gathered during the initial 911 call is unlikely or impossible. The communications personnel's job is not to assess dangerousness, but to look for signs that indicate danger. NEVER assume that a domestic violence call is not dangerous.

F. Child callers

Notify law enforcement officers responding when the call for service was made by a child.

G. Documentation of call

Document call on a 911 typewritten card/report, or within a computerized reporting system.

H. Victim safety

In cases where the communications personnel is concerned for the safety of the caller or another in the household, keep the caller on the line until law enforcement arrive. Inform the officer of concerns for victim's safety and reasons for these concerns.

V. Officer initial response procedures

Ensuring safety and gathering basic background information are the fundamental goals of an officer when first responding to a domestic disturbance.

A. Safe and expeditious response

Officers should respond to and investigate complaints of domestic violence in a safe and expeditious manner.

B. Regard as a high risk call

1. Domestic violence calls should be regarded as potentially "high risk" calls for law enforcement officers and victims, and should, if possible, utilize a back-up unit.
2. Standards practices and measures for approaching a scene in which violence is involved should be employed by law enforcement responding to the scene.

3. If the officers are aware that there are children at the scene, officers should take appropriate precautions for their safety.
4. Officers should listen outside of the premises and attempt to look through a window before entering. This allows for officer safety and can establish probable cause that a crime is in progress or has been committed.

C. Assess for injuries

Assess preliminarily for injuries that may require medical attention. Call EMS immediately if injuries are serious. Be sure to look for evidence of strangulation and sexual assault, which can be far more serious at further investigation than at first appearance.

D. Consult LEADS

The officer should consult LEADS for information on orders of protection and warrants.

1. Consult LEADS for an existing order of protection.
2. Consult LEADS to determine if an order of protection needs to be served.
3. Consult LEADS to determine if there is an outstanding warrant for the abuser that needs to be served.

E. Serve short form, as required

The officer on the scene also may serve a previously unserved order of protection with a short form. 750 *ILCS* 60/222.10(a). The Order of Protection Short Form Notification Form (short form) is a one-page summary of the order of protection that can be served by any law enforcement officer during any encounter with a respondent with an unserved order of protection. A LEADS inquiry will identify those individuals against whom an order of protection has been issued but remains unserved. Law enforcement is authorized to detain respondents for a reasonable period of time to complete and serve the short form. 750 *ILCS* 60/222.10(c).

Officers can complete the short form with information from LEADS or the petitioner's copy of the order of protection. Officers must verbally notify respondent of the order of protection and its provisions. Respondents are responsible for obtaining a full order of protection from the sheriff or clerk in the county where the order of protection originated.

Officers should notify their LEADS data entry person that a short form has been issued. Copies of the short form are forwarded to the originating county sheriff and court clerk. Unserved out-of-state orders of protection can also be served with a short form.

F. Continue contact with dispatcher

Officer(s) should continue to have contact with the dispatcher.

1. The officer should communicate the status of the call as soon as possible after their arrival.
2. The officer should stay in contact with the dispatcher for safety considerations.
3. The officer should ask the dispatcher to check for a record of any previous calls to this residence.

VI. Officer responsibilities at the scene

Often it is a victim's first contact with law enforcement that will determine whether or not they pursue criminal charges. Therefore, this initial law enforcement contact is very important. This section describes what is expected of the officer who responds to the scene of a domestic disturbance.

A. Law enforcement officers role

The fundamental duty of any law enforcement officer is to serve and protect. This is especially critical in cases where victims of crime are less able to protect themselves. Domestic violence, because it is a relational crime utilizing tactics of power and control, is one such case. Current statutory and case law require law enforcement officers to take an approach aimed at ending abuse.

Officers have multiple roles when responding to domestic violence cases, and may find these roles sometimes conflict. First, they must protect and serve victims by acting to prevent further violence. Additionally, they must uphold the law by holding offenders accountable for violations of criminal statutes. These roles come into conflict when the victim of a pattern of domestic violence commits a crime, such as possession of a controlled substance, an immigration violation, prostitution, or domestic battery. Officers must carefully consider the consequences of their actions when faced with such complicated circumstances. Arresting, or threatening to arrest, a domestic violence victim may have the unintended consequence of empowering the abuser and isolating the victim, thereby perpetuating the abuse. The primary mission of a law enforcement officer when responding to and investigating domestic violence is to act to break the cycle of violence.

B. Handle as any other crime

The Illinois Domestic Violence Act of 1986, as amended, requires officers to assist the victim, to arrest the abuser where probable cause exists, and to report the incident. In other words, the officer is expected to handle domestic violence in a manner similar to any other crime.

C. Separate parties and ensure safety

When an officer responds to a domestic violence call and both victim and perpetrator are present at the household or location of the incident, the responding law enforcement officer should separate the parties and ensure the safety of all persons present.

D. Identify and secure weapons

The officer should identify and seize weapons used or with which the victim was threatened.

E. Conduct preliminary investigation

A preliminary investigation should be conducted.

F. When abuser is not present

If the offender has left the scene, the officer should attempt to locate him or her.

VII. Context assessment and aggressor identification

Illinois law requires that responding officers carefully consider all relevant factors, both past and current, in order to make quality decisions that interrupt the cycle of violence, protect victims, and hold offenders accountable. Quality decisions identifying the victim and the aggressor, called the predominant, primary, or principal aggressor in some jurisdictions, are essential. It is important to note a victim of a pattern of intimate partner abuse may have committed a crime during a particular incident, just as the person predominantly responsible for the violence (the aggressor) may not have committed a crime at the time of the incident. Officers should consider more than just the events of a particular incident. A proper law enforcement response requires officers to choose a course of action that both upholds the law and interrupts the cycle of violence.

Quality decisions require a proper assessment of each of the following:

A. Context

To understand the impact of violence on the parties involved, the context of the violence should be investigated. Each violent act should be examined for intent of the person who committed the violent act, the meaning of the act to the recipient, and the effect of the violent act on the recipient's future behavior.

B. Aggressor

The aggressor is that person primarily responsible for the pattern of abuse in the relationship and the person attempting to abusively control the other, regardless of what crimes have been committed or what injuries have occurred. To identify the aggressor, officers should consider multiple factors, including:

1. The history of domestic violence between these parties.
 - a. Have law enforcement been called to this site before?
 - b. Has anyone been previously arrested?
 - c. Is there or has there ever been an order of protection against either party?

2. Types of injuries, current and previous, including nature, location, and severity. This is sometimes difficult to determine, and requires investigation. Scratch and bite marks (generally defensive wounds) show up immediately, while more serious injuries, such as bruises or strangulation marks, are not visible until later. Look for:
 - a. Does one party have scratch or bite marks on their face, arms, sides, or chest? These are generally defensive wounds received by the abusive party.
 - b. Does one person have small red marks around their neck, difficulty breathing or speaking? Are they holding their neck, even if no signs are present? These are signs of strangulation and can be difficult to detect. Or, does one person have minor red marks on the eye, or body, that you suspect may later turn to bruises? This person is more likely the victim.
3. Likelihood of future injury to each person. Past history and signs of danger can be a good indication of likelihood of future injury.
4. The basis and reasonableness of any fear by each person.
5. The criminal history of the parties.
 - a. Does either party have any prior records for domestic violence against this or any other party?
 - b. Does either party have any prior convictions for other violent crimes, such as batteries, against any person?
6. Consider the relative size and strength of the parties.
 - a. Which partner is more likely to exert power and control over the other based on physical size or strength?
7. Do the statements match the injuries?
 - a. Does one party's explanation for their and their partner's injuries seem more likely?
 - b. Is it possible, as one party says, that the other party attacked them and bit their chest? Or does the bite look like a defensive wound obtained while this person's hands were around the other's neck?
8. Does any other physical evidence support either party's statement?
 - a. Is the state of the home consistent with mutual combat, or are there signs that one party may have been trying to escape?
 - b. Are there broken locks on doors? Missing car keys? A phone torn out of the wall?

C. Self-defense

1. Statutory requirements

- a.** A person is justified in using force against another when
 - The user of force reasonably believed they or another was at risk of harm, and;
 - Risk of harm was actual or imminent, and;
 - The force used was reasonably necessary to prevent the infliction of harm. 720 ILCS 5/7-1(a).
- b.** A person is justified to used deadly force when the person believes the amount of force was reasonably necessary to prevent
 - The imminent death to himself or another.
 - Great bodily harm to himself or another.
 - The commission of a forcible felony. 720 ILCS 5/7-1(b).

2. Case law requirements

The First District Appellate Court, in *People v. Evans*, ruled in cases when deadly force is used in self-defense between inmate partners certain facts must be considered in these cases to determine if self-defense is a valid defense.

- a.** The facts to be considered are:
 - The mental state and sobriety of each person.
 - The difference between the physical attributes, skills, strengths of each person.
 - Prior threats and abuse in the relationship and to what extent these prior threats have been carried out.
 - Whether attacker was the apparent principle aggressor.
 - Other options that were readily available to quell the attack or escape.
 - The nature and extent of the attack.
 - The weapon that was used to stop the attack.
 - Apparent escalation or diminishment of attack at the time force was used.
 - The reasonable apprehension at the time the deadly force was used. *People v. Evans*, 259 Ill. App. 3d 195, 210 (1st Dist. 1994).
- b.** Additionally, a woman threatened by a larger man does not have to show infallible judgment if she reasonably believes she is in danger of suffering great bodily harm or death. *Id.*

D. Continuing threat

Prior to making an arrest, officers should consider if, and to what extent, each person who used violence is a continuing threat to the other person.

VIII. Evidence collection

The evidence collected at the crime scene may play a role in determining the charges brought by the state's attorney or otherwise influencing the prosecution of a case. This section reviews the evidence collection steps the responding officer should take when handling a domestic violence call.

A. Conduct separate interviews and prepare statements

The officer should interview the victim and the offender separately so that the victim can speak freely without being intimidated by the presence of the offender.

Officers should identify and interview other potential witnesses to both the incident and the pattern of abuse. However, officers must remember domestic violence advocates are specifically prohibited by the IDVA from releasing any information about contact with victims.

The officer should prepare a written report of the victim's and offender's interviews, and a taped or written statement, as is customary in the officer's jurisdiction. The written reports should document all potential injuries, even if they appear minor at first glance. Video tape or audio tape victim interviews and/or victim statements, when practicable. Videotaped or audiotaped interviews and statements make excellent evidence in court.

Officers should conduct separate interviews of child witnesses, as appropriate. All children who are able to communicate verbally should be interviewed. Child witnesses should not be interviewed in the presence of the offender.

B. Take photographs

Evidence collection should include color photographs of:

1. The victim's injuries.
2. The premises which serve to corroborate the purported incident. Include weapons, broken glass or objects, torn clothing, blood-stained articles, damaged personal possessions of the victim, or other articles which can be used to corroborate the occurrence of violence.

C. Collect other evidence

The officer should process the crime scene and collect evidence as in any other case involving physical harm to a victim.

The officer should obtain the names and numbers of all outcry witnesses in case further information or testimony is required of these witnesses.

D. Verify existence of an order of protection

The officer should verify the existence of an order of protection either by telephone or radio communications with the law enforcement agency or by referring to the copy of such order provided by the victim or other individual present.

E. Look out for special considerations and signs of extreme danger

The officer should look for signs of stalking, strangulation, firearms, and sexual assault. Document all evidence of these special considerations. These are indicators that this is a potentially very dangerous situation and must be treated as such.

F. Write report

The officer should complete a written report on each and every domestic violence call.

IX. Arrest

Officers are required to handle domestic violence incidences as they would any other crime. When considering arrest, officers should consider all grounds for arrest, not just the offenses most commonly associated with domestic violence. This section describes the officer's arrest powers both with and without a warrant.

A. Warrantless arrest with probable cause conditions

In domestic violence cases involving the circumstances listed below, an officer should make an arrest without a warrant when probable cause exists. Under these circumstances, the officer should make an arrest, even if the victim does not want the abuser arrested or if the victim has not signed a complaint statement regarding the events that occurred. Such circumstances are:

1. There is reasonable grounds to believe that the person has or is about to commit an offense. *725 ILCS 5/107-2(b)*.
2. The officer has probable cause to believe that the person has committed or is about to commit a crime including violating an order of protection. *750 ILCS 60/301(a)*.
3. The officer has probable cause to believe a defendant at liberty under the provisions of subsection *725 ILCS 5/110-10(d)(1-2)* and has violated a condition of their bail. *750 ILCS 60/301(c)*.

B. Warrantless arrest with probable cause at officer's discretion

In all other cases, it is within the officer's sound discretion to effect an arrest where there is probable cause to believe that an abuser has committed a domestic violence offense.

1. If another crime has been committed during the violation of an order of protection, that crime should be charged as an additional felony or misdemeanor complaint.

2. No officer should decline to arrest an abuser for any of the following reasons:
 - a. The victim does not wish to sign the complaint.
 - b. The parties live together.
 - c. The parties have sought civil remedies.
 - d. The victim has been previously unwilling to participate in the complaint or arrest process.
 - e. Verbal assurances are given by either party that the violence should cease.
 - f. The parties are of the same sex, or are lesbian, gay, bisexual, or transgender.
 - g. The parties claim that it is allowed within their religion or culture.
 - h. One or both parties has a mental delay, disability, or illness.
 - i. Either or both parties are under the influence of alcohol and/or other drugs.

C. Report when no arrest is made

If an arrest is not made, the report should be forwarded to the state's attorney for review and the victim/parties should be advised of same. The victim should also be advised:

1. That a complaint need not be signed at the time of an incident for further action by the state's attorney.
2. That they have the right to request that a criminal proceeding be initiated where appropriate, including specific times and places for meeting with the state's attorney's office, a warrant officer, or other official in accordance with local procedure. *750 ILCS 60/304(b)(2)* and *725 ILCS 5/112A-30(b)(2)*.
3. That it is of the utmost importance to preserve evidence, the types of evidence that could be collected at a later time, and how and by whom those types of evidence can be used. *750 ILCS 60/304(b)(3)* and *725 ILCS 5/112A-30(b)(3)*.

D. Abuser has left the scene

If the abuser has left the scene, the officer should proceed with the following:

1. Conduct a search of the immediate area for the abuser.
2. Ask the victim what kind of vehicle the abuser may be driving, what the abuser is wearing, and where the abuser may go. If available, secure a photograph of the abuser from the victim. Conduct a search of the places the abuser may have gone, such as a friend or family member's house, his or her place of employment, or a local business establishment.
3. Determine whether the incident indicates high risk that the abuser will return to the home and hurt the victim and/or children and make appropriate documentation.
4. Issue a broadcast, including the abuser's name and description, and note in the broadcast whether or not the incident indicates the above high risk.

5. Remain with the victim until all reasonable steps have been taken to ensure safety.
6. Provide or arrange for transportation for the victim and children to a safe place, as requested by victim.

E. List all charges

All possible charges, including non-domestic violence charges, should be listed on the arrest report. Consider all related charges, including stalking and sexual assault charges.

F. Avoid arresting both parties

Arrest decisions should consider what law enforcement action will interrupt the cycle of abuse, protect the victim, and hold the abuser accountable.

1. Arrest of both parties, also called mutual arrest or dual arrest, should be avoided. Dual arrest nearly always results in a dual dismissal of charges. Officers should perform an aggressor identification investigation and arrest the abuser as determined by the investigation.
2. In the very rare event that the arrest of more than one person is necessary, officers should specifically document the basis for each arrest and should write a separate report for each party justifying each arrest.

X. Incident reporting and documentation

Whether or not an arrest is made, it is of the utmost importance that the responding officers document their activity. This is particularly true in cases involving domestic violence because victims often place several calls to law enforcement before leaving their abuser or the conflict between the parties is otherwise resolved. This section describes what information should be recorded by the officer.

A. All domestic violence complaints require a report

1. Whenever an officer receives a domestic violence complaint, a report should be prepared.
2. A report should be prepared whether or not an arrest is made. If no arrest is made when the suspect is present, the report will clearly show sufficient reasons for not making an arrest.

B. The domestic violence report

Whenever an officer investigates a domestic violence incident, they should prepare a written report that includes the following:

1. The officer's observations of the victim, any visible injuries, the abuser, the presence of weapons, and any other relevant observable facts.

2. The victim's statements as to the frequency and severity of any and all prior domestic violence incidents committed by the same person.
3. Information about weapons, including any officer observations and the victim's statements.
4. Information on the number of prior calls to law enforcement.
5. That the victim was advised of his or her rights under the Illinois Domestic Violence Act.
6. Statements indicating whether children were present and where they were during the incident, names and ages of children, and whether or not they witnessed the incident. The report should also include statements taken from the children or reason why statements were not taken.
7. Interviews and statements from all other persons present at the time of the incident, including the person who called law enforcement.
8. All other circumstances and facts pertinent to the incident.
9. Dispositions allegation.
10. Information that supports the officer's determination of who is the aggressor.

C. Report child abuse or neglect

If the officer reasonably suspects that the children have been abused or neglected, the officer should report the suspicion to the **Illinois Department of Child and Family Services at 1-800-252-8966**. This phone call and the evidence used to determine the need for the call should be documented in the report.

D. Report elder abuse or neglect

If the officer reasonably suspects that a person over the age of 60 or a person with a disability has been abused, neglected, or exploited by a family member or caregiver, the officer should make a report to the **Illinois Department on Aging, Elder Abuse and Neglect Program**. This report can be made either by calling **1-800-252-8966** or by calling the local designated elder abuse provider agency. This phone call and the evidence used to determine the need for the call should be documented in the report. If an arrest is not made, the officer should clearly document circumstances of the incident and the reason an arrest was not made in the report.

E. Reports to state's attorney

Reports should be sent to the state's attorney's office that handles domestic violence cases.

F. LEADS inquiry

When an officer responds to a domestic violence complaint, an inquiry should be instituted through LEADS to determine whether an order of protection is in effect. LEADS should provide all the information contained in the order of protection. If no order of protection is in effect, the victim should be informed of her or his rights under the Illinois Domestic Violence Act. The officer should reference the LEADS inquiry and the victim's notification of their rights in the report.

XI. Statutory bail provisions

Many law enforcement officers have observed that victims are often at an increased risk of danger after an arrest has been made and bail issued. Therefore, 725 ILCS 5/110-10(d) provides provisions to increase the safety of the victim while the defendant is out on bail.

A. Conditions of bail

Most arrested offenders will be eligible to post bail to secure their release from custody. There are several conditions of bail for those arrested on any crime that was committed against a family or household member. Unless provided otherwise by the court, the following conditions are required:

1. The defendant should refrain from contact or communication with the victim for a minimum period of 72 hours following the defendant's release. 725 ILCS 5/110-10(d)(1).
2. The defendant should refrain from entering or remaining at the victim's residence for a minimum period of 72 hours following the defendant's release. 725 ILCS 5/110-10(d)(1).

While the bail provision of this section provides some protection it is not a substitute for an order of protection, because the order provides a wider range of remedies to the victim, it does provide a 72-hour protection to the victim.

B. Firearms

The court may order a person to surrender all firearms in his or her possession to a law enforcement officer if that person has been charged with, among other things, stalking, aggravated stalking, or domestic battery. 720 ILCS 5/110-10)(a)(5). Such firearms should then be impounded along with the owners Firearm Owners Identification Card. *Id.* All legally possessed firearms shall be returned upon the charges being dismissed, or if the person is found not guilty, unless the finding of not guilty is by reason of insanity. *Id.*

1. Firearms and Other Weapons

Used or threatened

- a. Officers will take possession of all weapons and objects, including legally possessed firearms, if there is probable cause to believe these weapons or objects were used or were threatened to be used to commit domestic violence.

- b. Officers will check all persons involved in a domestic violence incident for a firearm owners identification card.

2. Release on bond

- When a person has bonded out (as determined by a court appearance) on a charge of domestic battery, one possible condition of the bond is that he/she may be prohibited from possessing a firearm. Should an officer encounter someone whose bond requires the surrender of firearms, the officer will take lawful steps to confiscate firearms and firearm owner's identification cards in the person's possession.

3. Voluntary surrender of firearms

- If a person offers firearms to an officer to be secured for safekeeping, and the owner of the firearms does not object or is not present, the officer will temporarily secure the firearms as property to be released upon proof of ownership and a valid firearm owners identification card.

4. Orders of protection

- a. Officers who come upon a person in possession of firearms who is listed as the respondent to an active OP will notify the Illinois State Police Firearms and
- b. Information Resources Bureau by LEADS message using CDC (KYW) or by telephone to 217/558-0025.
- c. If the OP meets the criteria as a qualifying court order under federal law or the order prohibits possession of firearms officers will:
 - seize the firearms and secure them as property and
 - seize the firearm owners identification card and return it to firearms information resources bureau.

C. Violation of bail

A person will be charged with a Class A misdemeanor offense for violation of the 72-hour no-contact provision of the bail condition. 720 ILCS 5/32-10(b). Therefore, if a defendant returns to the victim's residence or contacts the victim in any way within 72 hours of having been released on bail on a domestic violence case, they should be arrested and prosecuted for the offense of Violation of Bail Bond. *Note: prohibition of firearm possession, bail provisions, including the 72-hour no-contact provision, are not currently included in LEADS.*

XII. Order of protection

Victims of domestic violence may petition a civil or criminal court to issue an order of protection which provides restrictions on the abuser's behavior, frequently including directing the alleged abuser to avoid contact with the victim. Orders of protection direct the respondent to behave in a certain manner; they create no duty for the victim. This section defines what an order of protection is, how it is obtained, and its enforcement by law enforcement.

A. Description

1. An order of protection is a statutory remedy designed to give family or household members' relief under statutory provisions. As stated, orders of protection can be issued by either a criminal or civil court.. The order of protection can both prohibit the abuser from committing certain behaviors and/or order him or her to perform certain acts. Illinois law does not provide for peace bonds, nor are restraining orders available in most domestic relations situations. The requirement for orders of protection issued in criminal court can be found in the Criminal Code of Procedure at *725 ILCS 5/112A- et. seq.* The requirement for orders of protection issued in civil court can be found in *750 ILCS 60/201 et. seq.*
2. Family or household members are defined by the IDVA and the Code of Criminal Procedure as:
 - a. People who are related by blood or by present or prior marriage.
 - b. People who share or formerly shared a common dwelling (apartment or home).
 - c. People who have or allegedly have a child in common.
 - d. People who share or allegedly share a blood relationship through a child.
 - e. People who have or have had a dating or engagement relationship.
 - f. People with disabilities and their personal assistants.*750 ILCS 60/103(6) and 720 ILCS 5-112A-3(3).*

B. Availability

An order of protection can be issued in civil, criminal or juvenile court under a number of circumstances.

1. An order of protection can be issued in civil court independently in a civil action, or as part of a divorce proceeding, guardianship, probate, or other civil proceeding. *750 ILCS 60/202(a)(1-2).*
2. An order of protection can be issued in criminal court in connection with a criminal charge when the petitioner is the victim of the offense and the respondent is the defendant. *750 ILCS 60/202(a)(3) and 725 ILCS 5/112A-2(a).*
3. An order of protection can be issued in juvenile court in connection with a delinquency petition. *750 ILCS 60/202(a)(3) and 725 ILCS 5/112A-2(a).*

C. Types and duration of orders of protection

1. Emergency order of protection

An emergency order of protection is only valid for 14 to 21 days. In cases where the petitioner alleges that abuse would occur if the respondent were given notice, the emergency order of protection can be entered without giving notice to the respondent. In emergency order of protection, certain remedies cannot be granted.

Remedies that are not available include counseling, temporary custody, payment of support, monetary compensation, or reimbursement of shelter costs.

2. Interim order of protection

An interim order of protection is valid for up to 30 days. This order is issued after the respondent has been served, or after the petitioner has served notice on the respondent and convinced the court that they are trying to complete the required service of process. Though not generally available in an interim order of protection, the following remedies may be available if the respondent has been personally served or has filed an appearance in court: counseling, payment of support, monetary compensation, prohibition of the possession of weapons, or reimbursement of shelter costs.

3. Plenary order of protection

A plenary order of protection can be valid for a set period of time up to and not longer than two years.

D. Service of process

1. Any action for an order of protection is a distinct cause of action and requires that a separate summons be issued and served. 750 *ILCS* 60/210(a) and 725 *ILCS* 5/112A-10(a).
2. The summons should be given expedited service. The sheriff or other law enforcement officer should serve the summons at the earliest time and should take precedence over other summonses except those of a similar emergency nature. 750 *ILCS* 60/210(c) and 725 *ILCS* 5/112A-10(c).

E. Entry into law enforcement agencies data system (LEADS)

The county sheriff should be responsible for entering all orders of protection into LEADS on the day the order is issued by the court whether or not the order has been served. 750 *ILCS* 60/220(b) and 725 *ILCS* 5/112A-22(b).

F. Revocation of firearms owners identification (FOID) card

If a court finds that there is sufficient evidence that there is a danger of illegal use of a firearm, the court will issue an order to seize the firearm. 750 *ILCS* 60/214(b)(14.5)(a) and 725 *ILCS* 5/112A-14.5(a). If the respondent is in court, the firearms should be turned over to the local law enforcement agency for safekeeping. *Id.* If the respondent is not in court, the court shall issue a warrant for the seizure of the firearms. *Id.* Illinois State Police can revoke and seize a Firearm Owners Identification Card (FOID) card from who it is issued if the person is under an order of protection prohibiting possession of a firearm. 430 *ILCS* 65/8(j). Additionally, after January 1, 1998, a FOID card can be revoked for a conviction of a domestic battery. 430 *ILCS* 65/8(l-m).

G. Full faith and credit

Congress enacted the Violence Against Women Act, otherwise known as VAWA, in 1994 instructing jurisdictions to give full faith and credit to all valid orders of protection issued by other jurisdictions. This requires the enforcement of all valid orders of protection to protect victims of domestic violence wherever a violation of the order occurs, regardless of the ordering jurisdiction. An order of protection is entitled to enforcement if:

- The court that issued the order of protection had jurisdiction over the parties and the matter under the law at the time of issuance.
- The respondent was given reasonable notice and opportunity to be heard to protect his/her due process rights. In the case of an order of protection that is entered *ex parte*, these notice and opportunity standards must be provided within the time required by the law of the issuing state.
18 USC § 2265(b)(1-2) (2006).

The remedies included, protected parties, and length of time the order is in effect are determined by the state issuing the order. The state where the violation occurs must honor the order of protection, regardless of whether the laws of the two states are inconsistent. 735 ILCS 5/12-652(c).

The laws of the state where the violation has occurred, however, determine how the violation is enforced. The state must enforce a foreign order in the same manner that it enforces orders given within the state. *Id.*

A person protected by an order of protection has the right to file a certified copy of the order in any judicial circuit they believe necessary for their protection. State residency is not a requirement for filing the order in a jurisdiction other than where it was granted. The clerk of court of the jurisdiction in which the order is being filed should:

- Treat the foreign order just as any order of that jurisdiction would be treated. The exception is that the clerk of court must not mail notice of the filing to the respondent. 750 ILCS 60/222.5(b)(1) and 725 ILCS 112A-22.5(b)(1).
- File a certified copy of the order of protection with the sheriff or other law enforcement agency for LEADS entry on the same day the order was filed. Whether or not the order of protection has been previously filed, the order is entitled to enforcement. 750 ILCS 60/222.5(b)(2) and 725 ILCS 112A-22.5(b)(2).

XIII. Order of protection remedies

Note: The citations listed after each remedy are to both the civil and criminal remedies found in orders or protection sections of the particular statute.

A. Prohibition of abuse, neglect or exploitation

This remedy prohibits the respondent from further abusing, neglecting, or exploiting the petitioner. Abuse includes physical abuse, harassment, intimidation, interference with personal liberty, or willful deprivation. 750 *ILCS* 60/214(b)(1) and 725 *ILCS* 5/112a-14(b)(1).

This remedy is law enforcement enforceable. 750 *ILCS* 60/223(a)(1) and 725 *ILCS* 5/112a-23(a)(1). A respondent who violates this remedy should be arrested and charged with the crime of violation of an order of protection.

B. Exclusive possession of residence

This remedy grants the petitioner exclusive possession of the residence. It can be used if the petitioner has the right to occupy and the respondent does not, or if both have the right to occupy and the balance of hardships favors the petitioner. 750 *ILCS* 60/214(b)(2) and 725 *ILCS* 5/112a-14(b)(2).

This remedy is law enforcement enforceable. 750 *ILCS* 60/223(a)(1) and 725 *ILCS* 5/112a-23(a)(1). A respondent who violates this remedy should be arrested and charged with the crime of violation of an order of protection.

C. Stay away and additional prohibitions

This remedy requires the respondent to stay away from the petitioner or anyone else that is protected by the order. 750 *ILCS* 60/214(b)(3) and 725 *ILCS* 5/112a-14(b)(3). It can specify times and/or locations, such as home, work, or school where the respondent needs to stay away. *Id.*

This remedy is law enforcement enforceable. 750 *ILCS* 60/223(a)(1) and 725 *ILCS* 5/112a-23(a)(1). A respondent who violates this remedy should be arrested and charged with the crime of violation of an order of protection.

D. Counseling

This remedy can require or recommend that the respondent undergo counseling for a specified amount of time. 750 *ILCS* 60/214(b)(4) and 725 *ILCS* 5/112a-14(b)(4). The counseling may be in a partner abuse intervention program, or it may be substance abuse, mental health, or some other type of counseling deemed necessary by the court. *Id.*

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

E. Physical care and possession of a minor child

This remedy can grant physical care and possession of a minor child to the petitioner, order the respondent to return a minor child to the petitioner, or order the respondent not to remove a child from the petitioner or a person acting in loco parentis. 750 ILCS 60/214(b)(5) and 725 ILCS 5/112a-14(b)(5).

This remedy is law enforcement enforceable as a violation of the state’s child abduction statute. 750 ILCS 60/223(a)(2) and 725 ILCS 5/112a-23(a)(2). A respondent who violates this remedy should be arrested and charged with the crime of child abduction.

F. Temporary legal custody of a minor child

This remedy allows the judge to grant temporary custody of a minor child to the petitioner. Custody of the minor child has to be in accordance with the section, the Illinois Marriage and Dissolution of Marriage Act, the Illinois Parentage Act of 1984, the Illinois Uniform Child-Custody Jurisdiction and Enforcement Act. 750 ILCS 60/214(b)(6) and 725 ILCS 5/112a-14(b)(6). There is a rebuttable presumption that temporary custody to the petitioner would be in the best interest of the minor child if there has been determination by the court of abuse. *Id.*

This remedy is law enforcement enforceable as a violation of the state’s child abduction statute. 750 ILCS 60/223(a)(2) and 725 ILCS 5/112a-23(a)(2). A respondent who violates this remedy should be arrested and charged with the crime of child abduction.

G. Visitation

This remedy allows the judge to deny or restrict visitation of a minor child if the respondent has, or is likely to, commit any of the following actions:

1. Abuse or endanger the child during visitation.
2. Use the visitation to abuse or harass the petitioner, the petitioner’s family, or a household member.
3. Improperly conceal or detain the child.
4. Act in a manner that is not in the best interest of the child.

750 ILCS 60/214(b)(7) and 725 ILCS 5/112a-14(b)(7).

The court, if it grants visitation, shall specify the date and time for visitation. *Id.* The court can order supervised visitation or visitation exchange at a place other than the petitioner’s home. The petitioner may refuse to exchange the child if the respondent is under the influence of drugs or alcohol, or if the respondent is a danger to the petitioner or the petitioner’s minor child. *Id.* However, the petitioner needs to be aware of the possibility of being charged with interference with visitation if they refuse to exchange the child for visitation.

This remedy is court enforceable on a contempt of court order. 750 ILCS 60/223(b) and 725 ILCS 5/112a-23(b).

H. Removal or concealment of minor child

This remedy prohibits the respondent from removing a child from the state or concealing a child within the state. 750 *ILCS* 60/214(b)(8) and 725 *ILCS* 5/112a-14(b)(8).

This remedy is law enforcement enforceable as a violation of the state's child abduction statute. 750 *ILCS* 60/223(a)(2) and 725 *ILCS* 5/112a-23(a)(2). A respondent who violates this remedy should be arrested and charged with the crime of child abduction.

I. Order to appear in court

This remedy can order the respondent to appear in court and to:

1. Appear with or without minor child.
2. Prevent the abuse, neglect, removal, or concealment of a minor child.
3. Return child to the custody or care of the petitioner.
4. Allow a court-ordered interview or examination of the child or the respondent.

750 *ILCS* 60/214(b)(9) and 725 *ILCS* 5/112a-14(b)(9).

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

J. Possession of personal property

This remedy gives the petitioner exclusive possession of personal property and may require the respondent to turn it over to the petitioner. The respondent must return the property over to the petitioner if either:

1. Petitioner solely owns the property.
2. Parties own the property jointly and sharing it would risk abuse of the petitioner
3. Parties own the property jointly and the balance of hardship temporarily favors the petitioner.

750 *ILCS* 60/214(b)(10) and 725 *ILCS* 5/112a-14(b)(10).

This remedy does not, however, influence ownership of the property, which must be assigned later in a divorce proceeding. *Id.*

This remedy is not law enforcement enforceable unless the respondent can also be charged with theft or criminal damage to property. 750 *ILCS* 60/214(b)(13)(iii) and 725 *ILCS* 5/112a-14(b)(12)(iii). Otherwise, it is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

K. Protection of property

This remedy prohibits the respondent from damaging, destroying, selling, taking, concealing, or otherwise disposing of personal and real property if:

1. Petitioner solely owns the property.
2. Parties own the property jointly and the balance of hardship temporarily favors the petitioner.

- Relief under this subparagraph is only available if a proper proceeding has been filed under the Illinois Marriage and Dissolution of Marriage Act. 750 *ILCS* 60/214(b)(11) and 725 *ILCS* 5/112a-14(b)(11).

This remedy is not law enforcement enforceable unless the respondent can also be charged with theft or criminal damage to property. 750 *ILCS* 60/214(b)(13)(iii) and 725 *ILCS* 5/112a-14(b)(12)(iii). Otherwise, it is enforceable by the court on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

L. Order of payment of support

This remedy orders the respondent to pay support or child support for a minor child in the petitioner's care if the respondent would be obligated to do so under Illinois Marriage and Dissolution of Marriage Act (IMDMA). 750 *ILCS* 60/214(b)(12) and 725 *ILCS* 5/112a-14(b)(12).

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

M. Payment for losses

This remedy requires the respondent to pay for losses suffered as a direct result of the abuse, including as medical expenses, lost wages, temporary housing, reasonable attorney fees, court cost, or damaged property. 750 *ILCS* 60/214(b)(13) and 725 *ILCS* 5/112a-14(b)(13).

The court can also order the respondent to pay the expenses incurred in the search and recovery of a minor child in the case of improper concealment or removal of a minor child. 750 *ILCS* 60/214(b)(13)(ii) and 725 *ILCS* 5/112a-14(b)(12)(ii).

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

N. Prohibition of entry

This remedy prohibits the respondent from entering or staying in the home while under the influence of drugs or alcohol and constituting a threat to the petitioner or the petitioner's child. 750 *ILCS* 60/214(b)(14) and 725 *ILCS* 5/112a-14(b)(14).

This remedy is law enforcement enforceable. A respondent who violates this remedy should be arrested and charged with the crime of violation of an order of protection. 750 *ILCS* 60/223(a)(1) and 725 *ILCS* 5/112a-23(a)(1).

O. Prohibition of firearm possession

If the respondent is present in court or has failed to appear after receiving actual notice of the order of protection, and the court is satisfied that there is any danger of the illegal use of firearms, the court should require that any firearms in the possession of the respondent

be turned over to the local law enforcement agency. 750 *ILCS* 60/214(b)(14.5) and 725 *ILCS* 5/112a-14(b)(14.5).

If the respondent has failed to appear, or fails to surrender his or her firearms, the court should issue a warrant for seizure of any firearm in the possession of the respondent. *Id.*

If the respondent is a peace officer, the court should order that any firearms used by the respondent in the performance of the officer's duties be surrendered to the respondent's chief law enforcement executive.

Under this law, the firearms can be retained for safekeeping for the period stated in the court order, not to exceed two years. Firearms should be returned to respondent when this remedy is no longer in effect. *Id.*

This remedy is law enforcement enforceable. A respondent who violates this remedy should be arrested and charged with the crime of violation of an order of protection. 750 *ILCS* 60/223(a)(1) and 725 *ILCS* 5/112a-23(a)(1).

P. Prohibition of access to records

This remedy prohibits the respondent from access to the school or any other records of a child in the care of the petitioner when:

- The order of protection prohibits the respondent from having contact with the child.
- The petitioner's address needs to be hidden to protect the petitioner.
- It is necessary to prevent the abuse, removal, or concealment of the child.

750 *ILCS* 60/214(b)(15) and 725 *ILCS* 5/112a-14(b)(15).

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

Q. Payment of shelter services

This remedy orders the respondent to reimburse a program providing shelter or counseling services. 750 *ILCS* 60/214(b)(16) and 725 *ILCS* 5/112a-14(b)(16).

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

R. Order for injunctive relief

This remedy allows for other relief as necessary to prevent further abuse, neglect, exploitation or to allow for the enforcement of one of the other remedies ordered.

750 *ILCS* 60/214(b)(17) and 725 *ILCS* 5/112a-14(b)(17).

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

XIV. Violation of an order of protection

Some violations of an order of protection are criminal offenses, while others are enforced by civil or criminal contempt proceedings.

A. Criminal violations of an order of protection

The respondent commits the crime of violation of an order of protection if the respondent has acquired actual knowledge of the contents of the order and knowingly violates any of the following remedies:

1. Prohibition of abuse, neglect or exploitation (Remedy A).
2. Exclusive possession of residence (Remedy B).
3. Stay away and additional prohibitions (Remedy C).
4. Prohibition of entry (Remedy N).
5. Prohibition of firearm possession (Remedy O).
6. Any remedies that are substantially similar to the remedies listed above on page 19 to 20.
7. Any other remedy when the violation would also constitute another crime, such as theft or criminal damage to property.
720 ILCS 5/12-30 (2007).

Arrest for a violation of an order of protection should not bar concurrent charges for any other crime, including any crime that may have been committed at the time of the violation of the order of protection. 750 ILCS 60/223(a) and 725 ILCS 5/112A-23(a).

If an order of protection is in effect and an officer has probable cause to believe that one of the above violations has occurred, the officer must make an arrest. As with warrants, arrests for a violation of an order of protection are mandatory and not subject to officer discretion. 750 ILCS 60/301(a) and 725 ILCS 5/112A-30(a).

B. Jurisdiction exists where the violation occurs

Jurisdiction exists where the act of violating the order occurred. Therefore, an arrest can be made in any county where a violation occurs. 750 ILCS 60/223(b) and 725 ILCS 5/112A-23(b).

C. No victim signature is required

The victim should not be required to sign a complaint.

D. Treat as any other criminal offense

The offense of violation of an order of protection should be treated as seriously as any other criminal offense, and investigated and reported as any other domestic violence crime. The offense should be issued even if other charges are pending.

E. Validity

An order of protection is valid regardless of how the offender obtained entry into the victim's residence. This includes entering the residence upon invitation by the victim.

F. Child abduction

A respondent on an order of protection can be charged with child abduction for committing any of the following violations of an order of protection:

1. The respondent intentionally conceals or detains a child or removes a child from the state in violation of the order of protection Remedy 5 granting the petitioner or another physical care and/or possession of the child.
2. The respondent intentionally conceals or detains a child or removes a child from the state in violation of the order of protection Remedy 6 granting temporary legal custody to the petitioner.
3. The respondent intentionally conceals or detains a child or removes a child from the state in violation of the order of protection Remedy 8 prohibiting such conduct.

720 *ILCS* 5/10-5(b)(1).

G. A victim cannot vacate an order of protection

Petitioners protected by an order of protection must return to court in order to vacate an order of protection. Only a judge can vacate an order of protection.

H. A victim cannot violate an order of protection

Petitioners protected by an order of protection cannot violate an order of protection. Only the respondent can violate an order of protection.

XV. Assistance to the victim and the role of the victim advocate

The first person a victim comes into contact with for help in a domestic violence situation is frequently a law enforcement officer. How the officer responds and the assistance given can determine whether or not the victim cooperates with the pursuit of criminal charges or contacts other service providers for help. In order for the victim to be safe, law enforcement officers need to provide assistance on a variety of levels beyond arresting the abuser. It is the role of the officer to take all reasonable steps to prevent further abuse, including, but not limited to, the following:

A. Accompany victim to residence

The officer shall accompany the victim into their residence to remove necessary personal items, such as identification and important papers, purse or pocketbook, clothing, medications, and toiletries. 750 *ILCS* 60/304(a)(3) and 725 *ILCS* 5/112A-30(a)(3).

B. Information on victim's rights

The officer shall furnish the victim with information of their rights under the Illinois Domestic Violence Act of 1986, as well as under the Rights of Crime Victims and Witnesses

Act (725 ILCS 120 et. sec.). Victims and witnesses of domestic battery, stalking, and violation of an order of protection are legally entitled to information about court proceedings and the release from custody of the accused. 750 ILCS 60/304(a)(4) and 725 ILCS 5/112A-30(a)(4).

C. Provide arresting officer and agency information

The officer shall provide the victim with the name and badge/I.D. number of the responding officer, and the responding agency's phone number. *Id.*

D. Provide information in victim's primary language

All information shall be provided in the victim's primary language, whenever practicable. *Id.*

E. Referrals to local services

1. The law enforcement agency should have good working relationships and written networking agreements with local service providers.
 2. Officers shall provide referrals to local service agencies, including, but not limited to:
 - a. Domestic violence shelters and services.
 - b. Elder services for persons over 60.
 - c. Disability services for persons with disabilities.
 - d. Language interpretation for persons who speak a primary language other than English, including American Sign Language.
 - e. Youth or children's service providers if the victim is a youth or if the victim has children.
 - f. Homeless shelters if a domestic violence shelter is not available or the victim is not eligible for the domestic violence shelter program.
 - g. Hospital or emergency care facilities.
 - h. Community programs with culturally appropriate services, as needed. This includes services for immigrant victims, lesbian, gay, bisexual, and transgender victims, victims from religious minorities, victims with disabilities, and others.
 - i. Mental health services.
 3. The officer should provide written as well as verbal referrals.
 4. Referrals should be offered whether or not an arrest is made.
- 750 ILCS 60/304(a)(5) and 725 ILCS 5/112A-30(a)(5).

F. Advise to seek medical attention

The officer shall advise the victim to seek medical attention. Medical care may be necessary even though injuries are not immediately apparent. 750 ILCS 60/304(a)(6) and 725 ILCS 5/112A-30(a)(6).

G. Advise victim of current and future evidence collection

The officer shall advise the victim of the evidence that has been collected. The officer should also advise the victim of the importance of preserving evidence and the types of evidence that could be collected at a later time. Finally, the officer should also explain how and by whom the evidence may be used. *Id.*

H. Transportation

The officer shall transport or arrange for the transportation of the victim to a medical facility for the treatment of injuries, to a nearby shelter or place of safety, or, after close of court business hours, to the nearest available circuit judge or associate judge so the victim may file a petition for an emergency order of protection. 750 ILCS 60/304(a)(7) and 725 ILCS 5/112A-30(a)(7).

I. Services to victims

Domestic violence programs in Illinois offer a range of services to victims of domestic violence. These services include safety planning, advocacy, hotline services, individual and group counseling, shelter and transitional housing, children's services, and legal advocacy. Domestic violence advocates are an essential part of the system's response to domestic violence.

J. Written agreements with domestic violence advocacy programs

Law enforcement agencies should have signed written agreements with local domestic violence advocacy programs that serve victims in their area. These agreements should specify duties and responsibilities of the law enforcement agency and the domestic violence advocacy program. Working with domestic violence advocacy programs is an essential part of any law enforcement agency's response protocol.

K. Referral to a domestic violence advocacy program

Law enforcement officers should refer all victims of domestic violence to their local domestic violence advocacy program or programs. Domestic violence advocacy programs assist victims with safety planning, problem solving, support and counseling, court advocacy, children's services, and locating other necessary resources and services. Many domestic violence advocacy programs also offer temporary shelter or transitional housing to domestic violence victims.

L. Privileged communications between domestic violence advocate and victims

The Domestic Violence Act of 1986 allows for confidential communication between domestic violence advocates and counselors who are 40-hour trained and victims of domestic violence. Confidential communication is defined as communication between an alleged victim of domestic violence and a domestic violence advocate or counselor in the course of providing information, counseling, or advocacy. 750 ILCS 60/227(a)(3). The term includes all records kept by the advocate, counselor, or domestic violence program in the course of providing services to an alleged victim concerning the alleged victim and the services provided. *Id.*

XVI. Victims with special needs and considerations

A. Witnessing domestic violence is traumatic to children and can have long lasting effects. The officer may be the only person to ask the children about the abuse and to provide assistance to the children. The following are steps the officer can take to assist child witnesses of domestic violence:

B. Interview children

1. Officers should identify all children in the home and interview all children who are verbal. Interviews of children should be conducted alone and in an age appropriate manner. The officer should sit or crouch at the child's level and speak in a gentle voice. If the child becomes too distressed, take a break or consider ending the interview.
2. Children should be asked about this incident and any prior abusive incidents. Leading questions should be avoided. Use general terms in asking questions and allow children to give details.
3. Document what the children say. Some evidence, such as excited utterances, may be admissible in court.
4. The officer may be the only person the children have talked to about the abuse. Therefore, the officer should listen to the children, acknowledge their experience, and respond in a comforting manner.
5. Be sure children are with the non-offending parent or caretaker as soon as possible after the interview.

C. Determine and report child abuse and neglect

1. When there are children in the home, officers should determine, to the best of their ability, whether there is a history of physical, sexual, or serious emotional abuse of children.
2. If the officer reasonably suspects that the children have been abused or neglected, the officer should report the suspicion to the Illinois Department of Child and Family Services at 1-800-25-ABUSE.
3. If evidence exists of child abuse, the officer should charge the perpetrator with the appropriate child abuse charges, as well as domestic violence charges.

D. Ensure children's care

1. When a victim of abuse chooses to leave the scene of the offense, it should be presumed that it is in the best interests of any minors or dependents in the victim's care to remain with the victim or a person designated by the victim, rather than to remain with the abusing party. 750 ILCS 60/304(a)(7).

2. If the non-offending parent or caretaker needs to be taken for medical services, or is otherwise unable to care for the children after the incident, obtain from the non-offending parent or caretaker information on who should care for the children. If needed and with the non-offending parent or caretaker's permission, provide or arrange for transportation of the children to the temporary caretaker. If there are no family members or friends available, contact the Illinois Department of Child and Family Services. An officer should stay with the children until there is a safe adult to care for them.

E. Child abduction

The child abduction statute protects parents or guardians against the concealment or removal of a child by a parent (Russell, 2002; Cook County Sheriff's Youth Services Department, 2002). 720 *ILCS* 5/10-5.

1. **Child abduction charges:** A person can be charged with the crime of child abduction if:

- a. The person is a parent and where the parents are married or have been married and there has been no determination of custody and the offender conceals a child for 15 days without notifying the other parent of the child's location or making arrangements for visitation or conduct.

It is not a violation if a parent fleeing domestic violence takes the child with them to a domestic violence program.

- b. The person is a parent, where the parents are or have been married and custody of the child has not been determined, and the offender detains, conceals, or removes the child with force or the threat of force.
- c. The person is the putative father and he intentionally conceals, detains, or removes the child with consent of the mother or legal guardian and one of the following is true
 - Paternity of the child has not been established.
 - Paternity of the child has been established but an order regarding custody has not been entered.
- d. The person is the mother and she intentionally conceals, or removes a child that she has abandoned or from who she has relinquished custody, from the unadjudicated father who had been the sole ongoing caregiver and her custody of the child in the mother's absence.
- e. They remove from the state or conceal a child when there is a divorce or paternity action pending, but before there has been a temporary or final determination of custody.

- f. They violate a court order of custody, joint custody, physical care, or possession of a child.
- g. They violate an order prohibiting the concealment, detainment, or removal of a child from the jurisdiction of the court.
- h. Following an out-of-state violation, the offender fails to return the child to the lawful custodian in Illinois.
- i. They remove or conceal the child for payment or promise of payment.
- j. They retain a child from another state in this state for 30 days without consent from the lawful custodian or in violation of a court order.
720 ILCS 5/10-5(b)(1-9).

2. **Returning the child:** Law enforcement officers should remove the child from the parent believed to have abducted the child and return the child to the lawful custodian of the child.
3. **Providing lawful custodian with rights:** The law enforcement officer should provide the lawful custodian information on their rights under the Child Abduction Act.
4. **Fleeing domestic violence victims are exempt:** In order to best protect the child, the law enforcement officer should not make an arrest in the case of a victim of domestic violence fleeing an abusive relationship. The Child Abduction Act provides an affirmative defense for a victim fleeing an incidence or pattern of domestic violence.

F. Unlawful visitation interference

The Unlawful Visitation Interference statute is often misused by abusers. Such abuses make it essential for officers to understand the appropriate use of the statute.

1. **Valid order:** In order for a parent to commit this offense, there must be a valid order granting specific visitation rights to the other parent. For example, an order that calls for reasonable visitation cannot be the basis of this charge, while an order that calls for visitation to begin at 6 p.m. on Friday night can be.

The Illinois Supreme Court has also determined that this charge cannot be used in situations where the parents share joint custody of the children. The use of the statute is only appropriate where there has been no determination of custody or one parent has been granted sole custody of the children.

2. **Intent to deprive visitation:** The custodial parent must detain or conceal children with the intent to deprive the other parent of their right to visitation. This statute

includes language that makes the person's intent an element of the offense that must be proven at trial. If the person does not have the "specific intent" to deprive the other parent of visitation, they have not committed this offense. 720 ILCS 5/10-5.5(b).

For example, an abuser might call law enforcement and request charges for unlawful visitation interference in situations where the parent has arrived late to the drop off site or the children aren't ready to leave home on time. In other cases, the children might be legitimately too ill to go for visitation. In such cases, the parent does not have the intent to deprive the parent of visitation, so it is not unlawful visitation interference.

A parent may also deny visitation that is granted pursuant to an order of protection if the visiting parent is under the influence of drugs or alcohol or is behaving in a violent or abusive manner at the time of pick up. 750 ILCS 60/214 (B)(7).

There is a limited window for the parent to pick up the children for visitation. For example, the order states that the parent has visitation from 6 p.m. on Friday until Sunday at 6 p.m. Unless the parent has made other arrangements, the children must be picked up within a reasonable time or the parent forfeits the visitation period. The custodial parent does not have to stand by the entire weekend to allow the visiting parent access throughout the visitation period.

3. **When unlawful visitation interference is committed:** If you have determined that the parent has committed unlawful visitation interference, there are two issues of importance.
 - a. Unlawful visitation interference is a petty offense. A case report should be generated and a citation prepared. An arrest cannot be made unless the parent has been convicted of unlawful visitation interference at least twice previously.
 - b. Law enforcement officers do not have the right to enforce civil process unless that right is specifically granted by statute. For example, the Illinois Domestic Violence Act not only allows officers to enforce most of its provisions, in many cases it requires officers to do so. There is no statute that grants officers the right to enforce visitation orders. The officer's role is limited to writing a citation for unlawful visitation interference. An officer who orders or coerces a parent to turn a child over for visitation can be held civilly liable for any injury to the child while the child is in the hands of the other parent.
4. **Abuse tactic:** When faced with an angry, hostile parent who is demanding action, it is easy enough to decide to write a report and/or issue the citation as a means of placating the parent. Keep in mind that people who would abuse the statute will also abuse your report or the case you have initiated, using it against the custodial parent as another means of abusive power and control. Therefore, it is important

that an officer's report accurately report the entire situation regarding a citation for unlawful visitation interference.

G. Referrals

The officer should offer the victim referrals to programs that serve as child witnesses of domestic violence where she can take her children for services and support.

H. Elderly victims

Many victims of domestic violence are elderly citizens or people with disabilities. Illinois laws provide greater protections for these victims as they are less likely to be able to protect themselves against or flee domestic violence. Like many other domestic violence victims, elderly victims or victims with disabilities are often afraid to seek help from service providers or law enforcement.

- 1. Family or household member:** In Illinois, the definition for family or household member includes caretakers and personal assistants. A key point in this definition of caretaker or personal assistant is that it includes strangers who visit the home to provide care, if that person is doing so as part of their employment, in exchange for any type of consideration or because they have been appointed to take care of the elderly or disabled person by a court or public agency. 750 ILCS 60/103(6).
- 2. Enhanced penalties:** The law provides for additional protections to the elderly or person with disabilities in the form of enhanced penalties against those who abuse them, whether in a domestic setting or not. These laws can and should be used in domestic violence cases, although they are based not on the victim's or defendant's domestic relationship. These laws generally provide greater penalties than the domestic violence statutes.
- 3. Aggravated battery:** What may be a misdemeanor domestic battery involving bodily harm in a normal situation can be enhanced to a Class 3 felony aggravated battery when the victim is age 60 or over or is physically handicapped. 720 ILCS 5/12-4(b)(10) and (b)(14).

In *People v. Jordan*, the court held that when the victim is 60 years of age or older, it was not required that the defendant know the victim's age for the crime to be enhanced. 102 Ill. App. 3d 1136, 1139 (4th Dist. 1983).

- 4. Aggravated battery of a senior citizen:** If, when committing a battery unknowingly or intentionally causes great bodily harm, permanent disability, or disfigurement against an elderly person age 60 or older, it is a non-probationable Class 2 felony for which the offender must be sentenced to prison for no less than three years and no more than seven years, upon a single conviction. 720 ILCS 5/12-4.6.

I. The safety of the elderly or disabled person

When assessing an elderly or disabled domestic violence victim's status and injuries, law enforcement officers have to look beyond mere physical appearances. Even if it appears that immediate medical attention is not needed by the victim, he or she may still need outside assistance. Law enforcement officers should know how to access service providers who can provide the required assistance.

- 1. What to consider when making an arrest:** Sometimes, arresting the domestic violence perpetrator and taking him to jail will remove the elderly or disabled person's only caretaker, thus causing suffering and chaos for the victim. If the defendant obeys the bail conditions and stays away for 72 hours, the elderly or disabled person will be without a caretaker for this amount of time. The law enforcement officer should make every effort to make contact with a victim advocacy center that specializes with senior victim. The advocacy center should be able to make referrals that will help secure a new caretaker so that the victim will be safe from abuse.
- 2. Orders of protection:** Orders of protection can also protect elder adults with disabilities and high-risk adults with disabilities. In some cases, an elder abuse worker or domestic violence advocate may apply for an order of protection on behalf of an elderly or disabled victim.
- 3. Report elder abuse:** Pursuant to 320 ILCS 20/2 and 320 ILCS 20/4, Illinois law enforcement officers are required to report any suspected abuse, neglect or financial exploitation of an elderly person to the Illinois Department of Aging (IDoA) or their local designated service provider agency. The Illinois Department of Aging has within every county in the State of Illinois a designated provider agency that serves senior citizens and investigates elder abuse and neglect allegations. Every law enforcement officer should know their local provider and how to reach them. Law enforcement officers can also report elder abuse by calling the IDoA at 1-800-252-8966 Monday through Friday from 8:30 a.m. to 5:00 p.m., or 1-800-279-0400 evenings, weekends, and holidays.
- 4. Local health and housing code enforcement departments:** Law enforcement officers should cultivate relationships with local health and housing code enforcement departments. These departments may be able to help senior or disabled victims with medical or housing issues that isolate or otherwise endanger the victim. Solving these problems may prevent future victimization of the elderly or disabled person and may lessen the number of assistance and/or welfare status check calls officers will need to make.

J. Evidence collection

Many of this Protocol's recommendations for evidence-based prosecution are especially important in domestic violence cases involving elderly victims or victims with disabilities.

1. Photographs: Photographs are vital.

- Photographs of the injuries: Seniors may not recall or be able to describe on the witness stand the bruise on their face or how they were injured. Even the officer's most vivid and graphic verbal description won't have the same effect that a good picture will have.
- Photographs of the home: Photographs of the home will often dispute the defense put up by many abusers that they were working so hard to care for the elderly or disabled person and that the victim was just inadvertently injured. Photographs of a filthy or disheveled home dispute the "overburdened caretaker" defense.

2. Interviews:

- a. Interviews with the elderly or disabled victim that are video- or audio-taped are most useful in prosecution. If the victim cannot remember, or refuses to testify, the relevant portion of the tape may be introduced as substantive evidence. A signed statement is second best to a tape. These statements may be admissible as substantive evidence pursuant to 725 ILCS 5/115-10.1(c)(2)(C).
- b. Interviews conducted by the state's attorney's office should be conducted in a place where the victim feels safe, without the presence of the offender. If the home is not safe, a senior center, social club, or religious institution may feel more comfortable to the victim. Having a large print calendar available for the interview may be of assistance in reminding the victim of specific dates.
- c. The victim should be interviewed alone. Adult children or caretakers (those other than the offender) often speak for the elderly or disabled person. A tape of the victim saying, "My son hit me in the face," may be admissible. A tape of the victim's daughter saying, "Mom told me my brother hit her in the face," is not.
- d. Like other victims of domestic violence, elderly victims and disabled victims may not want to cooperate. The perpetrator may be a beloved child or grandchild. Victims may blame themselves for the abuse.
- e. Interviews of neighbors, mail carriers, the paper deliverer, meter reader or any other who comes to the home on a regular basis may provide valuable information or admissible evidence.

K. Intimate partner sexual assault

When assessing the dangerousness of a domestic violence situation, it is generally recognized that forced sex or threatened forced sex increases the risk of fatality and serious injury (Bergen, 2006). The majority of women are raped by someone known to them. The effects can be extremely physically and psychologically damaging to the victim due to the frequency and severity of the assault and the relationship with the perpetrator.

- 1. Look for sexual assault indicators:** Whenever a law enforcement officer is responding to a domestic violence incident, it is important to look for clues from the victim that sexual assault may be occurring in the relationship and inquire further. The victim may give subtle clues to sexual assault. Additional follow-up questions may be necessary. Indicators of intimate partner sexual assault in a violent relationship include:
 - a. Torn or missing clothing.
 - b. Signs of the victim having been held or tied down, such as marks on wrists or ankles.
 - c. The retelling of the incident by the victim seems to be missing elements.
 - d. Injuries to victim's genitals, which may be apparent when the victim shows signs of pain upon sitting or walking.
 - e. Stomach cramps experienced by the victim.
 - f. Bite marks or blood-bruises on the victim.
 - g. The mention of "make-up sex" by the victim or abuser during the interview.
- 2. Investigate with care:** Intimate partner sexual assault victims should be treated like all other sexual assault victims. They have experienced a loss of control over their bodies and may be experiencing numerous psychological repercussions, including, embarrassment, shame, or anxiety. Law enforcement officers should:
 - a. Be clear with the victim about their role as an investigator and why the questions being asked are necessary.
 - b. Create an environment for questioning that is private and calming.
 - c. Provide information regarding what is happening whenever the victim is left alone for more than a few minutes.
 - d. Physically get on the victim's level, avoiding standing over the victim and using closed or authoritative body language.
- 3. Obtain medical help for the victim:** When pursuing cases of sexual assault, encourage the victim to seek medical care for health and safety reasons, and to obtain a rape kit examination to preserve evidence for prosecution.
- 4. The law and charging:** There are no longer any reporting restrictions on marital rape. Therefore, charges for a marital sexual assault can include criminal sexual abuse, aggravated criminal sexual abuse, criminal sexual assault, or aggravated criminal sexual assault based on the elements of the crime. Law enforcement

officers should charge the appropriate sexual assault charges as well as domestic violence charges.

L. Immigrant victims and communities

Immigrant victims of domestic violence face numerous barriers to reaching out to law enforcement for safety from domestic violence, making abusers within these communities less likely to be held accountable for their crimes. These barriers include a lack of knowledge about and fear of law enforcement, language barriers, fear of deportation for self or for the abuser, coming from a country with abusive and corrupt police, cultural, religious, and gender barriers, and economic barriers. Though these barriers can seem insurmountable to a victim at times, there is much law enforcement can do to create a system that is accessible to immigrant victims of domestic violence (Pendleton, 2003). This section describes steps law enforcement departments can take to encourage the reporting of domestic violence and to build trust within immigrant communities. This allows law enforcement to become more adept at protecting immigrant victims of violence and at holding abusers from immigrant communities accountable for their actions.

- 1. Immigration status:** Federal law does not require law enforcement to ask about a victim's immigration status. Victims or witnesses of crimes are not required to state their immigration status or place of birth when contacting law enforcement to file a complaint or police report. The victim's immigration status has no legal relevance for obtaining:
 - Law enforcement assistance.
 - Orders of protection.
 - Shelter services.
 - Emergency medical care.
 - Child custody or child support.

It is recommended that law enforcement agencies develop a policy that allows immigrant victims to report abuse without fear that their immigration status will be revealed. The enactment of such a policy will allow immigrant victims to feel safe in reporting any abuse

Domestic violence is a crime against society, not just a crime against an individual. Law enforcement officers must use all resources available to them to enforce domestic violence laws, regardless of the status of the victim. It is in the best interest of victim safety and abuser accountability for law enforcement to refrain from asking victims their immigration status when responding to domestic violence calls. This is absolutely necessary if immigrant victims of violence are to seek assistance from law enforcement. Law enforcement must uphold the laws of the state and locality first and foremost. Doing the work of U.S. Immigration and Customs Enforcement (ICE, formerly INS) can interfere with law enforcement's ability to enforce state domestic violence laws. The practice of asking about immigration status and reporting to ICE results in immigrant victims of violence not seeking help from law enforcement in the future, and allows abusers to use

law enforcement as another tool to control and abuse victims. This undermines law enforcement's primary role of enforcing state domestic violence laws to ensure victim safety and offender accountability.

- 2. Make referrals:** Provide the victim with referral information to local agencies that can assist battered immigrants and/or immigrants in general. In rural areas, such agencies may not be available. Law enforcement officers should then refer the victim to the closest available services.
- 3. Language accessibility:** Proper investigation of a crime involving victims and/or perpetrators that speak a language other than English requires that law enforcement have access to interpreters in all languages spoken by persons living in their communities. In rural areas, locating language translation services for many languages may be difficult or impossible. Consider looking for such services at colleges or universities, or set up telephone translation services with a service provider such as AT&T Language Bank. Additionally, there are several non-profit victim advocacy groups that have victim advocates that are fluent in several languages and may be contacted for translation services.

M. Victims with illiteracy

With a few minor considerations, law enforcement officers can assist victims of domestic violence who are unable to read or write, or have limited reading and writing skills. Victims will not always reveal if they are unable to read referral information, court documents or instructions. Therefore, it is important to verbally explain any materials given in writing to the victim.

N. Lesbian, gay, bisexual and transgender victims

Lesbian, gay, bisexual and transgender people experience domestic violence at a similar rate as do heterosexual people, but with far less access to services for safety and assistance (Wright, 2005). Law enforcement officers can increase the safety of lesbian, gay, bisexual, and transgender victims of domestic violence by incorporating the following:

- 1. Do not make assumptions:** Do not assume that every victim is heterosexual. In situations in which the abuser has already fled the scene, officers should use non-gender-specific language until the victim has identified the gender of their partner. Be sensitive to the victim's word choices, such as "lover," "partner," "spouse," or "roommate," and their use of gender pronouns. Echo the language used by the victim.
- 2. Aggressor identification:** Aggressor identification can appear challenging with lesbian, gay, bisexual, and transgender individuals in violent relationships, especially if both partners claim the other used violence. Law enforcement should complete a thorough aggressor assessment when responding to domestic violence calls involving lesbian, gay, bisexual, and transgender people.

- 3. Service provider accessibility:** Law enforcement officers should provide the victim with a referral to both an agency within the community that provides services to lesbian, gay, bisexual, and transgender individuals, as available, and to a domestic violence agency. When an agency that provides services to lesbian, gay, bisexual, and transgender individuals does not exist within the community, a referral to an appropriate statewide, regional, or national organization that works with lesbian, gay, bisexual, and transgender individuals may be made. Law enforcement agencies can also obtain training and resource information from local, statewide, regional, or national organizations that work with issues concerning lesbian, gay, bisexual, and transgender individuals.

O. People with physical or cognitive disabilities or mental health issues

People with physical or cognitive disabilities or mental health issues, including victims with HIV/AIDS, are especially vulnerable to domestic violence, with far fewer accessible resources available to help them escape and seek justice (Chapman, 1996). There are numerous barriers to victims with disabilities or mental health issues accessing the system. Law enforcement officers should work to make services accessible to victims of domestic violence with disabilities by incorporating the following:

- 1. Physical accessibility:** Law enforcement officers should plan ahead to ensure that they can transport a victim of violence with specific accessibility needs, such as a wheel chair.
- 2. Language accessibility:** American Sign Language translation should be available, as needed.
- 3. Reading accessibility:** Translation of any documents given to victim into Braille or onto computer discs in a language usable by the victim should be made available. Many people with visual disabilities use computers that can read out loud documents saved to disc.
- 4. Service provider accessibility:** Law enforcement agencies should work with programs designed to specifically serve people with disabilities or mental health issues, as well as domestic violence advocacy programs (some communities will have programs with expertise in both areas), and provide referrals for these agencies to victims.
- 5. IDVA:** High risk adults with disabilities who have been abused, neglected, or exploited by a caretaker, personal assistant, or family or household member are protected by the IDVA.

P. Rural victims: Rural victims of domestic violence face numerous additional barriers to safety and increased risk (Johnson, 2000). Law enforcement officers must be additionally creative and sensitive when serving rural areas. Law enforcement policies to assist rural victims of domestic violence include:

1. **Referrals and safety:** Law enforcement officers will need to be creative to find safety and resources for victims of domestic violence in rural communities. Officers should provide victims with referrals to the closest domestic violence services if there are none available within the community. Officers can assist victims in finding safety by driving them to safe places, or driving them to county lines and acquiring assistance from law enforcement within the next county to continue transporting a victim to a safe place. With limited resources and few transportation options, rural victims are particularly dependent upon law enforcement officers to find safety when faced with a dangerous situation.
2. **Objective response:** When faced with a domestic violence incident involving a family known to the law enforcement officer, officers should seek peer and supervisor support to ensure that they are responding objectively.
3. **Firearms:** Training and policy on firearms and domestic violence is a must in rural communities. Law enforcement officers should ask about firearms on every domestic violence call and confiscate and store weapons as appropriate.
4. **Coordinated response:** Nowhere is a coordinated response to domestic violence more important than in a rural community with limited resources.

Q. Teen victims: Teen dating violence happens at rates similar to that of adult dating and domestic violence (Silverman, Raj, Mucci and Hathaway, 2001), and teen girls are three-and-a-half times more likely to experience sexual assault than are members of the general populations (Bureau of Justice Statistics, 2001). However, teens are far less likely than adults to tell anyone about the violence (Silverman, et. al, 2001) and rarely call law enforcement for assistance. The following is information that will assist law enforcement agencies in increasing their accessibility to teens:

1. **IDVA and minor victims:** The IDVA in several sections address the accessibility of the act to minors. The following sections have application to minors and their use of the IDVA:
 - a. The definition of family or household members includes those who have or have had a dating or engagement relationship. 750 *ILCS* 60/103(6) and 725 *ILCS* 5/112A-3(6).
 - b. A petitioner cannot be denied an order of protection because the petitioner or respondent is a minor. 750 *ILCS* 60/214(a) and 725 *ILCS* 5/112A-14(a).
 - c. A minor has the power to waive the privilege of their communication with a domestic violence advocate if the court feels that the minor can knowingly do so. 750 *ILCS* 60/227(e).
2. **Orders of protection against minors:** Orders of protection can be entered against minors. A minor is a family or household member as defined in the

statute. *Wright v. Wright*, 221 Ill. App. 659, 662 (4th Dist. 1991). The act protects those that are being abused by family or household members. *Id.*

- 3. Service provider accessibility:** Law enforcement officers should work with programs designed specifically to serve teens, especially when domestic violence programs that have specialized programs for teens are available, and refer victims to these programs.
- R. Cultural and religious diversity:** Women from diverse cultural or religious groups, particularly those marginalized from mainstream culture, risk experiencing a lack of understanding and stereotyping when turning to law enforcement for assistance, causing many to refrain from seeking such services. Men from marginalized cultures may not be held as accountable, and women from certain groups may not be offered complete services because of negative and false stereotypes that abuse is normal within certain cultural and religious groups (Mederos, Gamache and Pence, 1997). The reverse is also true. Women of color and poor women sometimes turn to law enforcement for help because they lack other resources. Men of color and poor men will then be more likely to receive consequences from the system because they lack the resources for an attorney (Mederos, date not available). Law enforcement agencies can address these issues in a number of ways.
- 1. Avoid stereotyping:** Law enforcement officers should not allow stereotypes of any kind to interfere with decisions to arrest.
 - 2. Service provider accessibility:** Law enforcement officers should work with programs designed specifically to serve people from various cultural and ethnic groups, especially when domestic violence programs that work with specific cultural and religious groups are available, and refer victims to these programs.
 - 3. Listen to the community:** Law enforcement agencies will do well to listen to the voices of people from marginalized cultural and religious groups in their communities and together design policies that meet the needs of those populations. This fits well with community policing strategies.
 - 4. Diverse personnel:** Law enforcement agencies should hire officers that represent the communities that they serve.
- S. Homeless victims:** Homelessness is often a result of domestic violence, and homeless women are particularly vulnerable to violence. The courts should take into account the needs of homeless victims in seeking safety through law enforcement and prosecution.

Law enforcement officers should keep the temporary housing locations, such as a domestic violence shelter, homeless shelter, or the residence of a family member, confidential. If the victim is staying in a safe location, such as a shelter, whether it is a confidential location or not, or the residence of a friend or family member, officers should not reveal that location to the abuser under any circumstances.

T. Victims with substance abuse issues: Substance abusing victims of domestic violence provide unique challenges to the court system.

- 1. Separate the issues:** It is necessary for law enforcement officers to separate the issues of domestic violence from the issue of substance abuse in the victim. While substance-abusing victims may be more difficult for law enforcement to assist, they are still victims who deserves respect and protection.
- 2. Aggressor identification:** Since victims who use substances are more likely to fight back, the issue of who is the abuser and who is the victim can sometimes be clouded. Further, since substance use is a coping mechanism for some victims of domestic violence, this issue may frequently be present on domestic violence calls. Law enforcement officers should conduct thorough aggressor identification in any situation involving alcohol and violence on the part of both parties. Law enforcement officers should ensure that they are arresting the abuser, and not the victim.
- 3. Collect evidence:** As with all domestic violence calls, law enforcement officers should collect evidence at the scene that demonstrates the violence without the victim's testimony. An intoxicated victim, particularly one who has an ongoing substance abuse problem, often does not make a reliable witness. A case that relies on the evidence rather than the victim's testimony can still be prosecuted whether or not the victim is a reliable witness.

U. Victims involved with gang members: Victims of domestic violence whose partners are gang members are at particular risk for danger. Often they will not cooperate with law enforcement or the courts because such cooperation could put their safety at greater risk, triggering retaliation by gang members. The following are some beginning steps for addressing this issue:

- 1. Collect evidence:** Law enforcement officers can collect evidence to prove the violence allowing prosecutors the option of pursuing evidence-based prosecution without calling the victim to court to testify and further endangering the victim.
- 2. Safety:** As with other victims of domestic violence, law enforcement officers should assist victims in creating a safety plan and seeking shelter or another safe place. Victims whose abusers are involved with gangs may still be in danger from gang members after the abuser is arrested.

V. Prostituted and trafficked victims: Victims of domestic violence who are prostituted and trafficking victims rarely seek assistance from law enforcement. The following are some beginning steps officers can take to assist these victims:

- 1. Collect evidence:** As with all domestic violence calls, law enforcement officers should collect evidence at the scene that demonstrates the violence without the victim's testimony. A victim of domestic violence who has been prostituted or trafficked may not be believed as a witness. A case that relies on the evidence rather than the victim's testimony can still be prosecuted whether or not the victim makes a good witness.
- 2. Concentrate on domestic violence or trafficking case:** It is in the best interest of the safety of the victim and the accountability of the abuser for law enforcement to concentrate their efforts on the domestic violence or trafficking case rather than investigating and charging the victim for prostitution. A victim of domestic violence who has been prostituted or trafficked is unlikely to contact law enforcement unless the situation is highly dangerous. Officers must respond accordingly.

W. Domestic Violence by law enforcement officers: Domestic violence perpetrated by law enforcement officers presents unique dangers to victims and requires immediate and appropriate action. In cases where the actions of the officer violate Illinois law, law enforcement agencies should immediately and affirmatively act to protect the victim. The Illinois Supreme Court held in *Moore v. Green* that officers and supervisors can be held liable for money damages if they fail to protect a victim of domestic violence. There is no exception for intimate partners of law enforcement officers. The mandate to act applies both to the agency who receives the complaint and to the agency that employs the accused officer. Proper action, including a prompt, objective, and thorough investigation, along with services to the victim, is the best response. (International Association of Chiefs of Police, 2003; North Carolina Governor's Crime Commission Violence Against Women Committee, 1998; Wetendorf, 2004; Wetendorf, 2000; Lonsway, date unavailable; Sgambelluri, 2006; and Whitcomb, 2004).

- 1. Additional risks:** There is evidence that domestic violence by law enforcement officers results in greater potential danger, and fewer available resources, to victims (Sgambelluri, 2006; Whitcomb, 2004). Officers are trained to use a variety of strategies to assert control over others. The ability to have power and control over others is an essential job skill for the law enforcement officer. Officers are trained to interrogate and detect deception. Officers have access to various databases to obtain information and they are intimately familiar with the court system. It is often dangerous, for victims to report abuse to the co-workers of their abuser. The loyalty many officers have for fellow officers may make on-scene decisions particularly difficult. These factors should be considered when evaluating risk to complainants and investigating allegations (International Association of Chiefs of Police, 2003; North Carolina Governor's Crime Commission Violence Against Women Committee, 1998; and Wetendorf 2004 and 2000).

- 2. Prevention:** To ensure an appropriate and consistent response, law enforcement agencies should have a clearly delineated policy to address these situations (International Association of Chiefs of Police, 2003). Additionally, agency domestic violence training should include a component on the requirements of policy, as well as the unique factors associated with these cases. While officers should be reminded of their mandated responsibilities when responding to these calls, and of the consequences to officers who violate the law, there should also be services in place to help officers address intimate partner conflict before it threatens the safety of their partners or jeopardizes their careers. Agency chaplains and peer support personnel should be given specific training on officer-perpetrated domestic violence. However, any rules of confidentiality of these programs should specifically exclude information about officer-involved domestic violence and any requirements of a “duty to warn” should be shared with persons serving in this capacity.
- 3. Mandated reporting:** An appropriate response to allegations of domestic violence by a law enforcement officer should include mandated immediate notifications to both the responding and the employing agency command. Additionally, all law enforcement employees, other than the victim, should be required by policy to immediately report evidence of domestic violence by any other law enforcement employee. Law enforcement employees should also be required to immediately notify a supervisor if they are named in a complaint of domestic violence or as a respondent to an order of protection. Safety considerations preclude mandated reporting by employees who are victims of domestic violence.
- 4. On-scene response:**

 - a. Supervisory oversight:** When a complaint is received, a supervisor should respond to the scene, as practicable, to oversee the initial investigation and ensure all legally and policy mandated responsibilities are fulfilled. The recommended procedures for investigating domestic violence as outlined in this protocol should be followed. Interviews should be conducted, and evidence gathered, with the presumption that the case, whether handled administratively or criminally, will proceed without the need of further cooperation from the victim. Internal investigators from the employing agency should respond immediately, as practicable, because the dynamics of domestic violence may result in an unavailable victim the following day. In any case, a thorough investigation should be conducted with or without victim cooperation.
 - b. Arrest:** An arrest should be made in all cases where there is probable cause of a domestic battery by an aggressor. However, arrest of a victim of a pattern of domestic abuse should be avoided. In every case, detailed

reports should be completed documenting all relevant factors that form the basis of any arrest decision.

- c. **Weapons removal:** An officer who has committed a domestic battery has committed a violent crime. 725 *ILCS* 120. Illinois law mandates that law enforcement agencies affirmatively act to prevent further abuse. Therefore, the on-scene supervisor should remove all service weapons and all weapons used or whose use was threatened.
- d. **Services to victims:** Some research suggests that services to the victim are perceived by both law enforcement administrators and victim advocates as the most effective way to prevent further officer-perpetrated domestic violence (Sgambelluri, 2006). Appropriate services to the victim pose no additional risk in the rare case of an officer who is falsely accused. Certain services, however, should be avoided. In situations where physical abuse is present, referrals should not be made to couples counseling. The IDVA mandates law enforcement refer victims to a social service agency. Generally, the local domestic violence agency is best equipped to provide counseling, safety planning, and other needed advocacy services. The old adage that an officer's personal life is his own business does not apply to situations where there are allegations of domestic abuse. Appropriate services are a "win-win" proposition in that they reduce the probability of further abuse, which may preserve an officer's career and reduce administrator liability. Because of the unique dangers that can be present in officer-perpetrated domestic violence, those involved in the case, including service providers, should seek guidance on an appropriate response. Appropriate services to the victim should be utilized in every case of alleged domestic violence by a law enforcement officer.
- e. **Officer victims:** Just as officers can perpetrate domestic violence, officers can be victims as well. When officers are involved in intimate relationships with fellow officers, victim safety must always take precedence over an agency's need to police itself. Officer victims should not be required to report domestic violence by another officer and should not be disciplined for failing to do so.

XVII. Special considerations

Law enforcement officers must be aware of a number of special considerations when investigating domestic violence incidents. Stalking, strangulation, firearms, and sexual assault are the signs of a potentially very dangerous situation both for the victim and for the officer. Further, there are particular elements to each of these considerations that require expert investigation by an officer.

When looking for signs of danger, it is important for an officer to remember that only by knowing the pattern and most serious behaviors of an abuser is it possible to determine the level of danger, and even then such an assessment may not be accurate. Utilization of dangerousness or lethality assessment tools that take into account the offender's record, victim interview, offender interview, and psychological testing can have serious flaws. Offenders cannot be relied on to tell the truth, victims may minimize or may feel too intimidated to report accurately, and psychological testing, which is based on personality characteristics, is not reliable for this offender population. Additionally, many abusers may not have criminal records even when they have a long history of violence. Further, records of abusers' crimes that may have been committed as part of an abusive or stalking behavior may not be very illuminating, since there usually is no indication that those crimes were domestic violence-related.

With this in mind, the following is a list of elements of the most serious considerations and best practice policies that will assist officers in identifying some of the more extreme elements of danger.

A. Stalking

Stalking, including cyberstalking, is different from other crimes. First, stalking is not an individualized act, but a series of behaviors, causing repeated victimization. Second, stalking may be partly defined by its effect upon the victim (National Center for Victims of Crime, 2002). Stalking is a sign of extreme danger for a victim. While stalking cases do not all involve physical violence, stalking is frequently found as a precursor to homicide of women (National Center for Victims of Crime, 2002).

- 1. The law and stalking:** Illinois has one of the country's strongest anti-stalking laws. Illinois law defines stalking as at least twice following or placing a victim under surveillance and one of the following:
 - a.** At any time threatens bodily harm, sexual assault, confinement, or restraint towards the victim or a family member of the victim.
 - b.** Placing the victim in reasonable apprehension of future or immediate bodily harm, sexual assault, confinement, or restraint.
 - c.** Placing the victim in reasonable apprehension that a family member will receive future or immediate bodily harm, sexual assault, confinement, or restraint.

720 *ILCS* 5/12-7.3.

- 2. Aggravated stalking:** The Illinois law also prohibits aggravated stalking defined as behavior containing the above mentioned elements of stalking, plus any of the following:
 - a.** Actually physically harming, restraining, or confining the victim.
 - b.** Violating an order of protection or other similarly prohibitive injunction or restraining order.

720 *ILCS* 5/12-7.4.

3. **Purpose of the law:** The purpose of this law is to deter stalking and prevent deaths. The penalties under this law are greater than the penalties for harassment or violating an order of protection. This law is, therefore, an effective weapon against domestic violence.
4. **Cyberstalking:** Cyberstalking includes at least twice harassing a person through electronic communication, plus any of the following:
 - a. Transmitting a threat towards the person or family member of immediate or future bodily harm, sexual assault, confinement, or restraint.
 - b. Placing a person or their family member in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint.*720 ILCS 5/12-7.5.*
5. **Policy:** Solid policy around stalking and cyberstalking is needed to bring stalkers to justice and prevent further danger to their victims. A best practices law enforcement policy should include the following:
 - a. Treat all domestic violence cases as potential stalking cases.
 - b. Quickly investigate all reports of harassment, threatening behavior, and stalking in a manner that holds victim safety as a major priority.
 - c. Treat all acts of stalking as criminal conduct and assess for probable cause for arrest.
 - d. Charge the offender with all potential crimes.
 - e. In larger law enforcement agencies, develop a specialized unit to investigate stalking cases. Specialized units allow for needed expertise in stalking cases.
 - f. When documenting the case, law enforcement officers should cover key elements of the case that will assist the prosecution. These key elements include:
 - A description of all stalking behavior.
 - Why the victim is fearful.
 - What changes the victim has made in response to this fear, such as moved or adopted an alternate route to work.
 - Evidence of intent to stalk or recklessness regarding the victim's fear.
 - g. Work collaboratively with other elements of the courts to create a comprehensive stalking policy and work together to enact and enforce such policy.

B. Strangulation

Strangulation was previously not taken seriously enough due to the lack of physical evidence of the crime. There was a belief that these cases could not be prosecuted or prosecuted as the more serious crimes that they are because of the lack of evidence. New information and training is changing this pattern, allowing law enforcement officers the means to collect sufficient evidence for prosecution of strangulation cases. Evidence suggests that strangulation is one of the warning signs of a very dangerous, potentially lethal, domestic violence case. Unconsciousness can result from strangulation within 10 seconds, and death

can result within minutes (Maryland Network Against Domestic Violence & Maryland Law enforcement and Correctional Training Commissions, 2002; Strack, 2006).

- 1. Use the proper terminology:** To begin, use the term *strangle* rather than *choke*. *Strangle* means to obstruct seriously or fatally the breathing of another person. *Choke* means the obstruction of breathing by a foreign object lodged in the throat.
- 2. Give strangulation cases high priority:** Charge all cases of strangulation as felonies rather than misdemeanors. The case should be investigated as would any attempted homicide or aggravated assault case. A lack of readily visible physical evidence is not a sign of a lack of seriousness; injuries may be internal.
- 3. Conduct a thorough interview and investigation at the scene:** There are many ways an offender can strangle a victim, each potentially resulting in different signs and symptoms. The size of the perpetrator and the victim, whether or not the victim fought the strangulation, and many other factors will also affect signs and symptoms. Ask the victim for a demonstration of how they were strangled. Gather details such as the method or methods of strangulation, objects used, degree of pressure on a scale of one to 10, number of times strangulation took place, length of time of strangulation, and points of contact. Document other evidence as per norm in domestic violence cases. This includes documentation of evidence of a struggle, the presence of blood, and witnesses to the event.
- 4. Investigate the victim for injuries:** Investigators should look for the following initial signs of strangulation on the victim:
 - a. Changes in voice, from hoarseness to complete loss of voice.
 - b. Wheezing.
 - c. Difficulty breathing.
 - d. Difficulty swallowing or sore throat.
 - e. Scratches, abrasions, swelling, or discoloration of the neck.
 - f. Impressions on the skin which might indicate use of ligature (strangulation with a rope, clothing, other item) or use of an object.
 - g. Swelling of the tongue.
 - h. Victim's defensive finger nail marks on their own face, neck, or arms.
 - i. Redness on the neck, which may be temporary, or may later turn to bruising.
 - j. Light headedness or dizziness.
 - k. Fainting or unconsciousness.
 - l. Confusion or disorientation.
 - m. Nausea or vomiting.
 - n. Chin abrasions.
 - o. Loss of bodily functions.
 - p. Miscarriage.

Many victims of strangulation show no signs of external injury. However, due to lack of oxygen to the brain, the victim may suffer stroke, miscarriage, or death up to several weeks later.

- 5. Get medical help for the victim:** Because strangulation is so dangerous and symptoms may not be initially present even in the most severe cases, it is crucial that law enforcement officers take the time to try to convince the victim to receive medical treatment. If the victim refuses to proceed to a medical facility, the officer may call an ambulance, have paramedics examine the victim, and try to persuade her to seek further treatment.
- 6. Take photos:** Law enforcement officers should take a number of photos, and should be trained in taking close-up photos. Photos should include one distance photo of the victim's full body for identification; close up photos of the victims face and neck, from numerous angles; and follow-up photos 24, 48, and 72 hours later.
- 7. Complete a predominant aggressor assessment:** Claims of mutual violence are common in strangulation cases. Due to the nature of strangulation, the victim frequently fights back or uses physical means to try to get away. Since strangulation injuries are often not physically visible, the aggressor may be the only one with visible injuries. It is of the utmost importance to have documentation of an aggressor assessment taken at the time of the initial law enforcement visit.
- 8. Examine the abuser for injury:** If the strangulation was committed from behind, the abuser may have bite marks and scratches on the arms. If the strangulation was committed from the front, the abuser may have scratch marks on the face, arms, eyes, and chest, signs of hair being pulled, bite marks on the chest, injuries from kicks, and other defensive wounds.
- 9. List officer's experience:** Officers can list their experience with domestic violence and strangulation cases and the reasons that they believe that this is a felony case. This will assist prosecutors in pursuing charges.
- 10. Obtain the 911 call tape:** The 911 call may be the best evidence of changes in the victim's voice due to strangulation.

C. Firearms

The possession of firearms increases the risk of homicide in domestic violence cases. In 2004 there were 994 gun deaths in Illinois and 573 homicides (58 percent of all Illinois gun deaths) (CDC National Center for Health Statistics mortality report online, 2007). Law enforcement officers are in a unique position to ensure that laws, policies, and procedures are implemented to decrease the use and possession of firearms for abusers.

1. **Policies and procedures:** Each law enforcement agency should have policies and procedures regarding:
 - a. The secure storage of relinquished/seized weapons.
 - b. The return of firearms to respondents after an order of protection expires, including checking the respondents past criminal record, any current firearm prohibitions, and their FOID status.
 - c. The handling of officers within their own law enforcement agency who are subject to orders of protection in which Remedy 14.5 is granted.
2. **Identification, documentation, and seizure of firearms:** When responding to domestic violence-related calls, officers should ask if there are firearms in the house, and if those firearms have ever been used or threatened to be used in an abusive situation. These firearms should be seized. If firearms are present, but have not been used or threatened to be used, it should be documented and may be important if the offender denies owning or possessing any firearms at a later date.
3. **Firearms transfer:** If a respondent on an order of protection claims to have given any or all of their firearms to a relative or friend, the officer should ask if the person receiving the firearm(s) has a valid FOID card and proof of the transfer. The officers should also ask the respondent, as required of any person transferring a weapon, if he or she kept a record of to whom he or she gave the gun and a description of the gun. 430 *ILCS* 65/3(b). This record should be kept for 10 years. *Id.* If he or she does not have the record, the officer may arrest him or her for violating firearms transfer law or for a violation of the FOID act. *Id.*
4. **Revocation of firearms owners identification card:** If a court finds that there is sufficient evidence that there is a danger of illegal use of a firearm, the court will issue an order to seize the firearm. 750 *ILCS* 60/214(b)(14.5)(a) and 725 *ILCS* 5/112A-14.5(a). If the respondent is in court, the firearms should be turned over to the local law enforcement agency for safekeeping. *Id.* If the respondent is not in court, the court shall issue a warrant for the seizure of the firearms. *Id.* ISP can revoke and seize a FOID card from who it is issued if the person is under an order of protection prohibiting possession of a firearm. 430 *ILCS* 65/8(j). Additionally, a FOID card can be revoked for a conviction of within the last five years of a domestic battery after January 1, 1998. 430 *ILCS* 65/8(l-m).

Attachment A

IDVA Victim Information Form

Illinois Domestic Violence Act Victim Information

from the Office of Illinois Attorney General Lisa Madigan

Domestic violence is a crime. Any person who hits, chokes, kicks, threatens, harasses, or interferes with the personal liberty of another family or household member has broken Illinois domestic violence law.

Under Illinois law **family or household members** are defined as:

- family members related by blood or marriage;
- people who are married or used to be married;
- people who share or used to share a home, apartment, or other dwellings;
- people who have or say they have a child in common;
- people who have or say they have a blood relationship through a child;
- people who are dating or used to date, including same sex couples; and
- people with disabilities and their personal assistants.

Orders of Protection

An order of protection is a court order which restricts someone who has abused a family or household member. An order of protection may:

- prohibit abuser from continuing threats and abuse (abuse includes physical abuse, harassment, intimidation, etc.)
- order abuser out of a shared home or residence;
- order abuser out of that home while they are using drugs or alcohol;
- order abuser to stay away from you and other persons protected by the order and keep abuser from your work, school, or other specific locations;
- prohibit abuser from taking or hiding children, give you temporary custody, or require the abuser to bring the child to court;
- require abuser to attend counseling;
- require abuser to turn weapons over to local law enforcement; and/or
- prohibit abuser from other actions.

To Obtain an Order of Protection, You Can:

- Contact a domestic violence program for help completing the forms.
- Ask your attorney to file in civil court.
- Request an order with your divorce.
- Request an order during a criminal prosecution.
- Go to your local circuit court clerk's office and get papers to seek an order of protection for yourself.

Law Enforcement Response

Law enforcement should try to prevent further abuse by:

- arresting the abuser when appropriate and completing a police report;
- driving you to a medical facility, shelter or safe place or arranging for transportation to a safe place;
- accompanying you back to your home to get belongings; and
- telling you about the importance of saving evidence, such as damaged clothing or property, and taking photographs of injuries or damage.

Criminal Prosecutions

If an arrest wasn't made and you wish to seek criminal charges against your abuser, bring all relevant information, including the police report number and this form, to your local state's attorney. You may want to contact a local domestic violence program so they can help you through the system.

If Abuser Contacts You After an Arrest

If the abuser was charged with a crime and you or another victim is a family or household member, that abuser probably was ordered not to contact you for at least 72 hours. If the abuser does contact you soon after an arrest, you should call the police because the abuser can be charged with an additional crime, violation of bail bond.

Violation of an Order of Protection

You should also call police if the abuser disregards a part of the order of protection, because that is another crime, violation of an order of protection.

Where You Can Get Help and Advice:

National Domestic Violence Hotline: 1-800-799-SAFE

Chicagoland Domestic Violence Help Line: 1-877-863-6338 (*Chicago area*)

Chicago Rape Crisis Hotline: 1-888-293-2080 (*Chicago area*)

Local Domestic Violence Program: _____

Form available from the Office of Illinois Attorney General Lisa Madigan website at <http://www.IllinoisAttorneyGeneral.gov/women/ldva.pdf>

Officer's Name	Star / Badge #	Date
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Attachment B

Orland Park Police Department Order of Protection Short Form Notification

**ORDER OF
PROTECTION
SHORT FORM
NOTIFICATION**



LISA MADIGAN
ILLINOIS ATTORNEY GENERAL

Instructions for the Order of Protection Short Form Notification

The **Order of Protection Short Form Notification** (“short form”) shall be used to effectuate service of orders of protection upon respondents with unserved orders encountered during traffic stops or other routine contact with state or local law enforcement officers. 725 ILCS 5/112A-22.10.

1. IDENTIFICATION OF THE RESPONDENT

- A LEADS inquiry will identify those individuals against whom an order of protection has been issued but remains unserved. The service date remains blank until the order is served.

2. COMPLETION OF THE FORM

- Using the information obtained from LEADS, complete the identification and court sections at the top of the form. If hearing information is not available, please check the “Unable to provide this information” box.
- Check all remedies/restrictions applicable to the respondent from the information provided in LEADS. The numbers of remedies/restrictions on the short form correspond to the numbers in the LEADS information.
- Complete the affidavit of service. It is not necessary to have this affidavit notarized.
- In order to facilitate the respondent’s obtaining a full copy of the order, please complete the address information for the issuing county on the reverse of the top (white) copy, if available.
- By law, you may detain the respondent for a reasonable period of time in order to complete the short form.

3. NOTIFICATION TO THE RESPONDENT

- Serve the short form and explain what the respondent is required to do or must refrain from doing. The law requires you to read aloud the “Notice to Respondent” section.
- Explain to the respondent that there is important additional information on the back of the form.

4. NOTIFICATION TO LEADS

- Notify your dispatch, LEADS operator, or the appropriate person at your agency after the short form is served to ensure that LEADS is updated to reflect the short form service. Your agency must submit an “add on” record indicating short form service.
- Notify the originating agency of the short form service. The “served date” field can only be completed by the originating law enforcement agency.

5. DISTRIBUTION OF COPIES

- White copy given to the Respondent.
- Yellow copy retained for your Agency’s file.
- Pink and goldenrod copies sent to the Sheriff’s office in the county that issued the order of protection. The Sheriff in that originating county will make the required changes to the LEADS record. The Sheriff will send the goldenrod copy to the court for inclusion in the court file.

QUESTIONS

Questions concerning the use, completion, notification, or distribution of the short form may be directed to the Office of the Attorney General at 1-888-414-7678. We can also help provide the address of the issuing county required for the back of the respondent’s copy.

This project was supported by Grant No. 2001-WF-BX-0015, awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice, through the Illinois Criminal Justice Information Authority. Points of view or opinions contained within this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice, or the Illinois Criminal Justice Information Authority.

Provided by the Office of Illinois Attorney General Lisa Madigan.

Printed by authority of the State of Illinois. 06/05.13M.C05-731 This material is available in alternate format upon request.

Order of Protection Short Form Notification

<p>Date of Service: _____ Time: _____</p> <p>Respondent's Name (Person Served): _____</p> <p>Respondent's Date of Birth: _____</p> <p>Petitioner's Name (Person Protected): _____</p> <p>Other Protected Parties: _____ _____</p>	<p>An order of protection was entered against you on _____ in _____ County by Judge _____ Court File # _____</p> <p>A hearing is set on this matter. If you fail to appear, a default order may be entered against you. The hearing details: Date: _____ Time: _____ Location: _____</p> <p><input type="checkbox"/> Officer unable to provide this information. You must obtain the full order for this information. Instructions for obtaining the full order are on the back of this form.</p>
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The following are some of the restrictions placed on you. You must obtain a copy of the order for a complete list of restrictions. Instructions for obtaining the full order are on the back of this form.

1. You must not further abuse, harass, intimidate, or harm the petitioner or other protected parties.
2. You must not enter the petitioner's residence.
3. You must stay away from petitioner and protected parties at additional locations.
4. You must attend counseling.
5. Petitioner has been given physical care and possession of child(ren).
6. Petitioner has been given temporary legal custody of child(ren).
7. You may visit the child(ren) only at certain times (listed on the full order).
8. You must not remove child(ren) or hide the child(ren) from the petitioner.
9. You must appear in court or you must appear in court with the child(ren).
10. You must not possess certain personal property.
11. You must not damage, destroy, conceal, or sell certain personal property.
12. You are required to pay temporary support.
13. You are required to pay petitioner for losses and expenses.
14. You must not enter the residence while under the influence of drugs or alcohol.
15. You must not access child(ren)'s school, medical or other records.
16. You are required to pay for temporary shelter and counseling of the petitioner.
17. You are also ordered to _____ and
 you must not possess a firearm.

Notice to respondent: The order of protection is now enforceable. You must report to the office of the sheriff or the office of the circuit court in the county that issued the order to obtain a copy of the full order of protection. You are subject to arrest and may be charged with a misdemeanor or a felony if you violate any of the terms of the order of protection.

NOTE TO PRINTER: ONLY THIS PAGE TRIMS HERE.

Order of Protection Short Form Notification Important Information for Respondent

This is an **order of protection short form notification** and does not contain all the information you need to know about the order of protection.

You, the respondent, must obtain a copy of the full order of protection as soon as possible. The full order remains in effect until the expiration date indicated on the order.

To obtain the full order of protection

Go to the Sheriff's office or Circuit Court Clerk in the county where the order was issued to obtain a copy of the full order. Be sure to bring this form and proper identification (driver's license or state ID) with you to obtain a copy of the full order.

The full order explains in more detail what the Judge has ordered. **Failing to obtain the full order does not protect you from arrest if you violate any of the terms of the order.** Violation of this order can result in misdemeanor or felony charges against you.

Law enforcement agency please write in or stamp addresses here.

Sheriff's Office

Circuit Court Clerk

If box #2 is checked, you must not enter the petitioner's residence, even if you share that residence. You may not enter or stay at the residence, even if you are invited by the petitioner or another person. The petitioner cannot change this provision, only the Judge can. Only you, and not the petitioner, will be in violation of this order of protection if you are found at the residence. If box #2 is checked, you may not enter the residence to remove any personal effects without supervision of law enforcement. You may be able to make arrangements to remove personal effects when you obtain the full order from the Sheriff's Office or Circuit Court Clerk's Office.

You may also be subject to federal penalties for possessing, transporting, or accepting a firearm or ammunition under the Gun Control Act (18 U.S.C. § 922 9(g)(8)).

Respondent's Copy Order of Protection Short Form Notification

Order of Protection Short Form Notification

Date of Service: _____ Time: _____ Respondent's Name (Person Served): _____ Respondent's Date of Birth: _____ Petitioner's Name (Person Protected): _____ Other Protected Parties: _____ _____	An order of protection was entered against you on _____ in _____ County by Judge _____ Court File # _____ A hearing is set on this matter. If you fail to appear, a default order may be entered against you. The hearing details: Date: _____ Time: _____ Location: _____ <input type="checkbox"/> Officer unable to provide this information. You must obtain the full order for this information. Instructions for obtaining the full order are on the back of this form.
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The following are some of the restrictions placed on you. You must obtain a copy of the order for a complete list of restrictions. Instructions for obtaining the full order are on the back of this form.

1. You must not further abuse, harass, intimidate, or harm the petitioner or other protected parties.
2. You must not enter the petitioner's residence.
3. You must stay away from petitioner and protected parties at additional locations.
4. You must attend counseling.
5. Petitioner has been given physical care and possession of child(ren).
6. Petitioner has been given temporary legal custody of child(ren).
7. You may visit the child(ren) only at certain times (listed on the full order).
8. You must not remove child(ren) or hide the child(ren) from the petitioner.
9. You must appear in court or you must appear in court with the child(ren).
10. You must not possess certain personal property.
11. You must not damage, destroy, conceal, or sell certain personal property.
12. You are required to pay temporary support.
13. You are required to pay petitioner for losses and expenses.
14. You must not enter the residence while under the influence of drugs or alcohol.
15. You must not access child(ren)'s school, medical or other records.
16. You are required to pay for temporary shelter and counseling of the petitioner.
17. You are also ordered to _____ and
 you must not possess a firearm.

Notice to respondent: The order of protection is now enforceable. You must report to the office of the sheriff or the office of the circuit court in the county that issued the order to obtain a copy of the full order of protection. You are subject to arrest and may be charged with a misdemeanor or a felony if you violate any of the terms of the order of protection.

Respondent's current address: _____

Affidavit of Service

I certify that on _____ day of _____ of 20____, in _____ County at _____ a./p. I personally performed a short form notification to _____. I further certify that I orally informed the person of the conditions checked and the enforcement notice listed.

Officer _____	Agency _____
Signature _____	Agency Case # _____
Badge # _____	

Instructions for Law Enforcement

When a LEADS hit is received for an unserved order of protection, the following steps must be taken to complete short form notification.

1. Complete order of protection short form notification.
 - You are authorized by statute to detain the respondent for a reasonable period of time in order to complete the notification process. Filling out the short form notification should take no longer than a speeding ticket and will therefore not entail any unlawful detention of a person who is not under arrest.
 - Do not advise the respondent of the LEADS order of protection entry until the short form notification is completed and ready to be served on the respondent.
 - If you are taking the respondent into custody, serve the short form and notify the jail or detention authority that the subject has not received a copy of the full order of protection.
2. Serve the completed form on the respondent. Explain each condition and read the **NOTICE** provision. Emphasize that the order is now in effect. The respondent may be subject to arrest for violating the order and is responsible for obtaining a full copy of the order of protection. Inform the respondent that a further explanation of their rights and obligations is listed on the back of the order of protection short form notification.
3. Complete the certificate of notification on the bottom of this page. It is not necessary to sign before a notary.
4. A LEADS add on record must be made to the LEADS order of protection entry to indicate the short form notification has been served.

Expedite distribution of copies.

First copy - Respondent

Second copy - Retain for your agency file

Third and Fourth copies - Mail to Sheriff's Office **where the order was issued.**

The Sheriff's Office is responsible for distributing the Fourth copy to the Court Clerk.

Law Enforcement Agency Copy Order of Protection Short Form Notification

Order of Protection Short Form Notification

<p>Date of Service: _____ Time: _____</p> <p>Respondent's Name (Person Served): _____</p> <p>Respondent's Date of Birth: _____</p> <p>Petitioner's Name (Person Protected): _____</p> <p>Other Protected Parties: _____ _____</p>	<p>An order of protection was entered against you on _____ in _____ County by Judge _____ Court File # _____</p> <p>A hearing is set on this matter. If you fail to appear, a default order may be entered against you. The hearing details: Date: _____ Time: _____ Location: _____</p> <p><input type="checkbox"/> Officer unable to provide this information. You must obtain the full order for this information. Instructions for obtaining the full order are on the back of this form.</p>
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The following are some of the restrictions placed on you. You must obtain a copy of the order for a complete list of restrictions. Instructions for obtaining the full order are on the back of this form.

1. You must not further abuse, harass, intimidate, or harm the petitioner or other protected parties.
2. You must not enter the petitioner's residence.
3. You must stay away from petitioner and protected parties at additional locations.
4. You must attend counseling.
5. Petitioner has been given physical care and possession of child(ren).
6. Petitioner has been given temporary legal custody of child(ren).
7. You may visit the child(ren) only at certain times (listed on the full order).
8. You must not remove child(ren) or hide the child(ren) from the petitioner.
9. You must appear in court or you must appear in court with the child(ren).
10. You must not possess certain personal property.
11. You must not damage, destroy, conceal, or sell certain personal property.
12. You are required to pay temporary support.
13. You are required to pay petitioner for losses and expenses.
14. You must not enter the residence while under the influence of drugs or alcohol.
15. You must not access child(ren)'s school, medical or other records.
16. You are required to pay for temporary shelter and counseling of the petitioner.
17. You are also ordered to _____ and
 you must not possess a firearm.

Notice to respondent: The order of protection is now enforceable. You must report to the office of the sheriff or the office of the circuit court in the county that issued the order to obtain a copy of the full order of protection. You are subject to arrest and may be charged with a misdemeanor or a felony if you violate any of the terms of the order of protection.

Respondent's current address: _____

Affidavit of Service

I certify that on _____ day of _____ of 20____, in _____ County at _____ a./p. I personally performed a short form notification to _____. I further certify that I orally informed the person of the conditions checked and the enforcement notice listed.

Officer _____	Agency _____
Signature _____	Agency Case # _____
Badge # _____	

Instructions for Sheriff

When a LEADS hit was received for an unserved order of protection, the following steps were taken to complete short form notification.

1. Law enforcement officer completed order of protection short form notification and served the respondent.
2. Law enforcement officer explained each condition and read the **NOTICE** provision, emphasizing that the order was now in effect and the respondent may be subject to arrest for violating the order.
3. Law enforcement officer completed the certificate of notification on the bottom of this page. It was not necessary to sign before a notary.
4. A LEADS add on record should have been made to the LEADS order of protection entry to indicate the short form notification had been served.
5. The respondent's copy contained further explanation of their rights and responsibilities, and advised the respondent of their responsibility to obtain the full order of protection.

Sheriff, please follow LEADS protocol in updating the LEADS order of protection entry.

Expedite distribution of copies.

First copy - Respondent

Second copy - Retained for law enforcement agency file

*Third and Fourth copies - Mail to Sheriff's Office **where the order was issued.***

The Sheriff's Office is responsible for distributing the Fourth copy to the Court Clerk within 48 hours.

Sheriff's Office Copy Order of Protection Short Form Notification

Order of Protection Short Form Notification

Date of Service: _____ Time: _____ Respondent's Name (Person Served): _____ Respondent's Date of Birth: _____ Petitioner's Name (Person Protected): _____ Other Protected Parties: _____ _____	An order of protection was entered against you on _____ in _____ County by Judge _____ Court File # _____ A hearing is set on this matter. If you fail to appear, a default order may be entered against you. The hearing details: Date: _____ Time: _____ Location: _____ <input type="checkbox"/> Officer unable to provide this information. You must obtain the full order for this information. Instructions for obtaining the full order are on the back of this form.
---	---

The following are some of the restrictions placed on you. You must obtain a copy of the order for a complete list of restrictions. Instructions for obtaining the full order are on the back of this form.

1. You must not further abuse, harass, intimidate, or harm the petitioner or other protected parties.
2. You must not enter the petitioner's residence.
3. You must stay away from petitioner and protected parties at additional locations.
4. You must attend counseling.
5. Petitioner has been given physical care and possession of child(ren).
6. Petitioner has been given temporary legal custody of child(ren).
7. You may visit the child(ren) only at certain times (listed on the full order).
8. You must not remove child(ren) or hide the child(ren) from the petitioner.
9. You must appear in court or you must appear in court with the child(ren).
10. You must not possess certain personal property.
11. You must not damage, destroy, conceal, or sell certain personal property.
12. You are required to pay temporary support.
13. You are required to pay petitioner for losses and expenses.
14. You must not enter the residence while under the influence of drugs or alcohol.
15. You must not access child(ren)'s school, medical or other records.
16. You are required to pay for temporary shelter and counseling of the petitioner.
17. You are also ordered to _____ and
 you must not possess a firearm.

Notice to respondent: The order of protection is now enforceable. You must report to the office of the sheriff or the office of the circuit court in the county that issued the order to obtain a copy of the full order of protection. You are subject to arrest and may be charged with a misdemeanor or a felony if you violate any of the terms of the order of protection.

Respondent's current address: _____

Affidavit of Service

I certify that on _____ day of _____ of 20____, in _____ County at _____ a./p. I personally performed a short form notification to _____. I further certify that I orally informed the person of the conditions checked and the enforcement notice listed.

Officer _____	Agency _____
Signature _____	Agency Case # _____
Badge # _____	

Instructions for Court Clerk

When a LEADS hit was received for an unserved order of protection, the following steps were taken to complete short form notification.

1. Law enforcement officer completed order of protection short form notification and served the respondent.
2. Law enforcement officer explained each condition and read the **NOTICE** provision, emphasizing that the order was now in effect and the respondent may be subject to arrest for violating the order.
3. Law enforcement officer completed the certificate of notification on the bottom of this page. It was not necessary to sign before a notary.
4. A LEADS add on record was made to the LEADS order of protection entry to indicate the short form notification had been served.
5. The respondent's copy contained further explanation of their rights and responsibilities, and advised the respondent of their responsibility to obtain the full order of protection.

Copies distributed:

First copy - Respondent

Second copy - Retained for law enforcement agency file

Third and Fourth copies - Mail to Sheriff's Office **where the order was issued.**

The Sheriff's Office is responsible for distributing the Fourth copy to the Court Clerk.

Court Copy Order of Protection Short Form Notification

Attachment C

Determining the Primary Aggressor

Consider The Following

- Information from 911 Call
- Prior Contacts
- Criminal History
- Past or Present Signs of Fear
- Use of Power & Control Tactics

Determining The Primary Physical Aggressor

Did more than one person use or threaten to use violence?

NO

Single Custodial Arrest

YES

Was one of the parties acting in Self Defense?

Injuries sustained from actions consistent with self defense include bite marks on the chest, biceps or forearms and scratches on the face, chest, or neck.

NO

Can you determine the primary Physical Aggressor?

Consider

1. The intent of the law to protect victims of domestic violence
2. The relative degree of injury or fear inflicted (Level of violence)
3. An individual's ability to defend themselves
4. Past or present signs of fear
5. Use of Power and Control Tactics to intimidate or threaten victims
6. Criminal history of involved parties
7. Past or present Restraining Orders

YES

Single Custodial Arrest

Were the parties involved Mutual Combatants?

Dual arrests should be limited to those incidents when an officer determines that both parties were mutual combatants, equally involved in the commission of a crime against another person, and neither person was acting in self defense.

NO

Option 1

Arrest and confine the primary physical aggressor. Refer the second party to the District Attorney's Office for review.

Option 2

Review the investigation with an operations supervisor and seek approval before arresting and confining both parties.

Chapter 3:
State's Attorney Component

Chapter 3: State’s Attorney Component Table of Contents

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I. Introduction

The *State's Attorneys' Component* of the Illinois Model Domestic Violence Protocol is intended to be utilized in conjunction with Chapter 1 of the protocol.

The *Goals and Intentions and Guiding Principles*, in Chapter 1, form the basis of the beliefs upon which this protocol was designed. When a situation arises for which the protocol has no answer, state's attorneys may refer to the *Guiding Principles* and make decisions that fit within that framework.

It is the desire of the task force that this protocol provides guidelines and information to assist state's attorney offices across Illinois as they update existing protocols or develop new ones. The guidelines within this protocol, incorporated with local knowledge of best practices, will assist state's attorneys with the skills necessary to effectively prosecute the laws this state has developed to protect victims of violence.

II. Structures and strategies for effective prosecution

This section offers techniques to successfully prosecute domestic violence cases. Successful intervention by the courts is the best way to stop the violence and hold the abuser accountable. State's attorneys should work from a pro-prosecution perspective.

A. Vertical prosecution

With vertical prosecution, the same prosecutor stays with a domestic violence case from beginning to end. Vertical prosecution is preferable in domestic violence cases. Prosecutor familiarity with domestic violence is necessary for responding effectively to these cases. Therefore, where staff size permits, state's attorney's offices should designate one or more assistants to prosecute all phases of domestic violence cases. Further, both felony and misdemeanor cases should be handled within the domestic violence unit. It also reduces the need for a victim to repeatedly describe the crime and allows for a rapport to develop between the victim and the prosecutor.

B. Centralized domestic violence court

Where possible, scheduling all domestic violence cases for a single court with a designated judge is recommended. As in other areas of law, such specialization allows for in-depth knowledge of relevant laws and the unique needs of battered victims and how to work with them.

C. Knowledge of domestic violence dynamics

1. Training

Everyone in a state's attorney office should receive training on the dynamics and prevalence of domestic violence, the relevant provisions of the law, both state and federal, aggressor identification, safety planning, dangerousness issues, child

abuse, elder abuse, and their office's policies on handling domestic violence cases. This training should include information on evidence collection, referral sources, how to be accountable to victims, intervention strategies, and jurisdictional policies.

Specialized training should be provided to all new staff, and to all staff on a regular and ongoing basis. Staff should be provided with opportunities for multi-disciplinary and cross-training with other professions and specializations, including law enforcement and the judiciary, domestic violence advocates, juvenile court staff, probation, elder abuse services, and child protective professionals.

2. Potential abuser behaviors concerning the court system

State's attorneys should take steps to ensure the offender does not use the court system as another means of exercising power and control over the victim. The offender may employ several strategies within the courtroom to achieve this end. Some of these are not always obvious to those working with the victim.

Behaviors that the abuser or a third party may use to manipulate the courts and the victim include any or all of the following:

- a.** Threatening the victim or victim's family with further violence.
- b.** Threatening other witnesses.
- c.** Assaulting the victim during travel to or from the courthouse, or during the court hearing.
- d.** Requesting repeated changes of counsel and/or continuances.
- e.** Accompanying the victim to the prosecutor's office, law enforcement detective's office, or courtroom.
- f.** Using proximity to the victim or to persons with the victim in the courtroom to continue intimidation and violence. For example, sending the victim notes during the proceedings, following the victim in and out of the courtroom, bringing family or friends to the courtroom to intimidate the victim, and threatening to physically assault the victim or family.
- g.** Using courtship behaviors, such as sending flowers, love letters, or gifts, to harass and manipulate the victim.
- h.** Manipulating the victim into recanting by claiming to change and using behaviors during this process to make the victim believe this is true.

- i. Appearing to be reasonable and willing to cooperate while claiming that there is something wrong with the victim.
- j. Falsely claiming to be the victim, possibly including attempting to file charges against the victim or obtain an order of protection against the victim.

Effective prosecution strategies and prosecutors that understand the dynamics of domestic violence can diminish the influence of these behaviors.

3. Potential victim behaviors concerning the court system

Prosecutors may find that victims of domestic violence may not respond to the court system in the same manner as victims of other crimes. Their behavior may seem confusing or contradictory.

- a. Some victims can appear angry and irrational, and do not readily cooperate with prosecutors who wish to pursue their case. The victim may be challenging and frustrating to work with, and because of this the abuser may seem calm and reasonable in comparison to the victim.
- b. The victim may deny that abuse is taking place.
- c. The victim may recant, change the story, refuse to cooperate with prosecutors, refuse to testify, or testify for the defense.

D. Employ victim safety considerations

State's attorneys should employ the following list of safety considerations adapted from the work of the American Prosecutors Research Institute (2006) for enhancing victim safety:

1. Contact the victim early and often.
2. Work with domestic violence advocates.
3. Ensure that someone works with the victim to create a safety plan.
4. Prepare the victim for court.
5. Institute vertical prosecution, in which one prosecutor handles the case throughout, from charging through trial and sentencing.
6. Assist with and enforce orders of protection and no contact provisions.
7. Always keep the victim informed.

8. Place the focus on the offender or the system, not on the victim.
9. Collect and share data with other criminal justice agencies and victim support agencies.
10. Start public awareness initiatives.
11. Do not minimize the violence.
12. Institutionalize policies, protocols, procedures, forms, and best practices.
13. Remember, holding the offender accountable will help victim safety.

E. Evidence-based prosecution

The use of evidence-based prosecution, also called victimless prosecution, prioritizes evidence-based prosecution and recognizes victim needs and safety as well as conviction rates.

1. What is evidence-based prosecution?

Evidence-based prosecution relies on the evidence collected on the case rather than the testimony of the victim. This method of prosecution has long been used in the prosecution of homicide and gang-related cases. Evidence-based prosecution is a successful strategy that can be used to prosecute a case whether or not the victim testifies. In evidence-based prosecution, the state's attorney focuses on the criminal behavior of the defendant and on the evidence available rather than on the testimony of the victim. Keys to successful evidence-based prosecution are (Viswanathan, 2003; King-Reis, 2005; Markarian, 2003):

- a. Law enforcement proceeds with all investigations of domestic violence as if the victim is not going to testify. Evidence is gathered and documented that supports the case with or without victim testimony. In this way, the prosecution has evidence to back the victim's testimony if he or she does testify, and independent evidence to proceed if the victim does not testify.
- b. The prosecutor proceeds with the charges if there is sufficient evidence to prosecute, implementing a pro-prosecution policy.
- c. The prosecutor makes the decision on whether or not to prosecute without the victim's cooperation on a case-by-case basis. Victim cooperation and victim safety factors are taken into this decision.

2. Evidence in a domestic violence case

As state's attorney's offices develop policies and strategies to reduce the amount of necessary victim participation in the case, they reduce the potential for conflict with victims who do not wish to testify. Starting each case with the assumption

that the victim will not testify leads law enforcement and prosecutors to prepare cases in which such testimony is not needed. With increased training and sophistication within law enforcement agencies, prosecutors find they have the evidence to proceed with many cases with or without victim testimony. The following is a list of types of evidence that can be used to support a domestic violence case (King-Reis, 2005; Markarian, 2003; State of New York Office for the Prevention of Domestic Violence, 1998):

a. Photographs

- Victim's injuries.
- Abuser's injuries, or lack of injuries.
- Blood-stained items.
- Property damage.
- Messages on caller ID or pager (evidence of stalking or violating an order of protection).
- The crime scene.

b. Physical evidence collected at the scene

- Weapons.
- Evidence of alcohol or drug abuse.
- Damaged property.
- Items used to restrain, gag, beat or torture victim.
- Letters with envelopes.
- Victim's diary or calendar documenting abuse.
- Bloody items (clothes, sheets).
- Tapes of phone messages.
- Martial arts paraphernalia.

c. 911 tapes: *Davis v. Washington* confirmed the admissibility of 911 calls in 2006 (see Section XII D). 126 S. Ct. 2266, 2276 (2006).

d. Eye witnesses: Neighbors may have seen or heard the abuse taking place.

e. Excited utterances by victim: Utterances made to law enforcement, neighbors, emergency medical services, nurses, or doctors (see sub-section VIII, D for case law).

f. Abuser's statements: Any statements that demonstrate the abuse or demonstrate inconsistent denial of the abuse.

g. Medical records: The victim's medical records after the incident, as well as a series of medical records that show repeated injuries, are excellent sources of evidence.

- h. Expert medical opinion:** The opinion of a medical expert is useful whether or not the victim sought medical care after the incident.
- i. Expert witness testimony:** Local domestic violence program advocates and local law enforcement officers with extensive experience in domestic violence make excellent expert witnesses.
- j. Evidence of animal abuse.**

3. Victim reluctance

Generally, victims of violent crimes wish to cooperate with the prosecutor and see justice served. Victims of domestic violence, however, do not always act like other victims of violent crimes. This can be misunderstood by prosecutors and judges to mean that the victim is uncooperative. However, victims are often reluctant to testify in court for a number of reasons, including:

- a. Fear:** Victims often fear for their safety when criminal charges are pursued, and these fears can be justified. When the victim pursues or follows through with charges, the abuser may threaten the victim in a number of ways. The victim has experienced the abuser following through on threats in the past. The abuser may still be living with the victim, or the abuser may know the victim's daily routine and have ongoing access to the victim. The abuser may continue to harass, threaten and abuse the victim after the charges were filed.
- b. Distrust of the system:** The courts may have been unable to protect the victim and children in the past. The victim may have a general fear and distrust of the court and its ability to act in a fair and respectful manner. This can be particularly true for women of color, immigrant women, women from impoverished communities, and lesbian, bisexual, and transgender women who know of others in their communities that have had negative experiences within the system.
- c. Wish to move on:** The victim may wish not to relive the whole experience through a court case, but rather wish to move on with life. This may be because the victim has left the abuser and started a new life, or because the victim has reconciled with the abuser.
- d. Shame and guilt:** The victim may feel that in some way her behavior caused the violence, or may feel it is too shameful to be reviewed in a public forum.
- e. Children:** The victim and abuser may have children together. The victim may not wish to pursue charges against the children's other parent. The victim may fear the inevitability of ongoing contact with the abuser for visitation or shared custody of the children or the abuser's threats to try to take the children

if charges are pursued. The victim may also be fearful that the abuser will take it out on the children.

- f. Financial dependence:** The victim may be financially dependent upon the abuser and have no other means of support.

4. Victim safety considerations

The safety considerations of the victim and victim's family should be taken into account when prosecutors decide to pursue a case when the victim is reluctant or has refused to testify. Prosecutors should assess dangerousness components and safety factors. A victim's participation in the courts must never put her in unnecessary danger. Policies should be developed that ensure that the prosecution of a case does not take priority over victim safety, and does not expose a victim to a preventable hazards or costs.

When a prosecutor decides that justice is best served by pursuing a case in which the victim is reluctant or hostile, the state's attorney's office should develop strategies to continue assisting the victim with safety planning, support services, and appropriate referrals. The message should be that the court wishes to assist the victim, regardless of the victim's current level of cooperation.

5. Victim cooperation

State's attorney office should incorporate strategies that assist with victim cooperation. Frequently, these are the same strategies that assist with victim safety. Victims are more likely to be cooperative if:

- a.** The prosecutor works to establish a partnership with the victim in pursuing the case.
- b.** They are believed, listened to, and encouraged by law enforcement officers, prosecutors, and judges.
- c.** They are not made to feel responsible for the victimization or guilty for showing some signs of reluctance to testify.
- d.** They are educated on the process, sentencing options, and other components and potential outcomes of their case.
- e.** The state's attorney office stays in touch with the victim.
- f.** They have a domestic violence advocate or victim witness specialist who supports them throughout all phases of the case.
- g.** They are prepared to give testimony by the state's attorney office.

- h.** When victims show signs of reluctance they are asked why, listened to, and their fears are addressed to the extent possible with education, orders of protection, violation of order of protection charges, and other actions and services as needed.

The United States Supreme Court's decision in Crawford v. Washington, 541 U.S. 36 (2004), strongly impacted the prosecution of domestic violence cases. After Crawford, no matter how reliable, a victim's "testimonial statement" might be, it cannot be admitted against a defendant unless he has had an opportunity to cross-examine the victim. A "testimonial statement" is a statements "made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." Id. at 51-53.

In Crawford, the defendant was charged with stabbing a man who he claimed had previously assaulted his wife. Under police questioning relating to the stabbing, Crawford's wife made a tape-recorded statement at the police station that cast doubt on her husband's claim of self defense. Her statement was later used at trial against her husband in the stabbing case when defendant asserted a spousal privilege to prevent her from testifying against him. The Court found that introduction of such a statement violates the confrontation rights of the defendant.

Today, the parameters of the use of out-of-court statements in domestic violence cases is still being defined, but there are some decisions which give guidance to what is permissible after Crawford. First, the type of statements most relied upon by prosecutors is not affected by Crawford: excited utterances are still admissible. Second, even if a statement is "testimonial," if the defendant interferes with the victim's ability to testify, the statement may still be admitted.

Most courts that have examined the issue after Crawford have held that excited utterances made to non law enforcement (i.e., friends or relatives) are non-testimonial and therefore unaffected by Crawford. In 2006, the United States Supreme Court clarified that 911 calls for emergency assistance are not testimonial in consolidated domestic violence cases. Davis v. Washington, 126 S.Ct. 2266 (2006) (statement identifying assailant during emergency 911 call was not testimonial). However, Davis, also clarified that a domestic violence victim's statements to police on the scene where the emergency was over and that described past events was testimonial.

The forfeiture by wrongdoing doctrine is applicable to this issue. Forfeiture by wrongdoing is a doctrine which prevents a defendant from silencing a victim, thereby making the victim unavailable as a witness, and then seeking to bar testimonial statements. See Davis, 126 S.Ct. at 2280. The doctrine holds that such a defendant forfeits his rights under the Confrontation Clause by his own wrongdoing. The Illinois Supreme Court has found that the doctrine applies "when the assault is motivated at least in part by an intent to interfere with or impede the process of a trial at which all witnesses with relevant knowledge appear and testify and are subject to cross-examination." People v. Stechly, 225 Ill. 2d 246, 272 (2007).

III. Sources of cases and charging considerations

Domestic violence cases come to the attention of the state's attorneys' office in several different ways. The following list reviews those ways:

A. Arrest or charging by law enforcement

Most domestic violence cases result from the arrest or charging of an alleged offender by a law enforcement officer.

B. Initiated by state's attorney after review of case report

In some jurisdictions, law enforcement send reports on all domestic violence related calls, whether an arrest was made or not, to the state's attorney office. Some cases are initiated by the state's attorney following their case review. In most of these cases, the officer was unable to make an arrest because defendant had fled the scene or the officer determined that there was no probable cause to support an arrest.

C. Victim files complaint

Some cases are initiated by the state's attorney when a victim comes to the state's attorney office and files a complaint. In a portion of these cases, the victim is referred to the state's attorney by a victim assistance provider.

The state's attorney is the only one with the authority to press charges, drop charges, or prosecute in domestic violence cases. In making the decision of whether or not to prosecute, and which charges to pursue, the state's attorney should weigh a number of factors.

D. Charged as any crime against a person

Domestic violence cases should be evaluated and charged as any other crime against the person. The fact that the victim and defendant have a family or household relationship should not be a determining factor in the decision to initiate or reject charges, only in the decision as to whether the case is domestic violence in nature.

E. Deciding what charges to file

Domestic battery is a Class A misdemeanor. 720 ILCS 5/12-3.2(b). Domestic battery is distinguishable from simple battery by virtue of the parties involved as well as the provision that a second and subsequent violation becomes a Class 4 felony. Furthermore, the offender will be sentenced to a minimum of 72 hours of imprisonment. 720 ILCS 5/12-3-2(b). Supervision is not an available disposition for the second offense. *Id.*

- 1. Other felony charges:** Other criminal offenses may have occurred at the same time as the domestic battery, including felony crimes such as possession of a weapon or narcotics. It is important to continue to prosecute the misdemeanor domestic violence charge as well as the felony charges. This provides additional protection to the victim that is not available if the domestic violence charge is dropped.

2. **Stalking, strangulation and sexual assault:** The prosecutor should look for signs of stalking, strangulation, possession of firearms or sexual assault when investigating domestic violence cases and charge appropriately. The prosecutor should consider the option of filing charges of criminal sexual assault, aggravated criminal sexual assault, criminal sexual abuse and aggravated criminal sexual abuse for married defendants as well as for non-married defendants. 720 ILCS 5/12-18(a).

F. Consider all evidence in charging

In determining which charges to file, the reviewing attorney should consider the facts of the case and sufficiency of evidence, including the following:

1. Whether or not the offender used or threatened the use of a gun or other weapon.
2. The extent or seriousness of the injuries to the victim.
3. The defendant's prior criminal history.
4. The defendant's history of violence against this victim.
5. Any threats the defendant has made of future violence.
6. Lethality indicators that assist the prosecutor in making an assessment on the defendant's potential for extreme violence or homicide (see Appendices for a sample dangerousness assessment). The prosecutor should be aware that any domestic violence case is potentially dangerous or lethal. When a lethality indicator does not determine extreme risk, it is not necessarily determining that there isn't a lethality risk, just that extreme risk has not been detected with the information available.

G. Availability of independent corroboration

When independent corroboration of the domestic violence offense is available, the prosecutor will have a much stronger case whether or not the victim testifies. Independent corroboration includes:

1. Injuries observed by a person other than the victim.
2. A medical report that indicates injuries.
3. Witness to the crime.
4. Admission by the defendant.
5. Physical evidence present such as weapon, broken furniture, disarray, and torn clothes.

6. 911 call or other taped communication.
7. Video- or audio-taped interviews or statements by the victim, offender or witness.
8. Witnesses to excited utterances by the victim or other family members.
9. Photographs of injuries or the crime scene.
10. Witnesses who heard noises indicating that a domestic violence incident took place, such as screams or furniture being broken.
11. Information from DCFS, domestic violence programs, or other agencies for which the victim signs a release of information.

H. Victim's preference in charging

Whether or not to prosecute is the state's decision. The victim can not make the decision to press charges or to drop charges. However, the state's attorney should give consideration to the victim's safety, when making the decision as to whether or not to prosecute.

I. Declined prosecutions

The state has the right not to pursue charges as the state's attorney deems appropriate. This is known as the right of *Nolle Prosequi*. If the state's attorney office decides not to pursue charges, a written explanation of this decision should be entered into the file. The victim should be contacted, reasons for the decline to prosecute explained, referrals for victim services given, and an invitation to contact the state's attorney office if they have further questions.

IV. Context assessment and aggressor identification

Some cases will come to the state's attorney's office after being investigated by law enforcement, while others will not. Therefore, prosecutors should have the ability to perform a context assessment and aggressor identification to ensure that they are prosecuting a case against the abuser and not against the victim of domestic violence. Aggressors will at times attempt to use the court to further abuse their victims. One of the tactics used by abusers is to attempt to press charges or seek an order of protection. Making quality decisions which properly identify victim and aggressor, sometimes called the predominant, primary, or principal aggressor, are essential.

Quality decisions require a proper assessment of the each of the following:

A. Context

To understand the full picture of violence within a relationship, the context of the violence must be investigated. Each violent act should be examined for *intent* of the person who acted violently, the *meaning* of the act to the recipient, and the *effect* of the violent act on the recipient's future behavior.

B. Aggressor

The aggressor is the person primarily responsible for the pattern of abuse in the relationship and the person attempting to abusively control the other, regardless of what crimes have been committed by either party or what injuries have occurred. Prosecutors should know how to identify the aggressor so as to ensure that they are prosecuting crimes committed by the aggressor, not prosecuting a victim of violence for attempting self-defense. To identify the aggressor, multiple factors should be considered, including:

1. The history of domestic violence between these parties:
 - a. Have law enforcement ever been called to an incident between these two people?
 - b. Was either party arrested? Did law enforcement institute and document an aggressor identification at the time of the arrest?
 - c. Is there or has there ever been an order of protection against either party?
2. Types of injuries, current and previous, including nature, location and severity:
 - a. This is sometimes difficult to determine, and requires investigation, because scratch and bite marks, which are generally defensive wounds, show up immediately. Other more serious injuries, such as bruises or strangulation marks, do not appear until later. Bruises may or may not be present when a victim comes to the court to press charges. Strangulation marks may never be present.
 - b. Does one party attempting to press charges have scratch or bite marks on their face, arms, sides or chest? These are generally defensive wounds received by the aggressor.
 - c. Does one party attempting to press charges have small red marks around their neck or difficulty breathing or speaking? Are they holding their neck, even if no signs are present? These are signs of strangulation and can be difficult to detect. Or, does this person have red marks or bruises around the eye, on the body, or small bruises on the arms or neck that may be finger or thumb prints? This person is more likely the victim.
3. Likelihood of future injury to each person. Past history and signs of danger can be a good indication of likelihood of future injury.
4. The basis and reasonableness of any fear by each person. Which party is afraid of the other?
5. The criminal history of the parties:

- a. Does either party have any prior records for domestic violence against this or any other party?
 - b. Does either party have any prior convictions for other violent crimes against this or any other person?
6. Consider the relative size and strength of the parties. Which partner is more likely to exert power and control over the other based on physical size or strength? The prosecutor may not have this information at the time each of the parties is trying to press charges, so this information will need to be investigated.
7. Do the statements match the injuries? Do explanations for injuries seem likely? Is it possible, as one party says, that the other party attacked them? Do the injuries look like defensive wounds?

C. Self-defense

1. Statutory requirements

- a. A person is justified in using force against another when
 - The user of force reasonably believed they or another was at risk of harm, and;
 - Risk of harm was actual or imminent, and;
 - The force used was reasonably necessary to prevent the infliction of harm. 720 ILCS 5/7-1(a).
- b. A person is justified to used deadly force when the person believes the amount of force was reasonably necessary to prevent
 - Imminent death to oneself or another.
 - Great bodily harm to oneself or another.
 - The commission of a forcible felony. 720 ILCS 5/7-1(b).

2. **Case law requirements:** The First District Appellate Court, in *People v. Evans*, ruled in cases when deadly force is used in self-defense between intimate partners certain facts must be considered in these cases to determine if self-defense is a valid defense. 259 Ill. App. 3d 195, 210 (1st Dist. 1994).

- a. The facts to be considered are:
 - The mental state and sobriety of each person.
 - The difference between the physical attributes, skills, strengths of each person.
 - Prior threats and abuse in the relationship and to what extent these prior threats have been carried out.
 - Whether the attacker was the apparent principle aggressor.
 - Other options that were readily available to quell the attack or escape.
 - The nature and extent of the attack.

- The weapon that was used to stop the attack.
 - Apparent escalation or diminishment of attack at the time force was used.
 - The reasonable apprehension at the time the deadly force was used. *Id.*
- b. Additionally, a woman threatened by a larger man does not have to show “infallible judgment” if she reasonably believes she is in danger of suffering great bodily harm or death. *Id.*

D. Battered women defendants

Many state’s attorneys face the challenge of deciding whether or not to pursue charges when the actual victim of domestic violence has been charged with a domestic violence crime. This can happen when a law enforcement officer inaccurately identifies which party is the aggressor on a domestic violence call, when an officer arrests both parties because both were using violence, or when an abuser (aggressor) claims to be a victim and requests to pursue charges. State’s attorneys should take the following steps to ensure that a victim of domestic violence is not prosecuted:

1. **Aggressor identification:** Prosecutors should ensure that aggressor identifications were accurately completed during law enforcement investigations, or should complete an aggressor identification investigation themselves before pursuing charges in cases in which both parties used violence.
2. **Screening for female heterosexual defendants:** Each female heterosexual defendant should be screened to ensure that she is actually the perpetrator rather than the victim of an abusive relationship. This screening should be conducted separately by two individuals, one from the state’s attorney’s office and one from a domestic violence advocacy program.
3. **Referral to services:** Prosecutors should not pursue charges against victims who have acted in self-defense, retaliation for abuse, or whose charges were part of an abusive partner’s control tactics. Instead, these victims should be referred to domestic violence advocacy programs for assistance.

V. Statutory bail provisions and dangerousness assessments

Many law enforcement, prosecutors and judges have observed that victims are often at an increased risk of danger after an arrest has been made and bail issued. Therefore, 725 ILCS 5/110-10(d) provides provisions to increase the safety of the victim while the defendant is out on bail.

A. Setting bail

In 2006 Illinois passed a bail law regarding domestic offenders. The requirements of this law include:

1. Offenders charged with violent crimes against a family or household member must appear before a judge for bail, if the offender was:
 - a. Subject to an order of protection at the time of crime.
 - b. Previously convicted of a violation of an order of protection.
 - c. Previously convicted of a violent crime against a family or household member.
 - d. Previously convicted of a similar crime in another jurisdiction.

The law enforcement report indicates any of the following:

 - The officer at the scene observed injuries he believes resulted from the incident.
 - The officer at the scene believed the offender has access to or history of using deadly weapons.
 - The officer at the scene believed the offender is a threat to the victim or anyone else.

725 *ILCS* 5/110-5.1(a)(1-2).
2. When setting bail, the judge should consider to the extent possible the alleged offender's:
 - a. History of domestic or other violence.
 - b. Mental health.
 - c. History of violating court or other government orders.
 - d. Potential as a threat to another person.
 - e. Access to weapons or history of using weapons.
 - f. History of alcohol or drug abuse.
 - g. Severity of violence of the offense, including but not limited to:
 - The duration of the incident;
 - If the offense involved serious physical injury, sexual assault, strangulation, a pregnant victim, abuse of pets or forcible entry to gain access to the victim.

725 *ILCS* 5/110-5.1(b)(1-7).
3. The judge should also consider:
 - a. Whether the alleged offender and victim have recently separated.

- b. Whether the alleged offender has exhibited obsessive or controlling behaviors such as but not limited to stalking, placing under surveillance, or isolating the victim.
 - c. Where the alleged offender has expressed suicidal or homicidal ideations.
 - d. Any other relevant information.
725 ILCS 5/110-5.1(b)(8-11).
4. Finally, the law allows for this hearing to be held via video or waived by the court if not practicable. *725 ILCS 5/110-5.1(c).*
5. It is clear that this law encourages judges to assess the dangerousness of domestic violence offenders. Research and years of experience have demonstrated that some acts and tactics of domestic abusers are an indication of how dangerous that abuser may be. The considerations within this law are some of those indicators.

However, when looking for signs of danger, it is also important to remember that only by knowing the pattern and most serious behaviors of an abuser is it possible to determine dangerousness, and even then such an assessment may not be accurate. What this frequently means is that accurate prediction is unlikely. Some jurisdictions use dangerousness or lethality assessment tools that take into account the offender's record, victim interview, offender interview, and psychological testing. However offenders cannot be relied on, victims may be minimizing or may feel too intimidated to report accurately, and psychological testing, which is based on personality characteristics, is not reliable for this offender population. Additionally, many abusers may not have criminal records even if they have a long history of violence. Further, the records of abusers' crimes that may have been committed as part of abusive or stalking behavior may not be very illuminating, since there may be no indication that those crimes were domestic violence related. With these precautions in mind, see the Appendices for a sample dangerousness assessment.

B. Conditions of bail

When a person is charged with a criminal offense and the victim is a family or household member as defined in *725 ILCS 5/112A-3(3)*, conditions should be imposed at the time of the defendant's release on bail that restrict the defendant's access to the victim. Unless provided otherwise by the court, the restrictions should include the following requirements:

1. The defendant shall refrain from contact or communication with the victim for a minimum period of 72 hours following the defendant's release.
2. The defendant shall refrain from entering or remaining at the victim's residence for a minimum period of 72 hours following the defendant's release.

725 ILCS 5/110-10(d).

While the bail provision of Section 110-10(d) is not a substitute for an order of protection, because the order provides a wider range of remedies to the victim, it does provide a 72-hour protection to the victim. If the abuser returns to the household after posting bail, the abuser should be rearrested pursuant to another criminal charge such as violation of an order of protection, if one exists, or criminal trespass to residence, when the defendant no longer has legal authority to be at the residence. 720 ILCS 5/19-4(a)(1). The state's attorney should then take appropriate action against the abuser for the violation of the condition of bail and any additional criminal charges. *Note: 72-hour no-contact provisions are not entered into LEADS.*

C. Firearms

1. The court may order a person to surrender all firearms in his or her possession to a law enforcement officer if that person has been charged with, among other things, stalking, aggravated stalking, or domestic battery. 725 ILCS 5/110-10(a)(5). Such firearms should then be impounded and the bailee should surrender his or her firearm owners identification card (FOID). All legally possessed firearms shall be returned upon the charges being dismissed, or if the person is found not guilty, unless the finding of not guilty is by reason of insanity.
2. As bail conditions are not currently entered into LEADS, the prosecutor should give the complaining witness a copy of the bail sheet so it can be shown to law enforcement, if necessary. The prosecutor may also fax copies of all bail requirements to law enforcement departments, as practicable.

D. Violation of bail

The Violation of Bail Bond statute provides for a Class A misdemeanor offense for a bail violation of the 72-hour no-contact provision. 720 ILCS 5/32-10. Therefore, if a defendant returns to the victim's residence or contacts the victim in any way within 72 hours of having been released on bail on a domestic violence case, the defendant should be prosecuted for the offense of Violation of Bail Bond. *Note: Bail provisions, including the 72-hour no-contact provision, are not posted in LEADS.*

VI. Evidence collection

Evidence collection can be the single most important factor in obtaining a successful prosecution. Evidence can and should be obtained according to these guidelines in each case:

A. Victim interviews

Victim interviews can be critical in providing victims with information and in gaining their participation in the court process. Prosecutors can use the victim interview as an opportunity to demystify the system and provide the victim with an understanding of the court process. Abusers often give victims incorrect information regarding the courts. Interviews, particularly those obtained early in the case, are important in ascertaining the dangerousness

of the perpetrator. They provide the prosecutor with good opportunity to discuss safety issues and refer the victim to a domestic violence advocate or victim witness staff to develop a thorough safety plan (see Chapter 1). Further, the interview provides the prosecutor with an opportunity to try to forge a partnership with the victim in the fight for justice and a remedy to the situation. Finally, a written summary of statements made by the victim can be signed by the victim and used to refresh the victim/witness at trial.

Whenever practicable, video- or audio-taped interviews or statements could be excellent sources of evidence for trial if the proper burden is met.

Victim interview questions may include the following:

1. Has the offender spoken with the victim since the incident? If so, when? Were threats or promises made?
2. Has the victim been contacted by any family members or friends since the incident? What did they say? Have they discouraged going forward with charges or have they been supportive?
3. Is the victim able to support the family? Where are they living? What assistance do they need? (This provides a good opportunity to give the victim referrals.)
4. How long has the abuse been taking place? Have the children and/or pets been abused?
5. How has the victim been hurt in the past? Has the victim's life or the lives of family members been threatened?
6. Have weapons been used? If so, which? Have the victim describe the incident(s).
7. Has the victim ever been forced into unwanted sexual activity?
8. Is the victim still feeling unsafe?

B. Photographs of victim's injuries

On-scene photographs are critical to document the actual level of violence and injury. Photographs should include:

1. The victim's injuries.
2. The premises which serve to corroborate the purported incident. Include weapons, broken glass or objects, torn clothing, blood-stained articles, damaged personal possessions of the victim, or other articles which can be used to corroborate the occurrence of violence.

C. Follow-up photographs

Photographs taken two to 21 days after the incident often provide far more powerful evidence of the true violence than initial photographs. Often bruises do not show until after a few days and swelling may not happen immediately. Severe discoloration often peaks 14 to 21 days after the injury.

D. 911 and other emergency communications

1. When available, 911 tapes or other taped communications should be reviewed on every case. Do not rely on printouts, as they may not reflect the full impact of the call. A tape accurately captures the victim's emotional state, it provides a microphone into the violent incident, and it often records statements of a child, witness, or defendant which the prosecutor may not be aware of.
2. When introduced at trial, these tapes reveal the severity of the domestic violence and can be the most important piece of evidence in proving the case.
3. A copy of the 911 tape should be obtained as quickly as possible, as the tapes are often erased or destroyed within a brief period of time.
4. In 2006, the U.S. Supreme Court affirmed in *Davis v. Washington* that 911 calls are not testimonial and not subject to confrontation clause requirements, and therefore admissible if the victim is unwilling or unavailable to testify at trial. 126 S. Ct. 2266, 2276 (2006).

VII. Subpoenas, plea negotiations, dismissals, and continuances

A. Subpoenas

1. Victim subpoena

A number of protocols and policies on prosecution of domestic violence suggest subpoenaing victims both to relieve them of the responsibility for choosing to testify against the abuser, and to encourage or force them to testify. Anecdotal evidence provided by prosecutors suggests that subpoenaing victims is helpful to the prosecution of domestic violence cases. However, a large study conducted in 2000 of victim reluctance and case outcome suggests that subpoenaing the victim does not lead to a higher likelihood that the victim will testify (Belknap, Graham, Hartman, Lippen, Allen, and Sutherland). These researchers, and other proponents of victim empowerment strategies, propose not using victim subpoenas. Policies following this line of thought suggest strongly encouraging, but not forcing, victims to testify.

- a. **Creating policy on victim subpoenaing:** It is recommended that state's attorney offices make their own judgments as to whether it is in the best interest of justice to subpoena victims. When developing policy in this area, prosecutors should closely take into account the strategies and policies they

have developed to encourage victims to testify, and whether more work needs to be done in this area.

b. Subpoena early: State's attorneys offices that choose to subpoena victims should issue the subpoena as early as possible and inform the domestic violence advocate or victim witness personnel working with the case of the subpoena.

c. Do not charge victims: State's attorneys offices that choose to subpoena victims to testify in court should not charge victims who fail to appear in response to the subpoena.

2. Other witnesses subpoenas

Subpoenaing other witnesses in the case has been found to be useful in evidence-based prosecution. When subpoenaing other witnesses:

a. Subpoena early: State's attorney's offices should give the witness as much notice of the court date as possible.

b. Prepare witness: State's attorney's offices should educate witnesses on the court process and prepare witnesses to testify in the case.

B. Plea negotiations, reductions, dismissals or diversions

1. Policy against reductions and dismissals

The state's attorney's office should have a policy that discourages the reduction or dismissal of domestic violence cases. The state's attorney should reduce or dismiss a case only if required by the ends of justice.

The state has the right to *Nolle Prosequi*, to not prosecute the charges as the prosecutor determines is appropriate.

If the state's attorney determines that a reduction or dismissal is required by the ends of justice, the state's attorney should enter a written explanation of this decision into the file. The victim should be contacted, reasons for the decline to prosecute explained, referrals for victim services given, and an invitation to contact the state's attorney's office if they have further questions.

2. Victim consultation on plea bargains

Where practical, the state's attorney should consult with the victim before making an offer of a plea bargain to the defendant or entering into negotiations regarding a plea agreement.

C. Continuances

1. Minimize prosecution continuances

Continuances prolong justice and increase risk for the victim. The prosecution should proceed to trial as quickly as the court docket allows. Continuances should be requested only when absolutely necessary and supported by proper statutory reason, by a written motion and affidavit.

2. Minimize defense continuances

Defense continuances should be opposed when unsupported by written motion and affidavit and not based upon a recognized statutory provision. If the defense asserts as a basis for continuance that a material witness is unavailable for trial per 725 ILCS 5/114-4(b)(3), the prosecutor should consider stipulating to the testimony of that witness, if such stipulation, without cross examination, would not be detrimental to the prosecution's case.

3. When continuances are granted

If a continuance is granted to either party, the following responsibilities of the prosecutor should be enacted:

- a.** The prosecutor should ask the court to remind the defendant that all conditions of bail or orders of protection remain in effect.
- b.** The prosecution should move for all previously issued subpoenas to remain in full force and effect.
- c.** The prosecutor should also ensure that any orders of protection remain in effect throughout the trial process.

VIII. Sentencing

Evidence exists to demonstrate that arrest and jail deter future incidents of domestic violence (Ventura and Davis, 2005). The following outlines recommended policies to assist state's attorneys during sentencing proceedings.

A. Basis of recommendations for sentencing

The state's attorney's recommendation for sentencing should be based on facts of the case and should be commensurate with sentences for other crimes. Since domestic violence is often repeated, it is important to build a record and thereby avoid a subsequent offense being treated as a first offense.

B. Supervision

Supervision is not available as a disposition for any defendant who has pleaded guilty or found guilty of domestic battery. 730 ILCS 5/5-6-1(c)(i).

C. First time offenders

In the case of first time offenders, the assigned attorney should request, at a minimum, that the court order payment of court costs and order the defendant to participate in an abuser treatment program as a condition of probation. It is important that prosecutors request these fines and fees because a portion of those fees go to local domestic violence service providers which assist victims. When required by the ends of justice, probation and/or incarceration should also be requested by the prosecutor.

D. Repeat offenders

A second domestic battery charge is a Class 4 felony. 720 ILCS 5/12-3.2(b). Where the defendant has not served jail time, the prosecutor should seek a jail sentence. Domestic battery statute mandates a sentence of at least 72 hours of incarceration for any second offense committed. *Id.*

If the repeat offender has not previously attended a partner abuse intervention program, the prosecutor should seek that the court mandate these services at this time. The prosecutor should also seek that the court impose probation, and if the repeat offender has previously been ordered into partner abuse intervention services, a recommended condition of probation should be screening or counseling as deemed appropriate by probation.

E. Partner abuse intervention programs

Abuser's programs, also called batterer's treatment, batterer's education programs, or abuser's services, are entitled partner abuse intervention programs (PAIPs) in Illinois. There have been numerous studies on partner abuse intervention programs, with mixed outcomes. While some large studies have found that partner abuse intervention programs have positive effects on reducing the likelihood of violence with some abusers (Gondolf, 2002 and 1998; U.S. Department of Justice, 1998), others have not found partner abuse intervention programs to have significant impact on the behavior and recidivism rate of abusers (Labriola, Rempel and Davis, 2005). What researchers and experts in the field do generally agree on however, is that partner abuse intervention programs are not a substitute for criminal sanction, but a resource to utilize along with criminal sanctions.

- 1. Partner abuse intervention programs:** The Domestic Violence Advisory Council to the Illinois Department of Human Services (IDHS) has written and updated a manual reviewing the requirements state approved partner abuse intervention programs must meet. IDHS updates the list of approved service providers on a regular basis. Courts should refer offenders to state approved partner abuse intervention services only. While substance abuse treatment, individual counseling or anger management programs may also be appropriate additional services, these are not substitutes for and do not constitute abusers' programs.
- 2. No diversion:** Partner abuse intervention programs should not be used as a diversion for a criminal conviction. Similarly, offenders should not be allowed to plead guilty to a lesser non-domestic violence charge in exchange for receiving

services. Failure to obtain a conviction on a domestic violence charge limits further penalty enhancements in the future, and can cause a law enforcement officer and the courts to treat a repeat domestic violence offender as a first time domestic violence offender.

- 3. Non-completion penalties:** Before an offender receives abusers' programs as part of a sentence, sanctions should be in place for offenders who do not complete the program. Such sanctions include probation or jail sentences.

F. Fines

- 1. For domestic battery:** For the offense of domestic battery, an additional fine in the amount of \$10 shall be added to every penalty imposed in sentencing upon a plea of guilty, stipulation of facts, or finding of guilty resulting in a judgment of conviction or order of supervision. *730 ILCS 5/5-9-1.6.*
- 2. For domestic violence:** In addition to any other penalty imposed, a fine of \$200 shall be imposed upon any person who pleads guilty or no contest to or who is convicted of murder, voluntary manslaughter, involuntary manslaughter, burglary, residential burglary, criminal trespass to residence, criminal trespass to vehicle, criminal trespass to land, criminal damage to property, telephone harassment, kidnapping, aggravated kidnapping, unlawful restraint, forcible detention, child abduction, indecent solicitation of a child, sexual relations between siblings, exploitation of a child, child pornography, assault, aggravated assault, battery, aggravated battery, heinous battery, aggravated battery of a child, domestic battery, reckless conduct, intimidation, criminal sexual assault, aggravated criminal sexual assault, criminal sexual abuse, violation of an order of protection, disorderly conduct, endangering the life or health of a child, child abandonment, contributing to the dependency or neglect of a child, or cruelty to children and others provided that the offender and victim are family or household members as defined at *750 ILCS 60/103(6)*. *730 ILCS 5/5-9-1.5.*
- 3. For violation of order of protection:** In addition to any other penalty, a fine of \$20 shall be imposed upon any person who is convicted of or placed on supervision for violation of an order of protection; provided that the offender and victim are family or household members as defined at *750 ILCS 60/103(6)*. *730 ILCS 5/5-9-1.11.*
- 4. Burden on victim:** Upon request of the victim or the victim's representative, the court should determine whether the fine will impose an undue burden on the victim of the offense. For purposes of this paragraph, the defendant may not be considered the victim's representative. If the court finds that the fine would impose an undue burden on the victim, the court may reduce or waive the fine. The court should order that the defendant may not use funds belonging solely to the victim of the offense for payment of the fine.

G. Victim notice

1. **Sentence or acquittal:** The state's attorney's office should give written notification to the victim of the sentence or the acquittal of the offender.
2. **Appeal:** At the request of the victim, if the case is appealed, notice of the appeal and notice of the outcome of the appeal should be given in writing to the victim.
3. **Incarceration and release:** At the request of the victim, notice of incarceration of the offender, notice of death while in custody, and notice of release should be given in writing to the victim.

IX. Orders of protection

Victims of domestic violence may obtain an order of protection which directs the alleged abuser to avoid contact with the victim and to perform other acts as well. Orders of protection direct the respondent to behave in a certain manner. They create no duty for the victim. This section defines what an order of protection is, how it is obtained, and how it is enforced.

A. Description

1. An order of protection (OP) is a statutory remedy designed to give **family or household members** relief under statutory provisions 725 ILCS 5/112A *et. seq.* or 750 ILCS 60/201 *et. seq.*. The order of protection can both prohibit the abuser from committing certain behaviors and/or order him to perform certain acts. Illinois law does not provide for peace bonds, nor are restraining orders available in most domestic relations situations.
2. **Family or household members** are defined by the IDVA and in the Code of Criminal Procedure as:
 - a. People who are related by blood or by present or prior marriage.
 - b. People who share or formerly shared a common dwelling (apartment or home).
 - c. People who have or allegedly have a child in common.
 - d. People who share or allegedly share a blood relationship through a child.
 - e. People who have or have had a dating or engagement relationship.
 - f. People with disabilities and their personal assistants.
750 ILCS 60/103(6) and 720 ILCS 5-112A-3(3).

B. Availability

An order of protection can be issued in civil, criminal or juvenile court under a number of circumstances. In many counties, staff or volunteers are available from a local domestic violence program to assist victims seeking an order of protection *pro se*.

1. An order of protection can be issued in civil court independently in a civil action, or as part of a divorce proceeding, guardianship, probate or other civil proceeding.
2. An order of protection can be issued in criminal court in connection with a criminal charge when the petitioner is the victim of the offense and the respondent is the defendant.
3. An order of protection can be issued in juvenile court in connection with a delinquency petition.

C. Types and duration of orders of protection

1. Emergency order of protection

An emergency order of protection is valid for 14 to 21 days. 750 *ILCS* 60/220(a)(1) and 725 *ILCS* 5/112A-20(a)(1). In cases where the petitioner alleges that the abuse they are trying to prevent would occur if the respondent were given notice, the emergency order of protection can be entered without giving notice to the respondent. 750 *ILCS* 60/217(a)(3)(i). An emergency order of protection does not have all the remedies of a plenary order. Remedies that are not available include counseling, temporary custody, payment of support, monetary compensation, and reimbursement of shelter costs. 750 *ILCS* 60/217(a)(3).

2. Interim order of protection

An interim order of protection is valid for up to 30 days. 750 *ILCS* 60/220(a)(2) and 725 *ILCS* 5/112A-20(a)(2). This order is issued after one of three conditions have been met: 1) there has to be actual appearance by the respondent, 2) the respondent must have received notice as laid out in statute's notice provisions, or 3) the petitioner is diligently trying to serve process on the respondent. 750 *ILCS* 60/218(a)(3) and 725 *ILCS* 5/112A-18(a)(3). Although not generally available in an interim order of protection, the following remedies can be available if the respondent has been personally served or has filed an appearance in court: counseling; payment of support; monetary compensation; and reimbursement of shelter costs. 750 *ILCS* 60/218(a) and 725 *ILCS* 5/112A-20(b).

3. Plenary order of protection

A plenary order of protection can be valid for differing lengths of time dependent upon the conjunction of the order with other legal proceedings or decrees. If the order of protection is in conjunction with a criminal offense, it can be valid for the length of the defendant's sentence plus two years. 750 *ILCS* 60/220(b)(2)(iii) and 725 *ILCS* 5/112A-20(b)(4). If the order is in conjunction with a divorce proceeding and incorporated into the final judgment, it can be valid for the life of the final divorce decree. If in conjunction with any other proceeding, the order of protection can be valid for the life of the case. 750 *ILCS* 60/220(b)(1)(ii). When the order of protection is independent of another proceeding, its validity is a set period of time up to and not longer than two years. 750 *ILCS* 60/220(b)(1)(iii).

D. Burden of proof

The order of protection proceeding is civil in nature, regardless of whether it is held in a civil, criminal, or juvenile court. 750 *ILCS* 60/205(a) and 725 *ILCS* 5/112A-6(a). The burden of proof for a civil proceeding is preponderance of the evidence, meaning that the evidence in the case demonstrates that the allegations are more likely true than not true. *Id.*

E. Fees

There are no fees for filing or serving orders of protection. 750 *ILCS* 60/202(b).

F. Notice

1. Upon issuance of any order of protection, the clerk should immediately enter the order on the record and file the same, as well as provide a file-stamped copy to the respondent and copies, as needed, to the petitioner. 750 *ILCS* 60/222(a) and 725 *ILCS* 5/112A-22(a).
2. The circuit clerk's office of the issuing judge should, or the petitioner may, on the same day that an order is issued, file a certified copy of that order with the sheriff. 750 *ILCS* 60/222(b) and 725 *ILCS* 5/112A-22(b).
3. The county sheriff should be responsible for entering all orders of protection into the LEADS system on the same day the order is issued by the court whether or not the order has been served. 750 *ILCS* 60/222(b) and 725 *ILCS* 5/112A-22(b).
4. Unless the respondent was present in court when the order was issued, the sheriff should promptly serve the order on respondent and file proof of such service. 750 *ILCS* 60/222(c) and 725 *ILCS* 5/112A-22(c).
5. The respondent can also be served via the Order of Protection Short Form Notification Form, also called the "short form." This form is a one page summary of the order of protection that can be served by any law enforcement officer during any encounter with a respondent. 750 *ILCS* 60/222(c) and 725 *ILCS* 5/112A-22(c).

6. Notice to schools:

- a.** Upon the request of the petitioner, the clerk of the issuing judge should file a certified copy of an order of protection with the day-care facilities, pre-kindergarten, pre-school private school, schools or the principal office of the school district and universities and colleges in which any children of the petitioner are enrolled.
- b.** A private school may prohibit disclosure by any school employee to any person against whom the school has received a certified copy. A public school district may prohibit disclosure in accordance with the applicable provisions of the School Code.

750 *ILCS* 60/222(e,f) and 725 *ILCS* 5/112A-22(e,f).

G. Full faith and credit

Congress enacted the Violence Against Women Act, otherwise known as VAWA, in 1994 instructing jurisdictions to give full faith and credit to all valid orders of protection issued by other jurisdictions. This requires the enforcement of all valid orders of protection to protect victims of domestic violence wherever a violation of the order occurs, regardless of the ordering jurisdiction. An order of protection is entitled to enforcement if:

- 1.** The court that issued the order of protection had jurisdiction over the parties and the matter under the law at the time of issuance.
- 2.** The respondent was given reasonable notice and opportunity to be heard to protect his due process rights. In the case of an order of protection that is entered *ex parte*, these notice and opportunity standards must be provided within the time required by the law of the issuing state.
18 USC § 2265(b)(1-2) (2006).

The remedies included, protected parties, and length of time the order is in effect are determined by the state issuing the order. The state where the violation occurs must honor the order of protection, regardless of whether the laws of the two states are inconsistent. 735 *ILCS* 5/12-652(c).

The laws of the state occurred, however, determine how the violation is enforced. The state must enforce a foreign order in the same manner that it enforces orders given within the state. *Id.*

A person protected by an order of protection has the right to file a certified copy of the order in any judicial circuit they believe necessary for their protection. State residency is not a requirement for filing the order in a jurisdiction other than where it was granted. The clerk of court of the jurisdiction in which the order is being filed should:

- Treat the foreign order just as an order of that jurisdiction would be treated. The exception is that the clerk of court must not mail notice of the filing to the respondent. 750 *ILCS* 60/222.5(b)(1) and 725 *ILCS* 112A-22.5(b)(1).

- File a certified copy of the order of protection with the sheriff or other law enforcement agency for LEADS entry on the same day the order was filed. Whether or not the order of protection has been previously filed, the order is entitled to enforcement. 750 *ILCS* 60/222.5(b)(2) and 725 *ILCS* 112A-22.5(b)(2).

X. Remedies of Orders of Protection

(Note: The citations listed after each remedy is to both the civil and criminal remedies found in orders of protection sections of the particular statute.)

A. Prohibition of abuse, neglect or exploitation

This remedy prohibits the respondent from further abusing, neglecting or exploiting the petitioner. Abuse includes physical abuse, harassment, intimidation, interference with personal liberty, or willful deprivation. 750 *ILCS* 60/214(b)(1) and 725 *ILCS* 5/112a-14(b)(1).

This remedy is law enforcement enforceable. 750 *ILCS* 60/223(a)(1) and 725 *ILCS* 5/112a-23(a)(1). A respondent who violates this remedy should be arrested and charged with the crime of violation of an order of protection.

B. Exclusive possession of residence

This remedy grants the petitioner exclusive possession of the residence. It can be used if the petitioner has the right to occupy and the respondent does not, or if both have the right to occupy and the balance of hardships favors the petitioner. 750 *ILCS* 60/214(b)(2) and 725 *ILCS* 5/112a-14(b)(2).

This remedy is law enforcement enforceable. 750 *ILCS* 60/223(a)(1) and 725 *ILCS* 5/112a-23(a)(1). A respondent who violates this remedy should be arrested and charged with the crime of violation of an order of protection.

C. Stay away and additional prohibitions

This remedy requires the respondent to stay away from the petitioner or anyone else that is protected by the order. 750 *ILCS* 60/214(b)(3) and 725 *ILCS* 5/112a-14(b)(3). It can specify times and/or locations, such as home, work, or school where the respondent needs to stay away. *Id.*

This remedy is law enforcement enforceable. 750 *ILCS* 60/223(a)(1) and 725 *ILCS* 5/112a-23(a)(1). A respondent who violates this remedy should be arrested and charged with the crime of violation of an order of protection.

D. Counseling

This remedy can require or recommend that the respondent undergo counseling for a specified amount of time. 750 *ILCS* 60/214(b)(4) and 725 *ILCS* 5/112a-14(b)(4). The counseling may be in a partner abuse intervention program, or it may be substance abuse, mental health, or some other type of counseling deemed necessary by the court. *Id.*

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

E. Physical care and possession of a minor child

This remedy can grant physical care and possession of a minor child to the petitioner, order the respondent to return a minor child to the petitioner, or order the respondent not to remove a child from the petitioner or a person acting in loco parentis. 750 *ILCS* 60/214(b)(5) and 725 *ILCS* 5/112a-14(b)(5).

This remedy is law enforcement enforceable as a violation of the state's child abduction statute. 750 *ILCS* 60/223(a)(2) and 725 *ILCS* 5/112a-23(a)(2). A respondent who violates this remedy should be arrested and charged with the crime of child abduction.

F. Temporary legal custody of a minor child

This remedy allows the judge to grant temporary custody of a minor child to the petitioner. Custody of the minor child has to be in accordance with the section, the Illinois Marriage and Dissolution of Marriage Act, the Illinois Parentage Act of 1984, the Illinois Uniform Child-Custody Jurisdiction and Enforcement Act. 750 *ILCS* 60/214(b)(6) and 725 *ILCS* 5/112a-14(b)(6). There is a rebuttable presumption that temporary custody to the petitioner would be in the best interest of the minor child if there has been determination by the court of abuse. *Id.*

This remedy is law enforcement enforceable as a violation of the state's child abduction statute. 750 *ILCS* 60/223(a)(2) and 725 *ILCS* 5/112a-23(a)(2). A respondent who violates this remedy should be arrested and charged with the crime of child abduction.

G. Visitation

This remedy allows the judge to deny or restrict visitation of a minor child if the respondent has, or is likely to, commit any of the following actions:

1. Abuse or endanger the child during visitation.
2. Use the visitation to abuse or harass the petitioner, or the petitioner's family or household members.
3. Improperly conceal or detain the child.
4. Act in a manner that is not in the best interest of the child.
750 *ILCS* 60/214(b)(7) and 725 *ILCS* 5/112a-14(b)(7).

The court, if it grants visitation shall specify the date and time for visitation. *Id.* The court can order supervised visitation or visitation exchange at a place other than the petitioner's home. The petitioner may refuse to exchange the child if the respondent is under the influence of drugs or alcohol, or if the respondent a danger to the petitioner or the petitioner's

minor child. *Id.* However, the petitioner needs to be aware of the possibility of being charged with interference with visitation if they refuse to exchange the child for visitation.

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(a)(2) and 725 *ILCS* 5/112a-23(a)(2).

H. Removal or concealment of minor child

This remedy prohibits the respondent from removing a child from the state or concealing a child within the state. 750 *ILCS* 60/214(b)(8) and 725 *ILCS* 5/112a-14(b)(8).

This remedy is law enforcement enforceable as a violation of the state's child abduction statute. 750 *ILCS* 60/223(a)(2) and 725 *ILCS* 5/112a-23(a)(2). A respondent who violates this remedy should be arrested and charged with the crime of child abduction.

I. Order to appear in court

This remedy can order the respondent to appear in court and to:

1. Appear with or without minor child.
2. Prevent the abuse, neglect, removal, or concealment of a minor child.
3. Return child to the custody or care of the petitioner.
4. Allow a court-ordered interview or examination of the child or the respondent.
750 *ILCS* 60/214(b)(9) and 725 *ILCS* 5/112a-14(b)(9).

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

J. Possession of personal property

This remedy gives the petitioner exclusive possession of personal property and may require the respondent to turn it over to the petitioner. The respondent must return the property over to the petitioner if either:

1. Petitioner solely owns the property.
2. Parties own the property jointly and sharing it would risk abuse of the petitioner.
3. Parties own the property jointly and the balance of hardship temporary favors the petitioner.
750 *ILCS* 60/214(b)(10) and 725 *ILCS* 5/112a-14(b)(10).

This remedy does not, however, influence ownership of the property, which must be assigned later in a divorce proceeding. *Id.*

This remedy is not law enforcement enforceable unless the respondent can also be charged with theft or criminal damage to property. 750 *ILCS* 60/223(a)(iii) and 725 *ILCS* 5/112a-23(a)(iii). Otherwise, it is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

K. Protection of property

This remedy prohibits the respondent from damaging, destroying, selling, taking, concealing, or otherwise disposing of personal or real property if:

1. Petitioner solely owns the property.
2. Parties own the property jointly and the balance of hardship temporary favors the petitioner.

Relief under this subparagraph is only available if a proper proceeding has been filed under the Illinois Marriage and Dissolution of Marriage Act. 750 *ILCS* 60/214(b)(11) and 725 *ILCS* 5/112a-14(b)(11).

This remedy is not law enforcement enforceable unless the respondent can also be charged with theft or criminal damage to property. 750 *ILCS* 60/223(a)(iii) and 725 *ILCS* 5/112a-23(a)(iii). Otherwise, it is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

L. Order of payment of support

This remedy orders the respondent to pay support or child support for a minor child in the petitioner's care if the respondent would be obligated to do so under Illinois Marriage and Dissolution of Marriage Act (IMDMA). 750 *ILCS* 60/214(b)(12) and 725 *ILCS* 5/112a-14(b)(12).

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

M. Payment for losses

This remedy requires the respondent to pay for losses suffered as a direct result of abuse, including as medical expenses, lost wages, temporary housing, reasonable attorney fees, court cost, or damaged property. 750 *ILCS* 60/214(b)(13) and 725 *ILCS* 5/112a-14(b)(13).

The court can also order the respondent to pay the expenses incurred in the search and recovery of a minor child in the case of improper concealment or removal of a minor child. 750 *ILCS* 60/214(b)(13)(ii) and 725 *ILCS* 5/112a-14(b)(12)(ii).

This remedy is court enforceable on a contempt of court order.

N. Prohibition of entry

This remedy prohibits the respondent from entering or staying in the home while under the influence of drugs or alcohol and constituting a threat to the petitioner or the petitioner's child. 750 *ILCS* 60/214(b)(14) and 725 *ILCS* 5/112a-14(b)(14).

This remedy is law enforcement enforceable. A respondent who violates this remedy should be arrested and charged with the crime of violation of an order of protection. 750 *ILCS* 60/223(a)(1) and 725 *ILCS* 5/112a-23(a)(1).

O. Prohibition of firearm possession

If the respondent is present in court, or has failed to appear after receiving actual notice of the order of protection, and the court is satisfied that there is any danger of the illegal use of firearms, the court should require that any firearms in the possession of the respondent be turned over to the local law enforcement agency. 750 *ILCS* 60/214(b)(14.5) and 725 *ILCS* 5/112a-14(b)(14.5).

If the respondent has failed to appear, or fails to surrender his or her firearms, the court should issue a warrant for seizure of any firearm in the possession of the respondent. *Id.*

If the respondent is a peace officer, the court should order that any firearms used by the respondent in the performance of the officer's duties be surrendered to the respondent's chief law enforcement executive.

Under this law, the firearms can be retained for safekeeping for the period stated in the court order, not to exceed two years. Firearms should be returned to respondent when this remedy is no longer in effect. *Id.*

This remedy is law enforcement enforceable. A respondent who violates this remedy should be arrested and charged with the crime of violation of an order of protection. 750 *ILCS* 60/223(a)(1) and 725 *ILCS* 5/112a-23(a)(1).

P. Prohibition of access to records

This remedy prohibits the respondent from access to the school or any other records of a child in the care of the petitioner when:

1. The order of protection prohibits the respondent from having contact with the child.
2. The petitioner's address needs to be hidden to protect the petitioner.
3. It is necessary to prevent the abuse, removal, or concealment of the child.
750 *ILCS* 60/214(b)(15) and 725 *ILCS* 5/112a-14(b)(15).

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

Q. Payment of shelter services

This remedy orders the respondent to reimburse a program providing shelter or counseling services. 750 *ILCS* 60/214(b)(16) and 725 *ILCS* 5/112a-14(b)(16).

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

R. Order for injunctive relief

This remedy allows for other relief as necessary to prevent further abuse, neglect, exploitation or to allow for the enforcement of one of the other remedies ordered. 750 *ILCS* 60/214(b)(17) and 725 *ILCS* 5/112a-14(b)(17).

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

XI. Violation of an order of protection

It is the crime of violation of an order of protection (VOOP) for a respondent to violate certain conditions imposed by an order of protection. Jurisdiction exists where a violation occurs: an arrest can be made in any county where a violation occurs, and the courts of that county hear the case. Violations of orders of protection shall be prosecuted with the same vigor as any other portion of the criminal code. Only the respondent can violate an order of protection. A petitioner cannot violate an order of protection. Prosecution for a violation of an order of protection should not bar concurrent prosecution for any other crime, including any crime that may have been committed at the same time as the order of protection violation.

A. Violation of an order of protection:

The respondent commits the crime of violation of an order of protection by having knowingly violated the following remedies:

1. Prohibition against further abuse (Remedy A).
2. Exclusive possession of residence (Remedy B).
3. Stay away and additional prohibitions (Remedy C).
4. Prohibition of entry (Remedy N).
5. Prohibition of firearm possession (Remedy O).
6. Any remedies that are substantially similar to the remedies listed above in 1-5.
7. Any other remedy when the violation would also constitute another crime, such as theft or criminal damage to property.

720 ILCS 5/12-30 (2007).

B. Penalties for violation of an order of protection

- 1. First violation of an order of protection:** A violation of an order of protection is a Class A misdemeanor for the first offense. 720 ILCS 5/12-30. This carries a penalty of up to 364 days in jail. 730 ILCS 5/5-8-3(a).

- 2. Second violation of an order of protection:** A second or subsequent violation of an order of protection can be charged as a Class 4 felony and carry a penalty of one to three years. A violation of an order of protection can also be charged as a Class 4 felony when the offender has a prior conviction for domestic battery or one of the following felony convictions against any family or household member:
 - a. Aggravated battery, aggravated domestic battery, or heinous battery.

 - b. Aggravated battery of a child, unborn child or senior citizen.

 - c. Unlawful restraint or aggravated unlawful restraint.

 - d. Stalking or aggravated stalking.

 - e. Criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual assault.

 - f. Kidnapping or aggravated kidnapping.

 - g. Aggravated arson.

 - h. Aggravated battery with a firearm or aggravated discharge of a firearm.

 - i. First degree murder or attempt first degree murder.
720 ILCS 5/12-30(d).

A Class 4 felony carries a prison term of at least one year but not more than three years.
730 ILCS 5/5-8-1(a)(7).

C. Criminal violations: Child abduction

A respondent on an order of protection can be charged with child abduction for committing any of the following violations of an order of protection:

- 1.** The respondent intentionally conceals or detains a child or removes a child from the state in violation of the order of protection, Remedy 5 granting the petitioner or another physical care and/or possession of the child.

2. The respondent intentionally conceals or detains a child or removes a child from the state in violation of the order of protection, Remedy 6 granting temporary legal custody to the petitioner.
3. The respondent intentionally conceals or detains a child or removes a child from the state in violation of the order of protection, Remedy 8 prohibiting such conduct.

720 *ILCS* 5/10-5(b)(1).

D. Penalties for child abduction

Child abduction is a Class 4 felony and carries a penalty of one to three years. 730 *ILCS* 5/5-8-1(a)(7).

E. Contempt of court

A violation of any valid Illinois order of protection, whether issued in a civil or criminal proceeding, may be enforced through civil or criminal contempt procedures, as appropriate, by any court with jurisdiction, regardless where the act or acts which violated the order of protection were committed to the extent consistent with the venue provisions of this Act. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112A-23(b). Nothing in this Act shall preclude any Illinois court from enforcing any valid order of protection issued in another state. *Id.* Illinois courts may enforce orders of protection through both criminal prosecution and contempt proceedings, unless the action which is second in time is barred by collateral estoppel or the constitutional prohibition against double jeopardy. *Id.*

A civil contempt proceeding is used to coerce the respondent to comply with the remedies on the order of protection. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 43 (4th Dist. 1990). A criminal contempt proceeding is used to punish the respondent for violating the order. *Id.*

1. **Civil contempt:** There are two types of civil contempt, direct civil contempt and indirect civil contempt. Direct civil contempt occurs in front of the court. *Id.* at 47. Indirect civil contempt takes place outside the presence of the court. *Id.* Most civil contempt in the case of domestic violence will be indirect. If enforced through indirect civil contempt proceedings, the respondent has a right to receive a verified copy of the petition for indirect civil contempt; to notice of hearing; to answer orally or in writing; to be heard; to subpoena witnesses; to cross-examine witnesses; and to an attorney of choice.
2. **Criminal contempt:** There are two types of criminal contempt, direct criminal contempt and indirect criminal contempt. Direct criminal contempt is contumacious conduct if it is committed in such a manner that no evidentiary hearing is necessary to determine the facts establishing such conduct and is committed in an integral part of the court while the court is performing its judicial functions. *Id.* at 45. Indirect criminal contempt is a contumacious act when it occurs outside the presence of the court or in an area that is not integral or constituent part of the court, or the elements of the offense are otherwise not within the personal knowledge of the judge. *Id.* If enforced through indirect

criminal contempt, the respondent has a right to receive a copy of a verified charge; to personal service; to subpoena witnesses; to cross-examine witnesses; to exercise right against self-incrimination; to presumption of innocence; and to a court-appointed attorney. There is no right to a trial by jury if the sanctions do not exceed a fine of \$500, a jail sentence of six months, or both.

3. **Petition for rule to show cause:** In a contempt proceeding where the petition for rule to show cause sets forth facts evidencing an immediate danger that the respondent will flee the jurisdiction, conceal a child, or inflict physical abuse on the petitioner or minor children, the court may order the attachment of the respondent without prior service of the rule to show cause. 750 *ILCS* 60/223(b)(1) and 725 *ILCS* 5/112A-23(b)(1). Bail should be set unless specifically denied in writing. *Id.*
4. **Expedited proceeding:** A petition for rule to show cause for violation of an order of protection should be treated as an expedited proceeding. 750 *ILCS* 60/223(b)(2) and 725 *ILCS* 5/112A-23(b)(2).

F. Penalties for contempt of court

Except where the court finds the commission of a crime, including a violation of an order of protection or child abduction, or where the violation is of a custody or support order, the penalty should generally apply in such civil contempt or criminal contempt proceedings, and may include an order directing the respondent to pay restitution to the petitioner, or a fine, or both.

1. **Civil contempt:** Sanctions for indirect civil contempt continue until the order is obeyed. Possible sanctions include an indefinite and continuing fine and/or jail until the order is complied with. The opportunity to purge contempt must be given to the respondent. This sanction is used only to force a respondent to comply with a court order.
2. **Criminal contempt:** Sanctions for criminal contempt are issued to vindicate the authority of the court. The sentence is punitive and unconditional. Examples of criminal contempt sanctions include a specific time of jail commitment or a specific fine payable to the court.

G. Illinois Marriage and Dissolution Act

A violation of custody or support remedies can be enforced by any remedy provided by 750 *ILCS* 5/611. Violation of custody or support remedies include:

1. The physical care and possession of a minor child (Remedy 5).
2. Temporary legal custody of a minor child (Remedy 6).
3. Visitation (Remedy 7).

4. Removal or concealment of a minor child (Remedy 8).
750 ILCS 60/223(c) and 625 ILCS 5/112A-23(c).

H. Actual knowledge

An order of protection may be enforced only if the respondent was served or has actual knowledge of the contents of the order of protection (some jurisdictions use the term *constructive knowledge*). 750 ILCS 60/223(d) and 725 ILCS 5/112A-23(d). Respondents may receive actual knowledge via order of protection short form notification or even verbal notification from law enforcement. 750 ILCS 60/223(d)(4) and 725 ILCS 5/112A-23(d)(4).

In *People v. Ramos*, the court found a respondent guilty of violation of an order of protection where the defendant had actual knowledge of the provision prohibiting him from entering the petitioner's home, even though the defendant had not been served or received a full copy of the order of protection. 316 Ill. App. 3d 18, 23 (2000). The court held that the respondent need not be served or know full details of the order to be charged with a violation. The state only needs to show that the respondent had actual knowledge of the remedy that the respondent was charged with violating. *Id.* at 24.

I. Modifying and vacating an order.

Only a judge can modify or vacate an order of protection. *In Re the Marriage of Fischer*. 228 Ill. App. 482, 488 (4th Dist. 1992).

XII. Victims rights and role of the domestic violence advocate

Domestic violence programs in Illinois offer a range of services to victims of domestic violence, including legal advocacy. Domestic violence advocates provide important support for victims of domestic violence while they go through the court process. Working with domestic violence advocacy programs is an essential part of the system's response to domestic violence.

A. Advising the victim

Once the domestic violence case has been charged (whether by the local law enforcement or the state's attorney's office) and assigned to a courtroom, and the defendant has been arraigned, the state's attorney's office should advise the victim of the following:

1. The state's attorney's office is responsible for charging and prosecuting the case.
2. The victim is an important witness in the case and will be called upon to testify.
3. The victim is encouraged to contact the local domestic violence program, state's attorney's victim witness staff, or other persons identified by the state's attorney with questions about court process, support services, and orders of protection.

4. The victim is encouraged to contact the special unit or staff member of the state's attorney's office in order to detail any matters the victim thinks should be brought to the attention of the prosecutor.
5. The steps the victim can take to enforce the order of protection. If the victim has not obtained an order of protection, the state's attorney's office will advise the victim on how they can be obtained.

B. Victim rights under Illinois law

Illinois law affords victims specific rights under the Rights of Crime Victims and Witnesses Act. In accordance with this act, the prosecutor should provide the following information and notice to the victim:

1. The right to be treated with fairness and respect for their dignity and privacy.
2. The right to notification of court proceedings.
3. The right to communicate with the prosecution.
4. The right to make a statement to the court at sentencing.
5. The right to information about the conviction, sentence, imprisonment, and release of the accused.
6. The right to the timely disposition of the case following the arrest of the accused.
7. The right to be protected from the accused during the court proceedings.
8. The right to be present at the trial and all other court proceedings unless the victim is going to testify and the court determines that victim's testimony would be materially affected if the victim hears other testimony.
9. The right to have an advocate present subject to the rules of evidence.
10. The right to restitution.
725 ILCS 120/4.

C. Written agreements with domestic violence advocacy programs

The state's attorney's office should have signed written agreements with local domestic violence programs that serve victims in their area. The agreements should specify duties and responsibilities of the state's attorney's office and the domestic violence advocacy program. Working with domestic violence advocacy programs is an essential part of any state's attorney's office's response protocol.

D. Domestic violence advocates play a support and advocacy role

The companionship and reassurance of the domestic violence advocate can help the victim deal with harassment or intimidation by the abuser and assist the victim in planning for their safety. Advocates may also assist the victim to facilitate more convenient court dates, arrange for transportation to court proceedings, ensure that the victim has a secure place to wait before testifying, find resources for their children, provide shelter and counseling services, and provide advocacy with other agencies on behalf of the victim. Working closely to support the victim, the domestic violence advocate can aid the prosecutor in providing the victim with a greater understanding of the court process. Which can increase the likelihood that the victim will understand and cooperate with the court process.

E. Rights of the domestic violence advocate within the court

Domestic violence advocates are authorized to attend court proceedings, sit at the counsel table, and confer with the victim, at the victim's request, unless the court finds good reason to direct otherwise. 750 ILCS 60/205(b)(1-2). It is in the best interest of the victim, and the state, to have access to a domestic violence advocate as victims who are supported by advocates are more likely to follow and cooperate with the court process (Belknap, Graham, Hartman, Lippen, Allen, Sutherland, 2000).

F. Privileged communications between domestic violence advocate and victims

The Domestic Violence Act of 1986 allows for confidential communication between domestic violence advocates who are 40-hour trained and victims of domestic violence. 750 ILCS 60/227(a)(3). Confidential communication is defined as communication between an alleged victim of domestic violence and a domestic violence advocate or counselor in the course of providing information, counseling, or advocacy. *Id.* The term includes all records kept by the advocate, counselor, or domestic violence program in the course of providing services to an alleged victim concerning the alleged victim and the services provided. *Id.*

G. Disclosure or examination of a domestic violence advocate

Domestic violence advocates or counselors should not disclose any confidential communication or be examined as a witness. There are two exceptions to this confidentiality.

1. In cases where failure to disclose is likely to result in an imminent risk of serious bodily harm or death of the victim or another person.
2. In accordance with the provisions of the Abused and Neglected Child Reporting Act.
750 ILCS 60/227(b).

H. Penalty for knowing disclosure

The knowing disclosure of a confidential communication by a domestic violence advocate is a Class A misdemeanor. 750 ILCS 60/227(c).

I. Court responsibilities and confidentiality of domestic violence advocate and program

No court should compel any person or domestic violence program to disclose the location of any domestic violence program or the identity of any domestic violence advocate or counselor in any civil or criminal case or proceeding. A court may only compel disclosure following a hearing when there is clear and convincing evidence that failure to disclose would be likely to result in an imminent risk of serious bodily harm or death to a domestic violence victim or another person. Said disclosure shall take place in chambers and not be part of the written record of the case. 750 ILCS 60/227.1.

XIII. Victims with special needs and considerations

A. Cases involving child witnesses.

Children are at great risk of witnessing domestic violence or being abused themselves in homes where domestic violence is taking place. Prosecutors take this into account when pursuing domestic violence cases where children were in the home. In a study of prosecution techniques across the country, 89 percent of prosecutors state that the presence of children provides added incentive to prosecute (Whitcomb, 2002). However, it was also found that most jurisdictions lack a policy for prosecutors and investigators to identify cases where domestic violence and child abuse co-exist. The following are best practices state's attorney's offices can implement to address the overlap between domestic violence and child maltreatment.

1. Enforce orders of protection and probationary sentences

Keep children's presence in mind when these issues come before the court. Enforcement of orders of protection, statutory bail provisions and probationary sentences by the prosecutor's office are means of protecting children.

2. Develop policies for identifying cases in which domestic violence and child maltreatment coexist

State's attorney's offices should develop policies that promote the identification and investigation of both domestic violence and child maltreatment within the same home. In order to do this, state's attorney's offices should work closely with law enforcement, the Department of Child and Family Services, domestic violence advocates, and, in jurisdictions where the issues are handled in separate courtrooms, judges who handle child abuse cases.

3. Develop policies for information sharing between domestic violence prosecutors and child abuse prosecutors

In some jurisdictions, the same assistant state's attorney prosecutes domestic violence and child abuse cases but in others these prosecutors rarely interact. Policies for developing information sharing between prosecutors pursuing domestic violence cases and prosecutors pursuing child abuse cases should be developed in jurisdictions where they are in separate courts if the issue of the overlap of domestic violence and child abuse is to be addressed. Offenders should be held accountable

for all acts of family violence. Further, prosecutors who are aware of the full picture of family violence have better information to prepare a prosecution.

4. Prosecute offenders on concurrent charges of domestic violence, child abuse and child endangerment

When appropriate, concurrently prosecute offenders for the domestic violence charges committed as well as appropriate child endangerment and child abuse charges. Work together with child abuse prosecutors in jurisdictions where these issues are handled in separate courts.

5. Unlawful visitation interference

The Unlawful Visitation Interference (UVI) statute is often misused by abusers. Such abuses make it essential for officers to understand the appropriate use of the statute.

- a. Valid order: In order for a parent to commit this offense, there must be a valid order granting specific visitation rights to the other parent. For example, an order that calls for reasonable visitation cannot be the basis of this charge, while an order that calls for visitation to begin at 6 p.m. on Friday night can be.
- b. Intent to deprive visitation: The custodial parent must detain or conceal children with the intent to deprive the other parent of their right to visitation. This statute includes language that makes the person's intent an element of the offense that must be proven at trial. If the person does not have the "specific intent" to deprive the other parent of visitation, they have not committed this offense. 720 *ILCS* 5/10-5.5(b).

For example, an abuser might call law enforcement and request charges for unlawful visitation interference in situations where the parent has arrived late to the drop off site or the children aren't ready to leave home on time. In other cases, the children might be legitimately too ill to go for visitation. In such cases, the parent does not have the intent to deprive the parent of visitation, so it is not unlawful visitation interference.

A parent may also deny visitation that is granted pursuant to an order of protection if the visiting parent is under the influence of drugs or alcohol or is behaving in a violent or abusive manner at the time of pick up. 750 *ILCS* 60/214 (B)(7).

There is a limited window for the parent to pick up the children for visitation. For example, the order states that the parent has visitation from 6 p.m. on Friday until Sunday at 6 p.m. Unless the parent has made other arrangements, the children must be picked up within a reasonable time or the parent forfeits the visitation period. The custodial parent does not have

to stand by the entire weekend to allow the visiting parent access throughout the visitation period.

- c. When unlawful visitation interference is committed: If you have determined that the parent has committed unlawful visitation interference, there are two issues of importance.
 - Unlawful visitation interference is a petty offense. A case report should be generated and a citation prepared. An arrest cannot be made unless the parent has been convicted of unlawful visitation interference at least twice previously.
 - Law enforcement officers do not have the right to enforce civil process unless that right is specifically granted by statute. For example, the Illinois Domestic Violence Act not only allows officers to enforce most of its provisions, in many cases it requires officers to do so. There is no statute that grants officers the right to enforce visitation orders. The officer's role is limited to writing a citation for unlawful visitation interference. An officer who orders or coerces a parent to turn a child over for visitation can be held civilly liable for any injury to the child while the child is in the hands of the other parent.
- d. Abuse tactic: When faced with an angry, hostile parent who is demanding action, it is easy enough to decide to write a report and/or issue the citation as a means of placating the parent. Keep in mind that people who would abuse the statute will also abuse your report or the case you have initiated, using it against the custodial parent as another means of abusive power and control. Therefore, it is important that an officer's report accurately report the entire situation regarding a citation for unlawful visitation interference.

6. Networking and referrals

State's attorneys should work together with programs that provide services to children who witness domestic violence and should make referrals to these agencies to victims with children. Written networking agreements should be developed between the state's attorney's office and these programs.

B. Elderly victims and victims with disabilities

Many victims of domestic violence are elderly adults or people with disabilities. Illinois laws provide greater protections for these victims as they are less likely to be able to protect themselves against or flee domestic violence. Like many other domestic violence victims, elderly victims or victims with disabilities are often afraid to seek help from service providers or the courts.

1. The law

- a. **Family or household member:** In Illinois, the definition for family or household member includes caretakers and personal assistants. A key point in this definition of caretaker or personal assistant is that it includes strangers who visit the home to provide care, if that person is doing so as part of their employment, in exchange for any type of consideration or because they have been appointed to take care of the elderly or disabled person by a court or public agency. 750 ILCS 60/103(6) and 725 ILCS 5/112A-3(3).
- b. **Enhanced penalties:** The law provides for additional protections to the elderly or person with disabilities in the form of enhanced penalties against those who abuse them, whether in a domestic setting or not. These laws can and should be used in domestic violence cases, although they are based not on the victim's or defendant's domestic relationship. These laws generally provide greater penalties than the domestic violence statutes.
- c. **Aggravated battery:** What may be a misdemeanor domestic battery involving bodily harm in a normal situation can be enhanced to a Class 3 felony aggravated battery when the victim is age 60 or over or is physically handicapped. 720 ILCS 5/12-4(b)(10) and (b)(14).

In *People v. Jordan*, case law held that when the victim is 60 years of age or older, it was not required that the defendant know the victim's age for the crime to be enhanced. 102 Ill. App. 3d 1136, 1139 (4th Dist. 1983).

- d. **Aggravated battery of a senior citizen:** If when committing a battery knowingly or intentionally causes great bodily harm, permanent disability, or disfigurement against an elderly person age 60 or older, it is a non-probationable Class 2 felony for which a defendant must be sentenced to prison for no less than three years and no more than seven years, upon a single conviction. 720 ILCS 5/12-4.6.

2. **Evidence** Many of this Protocol's recommendations for evidence based prosecution are especially important in domestic violence cases involving elderly victims or victims with disabilities.

Photographs are vital.

- a. **Photographs of the injuries:** Seniors may not recall or describe on the witness stand the bruise on their face or how they were injured. Even the officer's most vivid and graphic verbal description won't have the same effect that a good picture will have.
- b. **Photographs of the home:** Photographs of the home will often dispute the defense put up by many abusers that they were working so hard to care for the elderly or disabled person and that the victim was just inadvertently

injured. Photographs of a filthy or disheveled home dispute the “overburdened caretaker” defense.

3. Interviews:

- a.** Interviews with the elderly or disabled victim that are video- or audio-taped are most useful in prosecution. If the victim cannot remember, or refuses to testify, the relevant portion of the tape may be introduced as substantive evidence. A signed statement is second best to a tape. These statements may be admissible as substantive evidence pursuant to 725 ILCS 5/115-10.1(c)(2)(C).
- Interviews conducted by the state’s attorney’s office should be conducted in a place where the victim feels safe, without the presence of the offender. If the home is not safe, a senior center, social club or religious institution may feel more comfortable to the victim. Having a large print calendar available for the interview may be of assistance in reminding the victim of specific dates.
- The victim should be interviewed alone. Adult children or caretakers (those other than the offender) often speak for the elderly or disabled person. A tape of the victim saying, “My son hit me in the face.” may be admissible. A tape of the victim’s daughter saying, “Mom told me my brother hit her in the face.” is not.
- Like other victims of domestic violence, elderly victims and disabled victims may not want to cooperate. The perpetrator may be a beloved child or grandchild. Victims may blame themselves for the abuse.
- Interviews of neighbors, mail carriers, the paper deliverer, meter reader or any other who comes to the home on a regular basis may provide valuable information or admissible evidence.

C. Intimate partner sexual assault

- 1. The law:** There are no longer any reporting restrictions on marital rape. Therefore, charges for a marital sexual assault can include criminal sexual abuse, aggravated criminal sexual abuse, criminal sexual assault or aggravated criminal sexual assault, based on the elements of the crime.
- 2. Charging considerations:** Prosecutors should pursue sexual assault charges in addition to domestic violence charges in any case with sufficient evidence.
- 3. Conduct a thorough interview and investigation at the scene:** Work with local law enforcement on providing the investigation and documentation needed to pursue intimate partner sexual assault cases.

4. **Use expert witness testimony:** Expert testimony is important for use in prosecution to educate the judge and jury on the implications and seriousness of intimate partner sexual assault. This is true whether or not the victim received medical attention for injuries due to the sexual assault.

XIV. Special considerations

There are a number of special considerations in domestic violence cases that require particular attention from the courts. Stalking, strangulation, firearms, and sexual assault are signs of a potentially very dangerous situation. The following section lists elements of these considerations and best practice policies that will assist state's attorneys in identifying these elements of danger:

A. Stalking

Stalking, including cyberstalking, is different from other crimes. First, stalking is not a single act, but a series of behaviors, causing repeated victimization. Second, stalking is partly defined by its effect upon the victim (National Center for Victims of Crime, 2002). Stalking is a sign of extreme danger for a victim. While stalking cases do not always involve physical violence, stalking is frequently found as a precursor to homicide of women (National Center for Victims of Crime, 2002).

1. **The law and stalking:** Illinois has one of the country's strongest anti-stalking laws. Illinois law defines stalking as at least twice following or placing a victim under surveillance and one of the following:
 - a. At any time threatens bodily harm, sexual assault, confinement or restraint towards the victim or a family member of the victim, or
 - b. Placing the victim in reasonable apprehension of future or immediate bodily harm, sexual assault, confinement, or restraint, or
 - c. Placing the victim in reasonable apprehension that a family member will receive future or immediate bodily harm, sexual assault, confinement, or restraint.

720 ILCS 5/12-7.3.
2. **Aggravated stalking:** The Illinois law also prohibits aggravated stalking defined as behavior containing the above mentioned elements of stalking, plus any of the following:
 - a. Actually physically harming, restraining, or confining the victim.
 - b. Violating an order of protection or other similarly prohibitive injunction or restraining order.

720 ILCS 5/12-7.4.

3. **Purpose of the law:** The purpose of this law is to deter stalking and prevent deaths. The penalties under this law are greater than the penalties for harassment or violating an order of protection. This law is, therefore, an effective weapon against domestic violence.
4. **Cyberstalking:** Cyberstalking includes at least twice harassing a person through electronic communication, plus any of the following:
 - a. Transmitting a threat towards the person or family member of immediate or future bodily harm, sexual assault, confinement or restraint.
 - b. Placing a person or their family member in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint.*720 ILCS 5/12-7.5.*
5. **Preventive Detention:** Illinois is the only state where the prosecutor can request preventive detention when a stalker poses a danger to the victim. The victim may not have to appear at the hearing for the denial of bail. Calling the victim may not be used to conduct a discovery disposition. If bail is denied, the state should bring the perpetrator to trial for that offense within 90 days after the order of detention.
6. **Sentencing:**
 - a. Stalking is a Class 4 felony and carries a penalty of one to three years for a first offense. *720 ILCS 5/12-7.3(b)* and *730 ILCS 5/5-8-1(a)(7)*.
 - b. Aggravated stalking is a Class 2 felony and carries a penalty of two to five years. A subsequent conviction for stalking or aggravated stalking carries higher penalties. *720 ILCS 5/12-7.4(b)* and *730 ILCS 5/5-8-1(a)(5)*.
7. **Policy:** Solid policy for state's attorneys on stalking and cyberstalking is needed in order to increase the use of the stalking law in Illinois. A best practices prosecution policy includes the following:
 - a. Treat all domestic violence cases as potential stalking cases.
 - b. The prosecutor should request that bail not be granted when the threat of violence was the basis of arrest. As appropriate, the prosecutor may request preventive detention or referral for a psychiatric evaluation. Intensive pretrial supervision is another option. Evidence that helps support a request for no release include a history of violating court orders, dangerousness assessment findings, and testimony from a detective experienced in stalking, a mental health expert, or a domestic violence and stalking expert.
 - c. Seek to issue a no-contact order relating specifically to the facts of the case and pattern of stalking.

- d. If bail is granted, the prosecutor should seek to ensure that the victim is contacted by the jail upon release of the offender.
- e. The prosecutor should re-interview the victim early in the case, using patience to give the victim the opportunity and feeling of safety to reveal all elements of the stalking behavior. The prosecutor should ask a domestic violence advocate or victim witness specialist to be available to assist the victim in creating a safety plan and locating other useful resources. The advocate can also assist the victim in obtaining an order of protection.
- f. The prosecutor should ensure that the victim has information on obtaining an order of protection.
- g. The prosecutor should decide what non-stalking charges to file, and should include all those having sufficient evidence to prosecute. Potential charges include felonies and misdemeanors.
- h. The prosecutor's office should maintain periodic contact with the victim post sentencing to see if any further episodes of stalking occur, or whether the stalker has been incarcerated or placed on probation. Stalking is one of the few crimes that incarceration does not necessarily end. The offender can continue to stalk through letters and phone calls.
- i. Work collaboratively with other elements of the courts to create a comprehensive stalking policy and to enact that policy.

B. Strangulation

In the past, strangulation was often not taken seriously by the courts because of the lack of physical evidence of the crime. There was a belief that these cases could not be prosecuted, or prosecuted as the more serious crimes that they are, because of the lack of evidence. New information and training is changing this pattern, allowing law enforcement officers means to collect sufficient evidence that allows prosecutors to take seriously the prosecution of strangulation cases. Evidence suggests that strangulation is one of the warning signs of a very dangerous, potentially lethal, domestic violence case. Unconsciousness can result from strangulation within 10 seconds, and death can result within minutes (Maryland Network Against Domestic Violence & Maryland Law enforcement and Correctional Training Commissions, 2002; Stack, 2006; Stack, McClain, & Hawley, 2001)

1. **Use of proper terminology:** To begin, use the term *strangle* rather than *choke*. *Strangle* means to obstruct the seriously or fatally the breathing of another person. *Choke* means the obstruction of breathing by a foreign object lodged in the throat.
2. **Charge as felonies:** Charge all cases of strangulation as felonies rather than misdemeanors. Investigate strangulation cases, like any attempted homicide or

aggravated assault case, as high priority. A lack of readily visible physical evidence is not a sign of a lack of seriousness; some injuries may be internal. With good investigation and follow-up, and an understanding of strangulation, evidence is generally available.

- 3. Conduct a thorough interview and investigation at the scene:** Work with local law enforcement on providing the investigation and documentation needed to pursue strangulation cases.
- 4. Perform a follow-up investigation for victim for injuries:** Because some physical evidence of victim injury may not show up until long after the initial law enforcement investigation, prosecutors should perform a follow-up investigation of the victim during an interview. Prosecutors should look for the following signs of strangulation on the victim:
 - a.** Changes in voice, from hoarseness to complete loss of voice (evidence of voice changes can be documented by tape recording the victim during different interviews and obtaining the 911 tape of the victim's initial call for help).
 - b.** Ongoing wheezing or difficulty breathing.
 - c.** Difficulty swallowing.
 - d.** Scratches, abrasions, finger prints or other discoloration of the neck.
 - e.** Impressions on the skin which might indicate use of ligature (strangulation with a rope or clothing) or use of an object.
 - f.** Swelling of the tongue.
 - g.** Victim's defensive finger nail marks on face, neck or arms.
 - h.** Redness on the neck, which may be temporary or may later turn to bruising.
 - i.** Lightheadedness, dizziness, fainting or unconsciousness.
 - j.** Confusion or disorientation.
 - k.** Nausea or vomiting.
 - l.** Chin abrasions.
 - m.** Loss of bodily functions.

n. Miscarriage.

5. **Take follow-up photos:** Because photos taken by law enforcement may not show evidence that becomes visible later, take photos of any injuries identified during victim interviews.
6. **Obtain medical records:** Many victims show no signs of external injury. However, due to lack of oxygen to the brain, the victim may suffer minor symptoms or even major symptoms, such as stroke, miscarriage or death up to several weeks later. Obtain medical records of the victim prior to and post strangulation.
7. **Aggressor identification:** Look for documentation of an aggressor identification performed by law enforcement at the time of the initial call. It is common for there to be mutual claims of violence in strangulation cases. Due to the nature of strangulation, the victim frequently fights back or uses physical means to try to get away. Since strangulation injuries are often not physically visible, the aggressor may be the only one with visible injuries. If an aggressor identification was not performed at the time of the initial law enforcement investigation, and both parties are claiming to be victims, perform an aggressor identification at this time to determine what charges to pursue. The type of injuries reported by both parties will assist with this investigation. The aggressor in a strangulation case may have defensive injuries. If the strangulation was committed from behind, the aggressor may have bite marks and scratches on the arms. If the strangulation was committed from the front, the aggressor may have scratch marks on the face, arms, eyes, and chest, signs of hair pulled, bite marks on the chest, injuries from kicks, or other defensive wounds.
8. **Obtain the 911 call tape:** The 911 call may be the best evidence of changes in the victim's voice due to strangulation.
9. **Tape record victim interviews:** Prosecutors can often record evidence of voice changes by tape recording victim interviews.
10. **Consider the use of forensic experts:** Forensic nurses or investigators can examine victims, take photographs, and identify injuries due to strangulation. The use of a forensic nurse or other forensic expert during investigation can strongly enhance the prosecution of a case.
11. **Use expert testimony:** Expert testimony is important for use in prosecution to educate the judge and jury on the seriousness of strangulation, especially in light of the limited physical evidence available in many of these cases. This is true whether or not the victim received medical attention for injuries due to strangulation.

C. Firearms

The possession of firearms increases the risk of homicide in relationships where domestic violence is occurring. Firearms were used in 65 percent of all domestic violence homicides between the years of 1976 and 1996 (Greenfield and Rand, 1998). Law enforcement, prosecutors and judges are in a unique position to ensure that laws, policies, and procedures are implemented to decrease the use and possession of firearms by abusers.

D. Immigrant Victims

Immigrant victims of domestic violence face numerous barriers to reaching out to law enforcement and courts for safety from domestic violence, making abusers within these communities far less likely to come before the courts and be held accountable for their crimes (Pendleton, 2003). This section describes steps the state's attorney's office can take to encourage the reporting of domestic violence and to build trust within immigrant communities. These steps allow courts to become more adept at protecting immigrant victims of violence and holding abusers from immigrant communities accountable for their actions.

- 1. Immigration status:** Federal law does not require law enforcement to ask about a victim's immigration status. Victims or witnesses of crimes are not required to state their immigration status or place of birth when contacting law enforcement to file a complaint or police report. The victim's immigration status has no legal relevance for obtaining:
 - Law enforcement assistance.
 - Orders of protection.
 - Shelter services.
 - Emergency medical care.
 - Child custody or child support.

It is recommended that state attorney's offices develop a policy that allows immigrant victims to help in the prosecution of their abuse without fear that their immigration status will be revealed. The enactment of such a policy will allow immigrant victims to feel safe in reporting any abuse.

- 2. Make referrals:** If the prosecutor or victim witness personnel suspect that a victim is a non-citizen, they should provide the victim with referral information to local agencies that can assist battered immigrants and/or immigrants in general. In rural areas such agencies may not be available. State's attorney's offices should then refer the victim to the closest available services. Additionally, several non-profit victim advocacy groups provide translation services for victims.
- 3. Language accessibility:** State's attorney's offices must be accessible to non-English speakers by providing access to interpreters in all languages of persons living within their communities. In rural areas, locating language translation services for many languages may be difficult or impossible. Translation services may be available at area colleges or universities, or the state's attorney's office can set-up telephone translation services with service providers such as AT&T.

- 4. Prosecute crimes against non-citizens:** State's attorney's offices prosecute crimes against non-citizens just as they prosecute crimes against citizens. Making public statements clarifying to immigrant communities that criminal laws and courts protect everyone regardless of immigration status allows victims within these communities the opportunity to come forward and participate with the prosecution of crimes.

E. Victims with illiteracy

Victims of domestic violence who are unable to read or write, or have limited reading and writing skills, need access to the full services of the courts. A victim who is unable to read court documents or instructions will not always reveal this to court personnel or a domestic violence advocate. It is important to verbally explain that domestic violence advocates or victim service personnel are available to verbally explain all court documents given to victims, including orders of protection, notification of court dates, subpoenas, and other important documentation.

F. Lesbian, gay, bisexual and transgender victims

Lesbian, gay, bisexual and transgender people experience domestic violence at a similar rate as heterosexual people do, but with far less access to services for safety and assistance (Wright, 2005). Prosecutors can increase the safety of lesbian, gay, bisexual and transgender victims of domestic violence by incorporating the following:

- 1. Make no assumptions:** Do not assume that every victim that enters the court is heterosexual. Be careful of the pronouns that you use when speaking to a victim who has not yet identified the gender of their partner. Use non-gender-specific language. Be sensitive to the victim's word choices, such as "lover," "partner," "spouse," or "roommate." Echo the language used by the victim.
- 2. Be especially careful when deciding to pursue charges against a victim's wishes:** Lesbian, gay, bisexual and transgender victims have the added fear of being "outed" when criminal charges are pursued in a court of law. They may not have told family and friends, or may not be out at their place of employment. They may be worried about jeopardizing their job or worried about custody issues with their children if others were to know of their sexual or gender orientation. When considering pursuing a case involving a lesbian, gay, bisexual and transgender victim, using evidence-based prosecution in which the victim does not wish for the case to go forward, ask the victim if "outing" is an additional safety concern when making the decision to pursue charges.
- 3. Aggressor identification:** Lesbian, gay, bisexual and transgender victims are especially susceptible to being arrested for domestic violence when defending themselves. When reviewing a case, prosecutors should ensure that a thorough aggressor assessment was done at the time of arrest. If prosecutors suspect that a thorough aggressor assessment was not done at the time of arrest, or the party has

come to the court to request charges or an order of protection themselves, prosecutors or victim assistance personnel should conduct an aggressor assessment before pursuing charges or assisting with an order of protection.

- 4. Service provider accessibility:** Work with agencies within the community that provide services to lesbian, gay, bisexual and transgender people, as well as with domestic violence advocates. In rural areas where such services may not be available statewide, regional or national groups may be able to obtain information, training and be used as referral sources. Training in homophobia and lesbian, gay, bisexual and transgender domestic violence should be given to state's attorney's office staff, including victim witness staff.

G. People with physical or cognitive disabilities or mental health issues

People with physical or cognitive disabilities or mental health issues, including victims with HIV/AIDS, are especially vulnerable to domestic violence, with far fewer accessible resources available to help them escape and seek justice (Chapman, 1996). There are numerous barriers to victims with disabilities or mental health issues trying to access the system. Courts can do much to make services accessible to victims of domestic violence with disabilities by incorporating the following:

- 1. Physical accessibility:** All domestic violence courts should be accessible by wheel-chairs and for people with mobility disabilities. When courtrooms are on floors other than the first floor, this includes elevators that fit two wheelchairs at the same time (for the victim and an advocate).
- 2. Language accessibility:** American Sign Language translation should be available, as needed.
- 3. Reading accessibility:** Translation of documents into Braille or onto computer discs in a language usable by the victim should be made available. Many people with visual disabilities use computers that can read documents aloud saved on disc.
- 4. Service provider accessibility:** State's attorney's offices should work with programs designed specifically to serve people with disabilities or mental health issues, as well as domestic violence advocacy programs. Some communities will have programs with expertise in both areas, and will train victim's services personnel in these issues.
- 5. IDVA:** The IDVA includes as protected persons any high-risk adult with disabilities who has been abused, neglected, or exploited by a caretaker or personal assistant, as well as by a family or household member.

H. Rural victims

Rural victims of domestic violence face numerous additional barriers to safety and increased risk (Johnson, 2000). Law enforcement officers must be additionally creative and sensitive when serving rural areas. Law enforcement policies to assist rural victims of domestic violence include:

- 1. Referrals and safety:** Prosecutors must be particularly attuned to the safety needs of victims of domestic violence in rural communities, such as if the victim is living with the offender during a case, if the victim has other options, if the victim is obtaining domestic violence advocacy services, and what the victim's thoughts are about prosecution of the domestic violence offense. These and other safety factors should be considered when deciding upon prosecution options, the victim should be provided with referrals to the closest domestic violence services if there are none available within the community. When practicable, the domestic violence advocate should come to the courthouse to support the victim.
- 2. Seek peer and supervisor support:** When faced with a domestic violence incident involving a family known to the prosecutor, prosecutors should seek peer and/or supervisor support to ensure that they are responding objectively. Online domestic violence groups can provide information and support for prosecutors, particularly when those resources are not available within their office.
- 3. Coordinated response:** Nowhere is a coordinated response to domestic violence more important than in a rural community with few resources.

I. Teen victims

Teen dating violence happens at rates similar to that of adult dating and domestic violence (Silverman, Raj, Mucci and Hathaway, 2001), and teen girls are 3.5 times more likely to experience sexual assault than are members of the general populations (Bureau of Justice Statistics, 2001). But, teens are far less likely than adults to tell anyone about the violence (Silverman, et. al, 2001), and rarely access services from the courts. The following is information that will assist state's attorney's offices in increasing accessibility of the courts to teen dating violence:

- 1. IDVA and minor victims:** The IDVA in several sections address the accessibility of the act to minors. The following sections have application to minors and there use of the IDVA:
 - The definition of family or household members includes those who have or have had a dating or engagement relationship. 750 *ILCS* 60/103(6) and 725 *ILCS* 5/112A-3(6).
 - A petitioner cannot be denied an order of protection because the petitioner or respondent is a minor. 750 *ILCS* 60/214(a) and 725 *ILCS* 5/112A-14(a).

- A minor also has the power if the court feels that can knowingly do waive the privilege of their communication with a domestic violence advocate. 750 ILCS 60/227(e).

- 2. Orders of protection against minors:** Orders of protection can be entered against minors. A minor is a family or household member as defined in the statute. *Wright v. Wright*, 221 Ill. App. 659, 662 (4th Dist. 1991). The act protects those who are being abused by family or household members. *Id.* The *Wright* court had no case law to go and their decision, but concluded that based on the legislative intent that § 214(a) applied to minors as well as adults. *Id.*
- 3. Service provider accessibility:** Law enforcement officers should work with programs designed specifically to serve teens, especially when domestic violence programs that have specialized programs for teens are available, and should refer victims to these programs.

J. Cultural and religious diversity

Women from diverse cultural or religious groups often face a lack of understanding and are stereotyped when seeking justice from the courts, causing many to refrain from seeking such services. Men from marginalized cultures may not be held as accountable, or women from certain groups not offered complete services, because of negative and false stereotype that abuse is normal within certain cultural and religious groups (Mederos, Gamache and Pence, 1997). The reverse is also true. Women of color and other poor women sometimes turn to the courts for help because they lack the resources to find help in other ways. Men of color and other poor men will then be more likely to receive consequences from the system because they lack the resources for an attorney (Mederos, date not available). The courts can address these issues in a number of ways, including:

- 1. Avoid stereotyping:** Prosecutors should not allow stereotypes of any kind to interfere with decisions to pursue or not pursue cases of domestic violence.
- 2. Service provider accessibility:** Courts should work with programs designed specifically to serve people from various cultural and ethnic groups, especially when domestic violence programs that work with specific cultural and religious groups are available and will train victim's services personnel in these issues
- 3. Listen to the community:** State's attorney's offices gain understanding and respect by listening to the voices of people from the marginalized cultural and religious groups in their communities. Together they can design policies that meet the needs of those populations.
- 4. Diverse personnel:** State's attorney's offices, victim witness offices, and other offices within the courts should make an effort to hire staff who represent all the communities they serve.

K. Homeless victims

Homelessness is often a result of domestic violence, and homeless women are particularly vulnerable to violence. The courts should take into account the needs of homeless victims in seeking safety through law enforcement and prosecution.

1. **Keep victim's location confidential:** The courts should keep a temporary housing location, such as a shelter or the residence of friends or family, confidential. The victim's location should not be revealed on court documents.

L. Victims with substance abuse issues

Substance abusing victims of domestic violence provide unique challenges for prosecutors. Best practices that work with substance abusing victims of domestic violence include the following:

1. **Separate the issues:** It is necessary for prosecutors to separate the issue of domestic violence from the issue of substance abuse in the victim. While substance-abusing victims may be more difficult for a prosecutor to work with and less dependable as witnesses, they are still victims who deserve the respect and protection of the courts.
2. **Aggressor identification:** Since victims who use substances are more likely to fight back, the issue of who is the abuser and who is the victim can become clouded. State's attorney's offices will look for evidence that law enforcement officers conducted a thorough aggressor identification in any situation where involving alcohol and violence on the part of both parties. If needed, state's attorney's office personnel may need to conduct an aggressor identification. State's attorneys should ensure that they are prosecuting the true aggressor.
3. **Evidence based prosecution:** Evidence-based prosecution is best applied in cases in which the victim was intoxicated at the time of the incident. An intoxicated victim, particularly one who has an ongoing substance abuse problem, often does not make a reliable witness.

M. Victims involved with gang members

Victims of domestic violence whose partners are gang members are at particular risk for danger. They often will not cooperate with the courts because such cooperation could put their safety at greater risk, triggering retaliation by gang members. The following are some beginning steps for addressing this issue:

1. **Evidence based prosecution:** Evidence-based prosecution can be an option that allows the prosecution to proceed with a domestic violence case against a gang member. This type of prosecution does not require a victim to testify, which could further endanger the individual. Prosecutors should explore this with victims whose partners are gang members, as pursuing the case could still endanger the victim.

- 2. Safety:** Prosecutors should take very seriously the fears of victims of gang members and only pursue charges when extreme safety measures are being pursued on behalf of the victim. Victims of gang members may need to relocate and pursue extensive measures to not be found by their abuser.

N. Prostituted and trafficked victims: Victims of domestic violence who are prostituted and trafficked women rarely seek assistance from the courts. There are many steps the courts must take to offer prostituted and trafficked victims safety.

- 1. Evidence based prosecution:** In some cases, state's attorneys fail to pursue reports of violence by prostituted or trafficked women because they do not believe the victim will be a credible witness. In such cases, evidence-based prosecution can go a long way to assist victims who may not be believed by a jury in seeking justice.
- 2. Concentrate on domestic violence or trafficking case:** It is in the best interest of the safety of the victim and the accountability of the abuser for prosecution to concentrate their efforts on the domestic violence or trafficking case rather than charging the victim for prostitution.

Attachment A

Initial DV Interview

INITIAL DV INTERVIEW			
INTERVIEWER:			
INTERVIEWEE:			
OTHERS PRESENT:			
CASE FILE:			
FILE NO.:		DATE:	

- Victim read police report
- Victim confirms allegations
- Witnesses to the incident (kids, neighbors, family)
- Victim made changes to position: Describe:
- Victim received a copy of the police report
- Lethality Factors (explain the behavior that constitutes):
 - Does defendant have prior DV, Assault PPOs, or restraining orders?
Where/when?
- Police called in past
- Threats to kill victim past present
- Threats to kill self past present
- Threats to children past present
- Threats to kill other past present
- Attempted murder of victim in the past
- Alcohol/drug use/abuse
- Threats to kidnap/hold hostage victim/children/others
- No contact provision discussed
- Victim requests no contact be lifted

History of domestic violence between victim and defendant:

Tip of the iceberg/get details *injuries – describe, date, witnesses, medical treatment:

Sexual activity/rape, objects, unusual activity:

Does defendant force kids to watch physical/sexual abuse?

History of domestic violence for defendant and others:

- APA explained court process, including plea and sentencing

Explain how defendant will lie about court dates, penalties, legal rights

- APA explained plea negotiations generally

- APA discussed the specific plea of:

- Victim agreed with plea offer

Victim would like the following changes to the plea agreement:

- APA explained decision-making process

- APA explained need for victim's input

- Victim given resource handbook

What can we do to help victim feel safe?



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- APA explained issues of confidentiality
- Medical treatment sought? Yes no
- Where? When? Nature of treatment?
- Medical release signed? Yes no
- Notes:

Attachment B

Charging Decisions Where Victim is Uncooperative

Charging Decisions Where Victim is Uncooperative- “No Drop” Policies

Jurisdictions use “No Drop” policies that can vary from rigid rules to loose guidelines. Any discussion of the best prosecution response must involve the consideration of the individual factors that influence the decision of whether to proceed without victim cooperation.

1. Arraignment

ISSUE: The defendant pleads not guilty and the victim indicates that she does not want the court to issue a no contact order.

Factors to take into account in deciding whether to request a no contact order:

1. Victim’s wishes alone
2. Victim’s stated reasons
3. Defendant’s past record and dangerousness
4. Financial ramifications of evicting the defendant from the household
(Do you try to get child support orders or find other ways to support her attempts to be financially independent?)
5. Children at home
6. Weapons at home
7. Alcohol or drug abuse history of defendant

2. Charging in the face of victim opposition

ISSUE: Victim requests that the prosecution drop the case.

Factors to take into account in deciding whether to proceed

1. Adequate evidence.
Whether there is adequate evidence to proceed without her victim testimony
Whether to put the child on the stand
Existence of an excited utterance
2. Retaliation.
Victim fear of retaliation by offender
3. Seriousness of the incident.
If very serious, are you more likely to proceed because you are afraid that if you don’t, she will be injured seriously; or are you less likely to proceed because you fear retaliation by the abuser against the victim?

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4. Lethality assessment.

Lethality assessment based upon information from advocates, police, courts and victim. What if you believe that she will really be hurt if you proceed? What if you believe that there is nothing the system will do which will discourage the perpetrator from re-offending?

5. Defendant's history.

Are you more likely to proceed if there is a history of serious violence?

6. Past violation of court orders.

If there are many past violations, is it possible that proceeding against him in court is useless? On the other hand, the existence of past violations may mean that an aggressive approach to the case is most likely to impact the defendant's choices to be violent in the future.

7. Likely disposition in the event of conviction.

If the defendant looks to be dangerous, do you proceed against the victim's wishes if upon conviction, he will only get a slap on the wrist?

8. Victim's history in criminal justice system.

Victim's past history of violence against the defendant and history of recanting in prior cases.

9. Children are being exposed to the violence.

10. Defendant's prior behavior during the pendency of proceedings.

Did he behave himself while involved in the court proceeding or was he more violent?

11. Defendant's history of serious mental health problems.

12. Is there support available and/or likely to change her position?

Internal or external services

13. The defendant's belief that victim is really in control of the proceedings.

If he thinks she controls the proceeding, is it more dangerous to proceed?

14. Minor incident.

Level of conduct is so low and history is so clean that suspended sentence or stayed executions, continued for dismissal, is appropriate?

If victims perceive this as a dismissal, what impact will that have?



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INFORMATION FOR TRIAL

Defendant Name: _____ Charge(s) _____

Date of Incident _____ Victim Name: _____

Address: _____ Apt.# _____ Phone _____

Employer: _____ Phone _____

Name of person who will know how to locate victim: _____

Address _____ Phone _____

Injuries: _____

EVIDENCE

Pictures _____ Witness: _____

Medical reports _____

Initial police call _____

Other _____

HISTORY OF VIOLENCE

EVIDENCE FROM PRIOR ASSAULTS

Arrest reports _____ Other _____

Investigation reports _____

O.F.P. _____

Medical reports _____

COMMENTS: _____

Advocate: _____ Date _____

Attachment C

Direct and Cross Examination Questions

Direct & Cross-Examination Questions

It is important to continue to set the tone when conducting either direct or cross-examination of a domestic violence victim. The following questions are designed to help explain to the court or jury the dynamics of domestic violence and the victim's motivation for testifying. Not all of the following questions are appropriate for all victim typologies and should be modified or adapted depending on the type of domestic violence victim witness testifying. Some of the questions may not be admissible in all jurisdictions and should be modified accordingly.

Prosecutors should not be judgmental of the domestic violence victim when she is testifying. Victim contact prior to trial and proper preparation will allow the prosecutor to present the facts and circumstances surrounding the victim's testimony in a non-antagonistic or overly judgmental fashion.

By meeting with the victim prior to trial the prosecutor can often diffuse hostility that the victim may have. A feeling of frustration or lack of understanding or information that the domestic violence victim has about the criminal justice process often causes this hostility.

- Are you here today because of a subpoena?
- Are you reluctant to testify?
- When did you become reluctant or refuse to testify?
- Did we meet to discuss the case?
- Do you understand why this case is being prosecuted?
- Were you living with the defendant when this incident happened?
- Are you living with the defendant now?
- [If not] Does the defendant know where you are staying?
- Are you employed?
- Is the defendant employed?
- Who makes more?
- Are the household finances shared?
- Do both you and the defendant contribute equally to the household budget?
- Who pays the bills in your household? Whose money is used to pay the bills?
- Do you and the defendant have children together?
- How did you get to court today? How will you get home?
- Have you seen or read the police reports and witness statements?
- Have you seen the photographs?
- Have you listened to the 911 tape? Is that your voice [your child's, neighbor's etc]?
- Have you talked about the case with the defendant?
- What did he say about the case?
- Has he apologized to you? What did he say?

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- Did he tell that he didn't mean to hurt you?
- Did he say that this would never happen again?
- Did he ask you to drop charges?
- Do you know that you can not drop charges? That the police [prosecutor] press charges?
- Did he tell you that he meant to hurt you? Did he threaten you?
- Did he ask you not to testify?
- Did anyone else talk to you about your testimony? His family? His friends?
- Are you afraid of the defendant?
- Has he threatened you?
- Didn't you tell the police something different than what you have testified?
- You never told the police that you started the fight?
- Were you were upset and crying when the police interviewed you?
- You told them about the incident right after it happened-correct?
- Have you reviewed the evidence in this case?
- You say that the police have misconstrued your statement?
- Have you seen the other witness statements? Did you hear their testimony?
- Their statements were not misconstrued-were they?
- Are you saying that all this evidence is being misconstrued?
- Did you call 911?
- 911 is for emergencies-correct?
- Are you trying to protect the defendant by testifying here today?
- What is the status of your marriage [relationship] with the defendant?
- Has he agreed to some sort of counseling?
- Has he made any promises to you?
- Has he stopped drinking [if applicable]?
- Have you and the defendant gotten back together?
- Do you still love the defendant?



Chapter 4:
Judicial Component

**Chapter 4: Judicial Component
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I. Introduction

The *Judicial Component* of the Illinois Model Domestic Violence Protocol is intended to be utilized in conjunction with the first chapter of the protocol.

The *Goals and Intentions* and *Guiding Principles* found in *Chapter 1: Background* form the basis of the beliefs upon which this protocol was designed. When a situation arises for which the protocol has no answer, judges may refer to the *Guiding Principles* and make decisions that fit within that framework.

It is the desire of the task force that this protocol provides guidelines and information to assist judges across Illinois in strengthening and updating current protocols and developing new protocols as needed. The guidelines within this protocol, incorporated with local knowledge of best practices, will assist judges in their role as enforcers of the laws of this state.

II. Effective domestic violence courtrooms

This section discusses best practice structures and strategies for courts that are hearing domestic violence cases.

A. Centralization of domestic violence court

Where possible, centralization of domestic violence court is recommended when all domestic violence cases are scheduled for a single court. Judges can acquire a specialized in-depth knowledge of domestic violence and related laws.

B. Knowledge of domestic violence dynamics

1. **Training:** It is important that judges hearing domestic violence cases receive training in the dynamics and prevalence of domestic violence, the relevant provisions of state and federal law, aggressor identification, safety planning, dangerousness issues, child abuse, child abduction, elder abuse, and court policies on handling domestic violence cases.

Specialized training is relevant for all new judges, and for all judges on a regular and ongoing basis. Judges should seek opportunities for multidisciplinary and cross-training with other professions and specializations, including law enforcement, prosecution, domestic violence advocates, juvenile court staff, probation, elder abuse services, and child protective professionals.

2. **Potential abuser behaviors concerning the court system:** Some domestic violence abusers attempt to use the court system as a means of exercising power and control over the victim. The offender may employ several strategies within the courtroom to achieve this end, some of which are not always obvious. Training for court personnel in detecting these strategies is useful.

Behaviors that an alleged abuser or a third party may use to manipulate the court or witnesses to the case include any or all of the following:

- a. Threatening a victim or victim's family with further violence.
- b. Threatening other witnesses.
- c. Assaulting a witness during travel to or from the courthouse or during the court hearing.
- d. Requesting repeated changes of counsel and/or continuances.
- e. Accompanying the reported victim to the courtroom.
- f. Using proximity to the reported victim or to persons with the reported victim in the courtroom to continue intimidation and violence. This includes but is not limited to, sending notes during the proceedings, following them in and out of the courtroom, bringing family or friends to the courtroom to intimidate, and making threats.
- g. Using courtship behaviors, such as sending flowers, love letters, or gifts, to harass and manipulate the reported victim.
- h. Manipulating the reported victim into recanting by claiming to change and using behaviors during this process to make this look true.
- i. Appearing to be reasonable and willing to cooperate while claiming that there is something wrong with the reported victim.
- j. Falsely claiming to be the victim, possibly including attempting to falsely file charges or obtain an order of protection.

An understanding by judges of these behaviors and the dynamics of domestic violence may diminish the influence these behaviors have upon the court.

3. **Potential reported victim behaviors affecting the court system:** Judges may witness confusing behavior on the part of the reported victim. Some victims of domestic violence do not respond to the court system in the same manner victims of other crimes do. Their behavior may seem confusing or contradictory. Confusing behaviors that judges may witness on the part of reported victims include:
 - a. Angry or irrational behavior and an unwillingness to cooperate with the court process, which is particularly notable when the alleged offender appears calm and reasonable.
 - b. Denial of the abuse.
 - c. Recanting, changing the story, refusing to cooperate or testify, or testifying for the defense.
4. **Reasons for reported victim reluctance:** Generally, reported victims of violent crime wish to cooperate with court cases and obtain justice. Reported victims of domestic violence, however, may be reluctant to testify in court for a number of reasons, including:
 - a. **Fear:** Victims often justifiably fear for their safety when pursuing criminal charges. The alleged abuser may have made threats, and there may be a history of the alleged abuser following through on threats. The alleged

abuser may still be living with the reported victim, or may be knowledgeable of the victim's routine and have ongoing access. The alleged abuser may be continuing to harass, threaten and abuse the reported victim since the charges were filed.

- b. Distrust of the system:** The reported victim may have experiences in the past when the courts were unable to protect them and their children. Or they may have a general fear and distrust of the courts. This can be particularly true for women of color, immigrant women, women from impoverished communities, and lesbian, gay, bisexual, and transgender victims who have seen others from their communities undergo negative experiences with the courts.
- c. Wish to move on:** The victim may wish not to relive the experience through a court case. This may be because the victim has left the abuser and started a new life, or because the victim has reconciled with the abuser.
- d. Shame and guilt:** The reported victim may feel that in some way their behavior caused the violence, or may feel the situation is too shameful to be reviewed in a public forum.
- a. Children:** The victim and abuser may have children together. The victim may not wish to pursue charges against the children's other parent. The victim may fear the inevitability of ongoing contact with the abuser for visitation or shared custody of the children or the abuser's threats to try to take the children if charges are pursued. The victim may also be fearful that the abuser will take it out on the children.
- e. Financial dependence:** The reported victim may be financially dependent upon the alleged abuser and have no other means of support.

III. Statutory bail provisions

The bail bond law, 725 *ILCS* 5/110-10(d), provides provisions to increase the safety of the reported victim while the defendant is out on bail.

A. Setting bail

The requirements of this law follow:

- 1.** Alleged offenders charged with violent crimes against a family or household member should appear before a judge for bail, if the alleged offender was:
 - a.** Subject to an order of protection at the time of crime.
 - b.** Previously convicted of a violation of an order of protection.
 - c.** Previously convicted of a violent crime against a family or household member.
 - d.** Previously convicted of a similar crime in another jurisdiction.
 - e.** Documented in the law enforcement report by the officer at the scene:
 - Observed injuries he believes resulted from the incident.
 - Believes the offender had on his person at the time of the alleged offense a deadly weapon.

- Believes the alleged offender presents a credible threat of serious physical harm to the victim or others.

725 *ILCS* 5/110-5.1(a)(1-2).

This section of the law is very similar to an existing Illinois Supreme Court rule, which required alleged domestic offenders to appear before a judge for bail. Further sections of the law are new statutory bail provisions.

2. When setting bail, the judge to the extent the information is available should consider the alleged offender's:
 - a. History of domestic violence or other violent acts.
 - b. Mental health.
 - c. History of violating court or other government orders.
 - d. Potential as a threat to another person.
 - e. Access to deadly weapons or history of using deadly weapons.
 - f. History of alcohol or drug abuse.
 - g. Severity of violence of the offense, including but not limited to:
 - The duration of the incident.
 - If the offense included serious physical injury, sexual assault, strangulation, abuse during an alleged victim's pregnancy, abuse of pets, or forcible entry to gain access to the victim.

725 *ILCS* 5/110-5.1(b)(1-7).

3. The judge should also consider the following to the extent the information is available:
 - a. Whether the alleged offender and reported victim have recently separated.
 - b. Whether the alleged offender exhibited any controlling or obsessive behavior toward the victim, including but not limited to:
 - Stalking
 - Surveillance
 - Isolating the alleged victim.
 - c. Whether the alleged offender has expressed suicidal or homicidal ideations.
 - d. Whether the offender did behaviors from a list in the statute or the materials contained in the complaint.

725 *ILCS* 5/110-5.1(b)(8-11).

4. Finally, the law allows for this hearing to be held via video or waived by the court if not practicable. 725 *ILCS* 5/110 5/110-5.1(c)
5. This law encourages judges to consider the dangerousness of alleged domestic violence offenders. Research and years of experience have demonstrated that some acts and tactics of domestic violence abusers indicate how dangerous that abuser may be. The considerations within this law are some of those indicators.

However, when looking for signs of danger, it is also important to remember that only by knowing the pattern and most serious behaviors of an alleged abuser is it possible to attempt to predict dangerousness, and even then such an assessment may not be accurate. Unfortunately, accurate prediction may not be possible, even when using dangerousness assessment tools that take into account the alleged offender's record, an interview of the reported victim, an interview of the alleged offender, and psychological testing. Alleged offenders cannot be relied on for accuracy, reported victims may be minimizing or may feel too intimidated to report accurately, and psychological testing, which is based on personality characteristics, is not reliable for this offender population. Additionally, many alleged abusers may not have criminal records even if they have a long history of violence. With these warnings in mind, see the *Appendices* for a sample dangerousness assessment.

B. Conditions of bail

When a person is charged with a criminal offense and the reported victim is a family or household member as defined in 725 ILCS 5/112A-3, conditions should be imposed at the time of the defendant's release on bail that restrict the defendant's access to the victim. Unless provided otherwise by the court, the restrictions should include the following requirements:

1. The defendant should refrain from contact or communication with the reported victim for a minimum period of 72 hours following the defendant's release.
2. The defendant should refrain from entering or remaining at the reported victim's residence for a minimum period of 72 hours following the defendant's release.
725 ILCS 5/110-10(d).

While the bail provision of Section 110-10(d) is not a substitute for an order of protection, because an order of protection can provide a wider range of remedies to the petitioner, it does provide 72-hours protection to the reported victim. If the defendant returns to the household after posting bail, the defendant can be charged with another criminal charge such as violation of an order of protection if one exists, or criminal trespass to residence (when the defendant no longer has legal authority to be at the residence). 720 ILCS 5/19-4(a)(1).

C. Violation of bail

The violation of bail bond statute provides that violation of the 72 hour no-contact provision is a Class A misdemeanor. 720 ILCS 5/32-10(b). Therefore, if a defendant returns to the reported victim's residence or contacts the reported victim in any way within 72 hours of having been released on bail on a domestic violence case, the defendant can have bail revoked or otherwise be charged. Local law enforcement may not be aware of the conditions of bail because bail provisions, including the 72-hour no-contact provision, are not currently included in LEADS.

D. Firearms

The court may order a person to surrender all firearms in their possession to a law enforcement officer at a designated date and time, and surrender their firearms owners identification card to the circuit clerk, if that person has been charged with, among other things, stalking, aggravated stalking, or domestic battery. Such firearms should then be impounded. All legally possessed firearms should be returned upon the charges being dismissed, or if the person is found not guilty, unless the finding of not guilty is by reason of insanity. 720 ILCS 5/110-10)(a)(5))

IV. Sentencing

Evidence exists to demonstrate that appropriate handling of domestic violence by the courts does deter future incidents of domestic violence (Ventura and Davis, 2005). This section covers sentencing information for judges to consider when sentencing domestic violence offenders.

A. Sentencing considerations

1. Factors in aggravation as reasons to provide a more severe sentence pursuant to:

- a. Defendant's conduct caused or threatened serious harm.
- b. Defendant has a history of prior delinquency or criminal activity.
- c. Defendant, by duties of his office or position, was obliged to prevent the particular offense committed or to bring offenders committing it to justice.
- d. Defendant utilized his professional reputation or position in the community to commit the offense, or to afford him an easier means of committing it.
- e. The sentence is necessary to deter others from committing the same crime.
- f. Defendant committed the offense against a person 60 years of age or older or such person's property.
- g. Defendant committed the offense against a person who is physically handicapped or such person's property.
- h. By reason of the individual's actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin the defendant committed an offense against:
 - The person or property of that individual.
 - The person or property of a person who has an association with the other individual.
 - The person or property is a relative, by blood or marriage, to the individual described above.
- i. The offense took place in a place of worship immediately prior to, during, or immediately following worship services.
- j. Defendant was convicted of a felony while he was released on bail or his own recognizance pending trial for a prior felony and was convicted of such prior felony, or defendant was convicted of a felony while on probation, conditional discharge, or supervised release.
- k. Defendant committed a felony while he was wearing a bulletproof vest.

- l. Defendant held a position of trust or supervision over the victim including but not limited to:
 - Family member.
 - Teacher, Scout leader or day care worker.
- m. Defendant committed an offense related to the activities of an organized gang.
- n. Defendant committed an offense in a school or daycare center, on school bus, or on or within 1,000 feet of school property.
- o. Defendant committed the offense in a nursing home or on the real property of a nursing home.

730 ILCS 5/5-5-3.2(a)(1,3,4,6-16.5,18).

Note: In the aggravation factors listed above do not reflect the complete list of factors found in the statute. The factors listed above are those factors that would most likely coincide with domestic violence. To see the entire list of factors found in the statute please consult the Appendices found at the back of this protocol.

2. Factors for consideration in imposing a more severe term under 730 ILCS 5/5-8-2:

- a. When a defendant is convicted of any felony, after having been previously convicted in Illinois or any other jurisdiction of the same or similar class felony or greater class felony, when such conviction has occurred within 10 years after the previous conviction, excluding time spent in custody, and such charges are separately brought and tried and arise out of different series of acts.
- b. When a defendant is convicted of any felony and the court finds that the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.
- c. When a defendant is convicted of voluntary manslaughter, second degree murder, involuntary manslaughter or reckless homicide in which the defendant has been convicted of causing the death of more than one individual.
- d. When a defendant is convicted of any felony committed against:
 - A person under 12 years of age at the time of the offense or such person's property.
 - A person 60 years of age or older at the time of the offense or such person's property.
 - A person physically handicapped at the time of the offense or such person's property.
- e. In the case of a defendant convicted of aggravated criminal sexual assault or criminal sexual assault, when the court finds that aggravated criminal sexual assault or criminal sexual assault was also committed on the same victim by one or more other individuals, and the defendant voluntarily participated in the crime with the knowledge of the participation of the others in the crime, and the commission of the crime was part of a single course of conduct during which there was no substantial change in the nature of the criminal objective.

- f. When a defendant is convicted of any felony and the offense involved any of the following types of specific misconduct committed as part of a ceremony, rite, initiation, observance, performance, practice or activity of any actual or ostensible religious, fraternal, or social group:
 - The brutalizing or torturing of humans or animals.
 - The theft of human corpses.
 - The kidnapping of humans.
 - The desecration of any cemetery, religious, fraternal, business, governmental, educational, or other building or property.
 - Ritualized abuse of a child.
- g. When a defendant is convicted of first degree murder, after having been previously convicted in Illinois of any offense listed under 730 ILCS 5/5-5-3(c)(2), when such conviction has occurred within 10 years after the previous conviction, excluding time spent in custody, and such charges are separately brought and tried and arise out of different series of acts.
- h. When a defendant is convicted of a felony violation of 720 ILCS 5/24-1 and the court finds that the defendant is a member of an organized gang.
- i. When a defendant committed the offense using a firearm with a laser sight attached to it. For purposes of this paragraph (i), "laser sight" has the meaning ascribed to it in 720 ILCS 5/24.6.5.
- j. When a defendant who was at least 17 years of age at the time of the commission of the offense is convicted of a felony and has been previously adjudicated a delinquent minor under 705 ILCS 405/1-1 for an act that if committed by an adult would be a Class X or Class 1 felony when the conviction has occurred within 10 years after the previous adjudication, excluding time spent in custody.
730 ILCS 5/5-5-3.2(b)(1-7,9-11).

3. Factors in mitigation:

- a. The defendant's criminal conduct neither caused nor threatened serious physical harm to another.
- b. The defendant did not contemplate that his criminal conduct would cause or threaten serious physical harm to another.
- c. The defendant acted under a strong provocation.
- d. There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense.
- e. The defendant's criminal conduct was induced or facilitated by someone other than the defendant.
- f. The defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that he sustained.
- g. The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime.
- h. The defendant's criminal conduct was the result of circumstances unlikely to recur.

- i. The character and attitudes of the defendant indicate that he is unlikely to commit another crime.
- j. The defendant is particularly likely to comply with the terms of a period of probation.
- k. The imprisonment of the defendant would entail excessive hardship to his dependents.
- l. The imprisonment of the defendant would endanger his or her medical condition.
- m. The defendant was mentally retarded as defined in 730 ILCS 5/5-1-13. 730 ILCS 5/5-5-3.1(a)(1-12).

B. Specific sentencing laws related to domestic battery

1. Supervision: Criminal sexual abuse and domestic battery are not eligible for the sentence of supervision. 730 ILCS 5/5-6-1(c).
2. Persons convicted of domestic battery may be subject to some penalties specific to domestic violence. First, there are mandatory jail periods for domestic violence convictions because the offense is not eligible for supervision. *Id.* For a subsequent domestic battery conviction, there is a mandatory penalty of 72 hours in jail. 720 ILCS 5/12-3.2(b). For aggravated domestic battery, the offender must serve 60 days in jail even if the eventual sentence is probation. 720 ILCS 5/12-3.3(b).
3. There are also additional penalties for subsequent convictions of domestic violence or aggravated domestic violence. A subsequent conviction for domestic battery, normally a Class A misdemeanor, is a Class 4 felony. 720 ILCS 5/12-3.2(b). A subsequent conviction for aggravated domestic battery, a Class 2 felony, results in a mandatory prison sentence of three to seven years. 720 ILCS 5/12-3.3(b).
4. There are also specific fines associated with domestic violence convictions. Domestic violence convictions are a conviction, plea of guilty, or a plea of no contest to a long list of crimes where both the offender and the victim are family of household members (730 ILCS 5/5-9-1.5). Any kind of domestic violence conviction provides for a mandatory fine of \$200. There is also a specific domestic battery fine available for a conviction or plea of domestic battery (730 ILCS 5/5-9-1.6). This is a \$10 fine on top of any other fines. *Id.* Another fine is available for violations of orders of protection. There is an additional \$20 fine for violations of orders of protection that involve family members. 730 ILCS 5/5-1.11.

C. Partner abuse intervention programs

As part of a sentence for domestic violence, a judge may require participation in a partner abuse intervention program (PAIP). Partner abuse intervention programs focus on making offenders accountable for their actions and on educating offenders about domestic violence.

These programs offer individual and group treatment, with groups numbering around 15 individuals. Groups are segregated by gender, and frequently by sexual orientation. Partner abuse intervention programs are funded with state grants and fees collected from individuals receiving services.

The Illinois Protocol for Partner Abuse Intervention Programs establishes partner abuse intervention program standards. The offender must first complete an initial evaluation. Then, the offender must attend at least 26 treatment sessions. These sessions must be conducted weekly or once every two weeks and must last at least 90 minutes. To complete the program, the offender must attend treatment sessions, take responsibility for violent behavior, understand alternatives to abusive behavior, understand the benefits of egalitarian relationships, and complete any other program requirements, such as substance abuse treatment. The Illinois Department of Human Services distributes a list of approved PAIPS.

When the court believes that a community-based sentence, such as probation or conditional discharge, is appropriate, it is recommended that the sentence include completion of a partner abuse intervention program assessment and all recommended program requirements. The court should also insure that the offender is required to attend and complete a protocol-approved program if one is available in the jurisdiction.

D. Judicial monitoring of sentencing compliance issues

A significant sentencing responsibility for the judge goes along with the imposition of community-based sentences in domestic violence cases. The well-established recognition of the cycle of violence, by which family violence recurs and escalates in frequency and lethality, heightens the judicial monitoring function in these cases even more than in non-domestic violence sentences.

The role of the court in protecting the victim from further violence and potential intimidation or retribution is an important one. Additionally, community-based sentences such as probation or conditional discharge also contemplate the rehabilitation of offenders. Evidence and experience indicate that domestic violence offenders are more successful with compliance and with rehabilitation efforts, such as a court-ordered partner abuse intervention program, when the judge personally and closely monitors compliance with such sentencing orders (MacLeod and Weber, 2000).

The court should not dismiss the charges upon successful completion of treatment and related expectations, a model frequently used in drug court. Preserving records of adjudicated criminal violence is too important. However, the court may decide to use a drug court model for post-adjudicatory monitoring of a defendant's compliance with terms and conditions, including treatment and restitution, of continuing sentence orders.

Frequent, personal involvement of the judge in reviewing short and long-term compliance expectations appears to be more successful than traditional probation. It is believed that if an offender on probation for domestic violence is faced with the requirement of appearing frequently before the sentencing judge, the offender will more promptly and completely

comply with treatment and other obligations. Some jurisdictions have confirmed this belief, reporting improved offender treatment completion statistics as a result of the judge remaining closely and personally involved in the enforcement process (MacLeod and Weber, 2000).

In sentencing an offender to a partner abuse intervention program, judges should be prepared to work closely and collaboratively with program provider. Judges should work with those providers to adopt substantially uniform practices for the reporting of offender progress to the court. Partner abuse intervention programs should be given some amount of discretion in deciding what an offender needs to do to complete the program, though judges should be aware of and enforce standards imposed by the Illinois Protocol for Partner Abuse Intervention Programs wherever possible.

The judge should remain an active participant while an offender is going through a partner abuse intervention program. Whether through a specialized domestic violence court or through regular reports, requiring the offender to appear for status reports keeps the judge aware of how the treatment is progressing. Also, hearings when jail time will result if the offender fails to remain current in the treatment program are a powerful incentive to attend treatment sessions. The judge should also consider the interests of both victim and offender in the imposition of a partner abuse intervention program requirement, as the offender must pay for the program in addition to being required to face other financial consequences involved in the case. The judge, mindful of the offender's ability to pay, may need to consider the total financial burden on the offender, along with the impact of a court-ordered payment obligation on the support due the victim's family unit.

V. Order of protection

Victims of domestic violence may petition a civil or criminal court to issue an order of protection which provides restrictions on the abuser's behavior, frequently including directing the alleged abuser to avoid contact with the victim. Orders of protection direct the respondent to behave in a certain manner; they create no duty for the victim. This section defines what an order of protection is, how it is obtained, and its enforcement by law enforcement.

A. Description

1. An order of protection (OP) is a statutory remedy designed to give family or household members relief under statutory provisions. The order of protection can both prohibit the abuser from committing certain behaviors and/or order him to perform certain acts. Illinois law does not provide for peace bonds, nor are restraining orders available in most domestic relations situations. The criminal orders of protection can be found in the Criminal Code of Procedure at 725 *ILCS* 5/112A- *et. seq.* While the civil orders of protection are in the IDVA and found at 750 *ILCS* 60/201 *et. seq.*
2. Family or household members are defined by the IDVA and in the Code of Criminal Procedure as:
 - a. People who are related by blood or by present or prior marriage.
 - b. People who share or formerly shared a common dwelling (apartment or home).

- c. People who have or allegedly have a child in common.
 - d. People who share or allegedly share a blood relationship through a child.
 - e. People who have or have had a dating or engagement relationship.
 - f. People with disabilities and their personal assistants.
- 750 ILCS 60/103(6) and 720 ILCS 5-112A-3(3).

B. Availability

An order of protection can be issued in civil, criminal or juvenile court under a number of circumstances.

1. An order of protection can be issued in civil court independently in a civil action, or as part of a divorce proceeding, guardianship, probate or other civil proceeding. 750 ILCS 60/202(a)(1-2).
2. An order of protection can be issued in criminal court in connection with a criminal charge when the petitioner is the victim of the offense and the respondent is the defendant. 750 ILCS 60/202(a)(3) and 725 ILCS 5/112A-2(a).
3. An order of protection can be issued in juvenile court in connection with a delinquency petition. 750 ILCS 60/202(a)(3) and 725 ILCS 5/112A-2(a).

C. Issuance of an order of protection

1. If the court finds that the petitioner has been abused by a family or household member or that the petitioner is a high-risk adult who has been abused, neglected, or exploited, an order of protection prohibiting the abuse, neglect, or exploitation should be issued.

A protective order issued pursuant to Domestic Violence Act of 1986 is an injunction within the meaning of Supreme Court Rule 307(a)(1) and is immediately appealable. *In re marriage of Fischer*, 228 Ill. App. 3d 482, 487 (4th Dist. 1992).

The circuit court has continuing discretion to modify or vacate the order of protection. *Id.* at 488.

2. An order of protection under the Act may be entered against a minor who is a family or household member. *Wright v. Wright*, 221 Ill. App. 3d 659, 662 (4th 1992).
3. When determining whether or not to issue an order of protection, the court shall not require physical manifestations of abuse on the person of the petitioner. 725 ILCS 5/112A-23(f).
4. For some guidance where no physical abuse occurred, see *In re Healy*. The respondent, in waking children up at 3:30 a.m. to go to an out-of-state golf tournament over July 4th weekend, did not harass or abuse his family sufficiently to warrant issuance of an order or protection. *In re Healy*, 263 Ill. App. 3d 596, 600 (1st Dist. 1994). Petitioner failed to show that respondent compelled her and the children to stop eating or sleeping or that he did something that would result in food and sleep

deprivation even though petitioner was unable to eat and sleep. *Id.* at 601. Even coupled with the use of curse words in the presence of children, his behavior did not constitute a basis for an order of protection on harassment, abuse, interference with personal liberty, or willful deprivation grounds. *Id.*

D. Burden of proof

The order of protection proceeding is civil in nature, regardless of whether it is held in a civil, criminal, or juvenile court. 750 ILCS 60/205(a) and 725 ILCS 5/112A-6(a). The burden of proof for a civil proceeding is preponderance of the evidence, meaning that the evidence in the case demonstrates that the allegations are more likely true than not true. *Id.*

E. Fees

There are no fees for filing or serving orders of protection. 750 ILCS 60/202(b).

F. Emergency order of protection

An emergency order of protection is valid for 14 to 21 days and can be issued *ex parte*. 750 ILCS 60/220(1) and 725 ILCS 5/112A-20(a)(1).

1. In the following circumstances, an emergency order of protection can be entered without giving notice to the respondent:
 - a. The reported abuse that the petitioner is trying to prevent would be likely to happen if the respondent were given notice. The following remedies are included here: prohibition of abuse, stay away order, removal or concealment of minor child, order to appear, physical care and possession of minor child, protection of property, prohibition of entry, prohibition of access to records, and injunctive relief.
 - b. For the remedy of exclusive possession, if the immediate danger of further abuse of the petitioner by the respondent outweighs the hardships to the respondent of an emergency order granting exclusive possession of the residence or household.
 - c. For the remedy of possession of personal property, if improper disposition of the personal property would be likely to occur if the respondent were given any prior notice.
750 ILCS 60/217(a)(3)(i-iii) and 725 ILCS 5/112A-17(a)(3)(i-iii).
2. Remedies that are not available on an emergency order of protection include counseling, temporary custody, payment of support, monetary compensation, or reimbursement of shelter costs. 750 ILCS 60/217(a) and 725 ILCS 5/112A-17(a).
3. If the respondent does appear in court, the respondent may elect to file a general appearance and testify. Any resulting order may be an emergency order. 750 ILCS 60/217(b) and 725 ILCS 5/112A-17(b).
4. The statute also provides for the issuance of an emergency order on court holidays and evenings. 750 ILCS 60/217(c) and 725 ILCS 5/112A-17(c).

G. Interim order of protection

1. An interim order of protection is valid for up to 30 days. 750 *ILCS* 60/220(2) and 725 *ILCS* 5/112A-20(a)(2).
2. This order is issued if there is an actual appearance by the respondent, the respondent must have received notice as laid out in statute's notice provisions, or the petitioner is diligently trying to serve process on the respondent. 750 *ILCS* 60/218(a)(3) and 725 *ILCS* 5/112A-18(a)(3).
3. Remedies not available on an interim order of protection unless the respondent has been served or has filed an appearance in court include counseling, payment of support, monetary compensation, or reimbursement of shelter costs. 750 *ILCS* 60/218(a) and 725 *ILCS* 5/112A-20(b). If the respondent has been served or has filed an appearance in court, these remedies may be available. *Id.*

H. Plenary order of protection

Except as otherwise listed below, a plenary order of protection should be valid for a fixed period of time, not to exceed two years. 750 *ILCS* 60/220(b) and 725 *ILCS* 5/112A-20(b).

1. A plenary order of protection in conjunction with another civil proceeding may be valid as follows:
 - a. If entered as preliminary relief in that other proceeding, until entry of final judgment in that proceeding.
 - b. If incorporated into the final judgment in that other proceeding, until the order of protection is vacated or modified.
 - c. If incorporated in an order for involuntary commitment, until termination of both the involuntary commitment and any voluntary commitment, or for a fixed period of time not exceeding two years.
750 *ILCS* 60/220(b)(1)(i-iii).
2. A plenary order of protection in conjunction with a criminal prosecution should be valid as follows:
 - a. If entered during pretrial release, until disposition, withdrawal, or dismissal of the underlying charge. However, if the case is continued as an independent cause of action, the order's duration may be for a fixed period of time not to exceed two years.
 - b. If in effect in conjunction with a bail forfeiture warrant, until final disposition or an additional period of time not exceeding two years. No order of protection, however, should be terminated by a dismissal that is accompanied by the issuance of a bail forfeiture warrant.
 - c. Until expiration of supervision, conditional discharge, probation, periodic imprisonment, parole, or mandatory supervised release, and for an additional period of time thereafter not exceeding two years.

3. Mandatory language that must be on an Order of Protection.

- a.** Any knowing violation of an order of protection forbidding physical abuse, neglect, exploitation, harassment, intimidation, interference with personal liberty, willful deprivation, or entering or remaining present at specified places when the protected person is present, or granting exclusive possession of the residence or household, or granting a stay away order is a Class A misdemeanor. Grant of exclusive possession of the residence or household shall constitute notice forbidding trespass to land. Any knowing violation of an order awarding legal custody or physical care of a child or prohibiting removal or concealment of a child may be a Class 4 felony. Any willful violation of any order is contempt of court. Any violation may result in fine or imprisonment. 750 *ILCS* 60/221(c) and 725 *ILCS* 5/112A-21(c).
- b.** Emergency Orders of Protection must have this statement:
 - This Order of Protection is enforceable, even without registration, in all 50 states, the District of Columbia, tribal lands, and the U.S. territories pursuant to the Violence Against Women Act (18 U.S.C. 2265). Violating this Order of Protection may subject the respondent to federal charges and punishment (18 U.S.C. 2261-2262). 750 *ILCS* 60/221(d) and 725 *ILCS* 5/112A-21(d).
- c.** Interim or Plenary orders of protection must have this statement:
 - This Order of Protection is enforceable, even without registration, in all 50 states, the District of Columbia, tribal lands, and the U.S. territories pursuant to the Violence Against Women Act (18 U.S.C. 2265). Violating this Order of Protection may subject the respondent to federal charges and punishment (18 U.S.C. 2261-2262). The respondent may be subject to federal criminal penalties for possessing, transporting, shipping, or receiving any firearm or ammunition under the Gun Control Act (18 U.S.C. 922(g)(8) and (9)). 750 *ILCS* 60/221(e) and 725 *ILCS* 5/112A-21(e).

K. Notice of an order of protection

- 1.** Upon issuance of any order of protection, the clerk should immediately enter the order on the record and file the same, as well as provide a file-stamped copy to the respondent and copies, as needed, to the petitioner. 750 *ILCS* 60/222(a) and 725 *ILCS* 5/112A-22(a).
- 2.** The circuit clerk's office of the issuing judge should or the petitioner may, on the same day that an order is issued, file a certified copy of that order with the sheriff. 750 *ILCS* 60/222(b) and 725 *ILCS* 5/112A-22(b).

3. The county sheriff should be responsible for entering all orders of protection into the LEADS system on the same day the order is issued by the court whether or not the order has been served. 750 *ILCS* 60/222(b) and 725 *ILCS* 5/112A-22(b).
4. Unless the respondent was present in court when the order was issued, the sheriff should promptly serve the order on respondent and file proof of such service. 750 *ILCS* 60/222(c) and 725 *ILCS* 5/112A-22(c).
5. The respondent can also be served via the Order of Protection Short Form Notification Form, also called the “short form.” This form is a one page summary of the order of protection that can be served by any law enforcement officer during any encounter with a respondent. 750 *ILCS* 60/222(c) and 725 *ILCS* 5/112A-22(c).
6. Notice to schools:
 - a. Upon the request of the petitioner, the clerk of the issuing judge should file a certified copy of an order of protection with the day-care facilities, pre-kindergarten, pre-school private school, schools or the principal office of the school district and universities and colleges in which any children of the petitioner are enrolled;
 - b. A private school may prohibit disclosure by any school employee to any person against whom the school has received a certified copy. A public school district may prohibit disclosure in accordance with the applicable provisions of the School Code.
750 *ILCS* 60/222(e,f) and 725 *ILCS* 5/112A-22(e,f).

L. Full faith and credit

Congress enacted the Violence Against Women Act (VAWA) in 1994 instructing jurisdictions to give full faith and credit to all valid orders of protection issued by other jurisdictions (18 USC 2265). This requires the enforcement of all valid orders of protection wherever a violation of the order occurs, regardless of the ordering jurisdiction. An order of protection is entitled to enforcement if:

1. The court that issued the order of protection had jurisdiction over the parties and the matter under the law at the time of issuance.
2. The respondent was given reasonable notice and opportunity to be heard to protect his due process rights. In the case of an order of protection that is entered *ex parte*, these notice and opportunity standards must be provided within the time required by the law of the issuing state.

The remedies included, protected parties, and length of time the order is in effect are determined by the state issuing the order. The state where the violation occurs must honor the order of protection, regardless of whether the laws of the two states are inconsistent.

The laws of the state where the violation has occurred, however, determine how the violation is enforced. The state must enforce a foreign order in the same manner that it enforces orders given within the state.

A person protected by an order of protection has the right to file a certified copy of the order in any judicial circuit they believe necessary for their protection. State residency is not a requirement for filing the order in a jurisdiction other than where it was given. The clerk of court of the jurisdiction in which the order is being filed must:

- Treat the foreign order just as an order of that jurisdiction would be treated. The exception is that the clerk of court must not mail notice of the filing to the respondent. 750 *ILCS* 60/222.5(b)(1) and 725 *ILCS* 5/112A-23(b)(1).
- File a certified copy of the order of protection with the sheriff or other law enforcement agency for LEADS entry on the same day the order was filed. Whether or not the order of protection has been previously filed, the order is entitled to enforcement. 750 *ILCS* 60/222.5(b)(2) and 725 *ILCS* 5/112A-23(b)(2).

M. Modification and reopening of orders of protection

The following is a list of conditions under which the court can modify or reopen orders of protection:

1. The court may modify an emergency, interim, or plenary order of protection:
 - a. If the respondent has abused the petitioner since the hearing for that order, the court can add or alter one or more of the provided remedies.
 - b. The court can add any authorized remedy which was reserved in the order of protection, not requested for inclusion in that order, or denied on procedural grounds but not on the merits.
750 *ILCS* 60/224(a)(1-2) and 725 *ILCS* 5/112A-24(a)(1-2).
2. Upon motion by either party, the court may modify any prior order of protection remedy for custody, visitation, or payment of support in accordance with the relevant provisions of the Illinois Marriage and Dissolution of Marriage Act. 750 *ILCS* 60/224(b) and 725 *ILCS* 5/112A-24(b).
3. After 30 days following entry of a plenary order of protection, a court may modify that order only when changes in the applicable law or facts since that plenary order was entered warrant a modification of its terms. 750 *ILCS* 60/224(c) and 725 *ILCS* 5/112A-24(c).
4. A respondent subject to an emergency or interim order may, upon two days notice to the petitioner, move to reopen that order to rehear the original or amended petition. 750 *ILCS* 60/224(d) and 725 *ILCS* 5/112A-24(d). Said motion must be supported by an affidavit alleging that the respondent did not receive prior notice

of the initial hearing and the respondent had a meritorious defense to the order or any portion thereof. *Id.*

5. In the event that the emergency or interim order granted the petitioner exclusive possession and the petition of the respondent seeks to reopen or vacate that grant, the court should set a date for hearing within 14 days on all issues relating to exclusive possession. 750 *ILCS* 60/224(e) and 725 *ILCS* 5/112A-24(e).
6. The court may extend any emergency, interim, or plenary order of protection one or more times, as deemed necessary. 750 *ILCS* 60/220(e) and 725 *ILCS* 5/112A-20(e).
7. In case a petitioner requests to vacate an order of protection, the court should require the petitioner to make this request in writing and appear before the judge to aid in verification that the motion to vacate is voluntary and to assure the court there is a reason to vacate the order.
8. Only a judge can modify or vacate an order of protection. *In Re the Marriage of Fischer*. 228 Ill. App. 482, 488 (4th Dist. 1992).

VI. Remedies of Orders of Protection

(Note: The citation listed after each remedy is to both the civil and criminal remedies found in orders or protection sections of the particular statute.)

A. Prohibition of abuse, neglect or exploitation

This remedy prohibits the respondent from further abusing, neglecting or exploiting the petitioner. Abuse includes physical abuse, harassment, intimidation, interference with personal liberty or willful deprivation. 750 *ILCS* 60/214(b)(1) and 725 *ILCS* 5/112a-14(b)(1). This remedy is available with all three types of orders of protection.

This remedy is law enforcement enforceable. 750 *ILCS* 60/223(a)(1) and 725 *ILCS* 5/112a-23(a)(1). A respondent who violates this remedy should be arrested and charged with the crime of violation of an order of protection.

B. Exclusive possession of residence

1. **Right of occupancy:** A party has the right to occupancy if:
 - a. It is solely or jointly owned or leased by that party.
 - b. That party's spouse, a person with a legal duty to support that party or a minor child in that party's care.
 - c. Any person or entity other than the opposing party that authorizes that party's occupancy, such as a domestic violence shelter.750 *ILCS* 60/214(b)(2) and 725 *ILCS* 5/112a-14(b)(2).

- 2. Balance of hardships:** Both parties must have a right of occupancy and the court should balance the hardships such as:
- a. To the respondent and any minor child or dependent adult in respondent's care resulting from entry of this remedy.
 - b. To petitioner and any minor child or dependent adult in petitioner's care resulting from continued exposure to the risk of abuse, should petitioner remain at the residence or household; or, from loss of possession of the residence or household, should petitioner leave to avoid the risk of abuse. When determining the balance of hardships, the court should also take into account the accessibility of the residence or household. Hardships need not be balanced if respondent does not have a right to occupancy. The balance of hardships is presumed to favor possession by petitioner unless the presumption is rebutted by a preponderance of the evidence, showing that the hardship to respondent substantially outweighs the hardship to petitioner and any minor child or dependent in petitioner's care. The court, on the request of petitioner or on its own motion, may order respondent to provide suitable, accessible, alternate housing for petitioner instead of excluding respondent from a mutual residence or household. *Id.*

Where an order of possession has been entered, the respondent may have access to the residence to remove items of clothing and personal adornment used exclusively by the respondent, medications, and other items as the court directs. This right to access should only be exercised on one occasion as the court directs and in the presence of an agreed-upon adult third party or law enforcement officer. Exclusive possession can be ordered on an emergency *ex parte* basis without hearing. *Id.*

This remedy is law enforcement enforceable. 750 *ILCS* 60/223(a)(1) and 725 *ILCS* 5/112a-23(a)(1) A respondent who violates this remedy should be arrested and charged with the crime of violation of an order of protection.

C. Stay away and additional prohibitions

This remedy requires the respondent to stay away from the petitioner or anyone else that is protected by the order. 750 *ILCS* 60/214(b)(3) and 725 *ILCS* 5/112a-14(b)(3). It can specify times and/or locations, such as home, work, or school where the respondent needs to stay away. *Id.*

This remedy is law enforcement enforceable. 750 *ILCS* 60/223(a)(1) and 725 *ILCS* 5/112a-23(a)(1). A respondent who violates this remedy should be arrested and charged with the crime of violation of an order of protection.

D. Counseling

This remedy can require or recommend that the respondent undergo counseling for a specified amount of time. 750 *ILCS* 60/214(b)(4) and 725 *ILCS* 5/112a-14(b)(4). The

counseling may be in a partner abuse intervention program, or it may be substance abuse, mental health, or some other type of counseling deemed necessary by the court. *Id.*

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

E. Physical care and possession of a minor child

This remedy can grant physical care and possession of a minor child to the petitioner, order the respondent to return a minor child to the petitioner, or order the respondent not to remove a child from the petitioner or a person acting in loco parentis. 750 *ILCS* 60/214(b)(5) and 725 *ILCS* 5/112a-14(b)(5).

This remedy is law enforcement enforceable as a violation of the state's child abduction statute. 750 *ILCS* 60/223(a)(2) and 725 *ILCS* 5/112a-23(a)(2). A respondent who violates this remedy should be arrested and charged with the crime of child abduction.

F. Temporary legal custody of a minor child

This remedy allows the judge to grant temporary custody of a minor child to the petitioner. Custody of the minor child has to be in accordance with the section, the Illinois Marriage and Dissolution of Marriage Act, the Illinois Parentage Act of 1984, the Illinois Uniform Child-Custody Jurisdiction and Enforcement Act. 750 *ILCS* 60/214(b)(6) and 725 *ILCS* 5/112a-14(b)(6). There is a rebuttable presumption that temporary custody to the petitioner would be in the best interest of the minor child if there has been determination by the court of abuse. *Id.*

Unfounded allegations of child abuse and abuse of the Illinois Domestic Violence Act can be considered by the court in custody decisions. *In re Marriage of Hartman*, 252 Ill App 3d 481, 485 (3rd Dist. 1993).

This remedy is law enforcement enforceable as a violation of the state's child abduction statute. 750 *ILCS* 60/223(a)(2) and 725 *ILCS* 5/112a-23(a)(2). A respondent who violates this remedy should be arrested and charged with the crime of child abduction.

G. Visitation

This remedy allows the judge to deny or restrict visitation of a minor child if the respondent has, or is likely to, commit any of the following actions:

1. Abuse or endanger the child during visitation.
2. Use the visitation to abuse or harass the petitioner, or the petitioner's family or household member.
3. Improperly conceal or detain the child.
4. Act in a manner that is not in the best interest of the child.

750 *ILCS* 60/214(b)(7) and 725 *ILCS* 5/112a-14(b)(7).

The court if it grants visitation shall specify the date and time for visitation. *Id.* The court can order supervised visitation or visitation exchange at a place other than the petitioner's home. The petitioner may refuse to exchange the child if the respondent is under the influence of

drugs or alcohol, or if the respondent presents a danger to the petitioner or the petitioner's minor child. *Id.* However, the petitioner needs to be aware of the possibility of being charged with interference with visitation if they refuse to exchange the child for visitation.

For a discussion of a case regarding this remedy, see *People v Hazelwonder*. In this case, proof established that the accused violated prior protective orders by harassing the former spouse. *People v Hazelwonder*, 138 Ill. App. 3d 213, 217 (4th Dist. 1985). Additionally, proof that the accused had depressive, violent, and suicidal tendencies raising the likelihood of loss of self-control in visitation arrangements, supporting the trial court's finding that visitation would seriously endanger the child's physical, mental, and emotional health. *Id.* Therefore, the court found justification for an order of protection against visitation without court permission during the 12-month term of probation on the domestic violence misdemeanor conviction. *Id.* at 218.

This remedy is court enforceable on a contempt of court order. 750 ILCS 60/223(b) and 725 ILCS 5/112a-23(b).

H. Removal or concealment of minor child

This remedy prohibits the respondent from removing a child from the state or concealing a child within the state. 750 ILCS 60/214(b)(8) and 725 ILCS 5/112a-14(b)(8). It can be issued in an emergency order of protection.

In *Sanders v Shephard*, the father who abducted and concealed a minor child was not entitled to notice of the child's mother's petition for order of protection where the affidavit stated fear that prior notice would cause further concealment of the child. *Sanders v Shephard*, 185 Ill. App. 3d 719, 727 (1st Dist. 1989) *Note: The minor child in Sanders' was abducted in 1984, has not yet been found. The defendant was still incarcerated at last check.*

This remedy is law enforcement enforceable as a violation of the state's child abduction statute. 750 ILCS 60/223(a)(2) and 725 ILCS 5/112a-23(a)(2). A respondent who violates this remedy should be arrested and charged with the crime of child abduction.

I. Order to appear in court

This remedy can order the respondent to appear in court and to:

1. Appear with or without minor child.
 2. Prevent the abuse, neglect, removal, or concealment of a minor child.
 3. Return child to the custody or care of the petitioner.
 4. Allow a court-ordered interview or examination of the child or the respondent.
- 750 ILCS 60/214(b)(9) and 725 ILCS 5/112a-14(b)(9).

This remedy is court enforceable on a contempt of court order. 750 ILCS 60/223(b) and 725 ILCS 5/112a-23(b).

J. Possession of personal property

This remedy gives the petitioner exclusive possession of personal property and may require the respondent to turn it over to the petitioner. The respondent must return the property over to the petitioner if either:

1. Petitioner solely owns the property.
2. Parties own the property jointly and sharing it would risk abuse of the petitioner
3. Parties own the property jointly and the balance of hardship temporary favors the petitioner.

750 *ILCS* 60/214(b)(10) and 725 *ILCS* 5/112a-14(b)(10).

If the petitioner's sole claim to ownership of the property is that it is marital property, the court may award the petitioner temporary possession thereof only if a proper proceeding has been filed under the Illinois Marriage and Dissolution of Marriage Act. *Id.* This remedy does not, however, influence ownership of the property, which must be assigned later in a divorce proceeding. *Id.*

In *People v Hetzel*, the court found that the respondent can be enjoined from taking, transferring, encumbering, concealing, damaging, or otherwise disposing of any real or personal property. *People v Hetzel*, 176 Ill. App. 3d 630, 633 (2nd Dist. 1988). Law enforcement may retrieve complainant's keys from defendant's coat pocket when enforcing an order of protection. *Id.* at 634.

This remedy is not law enforcement enforceable unless the respondent can also be charged with theft or criminal damage to property. 750 *ILCS* 60/214(b)(13)(iii) and 725 *ILCS* 5/112a-14(b)(12)(iii). Otherwise, it is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

K. Protection of property

This remedy prohibits the respondent from damaging, destroying, selling, taking, concealing, or otherwise disposing of personal or real property if:

1. Petitioner solely owns the property.
2. Parties own the property jointly and the balance of hardship temporary favors the petitioner.
 - Relief under this subparagraph is only available if a proper proceeding has been filed under the Illinois Marriage and Dissolution of Marriage Act.

750 *ILCS* 60/214(b)(11) and 725 *ILCS* 5/112a-14(b)(11).

This remedy is not law enforcement enforceable unless the respondent can also be charged with theft or criminal damage to property. 750 *ILCS* 60/214(b)(13)(iii) and 725 *ILCS* 5/112a-14(b)(12)(iii). Otherwise, it is enforceable by the court on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

L. Order of payment of support

This remedy orders the respondent to pay support or child support for a minor child in the petitioner's care if the respondent would be obligated to do so under Illinois Marriage and

Dissolution of Marriage Act (IMDMA). 750 *ILCS* 60/214(b)(12) and 725 *ILCS* 5/112a-14(b)(12).

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

M. Payment for losses

This remedy requires the respondent to pay for losses suffered as a direct result of the abuse, including as medical expenses, lost wages, temporary housing, reasonable attorney fees, court cost, or damaged property. 750 *ILCS* 60/214(b)(13) and 725 *ILCS* 5/112a-14(b)(13).

The court can also order the respondent to pay expenses incurred in the search and recovery of a minor child in the case of improper concealment or removal of a minor child. 750 *ILCS* 60/214(b)(13)(ii) and 725 *ILCS* 5/112a-14(b)(12)(ii).

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

N. Prohibition of entry

This remedy prohibits the respondent from entering or staying in the home while under the influence of drugs or alcohol and constituting a threat to the petitioner or the petitioner's child. 750 *ILCS* 60/214(b)(14) and 725 *ILCS* 5/112a-14(b)(14).

This remedy is law enforcement enforceable. A respondent who violates this remedy should be arrested and charged with the crime of violation of an order of protection. 750 *ILCS* 60/223(a)(1) and 725 *ILCS* 5/112a-23(a)(1).

O. Prohibition of firearm possession

If the respondent is present in court, or has failed to appear after receiving actual notice of the order of protection, and the court is satisfied that there is any danger of the illegal use of firearms, the court should require that any firearms in the possession of the respondent be turned over to the local law enforcement agency. 750 *ILCS* 60/214(b)(14.5) and 725 *ILCS* 5/112a-14(b)(14.5).

If the respondent has failed to appear, or fails to surrender his or her firearms, the court should issue a warrant for seizure of any firearm in the possession of the respondent. *Id.*

If the respondent is a peace officer, the court should order that any firearms used by the respondent in the performance of the officer's duties be surrendered to the respondent's chief law enforcement executive.

Under this law, the firearms can be retained for safekeeping for the period stated in the court order, not to exceed two years. Firearms should be returned to respondent when this remedy is no longer in effect. *Id.*

This remedy is law enforcement enforceable. A respondent who violates this remedy should be arrested and charged with the crime of violation of an order of protection. 750 *ILCS* 60/223(a)(1) and 725 *ILCS* 5/112a-23(a)(1).

P. Prohibition of access to records

This remedy prohibits the respondent from access to the school or any other records of a child in the care of the petitioner when:

1. The order of protection prohibits the respondent from having contact with the child.
2. The petitioner's address needs to be hidden to protect the petitioner.
3. It is necessary to prevent the abuse, removal, or concealment of the child.
750 *ILCS* 60/214(b)(15) and 725 *ILCS* 5/112a-14(b)(15).

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

Q. Payment of shelter services

This remedy orders the respondent to reimburse a program providing shelter or counseling services. 750 *ILCS* 60/214(b)(16) and 725 *ILCS* 5/112a-14(b)(16).

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

R. Order for injunctive relief

This remedy allows for other relief as necessary to prevent further abuse, neglect, exploitation or to allow for the enforcement of one of the other remedies ordered. 750 *ILCS* 60/214(b)(17) and 725 *ILCS* 5/112a-14(b)(17).

In *Rosenbaum v. Rosenbaum*, the court considered the use of the Illinois Domestic Violence Act of 1986 and an injunction to grant the appropriate relief to prevent harassment. An order enjoining a mother from telephoning or verbally contacting her son while allowing her to communicate in writing was clearly within the trial court's authority, but requiring the son to call and visit his mother was not appropriate to prevent further harassment. *Rosenbaum v. Rosenbaum*, 184 Ill. App. 3d 987, 990 (1st Dist. 1989). An order requiring such conduct of the son would not be deemed appropriate under the Illinois Domestic Violence Act or any other Illinois law. *Id.* The court does not have jurisdiction over the victim to order him or her to do any affirmative act. *Id.*

This remedy is court enforceable on a contempt of court order. 750 *ILCS* 60/223(b) and 725 *ILCS* 5/112a-23(b).

S. Balance of hardships test

When granting certain remedies on an order of protection, judges are required to balance the hardships to the parties. The balance of hardships is presumed to favor the petitioner unless

the presumption is rebutted by a preponderance of the evidence. The following are the circumstances to which the judge applies the balance of hardships test.

1. When granting exclusive possession of the residence, the judge shall apply the balance of hardships test. 750 ILCS 60/214(b)(2). The judge should consider availability, accessibility, cost, safety, adequacy, and location of alternate housing for each party. *Id.* Additionally, the judge may consider the effect on employment and the effect on the party and any child's relationship with family, school, and community of granting possession of the residence. *Id.*
2. When granting stay away orders, balance the hardships when the respondent has a right to occupancy. 750 ILCS 60/214 (b)(3).
3. When granting possession of personal property. 750 ILCS 60/214(b)(10).
4. When prohibiting transferring, concealing, or damaging property. 750 ILCS 60/214(b)(11).
5. When granting injunctive relief. 750 ILCS 60/214(b)(17).
6. In determining venue. If the court in which the case is currently being considered is an inconvenient forum (i.e., neither party resides in the county), the court may balance the hardships to the parties and transfer the case to a county where one of the parties resides. 750 ILCS 60/209(c). This transferring of venue only applies to modification, extend, vacate, re-open or enforcement. *Id.*

VII. Violation of an order of protection

It is the crime of violation of an order of protection (VOOP) for a respondent to violate certain conditions imposed by an order of protection. Jurisdiction exists where the violation occurs. An arrest can be made in any county where a violation occurs and the court of that county should hear the case. Only the respondent, not a petitioner can violate an order of protection. Prosecution for a violation of an order of protection should not bar concurrent prosecution for any other crime, including any crime that may have been committed at the same time as the violation of the order of protection.

A. Violation of an order of protection:

The respondent commits the crime of violation of an order of protection by having knowingly violated the following remedies:

1. Prohibition against further abuse (Remedy A).
2. Exclusive possession of residence (Remedy B).
3. Stay away and additional prohibitions (Remedy C).

4. Prohibition of entry (Remedy N).
5. Prohibition of firearm possession (Remedy O).
6. Any remedies that are substantially similar to the remedies listed above in 1-5.
7. Any other remedy when the violation would also constitute another crime, such as theft or criminal damage to property.
720 ILCS 5/12-30 (2007).

Prosecution for a violation of an order of protection should not bar concurrent prosecution for any other crime, including any crime that may have been committed at the time of the violation of the order of protection.

B. Penalties for violation of an order of protection

1. **First violation of an order of protection:** A violation of an order of protection is a Class A misdemeanor for the first offense. 720 ILCS 5/12-30. This carries a penalty of up to 364 days in jail. 730 ILCS 5/5-8-3(a).
2. **Second violation of an order of protection:** A second or subsequent violation of an order of protection can be charged as a Class 4 felony and carry a penalty of one to three years. A violation of an order of protection can also be charged as a Class 4 felony when the offender has a prior conviction for domestic battery or one of the following felony convictions against any family or household member:
 - a. Aggravated battery, aggravated domestic battery, or heinous battery.
 - b. Aggravated battery of a child, unborn child or senior citizen.
 - c. Unlawful restraint or aggravated unlawful restraint.
 - d. Stalking or aggravated stalking.
 - e. Criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual assault.
 - f. Kidnapping or aggravated kidnapping.
 - g. Aggravated arson.
 - h. Aggravated battery with a firearm or aggravated discharge of a firearm.
 - i. First degree murder or attempt first degree murder.
 720 ILCS 5/12-30(d).

A Class 4 felony carries a prison term of at least one year but not more than three years. 730 ILCS 5/5-8-1(a)(7).

C. Criminal violations: Child abduction

A respondent on an order of protection can be charged with child abduction for committing any of the following violations of an order of protection:

1. The respondent intentionally conceals or detains a child or removes a child from the state in violation of the order of protection Remedy 5 granting the petitioner or another physical care and/or possession of the child.
2. The respondent intentionally conceals or detains a child or removes a child from the state in violation of the order of protection Remedy 6 granting temporary legal custody to the petitioner.
3. The respondent intentionally conceals or detains a child or removes a child from the state in violation of the order of protection Remedy 8 prohibiting such conduct.
720 ILCS 5/10-5(b)(1).

D. Penalties for child abduction

Child abduction is a Class 4 felony and carries a penalty of one to three years. 730 ILCS 5/5-8-1(a)(7).

E. Contempt of court

When violation is contempt of court a violation of any valid Illinois order of protection, whether issued in a civil or criminal proceeding, may be enforced through civil or criminal contempt procedures, as appropriate, by any court with jurisdiction, regardless where the act or acts which violated the order of protection were committed, to the extent consistent with the venue provisions of this Act. 750 ILCS 60/223(b) and 725 ILCS 5/112A-23(b). Nothing in this Act shall preclude any Illinois court from enforcing any valid order of protection issued in another state. *Id.* Illinois courts may enforce orders of protection through both criminal prosecution and contempt proceedings, unless the action which is second in time is barred by collateral estoppel or the constitutional prohibition against double jeopardy. *Id.*

A civil contempt proceeding is used to coerce the respondent to comply with the remedies on the order of protection. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 43 (4th Dist. 1990). A criminal contempt proceeding is used to punish the respondent for violating the order. *Id.*

1. **Civil contempt:** There are two types of civil contempt. There is direct civil contempt and indirect civil contempt. Direct civil contempt occurs in front of the court. *Id.* at 47. Indirect civil contempt takes place outside the presence of the court. *Id.* Most civil contempt in the case of domestic violence will be indirect. If enforced through indirect civil contempt proceedings, the respondent has a right to receive a verified copy of the petition for indirect civil contempt; to notice of hearing; to answer orally or in writing; to be heard; to subpoena witnesses; to cross-examine witnesses; and to an attorney of choice.
2. **Criminal contempt:** There are two types of criminal contempt. There is direct criminal contempt and indirect criminal contempt. Direct criminal contempt is contumacious conduct if it is committed in such a manner that no evidentiary hearing is necessary to determine the facts establishing such conduct, and is committed in an integral part of the court while the court is performing its judicial functions. *Id.* at 45. Indirect criminal contempt is a contumacious act when it

occurs outside the presence of the court or in an area that is not integral or constituent part of the court, or the elements of the offense are otherwise not within the personal knowledge of the judge. *Id.* If enforced through indirect criminal contempt, the respondent has a right to receive a copy of a verified charge; to personal service; to subpoena witnesses; to cross-examine witnesses; to exercise right against self-incrimination; to presumption of innocence; and to a court-appointed attorney. There is no right to a trial by jury if the sanctions do not exceed a fine of \$500, a jail sentence of six months, or both.

3. **Petition for rule to show cause:** In a contempt proceeding where the petition for rule to show cause sets forth facts evidencing an immediate danger that the respondent will flee the jurisdiction, conceal a child, or inflict physical abuse on the petitioner or minor children, the court may order the attachment of the respondent without prior service of the rule to show cause. 750 *ILCS* 60/223(b)(1) and 725 *ILCS* 5/112A-23(b)(1). Bail should be set unless specifically denied in writing. *Id.*
4. **Expedited proceeding:** A petition for rule to show cause for violation of an order of protection should be treated as an expedited proceeding. 750 *ILCS* 60/223(b)(2) and 725 *ILCS* 5/112A-23(b)(2).

F. Penalties for contempt of court

Except where the court finds the commission of a crime, including a violation of an order of protection or child abduction, or where the violation is of a custody or support order, and may include an order directing the respondent to pay restitution to the petitioner, or a fine, or both.

1. **Civil contempt:** Sanctions for indirect civil contempt continue until the order is obeyed. Possible sanctions include an indefinite and continuing fine and/or jail until the order is complied with. The opportunity to purge contempt must be given to the respondent. This sanction is used only to force a respondent to comply with a court order. Civil contempt is not used to punish.
2. **Criminal contempt:** Sanctions for criminal contempt are issued to vindicate the authority of the court. The sentence is punitive and unconditional. Examples of criminal contempt sanctions include a specific time of jail commitment or a specific fine payable to the court.

G. Illinois Marriage and Dissolution Act

A violation of custody or support remedies can be enforced by any remedy provided by 750 *ILCS* 5/611. Violation of custody or support remedies include:

1. The physical care and possession of a minor child (Remedy 5).
2. Temporary legal custody of a minor child (Remedy 6).
3. Visitation (Remedy 7).

4. Removal or concealment of a minor child (Remedy 8).
750 ILCS 60/223(c) and 625 ILCS 5/112A-23(c).

H. Actual knowledge

An order of protection may be enforced only if the respondent was served or has actual knowledge of the contents of the order of protection (some jurisdictions use the term *constructive knowledge*). 750 ILCS 60/223(d) and 725 ILCS 5/112A-23(d). Respondents may receive actual knowledge via order of protection short form notification or even verbal notification from law enforcement. 750 ILCS 60/223(d)(4) and 725 ILCS 5/112A-23(d)(4).

In *People v. Ramos*, the court found a respondent guilty of violation of an order of protection where the defendant had actual knowledge of the provision prohibiting him from entering the petitioner's home, even though the defendant had not been served or received a full copy of the order of protection. 316 Ill. App. 3d 18, 23 (2000). The court held that the respondent need not be served or know full details of the order to be charged with a violation. The state only needs to show that the respondent had actual knowledge of the remedy that the respondent was charged with violating. *Id.* at 24.

VIII. Attorneys fees

The Illinois Domestic Violence Act makes the following references to the award of attorneys fees:

- A. The court may appoint an attorney for a minor to make the decision to waive the domestic violence counselor's privilege. 750 ILCS 60/227(e). The court will do this when it believes the minor is incapable of knowingly waiving the privilege. *Id.* Additionally, where the minor's parent and guardian has been charged with a violent crime against a minor or has had an order of protection entered against him or her on behalf of the minor. *Id.* The appointed attorney will be compensated under Section 506 of the Illinois Marriage and Dissolution of Marriage Act. *Id.*
- B. Reasonable expenses and attorney's fees can be collected when there have been untrue allegations or denials made without reasonable cause and found to be untrue. 750 ILCS 60/226.

IX. Presumptions found in the Illinois Domestic Violence Act

The following presumptions are found in the IDVA:

A. Actions presumed to constitute emotional distress.

1. Creating a disturbance at petitioner's place of employment or school.
2. Repeatedly telephoning petitioner's place of employment, home, or residence.
3. Repeatedly following petitioner about in a public place or places.

4. Repeatedly keeping petitioner under surveillance by remaining present outside his or her home, school, place of employment, vehicle, or other place occupied by petitioner or by peering in petitioner's windows.
5. Improperly concealing a minor child from petitioner, repeatedly threatening to improperly remove a minor child of petitioner's from the jurisdiction or from the physical care of petitioner, repeatedly threatening to conceal a minor child from petitioner, or making a single such threat following an actual or attempted improper removal or concealment, unless respondent was fleeing an incident or pattern of domestic violence.
6. Threatening physical force, confinement, or restraint on one or more occasions.
750 ILCS 60/103(7).

Note: All of the above presumptions can be rebutted by the preponderance of the evidence. Id.

B. Exclusive possession of residence

The presumption is that the balance of hardships favors possession by the petitioner unless rebutted by a preponderance of the evidence. 750 ILCS 60/214(b)(2)(B).

C. Physical care

If the respondent has committed abuse of a minor, the rebuttable presumption is that awarding the respondent physical care of the minor would not be in the minor's best interest. 750 ILCS 60/214(b)(5).

D. Temporary custody

If the respondent has committed abuse of a minor, the rebuttable presumption is that awarding the respondent physical care of the minor would not be in the minor's best interests. 750 ILCS 60/214(b)(6).

X. Victims with special needs and considerations

A. Children

Children are at great risk in homes where domestic violence occurs, either from witnessing domestic violence or of being abused themselves. The following are best practices courts can implement to address the overlap between domestic violence and child maltreatment.

1. Mandatory sentencing for child witnessing

If a defendant commits a felony domestic battery, aggravated domestic battery, aggravated battery, unlawful restraints, or aggravated unlawful against a family or household member in front of a child witness, this act carries a mandatory sentence of 10 days in jail or 300 hours of community service or both, and the defendant is liable for costs of counseling for the child witness. 720 ILCS 5/12 – 3.2(c).

2. Enforce orders of protection and probationary sentences

Enforcement of orders of protection, statutory bail provisions and probationary sentences by the court is a means of protecting children.

3. Child abduction charges: A person can be charged with the crime of child abduction if:

- a. The person is a parent and where the parents are married or have been married and there has been no determination of custody. The offender conceals a child for 15 days without notifying the other parent of the child's location or making arrangements for visitation or conduct.
 - i. It is not a violation if a parent fleeing domestic violence takes the child with them to a domestic violence program.
- b. The person is a parent, where the parents are or have been married and custody of the child has not been determined, and the offender detains, conceals, or removes the child with force or the threat of force.
- c. The person is the putative father and he intentionally conceals, detains or removes the child with consent of the mother or legal guardian and one of the following is true:
 - i. Paternity of the child has not been established.
 - ii. Paternity of the child has been established but not order about custody has been entered.
- d. The person is the mother and she intentionally conceals, or removes a child, that she has abandoned or relinquished custody, from the unadjudicated father who had been the sole ongoing care and custody of the child in the mother's absence.
- e. They remove from the state or conceal a child when there is a divorce or paternity action pending, but before there has been a temporary or final determination of custody.
- f. They violate a court order of custody, joint custody, physical care or possession of a child.
- g. They violate an order prohibiting the concealment, detainment, or removal of a child from the jurisdiction of the court.
- h. Following an out-of-state violation, the offender fails to return the child to the lawful custodian in Illinois.
- i. They remove or conceals the child for payment or promise of payment.
- j. They retain a child from another state in this state for 30 days without consent from the lawful custodian or in violation of a court order.

720 *ILCS* 5/10-5(b)(1-9).

B. Elderly victims and victims with disabilities

Quite often reported victims of domestic violence are elderly people (people over 60) or people with disabilities. The law in Illinois provides greater protections for these reported victims as they are less likely to be able to protect themselves against or flee from domestic violence.

2. The law for elderly and disabled domestic violence victims

- a. **Family or household member:** In Illinois, the definition for family or household member includes caretakers and personal assistants. A key point in this definition of caretaker or personal assistant is that it includes strangers who visit the home to provide care, if that person is doing so as part of their employment, in exchange for any type of consideration or because they have been appointed to take care of the elderly or disabled person by a court or public agency. 750 ILCS 60/103(6) and 725 ILCS 5/112A-3(3).
- b. **Enhanced penalties:** The law provides for additional protections to the elderly or person with disabilities in the form of enhanced penalties against those who abuse them, whether in a domestic setting or not. These laws can and should be used in domestic violence cases, although they are based not on the victim's or defendant's domestic relationship. These laws generally provide greater penalties than the domestic violence statutes.
- c. **Aggravated battery:** What may be a misdemeanor domestic battery involving bodily harm in a normal situation can be enhanced to a Class 3 felony aggravated battery when the victim is age 60 or over or is physically handicapped. 720 ILCS 5/12-4(b)(10) and (b)(14).

In *People v. Jordan*, case law held that when the victim is 60 years of age or older, it was not required that the defendant know the victim's age for the crime to be enhanced. 102 Ill. App. 3d 1136, 1139 (4th Dist. 1983).

- d. **Aggravated battery of a senior citizen:** If when committing a battery knowingly or intentionally causes great bodily harm, permanent disability, or disfigurement against an elderly person age 60 or older, it is a non-probationable Class 2 felony for which a defendant must be sentenced to prison for no less than three years and no more than seven years, upon a single conviction. 720 ILCS 5/12-4.6.

C. Intimate partner sexual assault

1. **The law:** There are no longer any reporting restrictions on marital rape. Therefore any intimate partner sexual assault, including sexual assault of a marital partner, can be charged and ultimately convicted as criminal sexual abuse, aggravated criminal sexual abuse, criminal sexual assault, or aggravated criminal sexual assault, based on the elements of the crime and the evidence.

D. Immigrant victims and court accessibility

Immigrant victims of domestic violence face numerous barriers to reaching out to the courts for safety from domestic violence, making abusers within these communities far less likely to come before the courts and be held accountable for their crimes (Mederos, date unavailable). These barriers may include a lack of knowledge about and fear of the judicial system, fear of deportation for self or for the abuser, cultural, religious and gender barriers, coming from a

country where the courts were corrupt, and economic barriers. Though these barriers can seem insurmountable to a victim at times, there is much the courts can do to create a system that is accessible to immigrant victims of domestic violence (Pendleton, 2003). This section describes steps the courts can take to encourage the reporting of domestic violence and to build trust within immigrant communities.

1. **No duty to report immigration status:** Federal law does not require law enforcement to ask about a victim's immigration status. Victims or witnesses of crimes are not required to state immigration status or place of birth when contacting law enforcement to file a complaint or police report. The victim's immigration status has no legal relevance for obtaining:
 - Law enforcement assistance.
 - Orders of protection.
 - Shelter services.
 - Emergency medical care.
 - Child custody or child support.

It is recommended that courts develop a policy that allows immigrant victims to seek the power of the court to prevent abuse without fear that their immigration status will be revealed. The enactment of such a policy will allow immigrant victims to feel safe in reporting any abuse.

It is in the best interest of abuser accountability and victim safety for judges to refrain from asking victims of domestic violence their immigration status. This is absolutely necessary if immigrant victims of violence are to feel safe participating in any court process. Reporting victims to U.S. Immigration and Customs Enforcement (ICE, formerly INS) can interfere with the judge's role as enforcer of the laws of the state and locality. If victims are asked about immigration status when pursuing domestic violence charges or seeking an order of protection, they will not cooperate with court proceedings in the future.

2. **Language accessibility:** Courts should be accessible to non-English speakers by having access to interpreters in all languages of persons living within their communities. This will enable the courts to better understand cases involving non-English speakers.

E. Victims with illiteracy

Victims of domestic violence who are unable to read or write, or have limited reading and writing skills need access to the full services of the courts. A victim who is unable to read court documents or instructions will not always reveal this to court personnel or a domestic violence advocate. Therefore, it is important to verbally explain or ensure that a domestic violence advocate or victims service person is available to verbally explain all court documents given to reported victim, including orders of protection, notification of court dates, subpoenas, and other important documentation.

F. Lesbian, gay, bisexual and transgender victims

Lesbian, gay, bisexual and transgender (LGBT) people experience domestic violence at a similar rate as do heterosexual people, but with far less access to services for safety and assistance (Wright, 2005). Courts can increase the safety of lesbian, gay, bisexual and transgender victims of domestic violence by incorporating the following:

- 1. Make no assumptions:** Do not assume that every victim that enters the court is heterosexual. Be sensitive to the victim's word choices, such as "lover," "partner," "spouse" or "roommate." Echo the language used by the reported victim.
- 2. Be aware of outing:** Lesbian, gay, bisexual and transgender victims have the added fear of being "outed" when criminal charges are pursued in a court of law. They may not have told family and friends, or may not be out at their place of employment. They may be worried about jeopardizing their job, or worried about custody issues with their children if others were to know of their sexual orientation or gender identity.

G. People with physical or cognitive disabilities or mental health issues

People with physical or cognitive disabilities or mental health issues, including victims with HIV/AIDS, are especially vulnerable to domestic violence, with far fewer accessible resources available to help them escape and seek justice (Chapman, 1996). There are numerous barriers to victims with disabilities or mental health issues accessing the court system. Courts can do much to make services accessible to victims of domestic violence with disabilities by incorporating the following:

- 1. Physical accessibility:** All domestic violence courts should be accessible for wheel-chairs and for people with other mobility disabilities. When courtrooms are on floors other than the first floor, this includes elevators that fit two wheelchairs at the same time (for the victim and an advocate).
- 2. Language accessibility:** American Sign Language translation should be available, as needed.
- 3. Reading accessibility:** Translation of documents into Braille or onto computer discs in a language usable by the victim should be available. Many people with visual disabilities use computers that can read documents saved to disc out loud.
- 4. IDVA:** The IDVA includes as protected persons any high-risk adult with disabilities who is abused, neglected or exploited by a caretaker or personal assistant, as well as by a family or household member.

H. Rural victims

Rural victims of domestic violence face numerous additional barriers to safety and increased risk (Johnson, 2000). Judges must be additionally creative and sensitive when serving rural areas.

- 1. Seek peer support:** When faced with a domestic violence incident involving people known to the judge, the judge may seek peer support to ensure that he or she is responding objectively. Networking with other judges in the circuit or the state can provide a good means for information and support for judges, particularly when resources are not available in a reasonably close proximity to the judicial circuit. In a case where a judge feels that he or she is not able to be objective, the judge must refer the case for reassignment to another judge.
- 2. Coordinated response:** Nowhere is a coordinated response to domestic violence more important than in a rural community with few resources.

I. Minor victims

Teen dating violence happens at rates similar to that of adult dating and domestic violence (Silverman, Raj, Mucci and Hathaway, 2001), and teen girls are 3.5 times more likely to experience sexual assault than are members of the general populations (Bureau of Justice Statistics, 2001). However, teens are far less likely than adults to tell anyone about the violence (Silverman, et. al, 2001) and rarely access services from the courts. The following is information that will assist in increasing accessibility of the courts to teens experiencing dating violence:

- 1. IDVA and minor victims:** The IDVA in several sections address the accessibility of the act to minors. The following sections have application to minors and there use of the IDVA:
 - a.** The definition of family or household members includes those who have or have had a dating or engagement relationship. 750 ILCS 60/103(6) and 725 ILCS 5/112A-3(6).
 - b.** A petitioner cannot be denied an order of protection because the petitioner or respondent is a minor. 750 ILCS 60/214(a) and 725 ILCS 5/112A-14(a).
 - c.** A minor also has the power if the court feels that can knowingly to waive the privilege of their communication with a domestic violence advocate. 750 ILCS 60/227(e).
- 2. Orders of protection against minors:** Orders of protection can be entered against minors. A minor is a family or household member as defined in the statute. *Wright v. Wright*, 221 Ill. App. 659, 662 (4th Dist. 1991). The act protects those that are being abused by family or household members. *Id.* The *Wright* court had no case law to go and their decision, but concluded that based on the legislative intent that § 214(a) applied to minors as well as adults. *Id.*

- 3. Service provider accessibility:** Law enforcement officers should work with programs designed specifically to serve teens, especially when domestic violence programs that have specialized programs for teens are available, and refer victims to these programs.

J. Cultural and religious diversity:

Victims from diverse cultural or religious groups often face a lack of understanding and stereotyping when seeking justice from the courts, causing many to refrain from seeking such services. Men from marginalized cultures may not be held as accountable, or women from certain groups not offered complete services, because of negative and false stereotype that abuse is normal within certain cultural and religious groups (Mederos, Gamache and Pence, 1997). The reverse is also true. Women of color and other poor women sometimes turn to the courts for help because they lack the resources to find help in other ways. Men of color and other poor men will then be more likely to receive consequences from the courts because they lack the resources for an attorney (Mederos, date not available). The courts can address these issues in a number of ways, including:

- 1. Avoid stereotyping:** Judges should not allow stereotypes of any kind to interfere with decisions in cases of domestic violence.
- 2. Listen to the community:** Courts will do well to listen to the voices of people from the marginalized cultural and religious groups in their communities and together design policies that meet the needs of all populations. Every judicial circuit has a domestic violence council and has access to the Illinois Family Violence Coordinating Council to obtain input on designing court programs for specific needs.
- 3. Diverse personnel:** Courts should make an effort to hire staff that represents all of the communities that they serve.

K. Homeless victims

Homeless is often a result of domestic violence, and homeless women are particularly vulnerable to violence. The courts should take into account the needs of homeless victims in seeking safety.

- **Keep victim's location confidential:** The courts should keep the temporary housing location, such as a shelter or the residence of a friend or family member, confidential. The victim's location should not be revealed in documents.

L. Victims with substance abuse issues

Substance abusing victims of domestic violence provide unique challenges to the court system.

1. **Separate the issues:** Judges should separate the issues of domestic violence victimization from the issue of substance abuse in the victim. While a substance abusing victim may not be ideal witness, they are still victims who deserve the respect and protection of the courts.
2. **Aggressor identification:** Judges must try to ensure that the defendant who is convicted is the aggressor, and not a victim.

M. Victims involved with gang members: Judges should be aware that victims of domestic violence whose partners are gang members are at particular risk for danger. Victims whose partners are involved with gangs often will not cooperate with the courts because such cooperation could put their safety at greater risk by triggering retaliation by gang members. Safety is a particular concern for victims of domestic violence whose partners are gang members.

N. Prostituted and trafficked victims: Victims of domestic violence who are prostituted or trafficked rarely seek assistance from the courts.

XI. Special considerations

Judges need to be acutely aware of the issues in cases involving stalking, strangulation, firearms, and sexual assault, as these are the signs of a potentially very dangerous relationship. The following lists elements of these considerations and best practice policies that will assist judges in understanding and convicting offenders for these violent crimes:

A. Stalking

Stalking, including cyberstalking, differs from other crimes because it is not an individualized act but a series of behaviors causing repeated victimization. Stalking is partly defined by its effect upon the victim of stalking (National Center for Victims of Crime, 2002). Stalking is a sign of extreme danger for a victim. While not all stalking cases involve physical violence, stalking is frequently a precursor to homicide of women (National Center for Victims of Crime, 2002).

1. **The law and stalking:** Illinois has one of the country's strongest anti-stalking laws. Illinois law defines stalking as at least twice following or placing a victim under surveillance, and also one of the following:
 - a. At any time threatening bodily harm, sexual assault, confinement or restraint towards the victim or a family member of the victim.
 - b. Placing the victim in reasonable apprehension of future or immediate bodily harm, sexual assault, confinement, or restraint.
 - c. Placing the victim in reasonable apprehension that a family member will receive future or immediate bodily harm, sexual assault, confinement, or restraint.

720 ILCS 5/12-7.3.

2. **Aggravated stalking:** Illinois law also prohibits aggravated stalking, defined as behavior containing the above-mentioned elements of stalking, plus any of the following:
 - a. Actually physically harming, restraining, or confining the victim.
 - b. Violating an order of protection or other similarly prohibitive injunction or restraining order.
720 ILCS 5/12-7.4.
3. **Purpose of the law:** The purpose of this law is to deter stalking and prevent deaths. The penalties under this law are greater than the penalties for harassment or violating an order of protection. This law is, therefore, an effective weapon against domestic violence.
4. **Cyberstalking:** Cyberstalking includes at least twice harassing a person through electronic communication, plus any of the following:
 - a. Transmitting a threat towards the person or family member of immediate or future bodily harm, sexual assault, confinement or restraint.
 - b. Placing a person or their family member in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint.
720 ILCS 5/12-7.5
5. **Preventive Detention:** Illinois is the only state where prosecutors can request preventive detention when a stalker poses a danger to the victim. The victim does not have to appear at a hearing for the denial of bail. Calling the victim may not be used to conduct a discovery disposition. If bail is denied, the state should bring the perpetrator to trial for that offense within 90 days after the order of detention.
6. **Sentencing:**
 - a. Stalking is a Class 4 felony and carries a penalty of one to three years for a first offense. *720 ILCS 5/12-7.3(b)* and *730 ILCS 5/5-8-1(a)(7)*.
 - b. Aggravated stalking is a Class 2 felony and carries a penalty of two to five years. A subsequent conviction for stalking or aggravated stalking carries higher penalties. *720 ILCS 5/12-7.4(b)* and *730 ILCS 5/5-8-1(a)(5)*.
7. **Policy:** Solid policy for state's attorneys on stalking and cyberstalking is needed in order to increase the use of the stalking law in Illinois. A best practices prosecution policy includes the following:
 - a. Treat all domestic violence cases as potential stalking cases.
 - b. The prosecutor should request that bail not be granted when the threat of violence was the basis of arrest. As appropriate, the prosecutor may request preventive detention or referral for a psychiatric evaluation. Intensive pretrial supervision is another option. Evidence that helps support a request for no release includes a history of violating court orders, dangerousness assessment findings, and testimony from a detective experienced in stalking, a mental health expert, or a domestic violence and stalking expert.

- c. Seek to issue a no-contact order relating specifically to the facts of the case and pattern of stalking.
- d. If bail is granted, the prosecutor should seek to ensure that the victim is contacted by the jail upon release of the offender.
- e. The prosecutor should re-interview the victim early in the case, using patience to give the victim the opportunity and feeling of safety to reveal all elements of the stalking behavior. The prosecutor should ask a domestic violence advocate or victim witness specialist to be available to assist the victim in creating a safety plan and locating other useful resources. The advocate can also assist the victim in obtaining an order of protection.
- j. The prosecutor should ensure that the victim has information on obtaining an order of protection.
- k. The prosecutor should decide what non-stalking charges to file, and should include all those that there is sufficient evidence to prosecute. Potential charges include felonies and misdemeanors.
- l. The prosecutor's office should maintain periodic contact with the victim post sentencing to see if any further episodes of stalking have occurred, whether the stalker has been incarcerated or placed on probation. Stalking is one of the few crimes that incarceration does not necessarily end. The offender can continue to stalk through letters and phone calls.
- m. Work collaboratively with other elements of the courts to create a comprehensive stalking policy and enact that policy.

B. Strangulation

Evidence suggests that strangulation is one of the warning signs of a very dangerous, potentially lethal, domestic violence case. Unconsciousness can result from strangulation within 10 seconds, and death can result within minutes (Maryland Network Against Domestic Violence & Maryland Law enforcement and Correctional Training Commissions, 2002; Strack, 2006; Strack, McClane, & Hawley, 2001).

1. **Use proper terminology:** Use the term *strangle* rather than *choke*. *Strangle* means to obstruct seriously or fatally the breathing of another person. *Choke* means the obstruction of breathing by a foreign object lodged in the throat.
2. **Treat as felonies:** Stalking cases are typically felonies rather than misdemeanors. The level of danger and seriousness of a strangulation case is that of an attempted homicide or aggravated assault case.
3. **Understand the evidence of strangulation:** Since physical evidence of strangulation is less apparent and less clear-cut, judges need to understand the intricacies involved in the evidence of strangulation injuries. The following is a list of potential injuries seen in strangulation victims
 - a. Changes in voice, from hoarseness to complete loss of voice (evidence of voice changes can be heard on tape recordings of the reported victim during

interviews with the prosecution, and by listening to the 911 tape of the reported victim's initial call for help).

- b. Ongoing wheezing or difficulty breathing.
- c. Difficulty swallowing or sore throat.
- d. Scratches, abrasions, finger prints or other discoloration of the neck.
- e. Impressions on the skin which might indicate use of ligature (strangulation with a rope or clothing) or use of an object.
- f. Swelling of the tongue.
- g. The reported victim's own defensive finger nail marks on their own face, neck or arms.
- h. Redness on the neck, which may be temporary, or may later turn to bruising.
- i. Lightheadedness, dizziness, fainting or unconsciousness.
- j. Confusion or disorientation.
- k. Nausea or vomiting.
- l. Chin abrasions.
- m. Loss of bodily functions.
- n. Miscarriage.

Many victims of strangulation show no signs of external injury. However, due to lack of oxygen to the brain, the victim may suffer minor symptoms or major symptoms, such as stroke, miscarriage or death up to several weeks later. Even when no visible signs of injury exist, strangulation can have extremely serious injurious effects.

- 4. **Victim/offender dynamics:** It is common place in strangulation cases for there to be mutual claims of violence. Due to the nature of strangulation, the victim of strangulation frequently fights back or uses physical means to try to get away. Since strangulation injuries are often not physically visible, the offender may be the only one with visible injuries. The types of injuries on an offender who has strangled his victim are defensive in nature. If the strangulation was committed from behind, the offender may have bite marks and scratches on the arms. If the strangulation was committed from the front, the offender may have scratch marks on the face, arms, eyes, chest, show signs of hair pulling, have bite marks on the chest, injuries from kicks, or other defensive wounds.

C. Firearms

The possession of firearms increases the risk of homicide in relationships where domestic violence is occurring. Firearms were used in 65 percent of all domestic violence homicides between the years of 1976 and 1996 (Greenfield and Rand, 1998). Judges are in a unique position to ensure that laws, policies, and procedures are implemented to decrease the use and possession of firearms for domestic violence offenders. The following are best practice recommendations for judges overseeing domestic violence cases involving firearms.

1. **Hold status hearings:** Hold status hearings in order to determine if the respondent/defendant has indeed turned over the firearms the respondent/defendant was ordered to surrender as a result of an order of protection or bail provision.
2. **Be specific:** Be specific when using remedy 14.5 and bail provisions. Include when and where the defendant/respondent must turn over weapons.
3. **Sentencing considerations:** When determining a sentence for a defendant convicted on a domestic violence charge involving a weapon, judges should consider the seriousness of such a charge and sentence appropriately.

Attachment A

Offense, Statute and Applicable Penalty Chart

Offense	Statute	Applicable Penalty
Assault	720 ILCS 5/12-1	Class C misdemeanor
Assault (Aggravated)	720 ILCS 5/12-2	Class A misdemeanor or Class A felony
Battery (Aggravated w/ firearm)	720 ILCS 5/12-3.1	Class X felony
Battery (Heinous)	720 ILCS 5/12-4.1	Class X felony
Battery (Unborn Child)	720 ILCS 5/12-4.1	Class A misdemeanor
Child Abduction	720 ILCS 5/10-5	Class 4 felony
Criminal Damage to Property	720 ILCS 5/21-1	Class A misdemeanor to Class 1 Felony
Domestic Battery	720 ILCS 5/12-3.2	Class A misdemeanor, Class 4 felony for subsequent offense & 48 hours jail mandatory
Domestic Battery (Aggravated)	720 ILCS 5/12-3.3	Class 2 Felony, 60 days jail if given probation, 2nd offense 3-7 years
Disorderly Conduct	720 ILCS 5/31-1	Class 3 felony to Class C misdemeanor
Forcible Detention	720 ILCS 5/10-4	Class 2 felony
Intimidation	720 ILCS 5/12-6	Class 3 felony, 2-10 years
Intimidation (Aggravated)	720 ILCS 5/12-6.2	Class 2 felony
Interfering w/ reporting domestic violence	720 ILCS 5.12-6.3	Class A misdemeanor
Involuntary Manslaughter	720 ILCS 5/9-3	Class 3 felony
Murder (1st Degree)	720 ILCS 5/9-1	Class X felony
Murder (2nd Degree)	720 ILCS 5/9-2	Class 1 felony, 4-20 years
Obstructing Justice	720 ILCS 5/31-4	Class 4 felony
Resisting/ Obstructing Peace Officer	720 ILCS 5/31-1	Class A misdemeanor/ Class 4 Felony
Stalking	720 ILCS 5/12-7.3	Class 4 felony, subsequent is class 3
Stalking (Aggravated)	720 ILCS 5/12-7.4	Class 3 felony, subsequent is class 2
Unborn Child (intentional homicide)	720 ILCS 5/9-1.2	Class X felony, no death penalty
Unborn Child (voluntary manslaughter)	720 ILCS 5/9-2.1	Class 1 felony
Unborn Child (involuntary manslaughter)	720 ILCS 5/9-3.2	Class 3 felony
Unlawful Restraint	720 ILCS 5/10-3	Class 4 felony
Unlawful Restraint (Aggravated)	720 ILCS 5/10-3.1	Class 3 felony
Unlawful Visitation Interference	720 ILCS 5/10-5.5	Petty offense or Class A misdemeanor
Violation of Bail Conditions	725 ILCS 5/110-10	
Violation of Order of Protection	720 ILCS 5/13-30	Class 4 felony or Class A misdemeanor, mandatory 24 hour jail for subsequent offense

Attachment B

Applicable Penalty and Sentence

	Incarceration	Mandatory Supervision	Probation	Fines Available
Class X Felony	60 to 30 years	3 years	up to 4 years	up to 25,000
Class 1 Felony	4 to 15 years	2 years	up to 4 years	up to 25,000
Class 2 Felony	3 to 7 years	2 years	up to 4 years	up to 25,000
Class 3 Felony	2 to 5 years	1 year	up to 30 months	up to 25,000
Class 4 Felony	1 to 3 years	1 year	up to 30 months	up to 25,000
Class A Misdemeanor	up to 1 year		up to 2 years	up to 2,500
Class B Misdemeanor	up to 6 months		up to 2 years	up to 1,500
Class C Misdemeanor	up to 30 days		up to 2 years	1000 or amount specified

Attachment C

Domestic Violence and Sexual Assault Fines Order

DOMESTIC VIOLENCE AND SEXUAL ASSAULT FINES ORDER

IN THE CIRCUIT COURT FOR THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)

)

VS.)

CASE NO. _____

)

DEFENDANT)

(i) DOMESTIC VIOLENCE AND SEXUAL ASSAULT FINES ORDER

It is hereby ordered that the following amounts are allowed and taxed against the Defendant as fines and the court enters judgment therefore:

SEXUAL ASSAULT FINE \$ _____ (730 ILCS 5/5-9-1.7) (Max. \$200)

_____ Non-Family

_____ Family

DOMESTIC VIOLENCE FINE \$ _____ (730 ILCS 5/5-9-1.5) (Max. \$200)

_____ Non-Family

_____ Family

DOMESTIC BATTERY FINE \$ _____ (730 ILCS 5/5-9-1.6) (\$10)

CHILD PORNOGRAPHY FINE \$ _____ (720 ILCS 5/11-20.1; 5/5/9-1.7)
\$10,000 max.; minimum varies from
\$1,000 to \$2,000 depending on class
of offense).

Less credit to Defendant \$ _____

AMOUNT DUE: \$ _____

DATE: _____ ENTERED: _____

JUDGE

Appendices

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Appendix I

REFERENCES

American Bar Association. (2000). Mediation and Domestic Violence Policy Adopted by the American Bar Association House of Delegates. Retrieved from www.abanet.org on June 21, 2006.

American Judges Association and Foundation Domestic Violence Committee. (date not available). What Judges Can Do to Stop Domestic Violence. Retrieved from www.aja.ncsc.dni.us on June 15, 2006.

Basile KC. (2002). *Prevalence of wife rape and other intimate partner sexual coercion in a nationally representative sample of women*. Violence and Victims 17(5).

Basile KC, L.E. Saltzman LE. (2002). Sexual Violence Surveillance: Uniform Definitions and Recommended Data Elements. Atlanta: Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Retrieved from www.cdc.gov on July 15, 2006.

Baum, R. (2000). Lesbian, gay, transgender and bisexual (lgbt) domestic violence in 1999: A report of the national coalition of anti-violence programs. New York: National Coalition of Anti-Violence Programs.

Belknap, J.; D. L. R. Graham; J. Hartman; U. Lippen; P. G. Allen; J. Sutherland. (2000). *Factors Related to Domestic Violence Court Dispositions in a Large Urban Area: The Role of Victim/Witness Reluctance and Other Variables*. Unpublished document retrieved from www.ojp.usdoj.gov on April 4, 2006.

Bergen, R.K. (2006). *Marital Rape: New Research and Directions*. VAWnet Applied Research Forum. National Resource Center on Domestic Violence. Retrieved from www.vawnet.org on July 15, 2006.

Bureau of Justice Statistics. (2005). Family Violence Statistics: Including Statistics on Strangers and Acquaintances. Washington, D.C.: U.S. Department of Justice. Retrieved from www.ojp.usdoj.gov on June 15, 2006.

Bureau of Justice Statistics. (2001). Intimate Partner Violence: Special Report. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics. Retrieved from www.ojp.usdoj.gov on January 15, 2006.

Catalano, S. (2004). *Criminal Victimization, 2003*. Washington, DC: Bureau of Justice Statistics, U.S. Department of Justice. Retrieved from <http://www.ojp.usdoj.gov/bjs/abstract/cv03.htm> on April 4, 2006.

CDC National Center for Health Statistics mortality report online, 2007. Retrieved from <http://www.ichv.org/Statistics.htm> on July 25, 2007.

Center for Impact Research. (2004). *Pathways to and from Homelessness: Women and children in Chicago Shelters*. Chicago, IL: Center for Impact Research.

Chapman, C. (1996). *Charting New Waters: Responding to Violence Against Women with Disabilities*. British Columbia: Justice Institute of British Columbia.

Chesler, P. (1986). *Mothers on Trial: The Battle for Children and Custody*. New York: McGraw-Hill Book Company.

Chicago Coalition for the Homeless. (2004). *Facts on Prostitution in Chicago*. In J. Wright, editor. (2005). *Centralized Training Institute's Domestic Violence 40-Hour Training Manual*. Chicago: Chicago Metropolitan Battered Women's Network.

Chicago Coalition for the Homeless. (2001). *Homelessness: Causes and Facts*. Retrieved from www.chicagohomeless.org on July 15, 2006.

Dasgupta, S.D. (2001). *Towards and Understanding of Women's Use of Non-lethal Violence in Heterosexual Relationships*. Retrieved from <http://www.vawnet.org> on March 14, 2006.

Domestic Violence Advisory Council, Illinois Department of Human Services. (2002). *Illinois Protocol for Partner Abuse Intervention Programs, 3rd Revision*. Illinois Department of Human Services. Retrieved from www.ilcdvp.org on July 17, 2006.

Durose, M. R., C. W. Harlow, P. A. Langan, M. Motivans, R. R. Rantala, and E. L. Schmitt. (2005). *Family Violence Statistics*. Washington, DC: Bureau of Justice Statistics, U.S. Department of Justice. Retrieved from www.ojp.usdoj.gov/bjs/abstract/fvs.htm on March 14, 2006.

Edleson, J. L. (1999). *The Overlap Between Child Maltreatment and Woman Battering*. *Violence Against Women Journal*. SAGE Publications.

English, D.J., D.B. Marshall, S. Brummel, and M. Orne. (1999). *Characteristics of Repeated Referrals to Child Protective Services in Washington State*. *Child Maltreatment*, Vol. 4.

Federal Bureau of Investigation. (2004). *Crime in the United States, 2003*. Washington, DC: Federal Bureau of Investigation, U.S. Department of Justice. Retrieved from www.fbi.gov/ on April 4, 2006.

Florida Governor's Task Force on Domestic and Sexual Violence. (1997). *Florida Mortality Review Project*. Florida: Florida Governor's Task Force on Domestic and Sexual Violence.

Frye, V. (2001). *Examining Homicide's Contribution to Pregnancy-Associated Deaths*. The Journal of the American Medical Association, 285, No. 11.

Gelles, R. (1996). Domestic Violence: Not an Even Playing Field. Retrieved from www.serve.com on January 31, 2006.

Gondolf, E. W. (2002). *Batterer Intervention Systems: Issues, Outcomes and Recommendations*. SAGE Publications.

Gondolf, E.W. (1998). Multi-site Evaluation of Batterer Intervention Systems. Retrieved from www.mincava.org on January 31, 2006.

Gondolf, E. W. (1988). *Who Are These Guys? Toward a behavioral typology of batterers*. Violence Victims. 3 (3).

Greenfield, L.A., and M.R. Rand. (1998). *Violence by Intimates: An Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends*. Bureau of Justice Statistics Factbook. Bureau of Justice.

Hall and Lynch. (1998). *Violence Begins at Home*. British Medical Journal. Retrieved from <http://bmj.bmjournals.com> on June 15, 2006.

Hart, B. J. Esq. (1995). *Coordinated Community Approaches to Domestic Violence*. Presented at the Strategic Planning Workshop on Violence Against Women, National Institute of Justice, Washington, D. C., March 31, 1995. Retrieved from <http://www.mincava.umn.edu> on January 31, 2006.

Hofer, M. (2006). Warning Signs of Elder Abuse and Neglect. University of Illinois Elder Abuse and Neglect. Retrieved from www.urbannext.uiuc.edu on July 15, 2006.

Horon, I. and Cheng, D. (2001). *Enhanced Surveillance for Pregnancy-Associated Mortality – Maryland, 1993 – 1998*. The Journal of the American Medical Association, 285, No. 11.

Hotaling, G. T. and Sugarman, D. B. (1986). *An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge*, Violence and Victims Vol. 1 No 2.

International Association of Chiefs of Police. (2003). Domestic Violence by Police Officers: A Policy of the IACP Police Response to Violence Against Women Project. Washington, DC. Retrieved from www.theiacp.org on February 21, 2006.

International Association of Chiefs of Police. (2003). Domestic Violence By Police Officers: A Policy of the IACP Police Response to Violence Against Women Project. Washington, DC. Retrieved from www.theiacp.org on February 21, 2006.

Island, D. and P. Letellier. (1991). *Men Who Beat the Men Who Love Them: Battered Gay Men and Domestic Violence*. New York: Harrington Press.

Johnson, R.M. (2000). *Rural Health Response to Domestic Violence: Policy and Practice Issues: Emerging Public Policy Issues and Best Practices*. Federal Office of Rural Health Policy. Retrieved from www.ruralhealth.hrsa.gov on June 30, 2006.

King-Reis, A. (2005). *Crawford v. Washington: The End of Victimless Prosecution?* *Law Review*, Vol. 28 (2).

Kipatrack, Litt and Williams. (1997). *Post-Traumatic Stress Disorder in Child Witnesses to Domestic Violence*. *American Journal of Orthopsychiatry*.

Kolbo. (1996). *Risk and Resilience Among Children Exposed to Family Violence*. *Violence and Victims*.

Labriola, M., M. Rempel, and R. C. Davis. (2005). *Testing the Effectiveness of Batterers' Programs and Judicial Monitoring*. New York: Center for Court Innovation. Retrieved from www.courtinnovation.org on April 17, 2006.

MacLeod, D. and Weber, J. (2000). *Domestic Violence Courts: A Descriptive Study*. California: Judicial Council of California Administrative Office of the Courts. Retrieved from www.courtinfo.ca.gov on August 28, 2006.

Markarian, A. M. (2003). *Evidence-based Prosecution of Domestic Violence Cases*. New York: Office on the Prevention of Domestic Violence. Retrieved from www.opdv.state.ny.us on June 20, 2006.

Maryland Network Against Domestic Violence and Maryland Police and Correctional Training Commissions. (2002). *Investigation of Strangulation Cases: A Model Protocol for Maryland Law Enforcement Officers*. Retrieved from <http://marcpi.jhu.edu> on January 15, 2006.

Martinson, R., J.D., C. Sponsler, K. Lizdas, J.D. and S. Avalon. (2002). *Case Processing of Misdemeanor Domestic Violence Cases: Arraignment to Sentencing – Progress Report on Implementation of Audit Recommendations from Year 1 – A Report from the BWJP's Safety and Accountability Audit*. Minneapolis, MN: Battered Women's Justice Project.

Mederos, F., Gamache, D. and Pence, E. (1997). *Domestic Violence and Probation: Effective and Safe Intervention*. Battered Women's Justice Project. Retrieved from www.bwjp.org on January 15, 2006.

Mederos, F. (date unavailable). *Domestic Violence and Culture: Moving Toward a More Sophisticated Encounter*. Retrieved from www.melissainstitute.org on July 10, 2006.

Miller, S. (2001). *The Paradox of Women Arrested for Domestic Violence*. Violence Against Women Journal. Sage Publications..

Molidor, C. and R. Tolman. (1998). *Gender and Contextual Factors in Adolescent Dating Violence*. Violence Against Women Journal, Vol. 4 (2).

National Center for Injury Prevention and Control. (2003). Costs of Intimate Partner Violence Against Women in the United States. Atlanta, GA: Center for Disease Control and Prevention.

National Center for Victims of Crime. (2002). Creating and Effective Stalking Protocol. U.S. Department of Justice Office of Community Policing Services. Retrieved from www.cops.usdoj.gov on January 3, 2006.

National Council of Juvenile and Family Court Judges, Advisory Committee of the Conrad N. Hilton Foundation Model Code Project of the Family Violence Project. (1994). Model Code on Domestic and Family Violence. Reno, Nevada: National Council of Juvenile and Family Court Judges.

North Carolina Governor's Crime Commission Violence Against Women Committee. (1998). Domestic Violence: Best Practices for Law Enforcement Response: A Model Policy Manual Prepared Under the Violence Against Women Act. North Carolina.

New York State Dispute Resolution Association, Inc. (2006). NYSDRA CDRC Member Showcases Ground Breaking Protocol. Retrieved from www.nysdra.org on June 20, 2006.

Ohio Domestic Violence Network's Violence Against Women Act Advisory Board. (2003). Ohio Model Protocol For Responding to Domestic Violence. Ohio: Ohio Domestic Violence Network.

Pence, E. and Osberg, S. (1987). In Our Best Interest. Duluth, Minnesota: Duluth Intervention Project.

Pendleton, G. (2003). Local Police Enforcement of Immigration Laws and its Effects on Victims of Domestic Violence: Why Police and Prosecutors Should Avoid Enforcing Immigration Laws: Goal of Encouraging Reporting of Domestic Violence in Immigrant Communities. Retrieved from <http://www.nationalimmigrationproject.org> on February 21, 2006.

Police Chiefs' Association of Santa Clara County. (2002). Domestic Violence Protocol for Law Enforcement. Retrieved from www.growing.com on February 21, 2006.

Rennison, C. M. (2001) *Bureau of Justice Statistics Special Report, Intimate Partner Violence and Age of Victim, 1993 – 1999*. Washington, DC: Bureau of Justice Statistics, U.S. Department of Justice. Retrieved from www.ojp.usdoj.gov/bjs/ on March 14, 2006.

Rennison, C.M. and Welchans, S. (2000). Intimate Partner Special Report. U.S. Department of Justice Bureau of Justice Statistics. Retrieved from ojp.usdoj.gov on March 14, 2006.

Rodriguez, M., H. Bauer, E. McLoughlin, K. Grumbach. (1999). *Screening and Intervention for Intimate Partner Abuse: Practices and Attitudes of Primary Care Physicians*. The Journal of the American Medical Association. 282.

Russell, D.E.H. (1990). Rape in Marriage. New York: MacMillan Press.

Russell, J. (2003) A Practical Guide to the Illinois Domestic Violence Act. Springfield, IL: Illinois State Bar Association.

Russell, J. (2002). *Child Abduction Statute*. In Wright, J., editor. (2005). Centralized Training Institute's Domestic Violence 40-Hour Training Manual. Chicago: Chicago Metropolitan Battered Women's Network.

Russell, J. (2002). *Sexual Abuse in Intimate Relationships*. In Wright, J., editor. (2005). Centralized Training Institute's Domestic Violence 40-Hour Training Manual. Chicago: Chicago Metropolitan Battered Women's Network.

Sadusky, J.M. (2003). Prosecution Diversion in Domestic Violence: Issues and Context. Battered Women's Justice Project Criminal Justice Center.

Schechter, S. and A. Ganley. (1995). *Understanding Domestic Violence: A Preparatory Reading for Participants*. Domestic Violence: A National Curriculum for Family Preservation Practitioners. CA: Family Violence Prevention Fund.

Sgambelluri, R. (2006). Domestic violence by male police officers: An analysis of interventions in Illinois. Unpublished master's thesis, University of Illinois at Springfield.

Shepard, M. (1999). *Evaluating Coordinated Community Responses to Domestic Violence*. In M. Shepard, E. L. Pence, Eds. (1999). Coordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond. CA: Sage Publications, Inc.

Stack, G.. J.D. (2006). *How to Improve Your investigation and Prosecution of Strangulation Cases*. In U.S. Department of Justice Office on Violence Against Women, Battered Women's Justice Project and American Prosecutors Research Institute. (May 9 – 12, 2006). National Institute on the Prosecution of Domestic Violence Conference CD.

Stack, G. J.D., M. E. McClane, M.D. and D. Hawley, M.D. (2001). A Review of 300 Attempted Strangulation Cases: Part 1: Criminal Legal Issues. In U.S. Department of Justice Office on Violence Against Women, Battered Women's Justice Project and American Prosecutors Research Institute. (May 9 – 12, 2006). National Institute on the Prosecution of Domestic Violence Conference CD.

State of New York Office for the Prevention of Domestic Violence. (1998). Model Domestic Violence Protocol for Counties. New York: Office for the Prevention of Domestic Violence. Retrieved from www.opdv.state.ny.us on January 15, 2006.

Teaster, P. (2000). A Response to the Abuse of Vulnerable Adults: The 2000 Survey of State Adult Protective Services. The National Center on Elder Abuse. Retrieved from www.elderabusecenter.org on July 15, 2006.

Tjaden, P. and N. Thoennes. (2000). *Extent, Nature and Consequences of Intimate Partner Violence*. Washington, D.C.: National Institute of Justice & Centers for Disease Control and Prevention. Retrieved from www.ojp.usdoj.gov/nji/ on February 15, 2006.

Tjaden, P. and N. Thoennes. (2000). *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey*. Washington, D.C.: National Institute of Justice & Centers for Disease Control and Prevention. Retrieved from www.ojp.usdoj.gov/nji/ on April 4, 2006.

Tjaden, P. and N. Thoennes. (1998). *Stalking in America: Findings From the National Violence Against Women Survey*. Washington, D.C.: National Institute of Justice & Centers for Disease Control and Prevention. Retrieved from www.ojp.usdoj.gov/nji/ on April 4, 2006.

Turkel, A. and C. Shaw (2003). *Strategies for Handling Cases Where Children Witness Domestic Violence*. Update, Vol. 16, No. 2. In U.S. Department of Justice Office on Violence Against Women, Battered Women's Justice Project and American Prosecutors Research Institute. (May 9 – 12, 2006). National Institute on the Prosecution of Domestic Violence Conference CD.

U.S. Department of Justice. (1998). *Batterer Intervention: Program Approaches and Criminal Justice Strategies*. Washington, D.C.: U.S. Department of Justice.

U.S. Department of Justice. (2000). *National Report Series: Children as Victims*. Washington, D.C.: U.S. Department of Justice.

Ventura, L. A. and G. Davis. (2005). *Domestic Violence Court Case Conviction and Recidivism*. *Violence Against Women Journal*, Vol. 11, No. 2.

Viswanathan, H.L. (2003). Evidence Based Prosecution of Domestic Violence: The Significance of New Hearsay Exceptions. Minnesota: Battered Women's Justice Project. Retrieved from www.bwjp.org on February 21, 2006.

Welch, J. (2005). *Can a teen get an order of protection under the Illinois Domestic Violence Act?* In J. Wright (2005). *The Illinois Facilitator's Guide for Teen Dating Violence and Sexual Assault Prevention Education*. Chicago, IL: Illinois Violence Prevention Authority.

Wetendorf, D. (2004). When the Batterer is a Law Enforcement Officer: A Guide for Advocates. Battered Women's Justice Project.

Wetendorf, D. (2000). Police Domestic Violence, A Handbook for Victims. Retrieved from www.abuseofpower.info on August 30, 2006.

Whitcomb, D. (2004). *Children and Domestic Violence: The Prosecutor's Response*. In U.S. Department of Justice Office on Violence Against Women, Battered Women's Justice Project and American Prosecutors Research Institute. (May 9 – 12, 2006). National Institute on the Prosecution of Domestic Violence Conference CD.

Wright, J., editor. (2005). Centralized Training Institute's Domestic Violence 40-Hour Training Manual. Chicago: Chicago Metropolitan Battered Women's Network.

Young, Nosek, Howland, Chanpong and Rintala. (1997). *Prevalence of Abuse of Women with Disabilities*. Archives of Physical Medicine.

Appendix II

DOMESTIC VIOLENCE MYTHS AND FACTS

Myth: Domestic violence is not common.

Fact: Close to 25% of women and 7.6% of men report having experienced physically assault and/or rape by a current or former intimate partner at some time in their lives, according to a report entitled *Extent, Nature and Consequences of Intimate Partner Violence* by the National Institute of Justice and the Centers for Disease Control. This data comes from the National Violence Against Women Survey which surveyed a nationally representative sample of 8,000 women and 8,000 men. (Tjaden and Thoenes, 2000)

Myth: The violence that occurs in abusive relationships is not that serious.

Fact: Domestic violence involves physical violence that ranges from a push or slap to permanent physical disability or death. According to an analysis of FBI homicide data, there were 1,587 women killed in the US by an intimate partner in 2002 (Violence Policy Center, 2004).

Myth: Men and women are equally the victims of domestic violence.

Fact: Both men and women are victimized by domestic violence, with 25% of women and 7.6% of men reporting experiencing domestic violence in an intimate relationship (Tjaden and Thoenes, 2000). The incidents and outcomes of the violence are also not equal. Men are generally victimized by other men (Tjaden and Thoenes, 2000). When men experience violence perpetrated by women, they generally do not experience the same levels of control, fear or physical injury as do women (O'Keefe and Treister, 1998; Molidor and Tolman, 1998). According to research, women tend to use violence in intimate relationships for different reasons than do men. Women use violence in response to their partner's physical and sexual violence, or in response to their partner's controlling behaviors, rather than to gain power and control in the relationship (Miller, 2001; DasGupta, 2001; Molidor and Tolman, 1998).

Myth: Stalking is an infrequent occurrence.

Fact: The National Violence Against Women Survey (Tjaden and Thoenes, 2000) found that stalking is far more prevalent than previously thought, with 5% of women and 0.6% of men reporting that they had been stalked by an intimate partner at sometime in their lives. From this data it is estimated that approximately 503,485 women and 185,496 men are stalked each year.

Myth: Domestic violence is a private family matter impacting only the family involved.

Fact: Domestic violence impacts all aspects of social and economic life. The economic impact in the U.S. exceeds \$5.8 billion each year, with \$4.1 billion in medical and mental health care services, according to the Center for Disease Control and Prevention. Victims of domestic violence miss an estimated 8.0 million days of work each year and 5.6 million days of household productivity, costing the nation \$0.9 billion each year in lost productivity. (National Center for Injury Prevention and Control, 2003)

Myth: Domestic violence only affects the adults in the household.

Fact: Researchers have found that child abuse occurs in 30% to 60% of families with children where domestic violence occurs. Children who witness domestic violence display a number of effects, including emotional and behavioral problems, academic problems, and juvenile delinquency. (Edleson, 1999).

Abusive men use custodial access to the children as a tool to terrorize their victims or to retaliate for separation. Each year more than 350,000 children are abducted by parents in this country; that is, 40.4 children are abducted per hour. Fifty four percent of these abductions are short-term manipulations around custody orders, but 46% involve concealing the whereabouts of the child or taking the child out of state. Most of these abductions are perpetrated by fathers and more than half of these occur in the context of domestic violence (Greif and Hager, 1992).

Myth: Domestic violence doesn't happen in my neighborhood.

Fact: Domestic violence happens in all neighborhoods. It occurs in the intimate relationships of people from all socio-economic levels, races, religions, educational levels, and in urban, suburban and rural communities (Schechter and Ganley, 1995).

Myth: Firearms are not a major factor in domestic violence.

Fact: According to an analysis of the FBI's homicide data, having one or more guns in the household increases by 7.2% the chance that a female domestic violence victim will be killed by her partner (Violence Policy Center, 1999).

Myth: Victims of domestic violence simply need to leave their abusers to be safe.

Fact: The most dangerous time for a victim in a violent relationship is often when they try to leave the relationship. A victim's attempts to separate from the abuser can trigger an escalation of violence. The Florida Mortality Review (1997), a study of domestic violence homicides in Florida, revealed that in 65% of intimate partner homicides, the victim had physically separated from their partner prior to the murder.

Myth: Weak, submissive women with low self-esteem tend to become victims of domestic violence.

Fact: Victims of domestic violence come from all walks of life and all personality types. The victim's self-esteem and level of assertiveness may be high or low prior to the abusive relationship. The only victim precipitant regularly found in the research is that the majority of victims are female. Low self-esteem and submissiveness on the part of the victim can be a result of domestic violence, but are not precipitating factors. (Catalano, 2004; Schechter and Ganley, 1995; Hotaling and Sugarman, 1986)

Myth: Violence between gay and lesbian partners is more likely to be mutual violence. Besides, it's not very common.

Fact: Domestic violence in relationships involving gay, lesbian, bisexual and transgender people is about power and control, just as it is in relationships involving heterosexual people. The rates of domestic violence in relationships involving gay, lesbian, bisexual and transgender people is about the same as in heterosexual relationships. (Dahir, 1999).

Myth: Elder abuse is rarely perpetrated by family members, and when it is, it's usually a case of caregiver stress.

Fact: Family members accounted for 75% of the abusers in the 7,157 reported cases of elder abuse in Illinois in 1999. These abusers were 14% spouses, 41% adult children and 22% other relatives. The most common form of abuse for elderly victims in Illinois was financial exploitation (53%), followed by emotional abuse (42%), passive neglect (37%), physical abuse (20%), willful deprivation (7%), confinement (5%), and sexual abuse (2%). (Illinois Department on Aging, 1999). Elder abuse, like other forms of domestic violence, is about power and control.

Myth: The rates of domestic violence homicide have declined during the last 30 years, and that decline is equal for the rates of domestic violence homicide by men against women as by women against men.

Fact: A US Department of Justice report on intimate partner violence (2000) analyzed the data from the National Crime Victimization Survey and FBI homicide data and concluded that intimate partner violence declined significantly between 1976 and 1998. The decrease, however, was very different by gender. Intimate partner homicide declined 60% for men during this period. However, for women, intimate partner homicide remained stable from 1976 to 1993, and declined 23% between 1993 and 1998.

This is the same period of time that law enforcement and the courts started taking domestic violence more seriously and domestic violence programs and shelters began to appear across the country.

Appendix III

POWER & CONTROL WHEEL

POWER AND CONTROL WHEEL

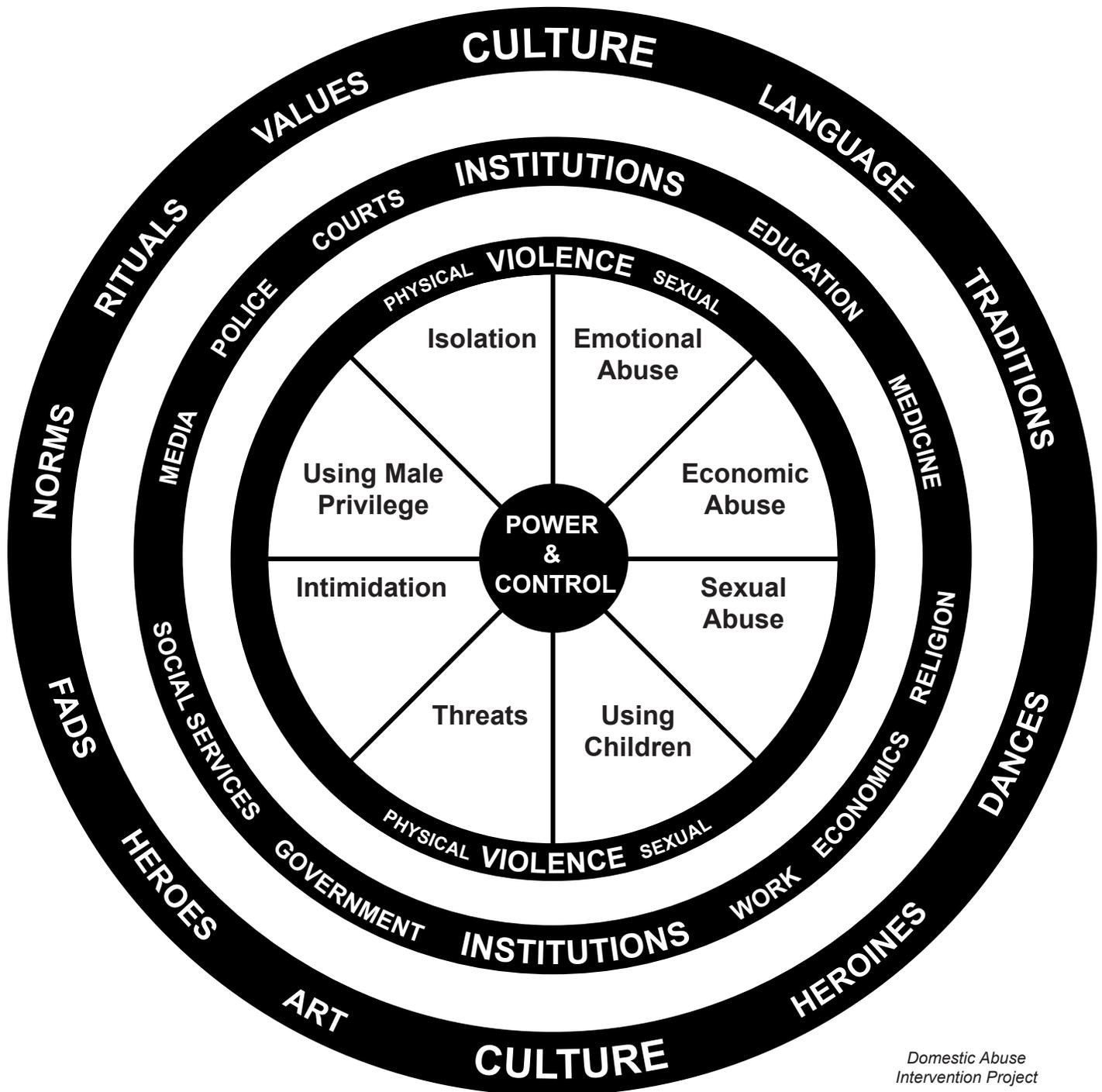
Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviors by the batterer, when reinforced by one or more acts of physical violence, make up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instill threat of future violent attacks and allow the abuser to take control of the woman's life and circumstances.

The Power & Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by a batterer to establish and maintain control over his partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.



Appendix IV
CULTURE WHEEL

Culture Wheel

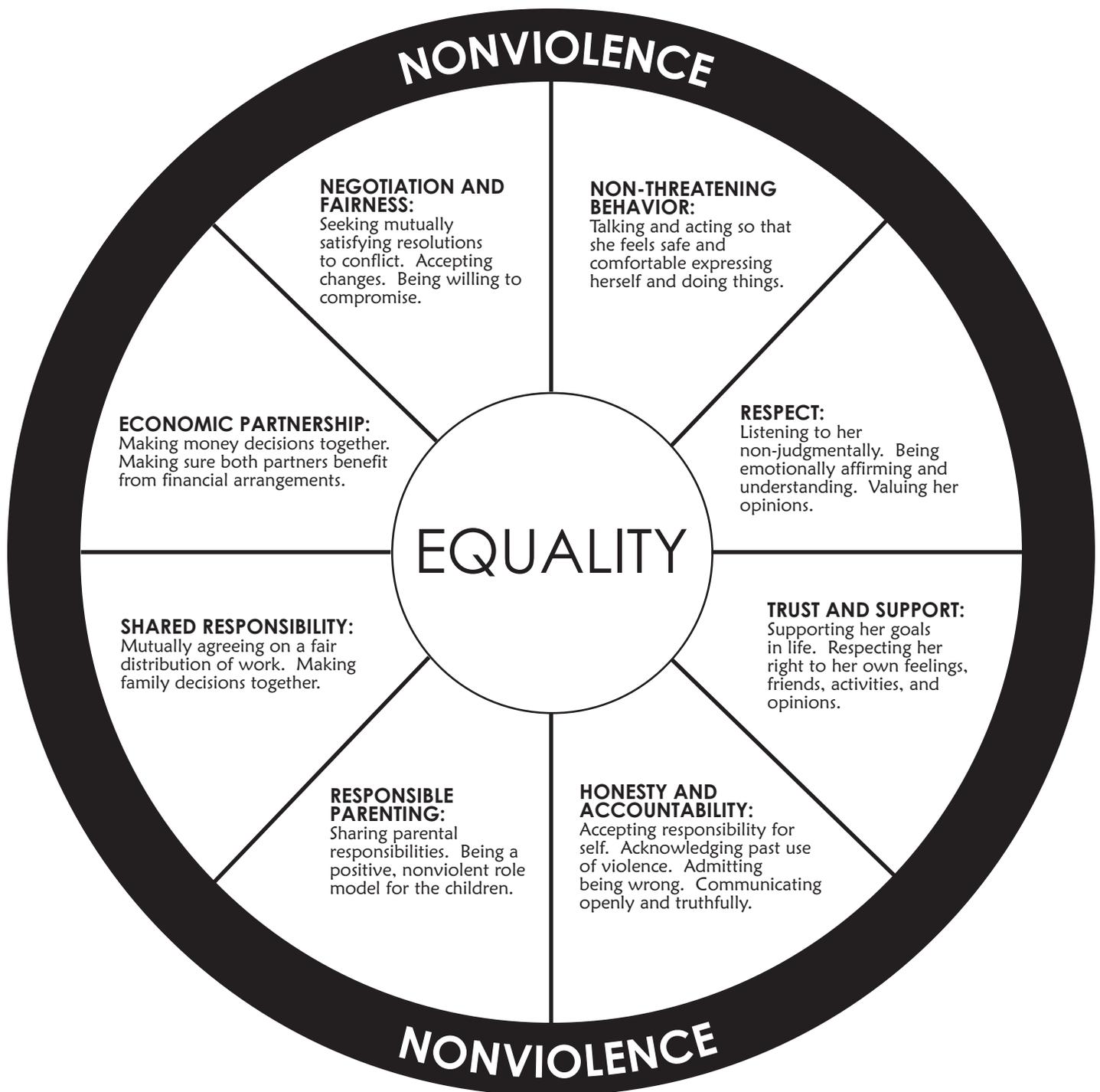


*Domestic Abuse
Intervention Project
Duluth, Minnesota*

Appendix V

EQUALITY WHEEL

EQUALITY WHEEL



Appendix VI

DOMESTIC VIOLENCE WEBSITES AND RESOURCES

Domestic Violence Information for Law Enforcement, Prosecution and the Judiciary Organizations and Websites

American Bar Association

Home to the Commission on Domestic Violence which provides training and educational materials to attorneys who represent victims of domestic violence. Contains numerous resources on domestic violence prosecution. 202.662.1000, www.abanet.org

American Judges Association

An international judicial association organized to provide education and networking and maintain the status and independence of the judiciary. Home to the American Judicial Foundation, which publishes a booklet for judicial education entitled, *Domestic Violence and the Courtroom... Understanding the Problem, Knowing the Victim*. www.aja.ncsc.dni.us

Battered Women's Justice Project

Provides training, technical assistance and other resources. 800-903-0111 x 1, www.bwjp.org

Bureau on Sexual and Domestic Violence Prevention Please contact the Bureau on Sexual and Domestic Violence Prevention at or go to the Illinois Coalition Against Domestic Violence website at www.ilcadv.org/battersprogs/default.asp for an updated list of approved programs. This list of programs is updated quarterly. 217-524-6031

Center for Court Innovation

The Center functions as the New York State court system's independent research and development arm, creating demonstration projects that test new ideas. Although focused on NY courts, this site contains a plethora of information and innovative research on integrated domestic violence courts. www.courtinnovaton.org

Chicago Mayor's Office on Domestic Violence

Visitation and Exchange Centers – Cook County

The Chicago Mayor's Office on Domestic Violence keeps updated information on visitation and exchange centers located in Cook County. Call for information and a current listing.

312-747-9972

Chicago Metropolitan Battered Women's Network

Regional domestic violence coalition that provides training, technical assistance and public policy advocacy. 312-750-0730, TTY 312-750-0735, www.batteredwomensnetwork.org

City of Chicago Domestic Violence Help Line 877-863-6338

Family Violence Prevention Fund

Focuses on domestic violence education, prevention and public policy.

415-252-8900, <http://endabuse.org>

Illinois Attorney General

Attorney General Madigan and her office offer numerous programs and services aimed at protecting the rights of people experiencing domestic violence.

www.IllinoisAttorneyGeneral.gov

Illinois Center for Violence Prevention

Works to prevent violence through public education, network coordination, advocacy, technical assistance, and training. Has a community policing program. 312-986-9200, www.icvp.org

Illinois Coalition Against Domestic Violence

Statewide domestic violence coalition that provides training, technical assistance, and public policy advocacy. 217-789-2830, www.icadv.org

Illinois Coalition Against Sexual Assault

Statewide sexual assault coalition that provides training, technical assistance, and public policy advocacy. 217-753-4117, www.icasa.org

Illinois Department of Children and Family Services

The state agency that provides child protection services. Information on the Child Abuse and Neglect Reporting Act can be found here.

www.state.il.us/dcfs Child Abuse Hotline 800-25-ABUSE

Illinois Department of Human Services, Division of Community Health and Prevention

Partner Abuse Intervention Programs – Illinois

Partner Abuse Intervention Programs that comply with the *Illinois Protocol for Partner Abuse Intervention Programs* (this protocol can be found at www.ilcdvp.org) are located across the state. 217-524-6031

Illinois Family Violence Coordinating Councils

The purpose of the IFVCC and its local councils is to establish a forum to share and discuss information in order to promote a coordinated community response to family violence.

Visitation and Exchange Centers – Downstate Illinois

The Illinois Family Violence Coordinating Councils keeps updated information on visitation and exchange centers located throughout downstate Illinois. Call for information and a current listing. 217-524-4962, www.ifvcc.org

Information for Survivors of Police Domestic Violence

Organization that addresses the issue of domestic violence perpetrated by law enforcement officers and firefighters. www.abuseofpower.info

Institute for Law and Justice

Provides consulting, research, and evaluation services to criminal justice practitioners on a number of issues, including domestic and sexual violence.

703-684-5300, www.ilj.org

The International Association for Chiefs of Police

A leadership organization that addresses emerging issues in policing. Has model policy information on domestic violence perpetrated by police.

800-THE-IACP, 703-836-6767, www.theiacp.org

National Center for Victims of Crime

Home to a number of resource centers concerning domestic, family and dating violence. Home to the Stalking Resource Center. Contains information on state statutes.

800-FYI-CALL, TTY 800-211-7996, www.ncvc.org

National Coalition Against Domestic Violence

Information and referral center for programs assisting battered women.

303-839-1852, www.ncadv.org

National Council of Juvenile and Family Court Judges

The mission of this organization is to improve courts and systems practice and raise awareness of the core issues that touch the lives of many of our nation's children and families, including family violence, child abuse, custody and visitation, etc. Home to the Family Violence Department. 775-784-6012, www.ncjfcj.org

National District Attorneys Association/American Prosecutors Research Institute

The NDAA and APRI merged in July of 2006. National organization that provides training, programs, research, technical assistance, and information for prosecutors. Home to the National Center for the Prosecution of Violence Against Women. www.ndaa-apri.org

National Domestic Violence Hotline

Hotline for resource and referrals on domestic violence.

800-799-SAFE (7233), TTY 800-787-3224, www.ndvh.org

National Judicial Institute on Domestic Violence

A partnership of the Family Violence Prevention Fund, National Council of Juvenile and Family Court Judges, and the U.S. Department of Justice Office of Violence Against Women to provide judicial education through the Judicial Education Project. Developed the Judges Toolbox.

775-784-1662, www.endabuse.org/programs/display.php3?DocID=89

National Organization for Victim Assistance

Resources and referrals for victims of crime. 800-TRY-NOVA, www.trynova.org

National Resource Center on Domestic Violence

Provides technical assistance, training and information on domestic violence. Contains a large library of articles and resources. 800-537-2238, www.nsvrc.org

National Sexual Violence Resource Center

A comprehensive collection and distribution center for information, statistics, and resources on sexual assault. 877-739-3895, www.nsvrc.org

National Sheriffs' Association

Provides training and resources for law enforcement officers and agencies. Partners with a number of organizations to provide training and information on domestic violence, including a specific training series for rural law enforcement of domestic violence. www.sheriffs.org

Office on Violence Against Women, OJP, DOJ

Federal office for domestic violence that manages grants and oversees federal policy.

202-307-6026, www.usdoj.gov/ovw

Praxis International

Nonprofit training and technical assistance organization founded by Ellen Pence (known for her innovative work with the Duluth program). Home to numerous projects, including a project providing technical assistance on supervised visitation centers. Downloadable resources and articles. 218-525-0487, www.praxisinternational.org

VAWnet

Provided by the University of Minnesota, this site contains downloadable articles and information on violence against women. 800-537-2238, TTY 800-553-2508, www.vawnet.org

wiredsafety.org

Online safety and help group concerning cyberstalking. Contains information for professionals as well as support for victims.

www.wiredsafety.org

Appendix VII

DANGER ASSESSMENT

DANGER ASSESSMENT

Jacquelyn C. Campbell, Ph.D., R.N.
Copyright, 2003

Several risk factors have been associated with increased risk of homicides (murders) of women and men in violent relationships. We cannot predict what will happen in your case, but we would like you to be aware of the danger of homicide in situations of abuse and for you to see how many of the risk factors apply to your situation.

Using the calendar, please mark the approximate dates during the past year when you were abused by your partner or ex partner. Write on that date how bad the incident was according to the following scale:

1. Slapping, pushing; no injuries and/or lasting pain
2. Punching, kicking; bruises, cuts, and/or continuing pain
3. "Beating up"; severe contusions, burns, broken bones
4. Threat to use weapon; head injury, internal injury, permanent injury
5. Use of weapon; wounds from weapon

(If any of the descriptions for the higher number apply, use the higher number.)

Mark **Yes** or **No** for each of the following. ("He" refers to your husband, partner, ex-husband, ex-partner, or whoever is currently physically hurting you.)

- ___ 1. Has the physical violence increased in severity or frequency over the past year?
- ___ 2. Does he own a gun?
- ___ 3. Have you left him after living together during the past year?
3a. (If have *never* lived with him, check here ___)
- ___ 4. Is he unemployed?
- ___ 5. Has he ever used a weapon against you or threatened you with a lethal weapon?
(If yes, was the weapon a gun? ___)
- ___ 6. Does he threaten to kill you?
- ___ 7. Has he avoided being arrested for domestic violence?
- ___ 8. Do you have a child that is not his?
- ___ 9. Has he ever forced you to have sex when you did not wish to do so?
- ___ 10. Does he ever try to choke you?
- ___ 11. Does he use illegal drugs? By drugs, I mean "uppers" or amphetamines, speed, angel dust, cocaine, "crack", street drugs or mixtures.
- ___ 12. Is he an alcoholic or problem drinker?
- ___ 13. Does he control most or all of your daily activities? For instance: does he tell you who you can be friends with, when you can see your family, how much money you can use, or when you can take the car? (If he tries, but you do not let him, check here: ___)
- ___ 14. Is he violently and constantly jealous of you? (For instance, does he say "If I can't have you, no one can.")
- ___ 15. Have you ever been beaten by him while you were pregnant? (If you have never been pregnant by him, check here: ___)
- ___ 16. Have you ever threatened or tried to commit suicide?
- ___ 17. Has he ever threatened or tried to commit suicide?
- ___ 18. Does he threaten to harm your children?
- ___ 19. Do you believe he is capable of killing you?
- ___ 20. Does he follow or spy on you, leave threatening notes or messages on answering machine, destroy your property, or call you when you don't want him to?

___ Total "Yes" Answers

Thank you. Please talk to your nurse, advocate or counselor about what the Danger Assessment means in terms of your situation.

Related Charges

720 ILCS 5/8-4.....	Attempted Murder
720 ILCS 5/9-1.....	First Degree Murder
720 ILCS 5/9-1.2.....	Intentional Homicide of an Unborn Child
720 ILCS 5/9-2.....	Second Degree Murder
720 ILCS 5/9-2.1.....	Voluntary Manslaughter of an Unborn Child
720 ILCS 5/9.3.....	Involuntary Manslaughter
720 ILCS 5/9-3.....	Reckless Homicide
720 ILCS 5/9-3.2.....	Involuntary Manslaughter of an Unborn Child
720 ILCS 5/9-3.2.....	Reckless Homicide of an Unborn Child
720 ILCS 5/10-1.....	Kidnapping
720 ILCS 5/10-2.....	Agg. Kidnapping
(See <i>People v. Frampton</i> , 248 Ill. App. 3d 238, 187 Ill. Dec. 950,618 N.E. 2d 541 (1st Dist. 1993).)	
720 ILCS 5/10-3.....	Unlawful Restraint
(See <i>People v. Williams</i> , 222 Ill. App. 3d 129, 164 Ill. Dec. 214, 582 N.E. 2d 1158 (1st Dist. 1991); <i>People v. Bratton</i> , 17 Ill. App. 3d 718, 127 Ill. Dec. 700,533 N.E. 2d 572 (4th Dist. 1989).)	
720 ILCS 5/10-3.1.....	Aggravated Unlawful Restraint
(See <i>People v. Murphy</i> , 261 Ill. App. 3d 1019, 200 Ill. Dec. 9, 635 N.E. 2d 110 (2nd Dist., 1994).)	
720 ILCS 5/10-4.....	Forcible Detention
720 ILCS 5/10-5.....	Child Abduction
720 ILCS 5/10-5.5.....	Unlawful Visitation Interference
720 ILCS 5/12-1.....	Assault
720 ILCS 5/12-2.....	Aggravated Assault
720 ILCS 5/12-3.1.....	Battery of an Unborn Child
720 ILCS 5/12-4.....	Aggravated Battery
(See <i>People v. Geneva</i> , 196 Ill. App. 3d 1018, 143 Ill. Dec. 621, 554 N.E. 2d 556 (1st Dist. 1990).)	
720 ILCS 5/124.1.....	Heinous Battery
720 ILCS 5/124.2.....	Aggravated Battery with a Firearm
720 ILCS 5/1 24.3.....	Aggravated Battery of a Child
720 ILCS 5/1 24.4.....	Aggravated Battery of an Unborn Child
720 ILCS 5/1 24.6.....	Aggravated Battery of a Senior Citizen
720 ILCS 5/12-5.....	Reckless Conduct
720 ILCS 5/12-6.....	Intimidation
(See <i>People v. Cole</i> , 571 Ill. App. 3d 396, 151 Ill. Dec. 12, 373 N.E. 2d 106 (3rd Dist. 1978).)	
720 ILCS 5/12-7.3.....	Stalking
(See <i>People v. Krawiec</i> , 262 Ill. App. 3d 152, 199 Ill. Dec. 819, 634 N.E. 2d 1173 (2nd Dist. 1994).)	
720 ILCS 5/12-7.4.....	Aggravated Stalking

720 ILCS 5/12-11.....	Home Invasion
(See <i>People v-Kick</i> , 216 Ill App: 3d 787,159111. Dec. 726, 576 N.E. 2d 395 (2nd Dist. 1991); <i>People v. Dall</i> , 207111. App.3d 508, 152111. Dec. 442,565 N.E. 2d 1360(4th Dist. 1991).)	
720 JLCS 5/12-11.1.....	Vehicular Invasion
720 ILCS 5/12-13.....	Criminal Sexual Assault
(See <i>People v. Wheeler</i> , 200 111. App. 3d 301, 146 111..Dec. 795, 558 N.E. 2d 758 (4th Dist. 1990).)	
720 ILCS 5/12-14.....	Aggravated Criminal Sexual Assault
(See <i>People v. Frampton</i> . 248 111. App. 3d 238, 187111. Dec. 950, 618 N.E. 2d 541 (1st Dist. 1993); <i>People v. Printy</i> , 232111. App. 3d 735, 174111. Dec. 149,598 N.E. 2d 346 (2nd Dist. 1992); <i>People v. M.D.</i> , 231 111. App. 3d 176, 172 111. Dec. 341, 595 N.E. 2d 702 (2nd Dist. 1992); <i>People v. Dall</i> , 207111. App. 3d 508, 152 111. Dec. 442, 565 N.E. 2d 1360 (4th Dist. 1991); <i>People v. Geneva</i> , 196 111. App. 3d 1017, 143 111. Dec. 621, SM N.E. 2d 556 (1st Dist. 1990).)	
720 ILCS 5/12-15.....	Criminal Sexual Abuse
720 ILCS 5/12-16.....	Aggravated Criminal Sexual Abuse
720 ILCS 5/12-21.....	Criminal Neglect of an Order of Protection
720 JLCS 5/12-30.....	Unlawful Violation of an Order of Protection
(See <i>People v. Zarebski</i> , 186 Ill. App. 3d 285, 134 111.Dec. 266, 542 N.E. 2d 445. (2nd Dist. 1989).)	
720 ILCS 5/16-1.....	Theft
720 ILCS 5/16-1.3.....	Unlawful Exploitation of an Elderly or Disabled Person
720 ILCS 5/18-1.....	Robbery
720 ILCS 5/18-2.....	Armed Robbery
720 JLCS 5/18-3.....	Aggravated Robbery
720ILCS 5/19-3.....	Residential Burglary
(See <i>People v. Williams</i> , 222 111. App. 3d 129, 164 111..Dec. 214, 582 N.E. 2d 1158 (1st Dist. 1991); <i>People v...Bratton</i> , 178 111. App. 3d 718, 127 111. Dec. 700, 533.N.E. 2d 572(4th Dist. 1989).)	
720 ILCS 5/194.....	Criminal Trespass to Residence
720 ILCS 5/21-1.....	Criminal Damage to Property
720 ILCS 5/21-2.....	Criminal Trespass to Motor Vehicle
720 ILCS 5/24-1.....	Unlawful Use of Weapons
720 ILCS 5/24-1.1.....	Unlawful Use or Possession of Weapons by Felons
720 ILCS 5/24-1.2.....	Aggravated Discharge of a Firearm
720 ILCS 5/24-1.5.....	Reckless Discharge of a Firearm
720 ILCS 5/24-3.1.....	Unlawful Possession of Firearms
720 ILCS 5/26-1.....	Disorderly Conduct
720 ILCS 5/31-1.....	Resisting a Peace Officer
720 ILCS 5/31-1.....	Obstructing a Peace Officer

(See *People v. Hetzel*, 176111. App. 3d 630,126111. Dec.141,531
N.E. 2d 436 (2nd Dist. 1989).)

- 720 LLCS 5/324.....Unlawful Communication with a Witness
- 720 LLCS 5/324.....Harassment of a Witness
- 720 ILCS 5/32-10.....Violation of Bail Bond
- 720 ILCS 5/33A-2.....Armed Violence
- 720 ILCS 135/1-1.....Harassment by Telephone
(See *People v. Darnell*, 190.Ill. App. 3d 587, 137 111..Dec. 844,
546 N.E. 2d 789 (2nd Dist. 1989).)
- 730 ILCS 5/5-64.....Violation of Parole
(See *People v. Hazeiwonder*, 138 III. App. 3d 213, 93III. Dec.
1,485 N.E. 2d 1211(4thDist. 1985).)
- 430 ILCS 65/2(a).....Possession of Firearm without Requisite
Firearm Owner's I.D. Card

Appendix IX

ORDER OF PROTECTION INFORMATION WORKSHEET

ORDER OF PROTECTION INFORMATION WORKSHEET

(This worksheet list most of the information you should bring with you to help complete your Petition)

INFORMATION ON PERSON MAKING THE REQUEST (PETITIONER)

Petitioner's Full Name: _____ Case No: _____

Date of Birth: _____ (mmdyyy) Your Age as of today: _____

Petitioner/Abused Person stands in relationship to the Respondent as: *(check all that apply)*

<input checked="" type="checkbox"/>	RELATIONSHIP	<input checked="" type="checkbox"/>	RELATIONSHIP	<input checked="" type="checkbox"/>	RELATIONSHIP
<input type="checkbox"/>	Spouse (SE)	<input type="checkbox"/>	Parent (PA)	<input type="checkbox"/>	Grandparent (GP)
<input type="checkbox"/>	Ex-Former Spouse (XS)	<input type="checkbox"/>	Sibling (Brother/Sister) (SB)	<input type="checkbox"/>	In-Law (IL)
<input type="checkbox"/>	Boyfriend/Girlfriend (BG) (Dating Relationship)	<input type="checkbox"/>	Step-child (SC)	<input type="checkbox"/>	Person with Disability (PD)
<input type="checkbox"/>	Child in Common (CC) (parties not married)	<input type="checkbox"/>	Step-sibling (SS)	<input type="checkbox"/>	Person Responsible for High-Risk Adult (PR)
<input type="checkbox"/>	Shared/common dwelling (CS)	<input type="checkbox"/>	Step-parent (SP)	<input type="checkbox"/>	Personal Assistant or Caregiver to Person with Disability (PC)
<input type="checkbox"/>	Child (CH)	<input type="checkbox"/>	Grandchild (GC)	<input type="checkbox"/>	Other Related by Blood or Marriage (OF)

MINOR CHILD(REN) OR ADULTS WHO CAN NOT FILE BECAUSE OF AGE, HEALTH, DISABILITY OR INACCESSIBILITY TO BE INCLUDED ON THE ORDER

Full Name	Relationship to Petitioner	Age

Have **You** ever asked for an Order of Protection before?
 Yes No
 When: _____
 Where: _____
 Was the Order: Given Extended Terminated Refused
 Was it an Emergency Order (21 Days) Yes No Case No: (If known) _____

Is there or has there ever been an Order of Protection against **YOU**? Yes No Currently Pending
 Terminated on _____

Has the child(ren) of either party been designated as a Respondent or a protected person in any Order of Protection: No Yes If Yes, where and what is/was the expiration date? _____

Do **YOU** or the **RESPONDENT** have any case(s) pending in any court?

<p>YOU</p> <input type="checkbox"/> Criminal Case <input type="checkbox"/> Divorce/Family Case/Custody <input type="checkbox"/> Small Claims Case <input type="checkbox"/> Probate Case <input type="checkbox"/> Juvenile Matter <input type="checkbox"/> Other _____	<p>RESPONDENT</p> <input type="checkbox"/> Criminal Case <input type="checkbox"/> Divorce/Family Case/Custody <input type="checkbox"/> Small Claims Case <input type="checkbox"/> Probate Case <input type="checkbox"/> Juvenile Matter <input type="checkbox"/> Other _____
---	--

Do **You** have any future court dates? No Yes When? _____
 Respondent? No Yes When? _____

Do **You** or the **Respondent** have an attorney?

<p>YOU: <input type="checkbox"/> No <input type="checkbox"/> Yes Name of Attorney _____ Attorney Phone No: _____</p>	<p>RESPONDENT: <input type="checkbox"/> No <input type="checkbox"/> Yes Name of Attorney _____ Attorney Phone No: _____</p>
---	--

PETITIONER'S RESIDENCE INFORMATION

Actual Address (Street/P.O. Box, City, State, Zip Code): _____ _____ _____	<input type="checkbox"/> Alternate Address for Service of Notice because disclosure would risk further abuse:
---	---

SECONDARY ADDRESS(ES) TO PROTECT (i.e. Schools, Day Care, Relatives, etc.)

Phone #	Address:
Phone #	Address:
Phone #	Address:

PETITIONER'S EMPLOYMENT INFORMATION

Business Name:	Petitioner's Work Address (Street/P.O. Box, City, State, Zip Code):
Business Phone:	Normal Work Hours:

PETITIONER'S VEHICLE INFORMATION

Vehicle Make:	Vehicle Model:	Vehicle Year:
License Plate #:	Vehicle Color:	

I am requesting an Order of Protection because the Respondent did the following things on the dates and times indicated below: *(You may include relevant history of abuse and its effect(s) on you and the date and place each incident occurred; Attach additional pages, if necessary)*

Date(s) & Location By City/State	Description of Incident(s)

INFORMATION ON PERSON TO BE SERVED (RESPONDENT)

Respondent's Full Name:

DATE OF BIRTH	AGE	HEIGHT	WEIGHT	HAIR COLOR
EYE COLOR	SEX	RACE	GLASSES	BUILD

Distinguishing Features (scars, marks, tattoos, etc.):

Social Security Number (if known):

Respondent's Current Address (Street, City, State, Zip Code, Phone):

RESPONDENT'S EMPLOYMENT INFORMATION

Business Name:

Respondent's Work Address (Street/P.O. Box, City, State, Zip Code):

Business Phone:

Normal Work Hours:

RESPONDENT'S VEHICLE INFORMATION

Vehicle Make:

Vehicle Model:

Vehicle Year:

License Plate #:

Vehicle Color:

RESPONDENT'S FIREARMS AND CUSTODY INFORMATIONIs the person to be served a violent person? Yes No Is the person to be served suicidal? Yes No Was the subject to be served arrested? Yes No Is the subject now in custody? Yes No Which Department?Does the person to be served carry any weapons on said person? Yes No Are there any weapons in the house? Yes No

If yes, give location in the house:

Types of Weapons?

Comments: *(Include other relevant information not mentioned above or additional information covered above)*

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth are true and correct, except as to matters therein stated to be on information an belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.

Date:

Signature of Petitioner:

DEFINITION OF TERMS USED IN ORDERS OF PROTECTION

These definitions are incorporated in and made a part of the order to which they are attached.

1. **Abuse:** "Abuse" means physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person *in loco parentis*.
2. **Domestic Violence:** Domestic Violence means abuse as defined in paragraph one.
3. **Exploitation:** "Exploitation" means the illegal, including tortuous, use of a high-risk adult with disabilities or of the assets or resources of a high-risk adult with disabilities. Exploitation includes, but is not limited to, the misappropriation of assets or resources of a high-risk adult with disabilities by undue influence, by breach of a fiduciary relationship, by fraud, deception, or extortion, or the use of such assets or resources in a manner contrary to law.
4. **Family or Household Members:** Include spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly have a child in common, persons who share or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, and persons with disabilities and their personal assistants. For purposes of this paragraph, neither a casual acquaintanceship nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute a dating relationship. In the case of a high-risk adult with disabilities, "family or household members" includes any person who has the responsibility for a high-risk adult as a result of a family relationship or who has assumed responsibility for all or a portion of the care of a high-risk adult with disabilities voluntarily, or by express or implied contract, or by court order.
5. **Harassment:** "Harassment" means knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances, would cause a reasonable person emotional distress, and does cause emotional distress to the petitioner. Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct shall be presumed to cause emotional distress:
 - a) creating a disturbance at petitioner's place of employment or school;
 - b) repeatedly telephoning petitioner's place of employment, home or residence;
 - c) repeatedly following petitioner about in a public place or places;
 - d) repeatedly keeping petitioner under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by petitioner or by peering in petitioner's windows;
 - e) repeatedly threatening to improperly remove a child of petitioner's from the jurisdiction, improperly concealing that child from petitioner or making a single such threat following an actual or attempted improper removal or concealment;
 - f) improperly concealing a minor child from petitioner, repeatedly threatening to improperly remove a minor child of petitioner from the jurisdiction or from the physical care of petitioner, repeatedly threatening to conceal a minor child from petitioner, or making a single such threat following an actual or attempted improper removal or concealment, unless respondent was fleeing an incident or pattern of domestic violence; or
 - g) threatening physical force, confinement or restraint on one or more occasions.

6. **Interference with Personal Liberty:** "Interference with personal liberty" means committing or threatening physical abuse, harassment, intimidation or willful deprivation so as to compel another to engage in conduct from which she or he has a right to abstain or to refrain from conduct in which she or he has a right to engage.
7. **Intimidation of a Dependent:** "Intimidation" means subjecting a person who is dependent because of age, health or disability to participation in, or the witnessing of: physical force against another or physical confinement or restraint of another which constitutes physical abuse as herein defined, regardless of whether the abused person is a family or household member.
8. **Neglect:** "Neglect" means the failure to exercise that degree of care toward a high-risk adult with disabilities which a reasonable person would exercise under the circumstances and includes but is not limited to:
 - a) the failure to take reasonable steps to protect a high-risk adult with disabilities from acts of abuse;
 - b) the repeated, careless imposition of unreasonable confinement;
 - c) the failure to provide food, shelter, clothing, and personal hygiene to a high-risk adult with disabilities who requires such assistance;
 - d) the failure to provide medical and rehabilitative care for the physical and mental health needs of a high-risk adult with disabilities; or
 - e) the failure to protect a high-risk adult with disabilities from health and safety hazards.
9. **Physical Abuse:** "Physical abuse" includes sexual abuse and means any of the following:
 - a) knowing or reckless use of physical force, confinement, or restraint; or
 - b) knowing, repeated and unnecessary sleep deprivation; or
 - c) knowing or reckless conduct which creates an immediate risk of physical harm.
10. **Stalking:** "Stalking" means knowingly and without lawful justification, on at least two (2) separate occasions, following another person or placing the person under surveillance or any combination thereof and:
 - a) at any time transmitting a threat of immediate or future bodily harm, sexual assault, confinement or restraint and the threat is directed towards that person or a family member of that person; or
 - b) placing that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint; or
 - c) placing that person in reasonable apprehension that a family member will receive immediate or future bodily harm, sexual assault, confinement, or restraint.
11. **Willful Deprivation:** "Willful deprivation" means willfully denying a person who because of age, health or disability requires medication, medical care, shelter, food, therapeutic device, or other physical assistance, and thereby exposing that person to the risk of physical, mental or emotional harm, except with regard to medical care or treatment when the dependent person has expressed an intent to forego such medical care or treatment. This paragraph does not create any new affirmative duty to provide support to dependent persons.

Appendix X

ILLINOIS AND FEDERAL FIREARM LAWS AND ISSUES

Illinois and Federal Firearm Laws and Issues

Statute	Summary/Context of Law	Issues Raised
<p>750 ILCS 60/214 (b) (14.5) – Illinois Domestic Violence Act/ Order of Protection 14.5 Remedy (Civil)</p> <p>(a) When a complaint is made under a request for an order of protection, that the respondent has threatened or is likely to use firearms illegally against the petitioner, and the respondent is present in court, or has failed to appear after receiving actual notice, the court shall examine on oath the petitioner, and any witnesses who may be produced. If the court is satisfied that there is any danger of the illegal use of firearms, it shall <u>issue an order</u> that any firearms in the possession of the respondent, except as provided in subsection (b), be turned over to the local law enforcement agency for safekeeping. If the respondent <u>has failed to appear</u>, the court shall issue a warrant for seizure of any firearm in the possession of the respondent. The period of safekeeping shall be for a stated period of time not to exceed 2 years. The firearm or firearms shall be returned to the respondent at the end of the stated period or at expiration of the order of protection, whichever is sooner.</p> <p>(b) If the respondent is a peace officer as defined in Section 2-13 of the Criminal Code of 1961, the court shall order that any firearms used by the respondent in the performance of his or her duties as a peace officer be surrendered to the chief law enforcement executive of the agency in which the respondent is employed, who shall retain the firearms for safekeeping for the stated period not to exceed 2 years as set forth in the court order.</p>	<p>A victim may request Remedy 14.5 in a Petition for an Order of Protection filed in either civil or criminal court.</p> <p>The victim must request 14.5 on the OP Petition form, and state to the Court that the respondent has threatened or is likely to use firearms against the victim.</p> <p>If the respondent is present in Court, or has failed to appear after receiving actual notice of the OP, and the Court is satisfied that there is any danger of the use of firearms, the court shall order the 14.5 remedy requiring that any firearms in the possession of the respondent be turned over to the local law enforcement agency.</p> <p>If the respondent has failed to appear (or refuses or fails to surrender his or her firearms <i>per criminal law above</i>), the court shall issue a warrant for seizure of any firearm in the possession of the respondent. If the respondent is a peace officer, the court shall order that any firearms used by the respondent in the performance of the officer’s duties be surrendered to the respondent’s chief law enforcement executive. Under this law, the firearms can be retained for safekeeping for the period stated in the court order, not to exceed 2 years. Firearms should be returned to respondent when this remedy is no longer in effect.</p>	<p><i>Professional education.</i> The need to educate both the civil & criminal court system about the availability of the firearm prohibition and the process for using it in an OP (judges, prosecuting attorneys, law enforcement, etc.).</p> <p><i>Requirements for search warrant.</i> Clarification of the warrant process that the court can use to seize firearms under this OP prohibition when respondents do not comply (<i>is there a need for a specific warrant form?</i>).</p> <p><i>Law enforcement agency policies and procedures</i> regarding:</p> <ul style="list-style-type: none"> ▪ The secure storage of relinquished/seized weapons; ▪ The return of firearms to respondents after an OP expires; ▪ Officers subject to OPs when 14.5 is granted. <p><i>Ensure respondent compliance.</i> The need to create a compliance review process to ensure respondents complies with the OP.</p> <p><i>Ensure petitioner awareness of 14.5.</i> The need to educate petitioners regarding the availability of 14.5, how to indicate the information on the Order of Protection form, and the importance of disclosing knowledge regarding respondent’s weapons.</p> <p><i>Judicial role in fact-finding regarding firearms.</i> How to ensure that judges ask petitioners and respondents about respondent access to/possession of firearms.</p> <p><i>Choice of law enforcement agency.</i> How to determine which law enforcement agency will take possession of the prohibited firearm(s).</p> <p>What type of order the court should issue for the seizure of weapons, which court will offer remedies, and how?</p>

Statute	Summary/Context of Law	Issues Raised
<p>725 ILCS 5/112A-14 (b) (14.5) -- Prohibition of Firearm Possession (Illinois Domestic Violence Act/ Order of Protection 14.5 Remedy (Criminal)</p> <p>a) When a complaint is made under a request for an order of protection, that the respondent has threatened or is likely to use firearms illegally against the petitioner, and the respondent is present in court, or has failed to appear after receiving actual notice, the court shall examine on oath the petitioner, and any witnesses who may be produced. If the court is satisfied that there is any danger of the illegal use of firearms, it shall <u>include in the order of protection the requirement</u> that any firearms in the possession of the respondent, except as provided in subsection (b), be turned over to the local law enforcement agency for safekeeping. If the respondent <u>fails to appear, or refuses or fails to surrender his or her firearms</u>, the court shall issue a warrant for seizure of any firearm in the possession of the respondent. The period of safekeeping shall be for a stated period of time not to exceed 2 years. The firearm or firearms shall be returned to the respondent at the end of the stated period or at expiration of the order of protection, whichever is sooner.</p> <p>(b) If the respondent is a peace officer as defined in Section 2-13 of the Criminal Code of 1961, the court shall order that any firearms used by the respondent in the performance of his or her duties as a peace officer be surrendered to the chief law enforcement executive of the agency in which the respondent is employed, who shall retain the firearms for safekeeping for the stated period not to exceed 2 years as set forth in the court order.</p>	<p>A victim may request Remedy 14.5 in a Petition for an Order of Protection filed in either civil or criminal court.</p> <p>The victim must request 14.5 on the OP Petition form, and state to the Court that the respondent has threatened or is likely to use firearms against the victim.</p> <p>If the respondent is present in Court, or has failed to appear after receiving actual notice of the OP, and the Court is satisfied that there is any danger of the use of firearms, the court shall order the 14.5 remedy requiring that any firearms in the possession of the respondent be turned over to the local law enforcement agency.</p> <p>If the respondent has failed to appear (or refuses or fails to surrender his or her firearms <i>per criminal law above</i>), the court shall issue a warrant for seizure of any firearm in the possession of the respondent. If the respondent is a peace officer, the court shall order that any firearms used by the respondent in the performance of the officer's duties be surrendered to the respondent's chief law enforcement executive. Under this law, the firearms can be retained for safekeeping for the period stated in the court order, not to exceed 2 years. Firearms should be returned to respondent when this remedy is no longer in effect.</p>	<p><i>Professional education.</i> The need to educate both the civil & criminal court system about the availability of the firearm prohibition and the process for using it in an OP (judges, prosecuting attorneys, law enforcement, etc).</p> <p><i>Requirements for search warrant.</i> Clarification of the warrant process that the court can use to seize firearms under this OP prohibition when respondents do not comply (<i>is there a need for a specific warrant form?</i>).</p> <p><i>Law enforcement agency policies and procedures</i> regarding:</p> <ul style="list-style-type: none"> ▪ The secure storage of relinquished/seized weapons; ▪ The return of firearms to respondents after an OP expires; ▪ Officers subject to OPs when 14.5 is granted. <p><i>Ensure respondent compliance.</i> The need to create a compliance review process to ensure respondents complies with the OP.</p> <p><i>Ensure petitioner awareness of 14.5.</i> The need to educate petitioners regarding the availability of 14.5, how to indicate the information on the Order of Protection form, and the importance of disclosing knowledge regarding respondent's weapons.</p> <p><i>Judicial role in fact-finding regarding firearms.</i> How to ensure that judges ask petitioners and respondents about respondent access to/possession of firearms.</p> <p><i>Choice of law enforcement agency.</i> How to determine which law enforcement agency will take possession of the prohibited firearm(s).</p> <p>What type of order the court should issue for the seizure of weapons, which court will offer remedies, and how?</p>

Statute	Summary/Context of Law	Issues Raised
<p>750 ILCS 60/304 – <i>Assistance by law enforcement officers</i> (Civil)</p> <p>(a) Whenever a law enforcement officer has reason to believe that a person has been abused, neglected, or exploited by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, neglect, or exploitation, including:</p> <ol style="list-style-type: none"> (1) Arresting the abusing, neglecting and exploiting party, where appropriate; (2) If there is probable cause to believe that particular weapons were used to commit the incident of abuse, subject to constitutional limitations, seizing and taking inventory of the weapons. 	<p>When a police officer is called to an abuse incident, and there is probable cause to believe weapons were used in the incident, the officer shall seize and take inventory of the weapons, subject to constitutional limitations.</p>	<p><i>Law enforcement documentation.</i> Training for law enforcement detailing the obtaining of victim statements so that they may that ascertain whether use of firearms against the victim occurred during the incident (i.e., threats to injury or harass victim/family with the firearm by the respondent).</p> <p><i>Storage time.</i> Clarification on how long the firearm can be kept by law enforcement.</p> <p><i>Procedures for return of firearms.</i> Establish law enforcement procedures to return the firearm to respondent. (i.e. checking past criminal record, current firearm prohibitions, FOID status, etc.)</p> <p><i>Search and seizure law.</i> Training regarding state constitutional and U.S. constitutional law regarding search and seizure.</p>
<p>725 ILCS 5/112A-30 – <i>Assistance by law enforcement officers</i> (Criminal)</p> <p>(a) Whenever a law enforcement officer has reason to believe that a person has been abused by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, including:</p> <ol style="list-style-type: none"> (1) Arresting the abusing party, where appropriate; (2) If there is probable cause to believe that particular weapons were used to commit the incident of abuse, subject to constitutional limitations, seizing and taking inventory of the weapons. 	<p>When a police officer is called to an abuse incident, and there is probable cause to believe weapons were used in the incident, the officer shall seize and take inventory of the weapons, subject to constitutional limitations.</p>	<p><i>Law enforcement documentation.</i> Training for law enforcement detailing the obtaining of victim statements so that they may that ascertain whether use of firearms against the victim occurred during the incident (i.e., threats to injury or harass victim/family with the firearm by the respondent).</p> <p><i>Storage time.</i> Clarification on how long the firearm can be kept by law enforcement.</p> <p><i>Procedures for return of firearms.</i> Establish law enforcement procedures to return the firearm to respondent. (i.e. checking past criminal record, current firearm prohibitions, FOID status, etc.)</p> <p><i>Search and seizure law.</i> Training regarding state constitutional and U.S. constitutional law regarding search and seizure.</p>
<p>430 ILCS 65/0.01 et seq. – <i>Firearm Owner’s Identification Card Act</i></p> <p>2(a)(1) No person may acquire or possess any firearm within this State without having in his or her possession a Firearm Owner’s Identification Card previously issued in his or her name by the Department</p>	<p>Section 2: Under the Firearm Owner’s Identification Card Act, no person may possess a firearm or firearm ammunition without a valid FOID card.</p> <p>“Firearm” is defined as a device designed to expel a projectile by means of an explosion, or the expansion or escape of gas. The definition excludes antique</p>	<p>Section 8: Should additional offenses be added to the list of grounds for the State Police to withhold or revoke a FOID card?</p> <p>Should the “look back” time frames for certain grounds be extended?</p>

Statute	Summary/Context of Law	Issues Raised
<p>of State Police under the provisions of this Act.</p> <p>(8) The Department of State Police has authority to deny an application for or to revoke and seize a Firearm Owner's Identification Card previously issued under this Act only if the Department finds that the applicant or the person to whom such card was issued is or was at the time of issuance:</p> <p>...</p> <p>(c) A person who has been convicted of a felony under the laws of this or any other jurisdiction;</p> <p>...</p> <p>(j) A person who is subject to an existing order of protection prohibiting him or her from possessing a firearm;</p> <p>(k) A person who has been convicted within the past 5 years of battery, assault, aggravated assault, violation of an order of protection, or a substantially similar offense in another jurisdiction, in which a firearm was used or possessed;</p> <p>(l) A person who has been convicted of domestic battery or a substantially similar offense in another jurisdiction committed on or after January 1, 1998;</p> <p>(m) A person who has been convicted within the past 5 years of domestic battery or a substantially similar offense in another jurisdiction committed before January 1, 1998;</p> <p>...</p> <p>(13.3) ...every municipality must submit to the Department of State Police a copy of every ordinance adopted by the municipality that regulates the acquisition, possession, sale, or transfer of firearms within the municipality...</p>	<p>firearms, pneumatic (air) guns, BB guns, paint ball guns, flare of signal guns (but only if recommended by certain federal transportation agencies), and nail guns (as used in construction).</p> <p>There are currently approximately 1.2 million FOID cards. The annual applications (for new or renewed cards) total 210,000 to 220,000. In 2002, 4642 cards were denied and 6926 cards were revoked (source: Illinois State Police).</p> <p>Section 8: The Firearm Owner's Identification Card Act provides a number of grounds for the withholding or revocation of the FOID card. These include person subject to a current order of protection that prohibits the possession of firearms. It also includes persons convicted of the violation of an order of protection within the past five years if a firearm was part of the violation, and past convictions of domestic battery offenses.</p> <p>The grounds for withholding or revoking a FOID card also includes convicted felons, current or former mental patients, and drug addicts.</p> <p>Section 13.3: The following communities have filed their local ordinances involving firearms with the Illinois State Police (www.isp.state.il.us): Ashmore, Aurora, Beecher, Bolingbrook, Calumet Park, Carbondale, Carol Stream, Casey, Channahon, Cicero, Crest Hill, Elgin, Flossmoore, Grayslake, Hazel Crest, Loves Park, McHenry, New Lenox, Northbrook, Oak Park, Peoria, Posen, Riverdale, Schaumburg, Shorewood, Skokie, Sleepy Hollow, Wheaton, Wilmette, and Woodridge.</p>	
<p>720 ILCS 5/24-1.6 -- Aggravated Unlawful Use of a Weapon</p> <p>(a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:</p> <p>(1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode or</p>	<p>Essentially this statute gives law enforcement and prosecutors another tool for holding abusers who have been subject to orders of protections accountable for carrying or possessing firearms. Sections (a)(3)(C) and (a)(3)(G) are most relevant to the issue of firearms and orders of protection. Under Section (a)(3)(C) a person not owning a valid FOID card and otherwise qualifying under the statute can be charged with aggravated unlawful use of a weapon. Arguably, this section</p>	<p><i>Charging prior to revocation of FOID.</i> Pursuant to Section (a)(3)(C) of the statute (assuming all other conditions of statute satisfied), may a respondent be charged under this section if the FOID card has not yet been revoked?</p> <p><i>Expired orders of protection.</i> Does Section (a)(3)(G) of the statute apply to a person who has had an order of protection issued against him/her in the last two years</p>

Statute	Summary/Context of Law	Issues Raised
<p>fixed place of business any pistol, revolver, stun gun or taser or other firearm; or</p> <p>(2) Carries or possesses on or about his or her person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons. or except when on his or her own land or in his or her own abode or fixed place of business, any pistol, revolver, stun gun or taser or other firearm; and</p> <p>(3) One of the following factors is present:</p> <p>(A) the firearm possessed was uncased, loaded and immediately accessible at the time of the offense; or</p> <p>(B) the firearm possessed was uncased, unloaded and the ammunition for the weapon was immediately accessible at the time of the offense; or</p> <p>(C) the person possessing the firearm has not been issued a currently valid Firearm Owner's Identification Card; or</p> <p>(D) the person possessing the weapon was previously adjudicated a delinquent minor under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 et. seq.) for an act that if committed by an adult would be a felony; or</p> <p>(E) the person possessing the weapon was engaged in a misdemeanor violation of the Cannabis Control Act (720 ILCS 550/1 et seq.) or in a misdemeanor violation of the Illinois Controlled Substance Act (720 ILCS 570/100 et. seq.); or</p> <p>(F) the person possessing the weapon is a member of a street gang or is engaged in street gang related activity, as defined in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act</p>	<p>would apply to someone who has had his/her FOID card revoked due to being subject to an Order of Protection. Under Section (a)(3)(G), a person who otherwise qualifies under the statute and has had an order of protection against him within the previous 2 years could be charged with aggravated unlawful use of a weapon.</p>	<p>but which is now expired?</p> <p><i>Search and seizure law.</i> Training regarding state constitutional and U.S. constitutional law regarding search and seizure.</p>

Statute	Summary/Context of Law	Issues Raised
<p>(740 ILCS 147/10 et seq.); or</p> <p>(G) the person possessing the weapon had a order of protection issued against him or her within the previous 2 years; or</p> <p>(H) the person possessing the weapon was engaged in the commission or attempted commission of a misdemeanor involving the use or threat of violence against the person or property of another; or</p> <p>(I) the person possessing the weapon was under 21 years of age and in possession of a handgun as defined in Section 24-3 (720 ILCS 5/24-3), unless the person under 21 is engaged in lawful activities under the Wildlife Code (520 ILCS 5/1.1 et seq.) or described in subsection 24-2(b)(1), (b)(3), or 24-2(f) (720 ILCS 5/24-2).</p> <p>(b) "Stun gun or taser" as used in this Section has the same definition given to it in Section 24-1 of this Code (720 ILCS 5/24-1).</p> <p>(c) This Section does not apply to or affect the transportation or possession of weapons that:</p> <p>(i) are broken down in a non-functioning state; or</p> <p>(ii) are not immediately accessible; or</p> <p>(iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card.</p> <p>(d) Sentence. Aggravated unlawful use of a weapon is a Class 4 felony; a second or subsequent offense is a Class 2 felony. Aggravated unlawful use of a weapon by a person who has been previously convicted of a felony in this State or another jurisdiction is a Class 2 felony.</p>		

<p>725 ILCS 5/110-10 – Conditions of Bail Bond</p> <p>(a) If a person is released prior to conviction, either upon payment of bail security or on his or her own recognizance, the conditions of the bail bond shall be that he or she will:</p> <p>...</p> <p>(5) At a time and place designated by the court, surrender all firearms in his or her possession to a law enforcement officer designated by the court to take custody of and impound the firearms and physically surrender his or her Firearm Owner’s Identification Card to the clerk of the circuit court when the offense the person has been charged with is a forcible felony, staling, aggravated stalking, domestic battery, any violation of either the Illinois Controlled Substances Act or the Cannabis Control Act that is classified as a Class 2 or greater felony, or any felony violation of Article 24 of the Criminal Code of 1961; the court may, however, forgo the imposition of this condition when the circumstances of the case clearly do not warrant it or when its imposition would be impractical; all legally possessed firearms shall be returned to the person upon that person completing a sentence for conviction on a misdemeanor domestic battery, upon the charges being dismissed, or if the person is found not guilty, unless the finding of not guilty is by reason of insanity.</p> <p>...</p> <p>(b) The court may impose other conditions, such as the following, if the court finds that such conditions are reasonably necessary to assure the defendant’s appearance in court, protect the public from the defendant, or prevent the defendant’s unlawful interference with the orderly administration of justice:</p> <p>...</p> <p>(2) Refrain from possessing a firearm or other dangerous weapon;</p> <p>...</p> <p>(15) Comply with the terms and conditions of an order of protection issued by the court under the Illinois Domestic Violence Act of 1986 or an order of protection issued by the court of another state,</p>	<p>This statute applies whenever a defendant is released prior to conviction, either upon payment of bail or upon his/her own recognizance. When the defendant is charged with a forcible felony, stalking, aggravated stalking, domestic battery, the court shall order the surrender of all firearms in the defendant’s possession to a law enforcement officer and the physical surrender of the defendant’s FOID card to the Circuit Clerk unless the Court determines that the case does not warrant this, or that its imposition would be impractical. The statute also provides that, in all cases, the court may include a condition of bond that the defendant refrain from possessing a firearm or other dangerous weapon. Finally, the statute requires the physical surrender of all firearms in the defendant’s possession and the defendant’s FOID card upon a finding of guilty for any felony offense.</p>	<p>Does the Circuit Clerk have a system for handling FOID card surrender?</p> <p>The provision requiring the return of firearms upon completion of the sentence conflicts with federal law (922(g)(9)), if the conviction was for a crime that meets the elements of a “misdemeanor crime of domestic violence.”</p>
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<p>tribe, or United States territory; ... (g) Upon a finding of guilty for any felony offense, the defendant shall physically surrender, at a time and place designated by the court, any and all firearms in his or her possession and his other Firearm Owner's Identification Card as a condition of remaining on bond pending sentencing.</p>		
<p>730 ILCS 5/5-6-3) Sec. 5-6-3 – Conditions of Probation and of Conditional Discharge. (a) The conditions of probation and of conditional discharge shall be that the person:</p> <ul style="list-style-type: none"> (1) not violate any criminal statute of any jurisdiction; (2) report to or appear in person before such person or agency as directed by the court; (3) refrain from possessing a firearm or other dangerous weapon; <p>...</p> <ul style="list-style-type: none"> (9) if convicted of a felony, physically surrender at a time and place designated by the court, his or her Firearm Owner's Identification Card and any and all firearms in his or her possession. <p>(b) The Court may in addition to other reasonable conditions relating to the nature of the offense or the rehabilitation of the defendant as determined for each defendant in the proper discretion of the Court require that the person:</p> <p>...</p> <ul style="list-style-type: none"> (11) comply with the terms and conditions of an order of protection issued by the court pursuant to the Illinois Domestic Violence Act of 1986, as now or hereafter amended, or an order of protection issued by the court of another state, tribe, or United States territory. A copy of the order of protection shall be transmitted to the probation officer or agency having responsibility for the case[.] 		

<p>725 ILCS 165/0.01 – Firearm Seizure Act</p> <p>(1) When a complaint is made to any circuit court that a person possessing a firearm or firearms has threatened to use a firearm illegally, the court shall examine on oath such complainant, and any witnesses which may be produced, reduce the complaint to writing and have it subscribed and sworn to by the complainant. If the court is satisfied that there is any danger of such illegal use of firearms, it shall issue a warrant requiring the apprehension of such person, hereafter referred to as the defendant, for appearance before the court. Such warrant shall also authorize the seizure of any firearm in the possession of the defendant.</p> <p>(2) When the defendant is brought before the court, if the charge is controverted the testimony produced on both sides shall be heard. When it appears to the court that the surrender of such firearm would serve to keep the peace, the court shall order any firearm taken from the defendant to be kept by the State for safekeeping during a stated period of time not to exceed one year. The firearm or firearms shall be returned to the defendant at the end of the stated period. If such firearm as not seized when the defendant was brought before the court, the defendant may be ordered by the court to produce such firearm for safekeeping as provided above, and upon failure to produce such weapon within a time period established by the court, the defendant may be punished by the court as a contempt.</p> <p>(3) If, however, it should appear to the court that the complaint is unfounded, the defendant shall be dismissed. When, in addition, the court is of the opinion that the proceeding was commenced maliciously without probable cause, it may enter judgment against the complainant for the costs of the prosecution.</p> <p>(4) In lieu of requiring the surrender of any firearm, the court may require the defendant to</p>		
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<p>give a recognizance as provided in Division V of “An Act to revise the law in relation to criminal jurisprudence.”</p> <p>(5) Any action brought under this Act is a civil action, governed by the Civil Practice Law as now or hereafter amended and by the Supreme Court Rules as now or hereafter adopted in relation to that Law. Appeals may be taken as in other civil cases.</p>		
<p>18 U.S.C. § 922(g)(8) – Protection Order Prohibition (Federal)</p> <p>“(g) It shall be unlawful for any person –</p> <p>“(8) who is subject to a court order that –</p> <p>(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;</p> <p>(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and</p> <p>(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury[.]</p> <p>“to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”</p>	<p>Persons who are subject to qualifying orders of protection may not ship or transport in interstate or foreign commerce, or possess or purchase firearms or ammunition that have been shipped or transported in interstate or foreign commerce.</p> <p>This statute applies to <u>all</u> qualifying orders of protection, regardless of whether the protection order itself includes relief that prohibits the possession or purchase of a firearm.</p> <p>A qualifying order is one that meets all of the following criteria:</p> <ul style="list-style-type: none"> • <i>The order was issued after a hearing about which the respondent received notice and at which he/she had an opportunity to participate.</i> An evidentiary hearing is <u>not</u> necessary to meet this criterion. A default order meets this requirement provided the respondent was provided with notice and an opportunity to participate. • <i>The petitioner is an “intimate partner” of the respondent under the federal definition.</i> The petitioner in the protection order must be the current or former spouse, be a parent of a child in common with the respondent, or currently cohabitates or previously have cohabitated with the respondent. Protection orders in which the relationship is other than one of the above relationships (e.g., aunt/uncle-niece/nephew, grandparent-grandchild, dating relationship where there was no cohabitation) do not meet the intimate partner requirement. 	<p><i>Ex parte orders.</i> 922(g)(8) does not apply to ex parte orders issued in Illinois, unless the respondent received notice of the ex parte hearing and had an opportunity to participate in it.</p> <p><i>Protection Orders without 14.5 finding trigger federal firearm prohibition.</i> If the plenary order is entered without this remedy, the federal firearm prohibition will still apply, making it illegal for the respondent to possess weapons or ammunition.</p> <p><i>No Illinois official use exemption.</i> Under Illinois law, there is no official use exemption if 14.5 is granted. “[I]f the respondent is a peace officer...the court shall order that any firearms used by the respondent in the performance of his or her duties as a peace officer be surrendered to the chief law enforcement executive of the agency in which the respondent is employed, who shall retain the firearms for safekeeping for the stated period not to exceed two years as set forth in the order.” (750 Ill. Comp. Stat. 60/214(b)(14.5)) If a judge grants the 14.5 remedy, a police officer is prohibited from carrying <i>any</i> firearm.</p> <p><i>Other types of orders.</i> Consent orders, default orders, and criminal protection orders will all qualify if they meet the due process and other requirements.</p> <p><i>State-Federal Partnerships.</i> Coordination between local/state law enforcement and/or prosecutors and the ATF/U.S. Attorney’s office is necessary for enforcement.</p> <p><i>State authority to seize.</i> Under what circumstances (if any) may local and state authorities seize firearms</p>

	<ul style="list-style-type: none"> • <i>Restrains the respondent from harassing, stalking, or threatening the petitioner or the child of the petitioner or respondent, or engaging in any conduct that would place the petitioner in reasonable fear of bodily injury to him-/herself or the child. In the alternative, the order may include a finding that the respondent represents a “credible threat” to the physical safety of the petitioner or child; however, such a finding is not necessary if the relief granted in the order include a prohibition against harassment, stalking, or threats or any conduct that would place the petitioner in reasonable fear of bodily injury to him-/herself or the child. In general, an Illinois order of protection will meet this requirement if Remedy 1 is included as relief.</i> 	pursuant to § 922(g)(8)?
<p>18 U.S.C. § 922(d)(8) – Transfer of Firearm to Person Subject to Order of Protection (Federal)</p> <p>“(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person –</p> <p>“(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—</p> <p>“(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and</p> <p>“(B) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or</p> <p>(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury[.]”</p>	<p>A person may not sell or otherwise transfer a firearm or ammunition to an individual if they know or have reasonable cause to believe that the individual is subject to the prohibitions of 18 U.S.C. § 922(g)(8).</p>	<p><i>Liability of courts and law enforcement.</i> Whether a law enforcement agency or court that returns or orders the return of a firearm to a person subject to § 922(g)(8) is subject to the prohibitions of this section.</p> <p><i>Procedures for identifying prohibited persons.</i> What steps may law enforcement and courts take to ensure that firearms are not returned to prohibited persons (e.g., procedures for identifying individuals receiving weapons to ensure they are not prohibited under § 922(g)(8)).</p> <p><i>Storage facilities.</i> Where will relinquished/seized firearms be stored?</p>

<p>18 U.S.C. § 922(g)(9) – Misdemeanor Crime of Domestic Violence Prohibition (Federal)</p> <p>“(g) It shall be unlawful for any person –</p> <p>“(9) who has been convicted in any court of a misdemeanor crime of domestic violence,</p> <p>“to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”</p>	<p>A person who has been convicted of misdemeanor crime of domestic violence may not ship or transport in interstate or foreign commerce, or possess or purchase firearms or ammunition that have been shipped or transported in interstate or foreign commerce.</p> <p>This prohibition applies to crimes committed before passage of this law (1996), and does not terminate, unless the conviction is expunged or set aside, is an offense for which the person has been pardoned or has had civil rights restored. <i>See</i> 18 U.S.C. § 921(a)(33)(B)(ii) in Federal Definitions section.</p>	<p><i>Relationship requirement.</i> The relationship requirement is slightly different than the “intimate partner” requirement for § 922(g)(8). For a conviction qualify under § 922(g)(9), the perpetrator must be the current or former spouse, parent or guardian of the victim, be a parent of a common child with the victim, currently cohabit or have previously cohabited with the victim, or be a person similarly situated to a spouse, parent, or guardian of the victim. In most cases, this means that a crime committed by a perpetrator who never lived with his/her victim, or where the perpetrator and victim did not hold themselves out to be in a marital relationship, will not meet the relationship required for a crime to qualify under § 922(g)(9).</p> <p><i>Type of crime.</i> The federal statute requires that the conviction be a misdemeanor under state law that has as an element the “use or attempted use of physical force or threatened use of a deadly weapon.” 18 U.S.C. § 921(33)(A)(ii). The federal law was not written to conform to what each state labels domestic violence. It was written in broader terms that proscribe certain types of crimes regardless of the statutory title. Therefore, pleading guilty or being found guilty of a misdemeanor that is not titled “domestic” in many cases will not circumvent the federal firearm prohibition.</p> <p><i>Representation by Counsel.</i> The accused must have been represented by counsel or made a knowing and intelligent waiver.</p> <p><i>Jury Trial.</i> If the accused was entitled to a jury trial, the case must have been tried by a jury, or the defendant must have made a knowing and intelligent waiver.</p> <p><i>Reduction of the charge.</i> Changing the charge from domestic battery to battery, for example, does not limit the applicability of the federal statute. What the federal law requires is that the relationship exists in fact, not that it is an element of the offense. Assuming that all</p>
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		<p>other criteria required by the federal statute (18 U.S. C 922(g)(9)) are met (e.g., the relationship requirement, right to counsel, and right to a jury trial) the battery count is a qualifying misdemeanor crime of domestic violence.</p> <p><i>Applies regardless of when conviction occurred.</i> The prohibition applies to qualifying convictions that occurred both before and after the statute’s effective date.</p> <p><i>No official use exemption.</i> There is no exemption for law enforcement and military personnel, even for duty weapons.</p> <p><i>Pretrial diversion.</i> Pretrial diversion does not trigger § 922(g)(9). The federal statute requires a conviction of a misdemeanor crime of domestic violence. Any type of deferred prosecution does not meet the definition of conviction.</p> <p><i>State-Federal Partnerships.</i> Coordination between local/state law enforcement and/or prosecutors and the ATF/U.S. Attorney’s office is necessary for enforcement, and to determine whether there will be a state or federal prosecution.</p> <p><i>State authority to seize.</i> Under what circumstances (if any) may local and state authorities seize firearms pursuant to § 922(g)(9)?</p> <p><i>Storage facilities.</i> Where will relinquished/seized firearms be stored?</p>
<p>18 U.S.C. § 922(d)(9) – Transfer of Firearm to Person Convicted of Misdemeanor Crime of Domestic Violence (Federal)</p> <p>“(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person –</p> <p>“(9) has been convicted in any court of a misdemeanor crime of domestic violence.”</p>	<p>A person may not sell or otherwise transfer a firearm or ammunition to an individual if they know or have reasonable cause to believe that the individual is subject to the prohibitions of 18 U.S.C. § 922(g)(9).</p>	<p><i>Liability of courts and law enforcement.</i> Whether a law enforcement agency or court that returns or orders the return of a firearm to a person subject to § 922(g)(9) is subject to the prohibitions of this section.</p> <p><i>Procedures for identifying prohibited persons.</i> What steps may law enforcement and courts take to ensure that firearms are not returned to prohibited persons (e.g., procedures for identifying individuals receiving weapons to ensure they are not prohibited under § 922(g)(8)).</p>

<p>18 U.S.C. § 925 – Exceptions: Relief From Disabilities (Federal)</p> <p>“(a) (1) The provisions of this chapter [18 USCS §§ 921 et seq.] except for sections 922(d)(9) and 922(g)(9) and provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.”</p> <p>“(c) A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant’s record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Secretary may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter [18 USCS §§ 921 et seq.], who makes application for relief from the disabilities incurred under this chapter [18 USCS §§ 921 et seq.], shall not be barred by such disability, from further operation under his license pending final action on an application for relief filed pursuant to this section. Whenever the Secretary grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefore.</p>	<p><i>The official use exemption.</i> Pursuant to 18 U.S.C. § 925, § 922(g)(8) does not apply to firearms provided to law enforcement officers and members of the military for their official duties. It may still be unclear as to whether law enforcement/military personnel fall into the exemption if they possess/carry their duty weapons when off-duty, especially if they are mandated by agency policy or encouraged by their superiors to carry/possess their weapons when off-duty.</p>	<p><i>Duty weapons possessed off-duty.</i> Whether the official use exemption applies to duty weapons when they are in the possession of a person subject to § 922(g)(8) while off duty, especially when departmental policy requires, or management encourages, this practice. How to ensure that law enforcement agencies do not require or encourage off-duty possession of firearms by persons subject to 18 U.S.C. § 922(g)(8).</p> <p><i>No parallel state exemption for 14.5.</i> The official use exemption is not applicable to officers subject to an order of protection with a 14.5 prohibition.</p>
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<p>Fourth Amendment, U.S. Constitution</p> <p>The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.</p>	<p>Generally, the Fourth Amendment of the United States Constitution governs search and seizure procedure for both Illinois and Federal law enforcement. Pursuant to the Fourth Amendment, evidentiary searches and seizures must be reasonable. Reasonableness usually means that the police must have obtained a warrant before conducting the search or seizure. However, there are six circumstances where a warrant is not required.</p> <p>Exceptions to the Warrant Requirement:</p> <p><i>1. Search or Seizure Incident to a Lawful Arrest</i></p> <p>The police may conduct a search or a seizure incident to arrest whenever they arrest a person. The police need not actually fear for their safety or believe that they will find evidence of a crime as long as the suspect is placed under arrest. <u>United States v. Robinson</u>, 414 U.S. 218 (1973).</p> <p>Under this exception, police may search the defendant and any area into which he or she might reach to obtain a weapon or to destroy evidence (his or her “wingspan”). <u>Chimel v. California</u>, 395 U.S. 752 (1969).</p> <p>Scenario A: A police officer arrests a defendant for reckless driving. At the time of arrest, the police conduct a search of the passenger compartment of the car and find a gun on the floor. The police can seize the weapon as evidence at the time of arrest.</p> <p>Scenario B: A police officer responds to a violation of an order of protection call. The defendant is apprehended outside of the Plaintiff's home. The officer places the defendant under arrest for violating the order of protection. At the time of the arrest, the officer finds a concealed weapon on the defendant's person. The officer can seize the weapon as evidence at the time of arrest.</p> <p><i>2. "Automobile" Exception:</i></p>	<p><i>Authority to search/seize.</i> May police search the home of an order of protection respondent based on the petitioner's belief that weapons are in the home against the requirements of an order of protection?</p> <p><i>Law enforcement policies, procedures, and training.</i> The need for SOPs and agency policy to address search/seizure situations related to firearms prohibited by state and federal law. The need for training on such policies and procedures, and at the academy level.</p>
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	<p>If the police have probable cause to believe that a vehicle such as an automobile contains contraband or fruits, instrumentalities, or evidence of a crime, and that it is likely that the vehicle will be unavailable by the time a warrant is obtained, they may search the vehicle without a warrant. <u>Carroll v. United States</u>, 267 U.S. 132 (1925).</p> <p>Scenario C: Police dispatch gets a call from a woman claiming that she has an order of protection against the defendant and that the defendant came to her house and threatened to kill her with a gun. The defendant then fled in his car. The police find the respondent 5 miles from the plaintiff's home in his car. After confirming the existence of the order of protection, the police stop the defendant. Upon the stop, the police search the vehicle and find a gun in the glove compartment. The police seize the gun. <u>United States v. Ross</u>, 456 U.S. 798 (1982).</p> <p><i>3. Plain View Doctrine</i></p> <p>The police may make a warrantless seizure when they are legitimately on the premises and discover evidence, fruits or instrumentalities of a crime, or contraband in plain view and have probable cause to believe that the item is evidence, contraband, or a fruit or instrumentality of the crime. <u>Arizona v. Hicks</u>, 480 U.S. 321 (1987).</p> <p>Scenario D: Same facts as Scenario C but the police see the gun laying on the front passenger seat in plain view.</p> <p><i>4. Consent</i></p> <p>The police may conduct a valid warrantless search if they have a voluntary and intelligent consent to do so. Knowledge of the right to withhold consent is not a prerequisite to establishing a voluntary and intelligent consent, it is only a factor. <u>Schneekloth v. Bustamonte</u>, 412 U.S. 218 (1973).</p> <p>Consent can be given by any person who has equal</p>	
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right to use or occupy the property, and any evidence obtained may be used against the other owners or occupants. Frazier v. Cupp, 394 U.S. 731 (1969). In addition, consent given by a person whom the officer reasonably believes to have a right to occupy is also valid. State of Illinois v. Rodriguez, 497 U.S. 177 (1990).

5. Stop and Frisk

A police officer may stop a person without probable cause for arrest if she has a reasonable suspicion of criminal activity. In such circumstances, if the officer also reasonably believes that the person may be armed and presently dangerous, she may conduct a protective frisk. Terry v. Ohio, 392 U.S. 1 (1968); United States v. Cortez, 449 U.S. 411 (1981).

The scope of the frisk is generally limited to a pat-down of the outer clothing for concealed instruments of assault. However, an officer may reach directly into an area of the suspect's clothing when she has specific information that a weapon is hidden there. Adams v. Williams, 407 U.S. 143 (1972).

An officer may conduct a warrantless search of the passenger compartment of an automobile when the occupant has been detained but not arrested provided the search is limited to those areas in which a weapon may be placed or hidden and the officers possess a reasonable belief that the occupant is dangerous. Michigan v. Long, 463 U.S. 1032 (1983).

6. Hot Pursuit Exception

Police officers in hot pursuit of a fleeing felon may make a warrantless search and seizure. Warden v. Hayden, 387 U.S. 294 (1967)

Scenario E: If the police have probable cause to believe a defendant has a gun in his possession and is subject to an Order of Protection, and the police try to stop him to question him and the suspect flees, the police can then do a warrantless search and seizure based on the hot pursuit exception.

	Federal Definitions	
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18 U.S.C. § 921

Ammunition:

“(17) (A) The term “ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.”

Antique Firearm:

“(16) The term “antique firearm” means –

- (A) any firearm (including any firearm with a match lock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or
- (B) any replica of any firearm described in subparagraph (A) if such replica –
 - (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
 - (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or
- (C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which cannot use fixed ammunition. For purpose of this subparagraph, the term ‘antique firearm’ shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.”

Crime Punishable by Imprisonment for a Term Exceeding One Year:

“(20) the term “crime punishable by imprisonment for a term exceeding one year” does not include-

- (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
- (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.”

Destructive Device:

“(4) The term “destructive device” means--

- (A) any explosive, incendiary, or poison gas--
 - (i) grenade
 - (ii) rocket having a propellant charge of more than four ounces,
 - (iii) missile having an explosive or incendiary charge or more than one quarter ounce,
 - (iv) mine, or
 - (v) device similar to any of the devices described in the preceding clauses.
- (B) any type of weapon (other than shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of any explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and
- (C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term “destructive device” shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordinance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

Firearm:

“(3) The term “firearm” means (A) any weapons (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include antique firearms.”

Firearm Silencer/Muffler:

“(24) The terms “firearm silencer” and “firearm muffler” mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.”

Intimate Partner:

“(32) The term “intimate partner” means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.”

Misdemeanor Crime of Domestic Violence:

“(33) (A) Except as provided in subparagraph (C), the term “misdemeanor crime of domestic violence” means an offense that –

- (i) is a misdemeanor under Federal or State law; and
- (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B) (i) A person shall not be considered to have been convicted of such offense for purposes of this chapter [18 USCS §§ 921 et seq.], unless,

- (I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and
- (II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either
 - (aa) the case was tried by a jury, or
 - (bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter [18 USCS §§ 921 et seq.] if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.”

Secretary:

“(18) The term “Secretary” or “Secretary of the Treasury” means the Secretary of the Treasury or his delegate.”

Appendix XI

SUPPLEMENTAL ORDER REGARDING FIREARMS – ORDER OF PROTECTION

IN THE CIRCUIT COURT OF ILLINOIS
JUDICIAL CIRCUIT
COUNTY OF _____

PEOPLE OF THE STATE OF ILLINOIS,)
)
) Plaintiff)
)
vs.) No.)
)
) Defendant)
)

**SUPPLEMENTAL ORDER ON CONDITIONS OF BOND: FIREARMS
(To be used with bail bond Order)**

The Defendant, _____, shall comply with the following:

1. Defendant shall refrain from possessing a firearm or other dangerous weapon.
2. By _____, at _____ A.M./P.M., all firearms and weapons owned
(date) (time)
and/or possessed by Defendant shall be surrendered to _____
(name of Sheriff or local law
enforcement agency), located at _____
(address of agency)
_____. Said agency shall take custody of
and impound said firearms and weapons until further order of Court. In addition, said agency
shall inventory all firearms and weapons in a form similar to Appendix A of this Order and
shall provide a copy to the Defendant.
3. By _____, at _____ A.M./P.M., Defendant shall surrender
his/her Firearm Owner's Identification (FOID) Card to the Circuit Clerk of
_____ County, _____, _____,
(street address) (town)
Illinois.
4. Upon receipt of the Defendant's FOID card, the Circuit Clerk shall mail the card and a copy
of this Order to the Illinois State Police Firearms and Information Resources Bureau at 100
Iles Park Place, Springfield, IL 62703. The Circuit Clerk shall give a receipt to the Defendant
and make a notation in the court docket.
5. No later than one working day after the date provided in paragraph three, the Circuit Clerk
shall notify the Court and State's Attorney's Office of compliance with paragraphs two and

three of this Order by completing and providing copies of the following page along with a copy of the receipt in a form similar to Appendix B of this Order.

6. Upon the return or destruction of a firearm or weapon, the receiving agency shall complete and return a firearm disposition report to the Clerk of the Court in a form similar to Appendix B of this Order.

DATE: _____

JUDGE

To Above Law Enforcement Agency:

The above referenced Defendant has been ordered to surrender all firearms and weapons to your Department by the date listed above. Notify the Clerk of the Circuit Court within 24 hours of the turn over date regarding Defendant's compliance by faxing or mailing this completed form to the _____ Circuit Clerk, _____, _____, Illinois _____, fax: _____.

On _____, at _____ A.M./P.M., Defendant surrendered the following
(date) (time)
firearms and weapons:

Defendant has not surrendered any firearms or weapons to this Department.

Date: _____

Signature: _____

Print Name: _____

Department: _____

TO BE COMPLETED BY CIRCUIT CLERK:

On _____, at _____ A.M./P.M., Defendant surrendered his/her FOID card.
(date) (time)

Defendant has not surrendered his/her FOID card to this office.

Date: _____

Signature: _____

Print Name: _____

_____ Circuit Clerk

FIREARM/WEAPONS INVENTORY/RECIPT (Appendix A)

Date: _____

Time: _____

Defendant: _____

Case Number: _____

Who turned weapons in: _____

Location Received: _____

Received By: _____

Agency: _____

For each item received, please list the property, any identifying information (including serial numbers), conditions and any flaws.

Item	Description, with serial number	Condition	Other, including list of any damage if received in damaged condition
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	

Please attach a second page if there is more property. Send copy of receipt to Circuit Clerk for entry in court file.

FIREARM/WEAPONS DESTRUCTION/RELEASE (Appendix B)

Date: _____

Time: _____

Defendant: _____

Case Number: _____

Who turned weapons in: _____

Agency: _____

For each item destroyed or released, please list the property, any identifying information (including serial numbers), conditions and any flaws.

Item	Description, with serial number	Condition	Other, including list of any damage if returned in damaged condition
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	

Date: _____

Released to: _____

Time: _____

Released/destroyed by: _____

Place: _____

Signature of Office if destroyed: _____

Appendix XII

SUPPLEMENTAL ORDER REGARDING FIREARMS – BAIL BOND

Iles Park Place, Springfield, IL 62703. The Circuit Clerk shall give a receipt to the Respondent and make an entry in the court document reflecting the forwarding of the FOID card to the Illinois State Police Firearms and Information Resources Bureau.

6. Upon the return or destruction of a firearm or weapon, the receiving agency shall complete and return a firearm disposition report to the Clerk of the Court in a form similar to Appendix B of this Order.

DATE: _____

JUDGE

To the Circuit Clerk:

The Circuit Clerk shall take the following steps:

- Send a copy of this Order to _____ law enforcement agency.
- Send a copy of this Order to the _____ State's Attorney's Office.
- Upon receipt of FOID card, send the FOID card and a copy of this Order to the Illinois State Police Firearms and Information Resources Bureau. (See paragraph 5 of this Order).
- Complete the Circuit Clerk's section on the next page within one working day of the date stated in paragraph 3 of this Order.

To Above Law Enforcement Agency: Law Enforcement to complete this section

The above referenced Respondent has been ordered to surrender all firearms and weapons to your Department by the date listed above. Notify the Clerk of the Circuit Court within 24 hours of the turn over date regarding Respondent's compliance by faxing or mailing this completed form to the _____ Circuit Clerk, _____, _____, Illinois _____, fax: _____.

On _____, at _____ A.M./P.M., Respondent surrendered the following
(date) (time)
firearms and weapons:

Respondent has not surrendered any firearms or weapons to this Department.

Date: _____

Signature: _____

Print Name: _____

Department: _____

To the Circuit Clerk:

On _____, at _____ A.M./P.M., Respondent surrendered his/her
(date) (time)
FOID card.

Respondent has not surrendered his/her FOID card to this office.

Date: _____

Signature: _____

Print Name: _____

_____ Circuit Clerk

FIREARM/WEAPONS INVENTORY/RECIEPT (Appendix A)

Date: _____

Time: _____

Respondent: _____

Case Number: _____

Who turned weapons in: _____

Location Received: _____

Received By: _____

Agency: _____

For each item received, please list the property, any identifying information (including serial numbers), conditions and any flaws.

Item	Description, with serial number	Condition	Other, including list of any damage if received in damaged condition
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	

Please attach a second page if there is more property. Send copy of receipt to Circuit Clerk for entry in court file.

FIREARM/WEAPONS DESTRUCTION/RELEASE (Appendix B)

Date: _____

Time: _____

Respondent: _____

Case Number: _____

Who turned weapons in: _____

Agency: _____

For each item destroyed or released, please list the property, any identifying information (including serial numbers), conditions and any flaws.

Item	Description, with serial number	Condition	Other, including list of any damage if returned in damaged condition
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	
		<input type="checkbox"/> excellent <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> damaged	

Date: _____

Released to: _____

Time: _____

Released/destroyed by: _____

Place: _____

Signature of Office if destroyed: _____

Please attach a second page if there is more property. Send copy of receipt to Circuit Clerk for entry in court file.