**Chapter 4:**

**Judicial Component**

**Chapter 4: Judicial Component**

**Table of Contents**

|  |  |  |
| --- | --- | --- |
| I. | Introduction ………………………………………………………………………… | 1 |
| II. | Effective domestic violence courtrooms …………………………………………… | 1 |
| III. | Statutory bail provisions …………………………………………………………… | 3 |
| IV. | Sentencing ………………………………………………………………………….. | 6 |
| V. | Order of protection …………………………………………………………………. | 11 |
| VI. | Remedies of Orders of Protection ………………………………………………… | 19 |
| VII. | Violation of an order of protection ………………………………………………… | 26 |
| VIII. | Attorneys fees ……………………………………………………………………… | 30 |
| IX. | Presumptions found in the Illinois Domestic Violence Act ………………………... | 30 |
| X. | Victims with special needs and considerations …………………………………….. | 31 |
| XI. | Special considerations ……………………………………………………………… | 38 |
|  | Attachment A: Offense, Statute and Applicable Penalty Chart ……………………. | 43 |
|  | Attachment B: Applicable Penalty and Sentence ………………………………….. | 44 |
|  | Attachment C: Domestic Violence and Sexual Assault Fines Order ………………. | 45 |

**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.

1. **Effective domestic violence courtrooms**

This section discusses best practice structures and strategies for courts that are hearing domestic violence cases.

1. **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.

1. **Knowledge of domestic violence dynamics**
2. **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.

1. **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:

1. Threatening a victim or victim’s family with further violence.
2. Threatening other witnesses.
3. Assaulting a witness during travel to or from the courthouse or during the court hearing.
4. Requesting repeated changes of counsel and/or continuances.
5. Accompanying the reported victim to the courtroom.
6. 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.
7. Using courtship behaviors, such as sending flowers, love letters, or gifts, to harass and manipulate the reported victim.
8. Manipulating the reported victim into recanting by claiming to change and using behaviors during this process to make this look true.
9. Appearing to be reasonable and willing to cooperate while claiming that there is something wrong with the reported victim.
10. 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.

* 1. **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:
  2. 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.
  3. Denial of the abuse.
  4. Recanting, changing the story, refusing to cooperate or testify, or testifying for the defense.
     1. **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:

1. **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.
2. **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.
3. **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.
4. **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.
   * 1. **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.
5. **Financial dependence:** The reported victim may be financially dependent upon the alleged abuser and have no other means of support.
6. **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.

1. **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:
   1. Subject to an order of protection at the time of crime.
   2. Previously convicted of a violation of an order of protection.
   3. Previously convicted of a violent crime against a family or household member.
   4. Previously convicted of a similar crime in another jurisdiction.
   5. 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.

1. When setting bail, the judge to the extent the information is available should consider the alleged offender’s:
   1. History of domestic violence or other violent acts.
   2. Mental health.
   3. History of violating court or other government orders.
   4. Potential as a threat to another person.
   5. Access to deadly weapons or history of using deadly weapons.
   6. History of alcohol or drug abuse.
   7. 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).

1. The judge should also consider the following to the extent the information is available:
   1. Whether the alleged offender and reported victim have recently separated.
   2. Whether the alleged offender exhibited any controlling or obsessive behavior toward the victim, including but not limited to:
      * Stalking
      * Surveillance
      * Isolating the alleged victim.
   3. Whether the alleged offender has expressed suicidal or homicidal ideations.
   4. 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).

1. 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)
2. 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.

1. **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).

1. **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.

1. **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 *ILC*S 5/110-l0)(a)(5))

1. **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.

1. **Sentencing considerations**
   1. **Factors in aggravation as reasons to provide a more severe sentence pursuant to:**
2. Defendant’s conduct caused or threatened serious harm.
3. Defendant has a history of prior delinquency or criminal activity.
4. Defendant, by duties of his office or position, was obliged to prevent the particular offense committed or to bring offenders committing it to justice.
5. Defendant utilized his professional reputation or position in the community to commit the offense, or to afford him an easier means of committing it.
6. The sentence is necessary to deter others from committing the same crime.
7. Defendant committed the offense against a person 60 years of age or older or such person’s property.
8. Defendant committed the offense against a person who is physically handicapped or such person’s property.
9. 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.

1. The offense took place in a place of worship immediately prior to, during, or immediately following worship services.
2. 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.
3. Defendant committed a felony while he was wearing a bulletproof vest.
4. 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.

1. Defendant committed an offense related to the activities of an organized gang.
2. Defendant committed an offense in a school or daycare center, on school bus, or on or within 1,000 feet of school property.
3. 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.*

* 1. **Factors for consideration in imposing a more severe term under 730 ILCS 5/5-8-2:** 
     1. 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.
     2. 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.
     3. 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.
     4. 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.
     5. 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.
     6. 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.
     7. 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.
     8. 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.
     9. 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.
     10. 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).

1. **Factors in mitigation**:
   1. The defendant's criminal conduct neither caused nor threatened serious physical harm to another.
   2. The defendant did not contemplate that his criminal conduct would cause or threaten serious physical harm to another.
   3. The defendant acted under a strong provocation.
   4. There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense.
   5. The defendant's criminal conduct was induced or facilitated by someone other than the defendant.
   6. The defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that he sustained.
   7. 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.
   8. The defendant's criminal conduct was the result of circumstances unlikely to recur.
   9. The character and attitudes of the defendant indicate that he is unlikely to commit another crime.
   10. The defendant is particularly likely to comply with the terms of a period of probation.
   11. The imprisonment of the defendant would entail excessive hardship to his dependents.
   12. The imprisonment of the defendant would endanger his or her medical condition.
   13. 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.

1. **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.

1. **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.

1. **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:
   1. People who are related by blood or by present or prior marriage.
   2. People who share or formerly shared a common dwelling (apartment or home).
   3. People who have or allegedly have a child in common.
   4. People who share or allegedly share a blood relationship through a child.
   5. People who have or have had a dating or engagement relationship.
   6. 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).
4. **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.

* 1. 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).
  2. 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).
  3. 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 childrento 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, interferencewith personal liberty, or willful deprivation grounds. *Id.*

1. **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).

1. **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:
   1. 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.
   2. 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.
   3. 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).

1. 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).
2. 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).
3. 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.*
4. **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:
   1. If entered as preliminary relief in that other proceeding, until entry of final judgment in that proceeding.
   2. If incorporated into the final judgment in that other proceeding, until the order of protection is vacated or modified.
   3. 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).

1. A plenary order of protection in conjunction with a criminal prosecution should be valid as follows:
   1. 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.
   2. 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.
   3. 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.
   4. Until the date set by the court for expiration of any sentence of imprisonment and subsequent parole or mandatory supervised release and for an additional period of time thereafter not exceeding two years.

725 *ILCS* 5/112A-20(b)(1-4).

1. In asituation where a respondent is either incarcerated or out of the country, the effective date of the order of protection can coincide with the date that the respondent is released from prison or when the respondent returns to the country.
2. **Correlative orders of protection**

Mutual orders of protection*,* where one party has filed a petition and the other party seeks to obtain a mutual order, are prohibited. 750 *ILCS* 60/215 and 725 *ILCS* 5/112A-15. Correlative orders, where both parties have filed a petition, are allowed only if both parties have properly filed their written pleadings and have proven past abuse by the other party give written notice unless excused under 750 ILCS 60/217. *Id.* Additionally they have to prove all of the elements of the remedy that they are seeking as well as all the prerequisite of the type of order that they are receiving.. *Id.* *Note: The criminal domestic violence statute also requires an underlying criminal offense before correlative orders will be allowed.*

1. **Contents of an order of protection**
2. Orders of protection should contain the following elements:
   1. Each remedy granted by the court should be listed so that the respondent can clearly understand what he or she must do or refrain from doing.
   2. The order cannot reference other documents for the explanation of remedies.
   3. Remedies as set forth in preprinted form orders should be numbered consistently with and corresponding to the numerical sequence of listed remedies.
   4. Pre-printed forms also have to include definitions of the abuse, neglect, and exploitation as listed in 750 ILCS 60/103.
   5. The reason for denial of petitioner’s request for a remedy should be listed.

750 *ILCS* 60/221(a)(1-2) and 725 *ILCS* 5/112A(a)(1-2).

1. Orders of protection should state all of the following:
   * 1. Name of the petitioner, that the respondent is a member of the family or household of the petitioner, and the names of other persons protected by the order of protection.
     2. For any remedy that was requested but the court declined to rule or that the remedy is reserved.
     3. Date and time the order of protection was issued, whether it is an emergency, interim, or plenary order, and the duration of the order.
     4. For an emergency order, the reason for entering the remedy without prior notice to respondent.
     5. Date, time, and place of any scheduled hearing that deal with the extension of the order or for another order that has great scope and duration.

750 *ILCS* 60/221(b)(1-6) and 725 *ILCS* 5/112A(b)(1-6).

1. Mandatory language that must be on an Order of Protection.
2. 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).
3. 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).

1. 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 ofthat 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 summery 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:
7. 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;
8. 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).

1. **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:
   1. 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.
   2. 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).

1. 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).
2. 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).
3. 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.*
4. 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).
5. 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).
6. 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.
7. 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).
8. **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.)*

* 1. **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.

* 1. **Exclusive possession of residence**
     1. **Right of occupancy**: A party has the right to occupancy if:

1. It is solely or jointly owned or leased by that party.
2. That party’s spouse, a person with a legal duty to support that party or a minor child in that party’s care.
3. 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).

* + 1. **Balance of hardships**:Both parties must have a right of occupancy and the court should balance the hardships such as:
       - 1. To the respondent and any minor child or dependent adult in respondent’s care resulting from entry of this remedy.
         2. 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.

* 1. **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).

1. **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.

1. **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.

1. **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).

1. **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 issue 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.

1. **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).

1. **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).

1. **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).

1. **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).

1. **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).

1. **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).

* 1. **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).

* 1. **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).

* 1. **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)(l0).
4. When prohibiting transferring, concealing, or damaging property. 750 *ILCS* 60/2 14(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.

1. **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 (RemedyA).
2. Exclusive possession of residence (Remedy B).
3. Stay away and additional prohibitions (RemedyC).
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.

1. **Penalties for violation of an order of protection**
2. **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).
3. **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:
4. Aggravated battery, aggravated domestic battery, or heinous battery.
5. Aggravated battery of a child, unborn child or senior citizen.
6. Unlawful restraint or aggravated unlawful restraint.
7. Stalking or aggravated stalking.
8. Criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual assault.
9. Kidnapping or aggravated kidnapping.
10. Aggravated arson.
11. Aggravated battery with a firearm or aggravated discharge of a firearm.
12. 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).

1. **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).

1. **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).

1. **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 civilcontempt 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).
5. **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.
3. **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).

1. **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 knowledgeof the provision prohibiting him from entering the petitioner’s home, even though the defendant had not been served orreceived 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.

* 1. **Attorneys fees**

The Illinois Domestic Violence Act makes the following references to the award of attorneys fees:

1. The court may appoint an attorney for a minor to make the decision to waiver 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.*
2. 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.
3. **Presumptions found in the Illinois Domestic Violence Act**

The following presumptions are found in the IDVA:

1. **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.*

1. **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).

1. **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).

1. **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 601214(b)(6).

1. **Victims with special needs and considerations**
2. **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).

1. **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.

1. **Child abduction charges:** A person can be charged with the crime of child abduction if:
2. 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.
3. It is not a violation if a parent fleeing domestic violence takes the child with them to a domestic violence program.
4. 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.
5. 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:
6. Paternity of the child has not been established.
7. Paternity of the child has been established but not order about custody has been entered.
8. 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.
9. 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.
10. They violate a court order of custody, joint custody, physical care or possession of a child.
11. They violate an order prohibiting the concealment, detainment, or removal of a child from the jurisdiction of the court.
12. Following an out-of-state violation, the offender fails to return the child to the lawful custodian in Illinois.
13. They remove or conceals the child for payment or promise of payment.
14. 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).

1. **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.

**The law for elderly and disabled domestic violence victims**

* + 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) and 725 *ILCS* 5/112A-3(3).
    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*, 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).

* + 1. **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.
  1. **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.
  2. **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.

1. **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.
   1. **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.

* 1. **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.
  1. **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.
   1. **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.
  1. **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:
2. 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).
3. 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).
4. 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)*.*
5. **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.*
6. **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.
   1. **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.
   1. **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.
  1. **Victims with substance abuse issues**

Substance abusing victims of domestic violence provide unique challenges to the court system.

1. **Separate the issues:** Judgesshould separate the issues of domestic violence victimization from the issue of substance abuse in the victim. While a substance abusing victims may not be ideal witnesses, 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.
   1. **Victims involved with gang members:** Judges should be awarethat **v**ictims 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.
   2. **Prostituted and trafficked victims:** Victims of domestic violence who are prostituted or trafficked rarely seek assistance from the courts.
3. **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:

* 1. **Stalking**

Stalking, including cyberstalking, differs from other crimes because 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;
2. At any time threatening bodily harm, sexual assault, confinement or restraint towards the victim or a family member of the victim.
3. Placing the victim in reasonable apprehension of future or immediate bodily harm, sexual assault, confinement, or restraint.
4. 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:

1. Actually physically harming, restraining, or confining the victim.
2. Violating an order of protection or other similarly prohibitive injunction or restraining order.

720 *ILCS* 5/12-7.4.

* 1. **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.
  2. **Cyberstalking**: Cyberstalking includes at least twice harassing a person through electronic communication, plus any of the following:

1. Transmitting a threat towards the person or family member of immediate or future bodily harm, sexual assault, confinement or restraint.
2. 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

* 1. **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.
  2. **Sentencing:**

1. 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).
2. 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).
   1. **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:
3. Treat all domestic violence cases as potential stalking cases.
4. 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.
5. Seek to issue a no-contact order relating specifically to the facts of the case and pattern of stalking.
6. If bail is granted, the prosecutor should seek to ensure that the victim is contacted by the jail upon release of the offender.
7. 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.
   1. The prosecutor should ensure that the victim has information on obtaining an order of protection.
   2. 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.
   3. 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 place 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.
   4. Work collaboratively with other elements of the courts to create a comprehensive stalking policy and enact that policy.
   5. **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
   1. 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).
   2. Ongoing wheezing or difficulty breathing.
   3. Difficulty swallowing or sore throat.
   4. Scratches, abrasions, finger prints or other discoloration of the neck.
   5. Impressions on the skin which might indicate use of ligature (strangulation with a rope or clothing) or use of an object.
   6. Swelling of the tongue.
   7. The reported victim’s own defensive finger nail marks on their own face, neck or arms.
   8. Redness on the neck, which may be temporary, or may later turn to bruising.
   9. Lightheadedness, dizziness, fainting or unconsciousness.
   10. Confusion or disorientation.
   11. Nausea or vomiting.
   12. Chin abrasions.
   13. Loss of bodily functions.
   14. 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.

1. **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. Ifthe 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.
2. **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 |

**DOMESTIC VIOLENCE AND SEXUAL ASSAULT FINES ORDER**

**Attachment C**

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 )

#### 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