

Comment,
CIVIL ORDERS OF PROTECTION: A TOOL
TO KEEP CHILDREN SAFE

I. Introduction

The number of children in this country who suffer from abuse and neglect is devastating in its enormity. Both the federal government and the states have set out to eradicate this epidemic by enacting legislation to prevent, treat and cope with the abuse of children.¹ Additionally, federal and state agencies have been called upon to work hand in hand with the court system and families to deal with the legal ramifications of child abuse.² This is done through federal funding, awareness campaigns, programs and legal and social services. Children who experience abuse and neglect have both criminal and civil remedies available to them.³ One such remedy is the civil order of protection, which can be brought on behalf of minor children to provide them with protection not initiated by a state agency but a parent or household member. This comment will specifically address the protective measures of civil orders of protection for children.

In Part II of this comment, the discussion will focus on civil orders of protection created to protect children under general abuse or domestic violence statutes. Included in the discussion is a brief overview of the differences between civil and criminal orders of protection, the process of obtaining a civil order of protection for a child, how the order functions and the benefits of a civil order of protection.

In Part III of the discussion, the focus will shift to look at what kinds of situations civil orders of protections for children are most effective. Additionally, Part II will address some of the limitations and criticisms associated with obtaining civil orders of protections for children.

¹ Child Abuse Prevention and Treatment Act ("CAPTA"), 42 U.S.C. § 67 (1974).

² See e.g., MO. REV. STAT. CHAPTER 211.

³ This article will only focus on civil orders of protection for children rather than any orders available through the criminal system.

II. Civil Orders of Protection for Children Under the General Abuse or Domestic Violence Statutes

A. Civil Orders of Protection for Children vs. Criminal Orders of Protection

Most frequently the need for a court-enforced order of protection for a child stems from domestic violence, although the need may arise in other situations. The main difference between a criminal order of protection, involving family members, and civil orders of protection is that the criminal court does not have jurisdiction to implement new orders pertaining to custody, support and visitation of minor children.⁴ Additionally, criminal orders of protection usually do not allow for other remedies such as attorney's fees, maintenance, restitution and medical care expenses as provided for in civil orders of protection.⁵

A further difference is the level of evidence required to obtain an order of protection in the criminal court. Criminal courts require a higher standard of proof before issuing a permanent order of protection. Civil or family courts usually require a "preponderance of the evidence" standard to issue an order of protection. The criminal courts require that the underlying crime be proven "beyond a reasonable doubt."⁶

B. Civil Orders of Protection for Children Generally

1. Background on Civil Orders of Protection for Children

As stated above most civil orders of protection for children can be obtained through a domestic violence civil protection order statute. Since 1994, all fifty states have enacted some form of legislation, which allows victims of domestic violence to obtain a civil order of protection.⁷ Most states allow adult victims of domestic violence to obtain an order of protection for their child.⁸

⁴ Judith A. Smith, *Battered Non-Wives and Unequal Protection-Order Coverage: A Call for Reform*, *YALE L. & POL'Y REV.* 93, 116 (2005). It should be noted that the criminal courts can enforce existing visitation orders.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 100.

⁸ *Id.* at 109 n. 97 ("Some states fail to include children of victims who are not also the children of the abuser in their definitions of protected relationships.

The state of Missouri has enacted its own “Child Protection Orders Act”⁹ which allows an individual with standing to obtain an order of protection on behalf of a child. This order of protection is distinct and separate than the relief that can be sought under Missouri’s “Adult Abuse Act”. “Perceiving that abusive persons often behave no better toward children than adults, the [Missouri] legislature in 1987 begat the Child Protection Orders Act.”¹⁰ There are significant differences between the Missouri Adult Abuse Act and the Child Protection Orders Act. Full orders of protection for children are still discretionary by the court, and last 180 days as opposed to an adult order of protection, which remains effective for one year.¹¹ Finally, under the Missouri Child Protection Orders Act an ex parte order of protection will not exclude the respondent/abuser from the home unless four separate conditions are met.¹² The four conditions are: that the exclusion of the respondent/abuser is in the best interest of the child remaining in the home; that a “substantial risk” of abuse exists unless the respondent/abuser is removed; that a remaining adult family or household member is capable to adequately care for the minor children in the absence of the removed party and finally a commitment from the local Division of Family Services office to provide social services to the family.¹³ There are some potential drawbacks to Missouri’s system that treats orders of protection for children differently than those obtained under the Adult Abuse Act. However, Missouri’s Child Protection Order Act does invoke social services for child victims of abuse and their families.

Additionally, civil orders of protection (CPO) may be called many different things depending on the jurisdiction. Some states call their civil orders of protection a Permanent Protective Order

These abused children may never be able for civil protection.”) *See, e.g.*, OR. REV. STAT. § 107.705(3) (2005).

⁹ *See, e.g.*, MO. REV. STAT. § 455.500 (2005) (The act seeks to protect children from abuse from adult house hold members and is separate from the adult abuse orders of protection.).

¹⁰ David Dunlap, *Trends in Adult Abuse and Child Protection*, 66 UMKC L. REV. 1, 7 (1997).

¹¹ *Id.* at 8.

¹² *Id.*

¹³ *Id.*

(PPO), a Permanent Restraining Order (PRO) or some may simply refer to the order as a domestic violence injunction.¹⁴

2. *Obtaining a Civil Order of Protection*

In most states there is a similar procedure for obtaining an order of protection for a child. For a child/victim to obtain a civil order of protection the victim must not only have a link or relationship with the respondent/abuser; the victim must have also experienced the type of domestic violence or abuse acknowledged by the statute.¹⁵ Traditionally, most civil orders of protection arise under a domestic violence statute, which tends to protect children of the adult being abused, often called a “common child” statute. However, most states routinely allow adult household members or other adults to file an order of protection on behalf of a minor child, either by statute, case law or practice.¹⁶ Additionally, courts have even allowed noncustodial parents to file for civil protection orders on behalf of their children against the other parent or the boyfriend of the other parent.¹⁷ Another common theme among civil orders of protection granted for children is who qualifies as the respondent/abuser under state statute. Generally, parents of common child, an adult household member, a spouse, family members, an individual that the petitioners had a co-habitation relationship with or someone who the petitioner was or is currently in a dating relationship are recognized as individuals upon which an order of protection may be issued against.

An adult who wishes to obtain an order of protection for their child may do so by filing the appropriate paperwork requested by the court. In some states, court personnel are authorized to assist individuals seeking a civil order of protection by aiding them in filing out the mandatory court forms.¹⁸ In Mis-

¹⁴ See, e.g., GA. CODE ANN. § 19-13-4 (2005) (Georgia calls an order of protection a protection order); CA. FAM. CODE § 233 (2004) (California calls an order of protection a restraining order); FLA. STAT. ch. 741.30 (2005) (Florida calls an order of protection an injunction).

¹⁵ Smith, *supra* note 4, at 108.

¹⁶ Catherine F. Klein & Leslye E. Orloff, *Symposium on Domestic Violence: Article: Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 846 (1993).

¹⁷ *Id.*

¹⁸ MO. REV. STAT. §§ 455.025, 455.504.

souri, court clerks are granted the authority to aid and explain to non-represented petitioners how to fill out the appropriate forms for either an adult order of protection or one specifically for a child. Additionally, the services provided by the court personnel are provided to petitioners at no cost.

Because most civil orders of protection granted on behalf of children fall under domestic violence or adult abuse acts, the child must be subjected to conduct by the respondent/abuser that is sufficient to warrant the issuance of a civil order of protection.¹⁹ The kind of conduct that is sufficient to grant a civil order of protection for a child is broad ranging and can be overt acts of physical harm, threats of imminent harm, harassment, sexual acts with minors, lewd fondling and touching of a minor.²⁰ Some states have even recognized emotional abuse as grounds for granting an order of protection.²¹ Even though civil orders of protection are granted for a wide range of behaviors or acts relating to abuse and domestic violence, the courts will not go so far as to issue an order on behalf of a child for frivolous claims.

Another important element of obtaining an order of protection for a child is the issue of “timing” in relationship to the alleged abusive conduct. When states enacted statutes providing civil orders of protection for victims of domestic violence and their children it was recognized that domestic violence is cyclical in nature and as a result most jurisdictions do not require a filing deadline. Rather, courts will often look at past violence as a context for the present fears expressed by the petitioners. In Illinois, some of the relevant factors the court can look at in granting an order of protection and specific remedies are as follows:

the nature, frequency, severity, pattern and consequences of the respondent’s past abuse, neglect or exploitation of the petitioner or any family or household member, including the concealment of his or her location in order to evade service of process or notice, and the likelihood of danger of future abuse, neglect, or exploitation to petitioner or any member of petitioner’s or respondent’s family or household; and the danger that any minor child will be abused or neglected or improperly removed from the jurisdiction, improperly concealed

¹⁹ Klein & Orloff, *supra* note 16, at 848.

²⁰ *Id.* See also, KAN. STAT. ANN. § 60-3102 (2005).

²¹ Klein & Orloff, *supra* note 16, at 869.

within the State or improperly separated from the child's primary caretaker.²²

The Illinois' statute is representative of most civil order of protection statutes and encompasses many of the common factors that courts look at when determining whether to grant an order of protection.

a. *Temporary Orders of Protection*

In most states a temporary or emergency order of protection is granted in an *ex parte* fashion without a full hearing, notice to the respondent/abuser and his or her presence is not required.²³ Courts have consistently found that *ex parte* orders of protection do not violate the due process rights of the respondent/abuser due to legitimate state interests in protecting the victims of domestic violence and because safeguards were put in place prior to and after the *ex parte* order.²⁴ Civil orders of protection under domestic violence statutes have been consistently upheld as constitutional.²⁵

Additionally, some states such as Missouri require that a verified petition be filed with the court in order to obtain a temporary order of protection.²⁶ Usually the court will enter a temporary order of protection based on "good cause" shown by the petitioner/parent. In Ohio, "immediate and present danger of domestic violence to the family or household member constitutes good cause."²⁷ The temporary or emergency civil order of protection can generally range from 10 to 14 days depending on the jurisdiction. Some states such as Kansas provided extended temporary orders of protection beyond the usual 14 day time period. The Kansas statute states "within 20 days of the filing of a petition under this act a hearing shall be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence and the defendant shall have an opportunity to present evidence on the defendant's behalf."²⁸

²² 750 ILL. COMP. STAT., 60/214(c)(1)(i)-(ii) (2005).

²³ Smith, *supra* note 4, at 100.

²⁴ State *ex rel.* Williams v. Marsh, 626 S.W.2d 223 (Mo. 1982).

²⁵ Klein & Orloff, *supra* note 16, at 905.

²⁶ MO. REV. STAT. § 455.035(1).

²⁷ OR. REV. STAT. § 3113.31(D)(1).

²⁸ KAN. STAT. ANN. § 60-3106(1).

b. *Permanent Orders of Protection*

In order for the court to grant a full or permanent order of protection on behalf of the child a hearing must be held which gives the respondent/abuser procedural due process. Unlike the *ex parte* proceeding the respondent/abuser is given notice, allowed to be present for the proceeding and given an opportunity to be heard and present evidence. The rules of civil procedure apply and because this is outside of the criminal context the standard of proof required by the court is lower.²⁹ Usually, if the court finds by a preponderance of the evidence, that the facts alleged in the pleading transpired and the behavior is likely to continue in the future, the court will enter a “full” or “permanent” order of protection for the child.³⁰

The length of time a civil order of protection will be enforced on behalf of a child varies from state to state depending on the provisions set out in the statute.³¹ In most states the order of protection will remain in effect for one to two years.³² In Kansas, an order of protection is effective for three years while in Iowa an order of protection is viable for up to five years.³³ By contrast, in Colorado, a parent who seeks to protect a child can do so under the state’s civil order of protection act. A judge may rule that the respondent/abuser be restrained from any contact with the petitioner’s children. If the respondent/abuser does not have legal rights to the child, the restraining order functions exactly if it were created for an adult. If the respondent/abuser does have legal rights to the child the judge can make a temporary order regarding care, control, and visitation of the child. The order of protection for the child is good for 120 days from the date the permanent restraining order (PRO) is granted for the adult parent. It then becomes a custody issue and a matter for the District Court.³⁴

²⁹ Michelle R. Waul, *Civil Protection Orders: An Opportunity for Intervention with Domestic Violence Victims*, 6 GEO. PUB. POL’Y REV. 51, 54 (2000).

³⁰ Smith, *supra* note 4, at 101.

³¹ Klein & Orloff, *supra* note 16, at 905.

³² *Id.*

³³ See, e.g., KAN. STAT. ANN. § 403.750(2); IOWA CODE § 708.12 (2005).

³⁴ Klein & Orloff, *supra* note 16, at 1108.

3. *Violating an Order of Protection*

Each state treats a violation of an order of protection differently. However, in most states, the punishment for violating an order of protection is at least a misdemeanor.³⁵ Since violations of orders of protection are treated as misdemeanors, which are normally considered “petty offenses” the penalties usually do not exceed six months incarceration for any one offense.³⁶ It is common among the states that a violation of an order of protection is “grounds for charges of civil or criminal contempt.”³⁷ Additionally, the respondent/abuser is subject to civil or criminal contempt for failing to abide by any provisions of the order of protection. Some examples of contempt by the respondent/abuser might be failure to vacate a premise,³⁸ failure to pay child support or other monetary sanctions, or to turn over property.³⁹ Further, a respondent/abuser is required to obey an order of protection granted by the court until such order is vacated.⁴⁰ A respondent/abuser must comply with the order of protection even if he or she has reason to believe that the order was issued illegally.⁴¹ In a number of states, a persistent violator of an order of protection can be charged with a felony⁴² and is subject to both fines and jail time.⁴³

³⁵ Kit Kinports & Karla Fischer, *Orders of Protection in Domestic Violence Cases: An Empirical Assessment of the Impact of the Reform Statutes*, 2 TEX. J. WOMEN & L. 163, 165 (1993).

³⁶ Klein & Orloff, *supra* note 16, at 1107.

³⁷ Smith, *supra* note 4, at 101.

³⁸ See *City of Columbus v. Patterson*, No. 82AP-47, 1982 WL 4556 (Ohio Ct. App. Dec. 9, 1982) (the defendant was held in criminal contempt for failure to vacate the premises as dictated in a temporary order of protection).

³⁹ Klein & Orloff, *supra* note 16, at, 1100.

⁴⁰ *Id.* at 1110.

⁴¹ *Id.*

⁴² *Id.* at 899. Texas, Missouri, North Dakota, Ohio and Washington’s civil order of protection statutes can prosecute violations of an order of protection as felonies. See, e.g. MO. REV. STAT. § 455.085(7); N.D. CENT. CODE § 14-07.106 (Supp. 2005); OHIO REV. CODE. ANN. § 2919.27 (2005); WASH. REV. CODE § 26.50.110 (Supp. 2005).

⁴³ Smith, *supra* note 4, at 101.

4. *How to Renew an Order of Protection*

Most states dictate by statute how an individual with an order of protection may seek to renew the order. In Kansas, an adult/petitioner may extend or renew an order of protection, by filing a petition.⁴⁴ However, Kansas does make a special provision for children protected under the act, “No person may use the procedure provided for in this act more than twice in any twelve-month period, except in the case of abuse of a minor.”⁴⁵ In California, which also has a three year order of protection, “these orders may be renewed, upon the request of a party, either for three years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party.”⁴⁶ In Missouri, where a child can receive an order of protection under the state’s “Child Protection Orders Act” for a duration of 180 day, it too can be modified by either party, or the court-appointed special advocate or the guardian *ad litem*.⁴⁷

5. *Benefits of an Order of Protection for Children*

A civil order of protection has many benefits to children and their parents who are subjected to abuse. One such advantage of using an order of protection is the extended jurisdiction given to courts by statute, sometimes called “catch-all provisions.” These “catch-all provisions” allow the civil courts broad discretion to effectively deal with removing the respondent/abuser from the home, protection of property, attorney’s fees and providing child custody, support and visitation arrangements.

In most states, the court may issue civil orders of protection in any dissolution or family law proceeding or in an independent civil protection order action.⁴⁸ Orders of protection might be sought prior to; during or after a dissolution proceeding has been

⁴⁴ KAN. STAT. ANN. § 60-3107(e).

⁴⁵ KAN. STAT. ANN. § 60-3111.

⁴⁶ CAL. FAM. CODE § 6345(a) (West 2005).

⁴⁷ MO. REV. STAT. § 455.528(1).

⁴⁸ Klein & Orloff, *supra* note 16, at 881 (citing ARK. CODE ANN. § 9-15-201(f) (Michie 1993) (this order of protection statute allows a petitioner to file petition regardless of whether there is any pending litigation between the respective parties.)).

finalized. In some jurisdictions a protective order might be incorporated into a divorce decree as a part of the court's equitable powers.⁴⁹ In Missouri, under the "Child Protection Orders Act" the "custody of any minor child born to or adopted by the parties when the court has jurisdiction over such child and no prior order regarding custody is pending or has been made, and the best interests of the child require such order be issued."⁵⁰ Finally, a civil order of protection cannot be denied to a member of the household who has been threatened with abuse or domestic violence simply because there is a dissolution action pending between the parties.⁵¹ However, because obtaining extended relief from an order of protection might conflict with proceedings in other courts it is important to check the statute in your state to see how an impending dissolution action or existing decree of custody and visitation will affect an order of protection. There are some states statutes that provide that "subsequent domestic relations case supersedes portions of a prior civil protection order."⁵² However, it is certainly the minority of jurisdictions that require that a civil order of protection court be constrained by a prior custody award⁵³ and only two jurisdictions prevent a civil order of protection from overriding an order of child support.⁵⁴

⁴⁹ Klein & Orloff, *supra* note 16, at 883 n.504 (citing *Arlyn T. v. Harold T.*, 435 N.Y.S.2d 651, 652 (Fam. Ct. 1981); *Hrab v. Hrab*, 332 N.Y.S.2d 91 (App. Div. 1972); *Thomas v. Thomas*, 540 N.E.2d 745 (Ohio Ct. App. 1988).

⁵⁰ *See, e.g.*, MO. REV. STAT. § 455.523(2). If no other order regarding custody is in effect, the court can award visitation, child support, order respondent to make or continue to make rent or mortgage payments on the residence occupied by the victim, order the respondent to participate in a court-approved counseling program designed to help child abusers stop violence behavior or treat substance abuse, order respondent to pay to the costs, to the extent he or she is able, of any treatment needed by the victim or the respondent and order the respondent to pay a reasonable fee for housing and other services that have been utilized or being provided to the victims by a domestic violence shelter. *See id.*

⁵¹ Klein & Orloff, *supra* note 16, at 883.

⁵² *Id.* *supra* note 16, at 886 n. 524.

⁵³ *Id.* at 887-888. MASS. GEN. L. ANN. ch. 209A, section 3 (West Supp. 1993); MO. REV. STAT. section 455.050.3(1) (Vernon 1993); N.H. REV. STAT. ANN. section 173-B:4II (1991); N.M. STAT. ANN. section 40-13-5(c) (Michie Supp. 1993); OKLA. STAT. ANN. tit. 22, section 60.4(H) (West 1992).

⁵⁴ *Id.* at 888. N.H. REV. STAT. Ann. section 173-B:4II (1991); N.M. STAT. ANN. section 40-13-5C (Michie Supp. 1993).

However, one of the most beneficial measures that a civil order of protection provides to an abused child is the removal of the respondent/abuser from the residence of the child/victim. These are often called a “stay away provision” and are standard in almost every state’s civil order of protection statute.⁵⁵ This allows the child/victim and their parent or guardian to remain in the family home while the respondent/abuser is precluding from staying in the home. A “stay away provision” appropriately removes the respondent/abuser from the home rather than the child. The inconvenience falls upon the respondent/abuser and allows the child/victim to remain in their own home and surroundings. Additionally, allowing the child to remain with the non-abusing parent and removing the respondent/abuser from the home can provide stability to the child/victim. Removal of the child instead of the perpetrator sends a contradictory message to the child. To a child, being removed from his home can be frightening and reinforce the message that abusers often send to their victims.⁵⁶ This is especially true for children sexually abused by a family member. The child/victim is likely to feel as if they are the wrongdoer instead of the respondent/abuser. Furthermore, there is some evidence to suggest that children are not free from risk of harm simply because they are removed from the home and placed in foster care.⁵⁷ The civil order of protection allows children to remain in their home and does not inadvertently punish the child/victim by removing them from the family home.

III: Civil Orders of Protection for Children: Effective Uses, Limitations and Criticisms

A. Effective Uses of Civil Order of Protection for Children

Part II of this comment discussed in general how to obtain a civil order of protection for a child and how orders of protection

⁵⁵ Klein & Orloff, *supra* note 16, at 919.

⁵⁶ The message often sent by the abuser to the child is that if you tell about the abuse something bad will happen.

⁵⁷ Heidi A. White, *Refusing to Blame the Victim for the Aftermath of Domestic Violence: Nicholson v. Williams is a Step in the Right Direction*, 41 FAM. CT. REV. 527 (2003).

function. This section looks at what kinds of situations civil orders of protections for children are most effective.

Civil orders of protections are most commonly used as a way to protect children who are victimized either directly by domestic violence or endangered by the by-products of domestic violence. Civil orders of protection for children are effective tools for parents or guardians to shield their children from harm from another family member. In a sense, civil orders of protection for children are a form of self-help in that the petition for an order does not need to be brought by an outside agency or court appointed special advocate, rather the parent can bring the action themselves. There are situations where children are exposed to violence and abuse but may not be under the supervision of the state's juvenile system. Furthermore, not all violence or abuse directed towards children evokes the criminal or juvenile justice systems. When a parent or guardian petitions the court for a civil order of protection for their child, it might be the first contact the adult or child has had with the judicial system. Civil orders of protection statutes were designed to encompass the minor children of domestic abuse victims. Nearly all children in homes plagued by domestic violence hear or witness the abuse enacted against their parent. Living in a home surrounded by domestic violence can have devastating effects on children, making them feel isolated, withdrawn, nervous, suicidal, and guilt ridden.

Often times, children living in the midst of domestic violence are also victims of physical trauma and injury even if they were not the intended target.⁵⁸ Additionally, an order of protection might be useful if the child experiences abuse by a parent after dissolution has been finalized. It should be noted that more than half of perpetrators of domestic violence continue to be violent toward subsequent partners, which means children could be at risk to being exposed to abuse and violence on required visits at the abuser's household with his or her new partner.⁵⁹

Finally, civil orders of protection for children can provide immediate and effective relief by providing an *ex parte* or emergency order of protection on behalf of a child (with an existing custody order) that would not see immediate relief if the parties

⁵⁸ *Id.*

⁵⁹ *Id.* at 25.

had to wait for a modification hearing on the current custody arrangements.⁶⁰

B. *Limitations on Civil Order of Protection for Children*

There are some limitations to civil orders of protection for children in that they do not always encompass all forms of threatened violence towards children. Most state statutes that extend protection to children through the use of civil orders of protection do not apply to members outside of the household or other designated relationships recognized by the statute. Most of the relationships identified by civil orders of protection seem to relate to the adult abuse victims. For instance, if a child were being stalked by a household member, a parent or his or her parent's significant other, they would likely be protected by an order of protection. However, if another individual who is also a minor is stalking the child, perhaps a boyfriend, girlfriend or classmate the child will most likely not be able to obtain an order of protection under domestic violence statutes. Only seventeen states provide a device for minor victims of dating violence to apply for protective orders. Some of those states allow minors to request an order of protection on their own, while other states permit or require the involvement of an adult to apply for the order on a minor's behalf.⁶¹

C. *Criticisms of Civil Orders of Protection for Children*

There are two main criticism regarding orders of protection for children, (1) they are ineffective in dealing with domestic violence and (2) they are used by spouses as weapons in impeding dissolution and custody battles. For years there has been a na-

⁶⁰ See *supra* Part I. Note that some states an existing custody and visitation determination will take precedence over the requested civil order of protection.

⁶¹ For example in Missouri the Child Protection Orders Act does not allow a minor child to seek protection from the stalking of another minor. See, e.g., MO. REV. STAT. § 455.505; *Reller v. Hamline*, 895 S.W.2d 659, (Mo. Ct. App. 1995). The court held that because the boyfriend was only an infrequent overnight guest, and not a member of the household, as such the trial court could not enter an ex parte order of protection for the minor child under the Child Protection Orders Act. As required by MO. REV. STAT. §455.500, the child had to be abused by a present or former household member and an overnight guest was not considered a household member for purposes of the Act.

tional charge to eradicate child abuse and neglect and the overall effects of domestic violence on families. As noted above all 50 states now have legislation that specifically address domestic violence and provide civil orders of protection as a means of protecting its victims. However, some question the effectiveness of civil orders of protection for both children and adult victims of domestic violence. The question is how effective are orders of protection at actually deterring or restraining the abuser from future violence. As one Georgia law enforcement web site explains, there are limitations regarding orders of protection, "A Temporary Protection Order (TPO) is a court document ordering someone to stay away, but is not a bulletproof vest that can prevent danger or some force that will physically keep a person from harming you."⁶² Unfortunately, both adult and child victims of domestic violence and abuse cannot solely rely on an order of protection for complete protection but must take other measures such as safety planning to maximize their security.

Finally, another criticism of civil orders of protection stems from what some perceive as abuse of the protective order system. The manipulation of protective orders can be from the batterer in a child custody case or when a parent falsely accuses another parent of abuse to obtain an order of protection in an attempt to gain an advantage in an impending dissolution action. It has become increasingly common for batterers, in an attempt to continue their power and control, to race to the courthouse and file an order of protection against the non-battering parent.⁶³ Batterers may also view orders of protection as a cheap and speedy means to resolving paternity, custody, support and visitation matters that should be dealt with through the appropriate channels.⁶⁴

IV. Conclusion

When used properly civil orders of protections can be effective in providing safety and security to children being abused or at risk of being abused. A parent or household member may ob-

⁶² Haven House, <http://www.henryhavenhouse.org/tpo.html> (accessed May 3, 2005).

⁶³ Nina W. Tarr, *The Cost to Children When Batterers Misuse Order for Protection Statutes in Child Custody Cases*, 13 S. CAL. REV. L. & WOMEN'S STUD. 35, 37-38 (2003).

⁶⁴ *Id.* at 38.

tain an order of protection for a child on their behalf. Orders of protection can be either temporary or permanent in nature and encompass a wide range of abusive behaviors that put children in danger. While most states treat orders of protection for children in a similar manner, one must take care to recognize the differences and nuances of each particular statute. Each state statute is crafted in a slightly different way and may provide for more or less protections depending on its scope. Civil orders of protection provide children protection from their abuser while allowing them to remain in their own homes. Ultimately, civil orders of protection can be an appropriate remedy for children who are the primary targets of abuse by family and or household members.

Allie Meiers

