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**JUSTICE FOR ALL**  
Kentucky Bar Association ★ 2015 Annual Convention

# **VOICES AGAINST VIOLENCE: PRACTICING A DOMESTIC VIOLENCE CASE – START TO FINISH**

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# TABLE OF CONTENTS

The Presenters.....	i
Overview of Recent Changes to Kentucky's Protective Order Laws .....	1
Why HB 8? .....	51
HB 8 – Expanding Civil Court Orders of Protection for Victims .....	57



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**OVERVIEW OF RECENT CHANGES TO KENTUCKY'S  
PROTECTIVE ORDER LAWS: PROTECTING VICTIMS OF  
DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL VIOLENCE,  
AND STALKING.**

Catherine DeFlorio

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**I. INTRODUCTION**

After eight unsuccessful attempts to expand civil protections to victims of dating violence in Kentucky, H.B. 8 passed the General Assembly during its fifteenth Regular Session, on March 24, 2015.<sup>1</sup> The Act adds a new chapter to the Kentucky Revised Statutes (Chapter 456), establishing civil protective orders for dating violence, sexual violence, and stalking victims. The final version of H.B. 8 repealed and re-enacted KRS 403.715 to 403.785, keeping domestic violence protective orders in KRS Chapter 403. Most of the changes were aimed at simplifying the language of Chapter 403 and making it more consistent with the Family Court Rules of Procedure and Practice. The Act goes into effect on January 1, 2016.

***Please note that relevant sections of KRS Chapter 403 cited in this overview, unless noted otherwise, appear as re-enacted through H.B. 8.*** Both the current version and the newly re-enacted version of Chapter 403 are currently available online at <http://www.lrc.ky.gov/Statutes/chapter.aspx?id=39213>.

Chapter 456 is currently available online at <http://www.lrc.ky.gov/Statutes/chapter.aspx?id=43990>.

Types of Personal Protective Orders in Kentucky:

<b>EPO / DVO</b> KRS CHAPTER 403 403.715-403.785	<b>IPO</b> KRS CHAPTER 456	<b>RO / IPO</b> CRIMINAL CONVICTION STALKING KRS CHAPTER 508 OR RAPE, SODOMY, SEXUAL ABUSE CHAPTER 510
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- A. Emergency Protective Orders (EPO), Domestic Violence Orders (DVO) and Foreign Protective Orders in KRS Chapter 403
1. Kentucky's civil protective order statutes as they relate to EPOs and DVOs are found in KRS 403.715-403.785. KRS Chapter 403 governs orders of protection between "family members" and "members of an unmarried couple," how they are obtained, how hearings are conducted, relief available, and mechanisms for enforcement.

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<sup>1</sup> H.B. 8, 2015 Gen. Assemb., Reg. Sess. (Ky. 2015) (enacted).

2. A "foreign protective order" (FPO) as defined in KRS 403.720(3) means "any judgment, decree, or order of protection entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 that was issued on the basis of domestic violence and abuse."

3. Legislative intent in KRS 403.715.

"KRS 403.715 to 403.785 shall be interpreted to:

(1) Allow victims to obtain effective, short-term protection against further ~~acts of domestic violence and abuse~~ [wrongful conduct] in order that their lives may be as secure and as uninterrupted as possible;

(2) Expand the ability of law enforcement officers to effectively respond to further ~~acts of domestic violence and abuse~~ [wrongful conduct] so as to prevent future incidents and to provide assistance to the victims;

(3) Provide peace officers with the authority to immediately apprehend and charge for violation of an order of protection any person whom the officer has probable cause to believe has violated an order of protection and to provide courts with the authority to conduct contempt of court proceedings for these violations;

(4) Provide for the collection of data concerning incidents of domestic violence and abuse in order to develop a comprehensive analysis of the numbers and causes of such incidents;

(5) Supplement and not repeal or supplant any duties, responsibilities, services, or penalties under KRS Chapters 209, 209A, and 620."

B. Temporary Interpersonal Protective Order (TIPO), Interpersonal Protective Order (IPO), and Foreign Protective Order (FPO) – Effective January 1, 2016

1. A new section of KRS Chapter 456 is created to establish an interpersonal protective order which may be filed by a victim of dating violence and abuse, a victim of stalking, a victim of sexual assault, or an adult on behalf of a victim who is a minor otherwise qualifying for relief under this subsection.<sup>2</sup>

2. A "foreign protective order" (FPO) as defined in Chapter 456, means "any judgment, decree, or order of protection entitled to full

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<sup>2</sup> *Id.* at §21.

faith and credit pursuant to 18 U.S.C. sec. 2265 which *was not* issued on the basis of domestic violence and abuse.”<sup>3</sup>

3. Legislative intent – KRS 456.020.

“(1) This chapter shall be interpreted to:

(a) Allow victims to obtain effective, short-term protection against further wrongful conduct in order that their lives may be as secure and as uninterrupted as possible;

(b) Expand the ability of law enforcement officers to effectively respond to further wrongful conduct so as to prevent future incidents and to provide assistance to the victims;

(c) Provide peace officers with the authority to immediately apprehend and charge for violation of an order of protection any person whom the officer has probable cause to believe has violated an order of protection and to provide courts with the authority to conduct contempt of court proceedings for these violations;

(d) Provide for the collection of data concerning incidents of dating violence and abuse, sexual assault, and stalking in order to develop a comprehensive analysis of the numbers and causes of such incidents; and

(e) Supplement and not repeal or supplant any duties, responsibilities, services, or penalties under KRS Chapters 209, 209A, and 620.

(2) Nothing in this chapter is intended to trigger the application of the provisions of 18 U.S.C. sec. 922(g)<sup>4</sup> as to an interpersonal protective order issued on the basis of the existence of a current or previous dating relationship.”

C. Restraining Orders/Interpersonal Protective Orders upon Criminal Conviction for Stalking under KRS Chapter 508, or Rape, Sodomy, and Sexual Abuse under Chapter 510

1. Stalking restraining orders – KRS 508.155.

A restraining order is currently available to victims of stalking upon a verdict or a plea of guilty to KRS 508.140 or 508.150. A conviction in a felony or misdemeanor stalking case operates as

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<sup>3</sup> KRS 456.010(3) (emphasis added).

<sup>4</sup> The federal gun prohibition.

an application for a *restraining order* limiting the contact of the defendant and the victim who was stalked, unless the victim requests otherwise. This restraining order can be entered for a period of up to ten years. The defendant may request a hearing. This type of restraining order is not to be confused with an IPO on behalf of a stalking victim, which can be entered without a criminal charge or conviction, for up to three years.

2. KRS 508.155 is amended effective January 1, 2016 as follows:
  - a. “[A] verdict of guilty or a plea of guilty to KRS 508.140 or 508.150 shall operate as an application for an *interpersonal protective order* issued under KRS Chapter 456, unless the victim requests otherwise. Notwithstanding the provisions of KRS Chapter 456:
    1. An interpersonal protective order requested under this subsection may be issued by the court that entered the judgment of conviction;
    2. The judgment of conviction shall constitute sufficient cause for the entry of the order without necessity of further proof being taken; and
    3. The order may be effective for up to ten (10) years, with further renewals in increments of up to ten (10) years.”<sup>5</sup>
  - b. Defendant shall be given notice of right to request a hearing on the application of the restraining order; if none requested, court may issue the restraining order without a hearing.<sup>6</sup>
  - c. If defendant requests a hearing, it shall be held at the time of verdict or plea of guilty, unless the victim or defendant requests otherwise. The hearing will take place in the court where the verdict or plea of guilty was entered.<sup>7</sup>
  - d. The duration of the protective order shall be based on the seriousness of the facts before the court, the probability of future violations, and the safety of the victim, his or her immediate family, or both.<sup>8</sup>

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<sup>5</sup> KRS 508.155(1)(b) (effective Jan. 1, 2016) (emphasis added).

<sup>6</sup> KRS 508.155(2) (effective Jan. 1, 2016).

<sup>7</sup> KRS 508.155(3) (effective Jan. 1, 2016).

<sup>8</sup> KRS 508.155(5) (effective Jan. 1, 2016).

3. A new section of KRS Chapter 510 is created by H.B. 8, which provides IPOs for victims of rape, sodomy, and sexual abuse and reads as follows:

“The entering of a judgment of conviction for any degree of rape, sodomy, or sexual abuse under this chapter shall operate as an application for an interpersonal protective order issued under KRS Chapter 456, unless the victim requests otherwise. Notwithstanding the provisions of KRS Chapter 456:

- (1) An interpersonal protective order requested under this subsection may be issued by the court that entered the judgment of conviction;
- (2) The judgment of conviction shall constitute sufficient cause for the entry of the order without the necessity of further proof being taken; and
- (3) The order may be effective for up to ten (10) years, with further renewals in increments of up to ten (10) years.”<sup>9</sup>

## II. FILING FOR PROTECTIVE ORDERS

### A. Who Can File?

1. Emergency protective order/domestic violence order.

Any "family member" or "member of an unmarried couple," or an adult on behalf of a minor otherwise qualifying for relief under this subsection, who is a victim of domestic violence and abuse and resides in this state or has fled to this state to escape domestic violence and abuse may file a verified petition for an emergency protective order in the county in which s/he resides.<sup>10</sup>

- a. "Family member" defined – "Family member" means a spouse, including a former spouse, a grandparent, [a grandchild],<sup>11</sup> a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim.<sup>12</sup>
- b. "Member of an unmarried couple" defined – "Member of an unmarried couple" means each member of an unmarried

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<sup>9</sup> KRS 510.037 (effective Jan. 1, 2016).

<sup>10</sup> See KRS 403.725(1)-(3).

<sup>11</sup> Added effective Jan. 1, 2016 by Ky. H.B. 8, §2(2).

<sup>12</sup> KRS 403.720(2).

couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together.<sup>13</sup>

- i. "Couple" though undefined in the statute, refers to two people in an intimate relationship and does not include roommates. Couples residing together of the same sex who were not merely roommates are eligible for the protection of a DVO.<sup>14</sup>
- ii. Domestic violence statute does not extend to altercations between mere roommates.<sup>15</sup>

2. Temporary interpersonal protective order/interpersonal protective order.

- a. A petition for an interpersonal protective order may be filed by a victim of dating violence and abuse, a victim of stalking, a victim of sexual assault, or an adult on behalf of a victim who is a minor otherwise qualifying for relief under this subsection.<sup>16</sup>
- b. Dating relationship defined.
  - i. A dating relationship "means a relationship between individuals who have or have had a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context."<sup>17</sup>
  - ii. Factors which may be considered when determining whether relationship is romantic or intimate in nature:
    - a) Declarations of romantic interest.
    - b) Characterized by the expectation of affection.
    - c) Attendance at social outings together as a couple.

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<sup>13</sup> KRS 403.720(4), recodified at KRS 403.720(5) effective Jan. 1, 2016.

<sup>14</sup> Ireland v. Davis, 957 S.W.2d 310, 312 (Ky. App. 1997).

<sup>15</sup> Wright v. Com., 391 S.W.3d 743, 748 (Ky. 2012).

<sup>16</sup> KRS 456.030 (effective Jan. 1, 2016).

<sup>17</sup> KRS 456.010(1) (effective Jan. 1, 2016).

- d) Frequency and type of interaction, including whether persons have been involved together over time and on a continuous basis during course of relationship.
  - e) Length of relationship.
  - f) Indications of a substantial connection that would lead a reasonable person to understand that a dating relationship existed.<sup>18</sup>
- c. "Victim of stalking" defined – A "victim of stalking" refers to a victim of conduct prohibited as stalking under KRS 508.140 or 508.150.<sup>19</sup> An actual criminal charge or conviction is not required to obtain protection through an IPO under this subsection. Kentucky has the highest number of stalking victims in the United States, according to federal statistics.
- d. "Victim of Sexual Assault" defined – A "victim of sexual assault" refers to a victim of conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or incest under KRS 530.020. An actual criminal charge or conviction is not required to obtain an IPO under this subsection of Chapter 456.<sup>20</sup>
3. Restraining order/interpersonal protective order in criminal convictions for stalking, rape, sodomy, and sexual abuse cases.
- a. A victim in a criminal stalking case under KRS 508.140 or 508.150 is currently eligible for a restraining order (*interpersonal protective order* effective January 1, 2016) upon a verdict of guilty or plea of guilty. The victim is not required to file a petition, as the criminal conviction operates as an application to the court for a restraining order, unless the victim requests otherwise. The defendant may request a hearing.<sup>21</sup>
  - b. A victim in a rape, sodomy, or sexual abuse case under Chapter 510 will be eligible for an interpersonal protective order upon a verdict of guilty or a plea of guilty to the charges. The victim is not required to file a petition, as the

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<sup>18</sup> *Id.*

<sup>19</sup> KRS 456.010(7) (effective Jan. 1, 2016).

<sup>20</sup> KRS 456.010(6) (effective Jan. 1, 2016).

<sup>21</sup> KRS 508.155.

criminal conviction operates as an application to the court for an IPO, unless the victim requests otherwise. The judgment of conviction shall constitute sufficient cause for the entry of the order without the necessity of further proof being taken.<sup>22</sup>

B. Where to File? Jurisdiction, Residency, Venue

1. Petition for EPO/DVO.

- a. Jurisdiction over petitions shall be concurrent between the District Court and Circuit Court and may be filed in either court, *if there is no family court established in the county of filing*. If there is an established family court in the county of filing, a petition for an **EPO/DVO** shall be filed in family court. The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county.<sup>23</sup>
- b. To file a petition for an EPO/DVO, you must be residing in this state or have fled to this state from another state to escape domestic violence and abuse, but unlike the residency requirements to establish home-state jurisdiction under the UCCJEA, there is no minimum time period to establish residency for a protective order.<sup>24</sup>
- c. Kentucky's "Safe Harbor" provisions found in KRS Chapter 403 allow a "family member or member of an unmarried couple" who has fled to this state to escape domestic violence and abuse to file for an EPO in the county of their current residence.<sup>25</sup>
- d. Petitioner may file in the county of their usual residence or if they have fled to another county to escape domestic violence, in the county of their current residence. Appropriate venue is not necessarily where the wrongful conduct has occurred.<sup>26</sup>
- e. When filing for an EPO/DVO, if a family member or member of an unmarried couple files action for dissolution

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<sup>22</sup> KRS 510.037 (effective Jan. 1, 2016).

<sup>23</sup> KRS 403.725(6)(a), (c) (effective Jan. 1, 2016).

<sup>24</sup> Bissel v. Baumgardner, 236 S.W.3d 24, 30 (Ky. App. 2007).

<sup>25</sup> KRS 403.725(1).

<sup>26</sup> KRS 403.725(2) effective Jan. 1, 2016.

of marriage, child custody, or visitation, the court hearing the case has jurisdiction to issue an order of protection upon the filing of a verified motion either at the commencement or during the pendency of the action.<sup>27</sup>

- f. In Spencer v. Spencer, 191 S.W.3d 14 (Ky. App. 2006), the court held it could enter a DVO against an out-of-state respondent it did not have personal jurisdiction over; however, it could not impose affirmative duties on respondent, such as requiring payment of child support. The court balanced respondent's due process rights with the state's interest in protecting victim of domestic violence who had fled to Kentucky under its "Safe Harbor" provision to escape further domestic violence and abuse.
  - g. In Hunter v. Mena, 302 S.W.3d 93, 97 (Ky. App. 2010), the court held that wife did not abandon Kentucky as her legal residence when she went to stay with her mother in Indiana because respondent would not leave her alone. The Kentucky court had subject matter jurisdiction to hear the domestic violence case.
2. Petition for TIPO/IPO – effective January 1, 2016.
- a. To file a petition for an IPO, the petitioner must file in their county of residence or a county where they have fled to escape dating violence and abuse, stalking, or sexual assault. There is no minimum time period that the victim must have resided in the county in which they are filing. You do not have to file in the county where the wrongful acts occurred.<sup>28</sup>
  - b. Similar to the "Safe Harbor" provision in KRS Chapter 403, the newly enacted Chapter 456 allows a victim of dating violence and abuse, stalking, or sexual abuse to flee to another county to escape further acts of abuse and file for an IPO in that county.<sup>29</sup>
3. Petition for restraining order (RO)/interpersonal protective order (IPO) in criminal convictions for stalking, rape, sodomy, or sexual abuse cases.

RO/IPO entered following a verdict of guilty or plea of guilty to stalking under KRS 508.140 or 508.150, or IPO entered following

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<sup>27</sup> KRS 403.750(3) (effective Jan. 1, 2016).

<sup>28</sup> KRS 456.030(2).

<sup>29</sup> *Id.*

a verdict or plea of guilty to any degree of rape, sodomy, or sexual abuse under KRS Chapter 510, are issued in the court that entered the judgment of conviction.<sup>30</sup>

C. Definitions of Qualifying Wrongful Conduct

1. EPO/DVO.

For purposes of obtaining an EPO or DVO, "domestic violence and abuse" means physical injury, serious physical injury, [stalking],<sup>31</sup> sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple."<sup>32</sup>

2. TIPO/IPO effective January 1, 2016.

a. For purposes of obtaining an interpersonal protective order, "dating violence and abuse" means "physical injury, serious physical injury, stalking, sexual assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault occurring between persons who are or have been in a dating relationship."<sup>33</sup>

b. For purposes of obtaining a civil interpersonal protective order, "stalking" refers to conduct prohibited as stalking under KRS 508.140 or 508.150.<sup>34</sup>

c. For purposes of obtaining a civil interpersonal protective order, "sexual assault" refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or incest under KRS 530.020.<sup>35</sup>

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<sup>30</sup> H.B. 8, at §§46-47.

<sup>31</sup> *Id.* at §2(1), effective Jan. 1, 2016.

<sup>32</sup> KRS 403.720(1).

<sup>33</sup> KRS 456.010(2).

<sup>34</sup> KRS 456.010(7).

<sup>35</sup> KRS 456.010(6).

D. Forms for Documents Entered into the LINK System

1. Law Enforcement Network of Kentucky (LINK).

- a. LINK refers to the system in place for the timely acceptance, processing, and subsequent dissemination of criminal justice information.<sup>36</sup>
- b. All forms, affidavits, EPOs, DVOs, TIPOs and IPOs, or other orders requiring entry into LINK, must be on forms prescribed by the Administrative Office of the Court. If the provisions of an order of protection are contained in an order which is narrative in nature, the prescribed form must be used in addition to the narrative order. Failure to use the appropriate AOC form can result in orders not being entered into LINK.<sup>37</sup>
- c. All orders of protection, including IPOs, are required to be entered into the LINK system within twenty-four hours of issuance. This enables law enforcement officers to have immediate access to the information contained in a protective order for enforcement. The exception to this is that foreign protective orders are not entered into the LINK system unless a certified copy of the foreign protective order is provided and registered in Kentucky.<sup>38</sup>

2. AOC protective order forms used in Kentucky courts.

- a. Emergency Protective Order Petition.
- b. Emergency Protective Order.
- c. Summons.
- d. Domestic Violence Order.
- e. Forthwith Order of Arrest.
- f. Show Cause Motion and Affidavit.
- g. Uncertified Foreign Protective Order and Affidavit.
- h. Foreign Protective Order and Affidavit.
- i. Motion to Amend.

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<sup>36</sup> 502 KAR §40:010.

<sup>37</sup> KRS 403.751(1) and KRS 456.110(1), effective Jan 1, 2016.

<sup>38</sup> KRS 403.751(2) and KRS 456.110(2), effective Jan. 1, 2016.

- j. Notice of Impending Expiration of Unserved Emergency Order of Protection.
- k. Stalking Restraining Orders.

Note: There will be a Temporary Interpersonal Protective Order and an Interpersonal Protective Order in place by January 1, 2016; however, at this point it is unclear whether it will be its own form or if our EPOs/DVOs will be modified to include an option for TIPOs and IPOs. The following forms are anticipated by January 1, 2016:

- l. Temporary IPO, effective January 1, 2016.
- m. IPO, effective January 1, 2016.
- n. IPO following conviction in rape, sodomy, or sexual abuse cases..
- o. IPO following conviction in stalking case.
- p. EPO/DVO and TIPO/IPO certification form that order entered following a hearing where AP received notice and an opportunity to be heard.

E. Access to the Courts for Filing for a Protective Order

- 1. Access and safety generally.
  - a. All courts must establish a protocol for providing twenty-four hour (24) access to EPOs and TIPOs.<sup>39</sup>
  - b. When a law enforcement officer has reason to suspect that a person has been the victim of domestic violence and abuse, dating violence and abuse, sexual assault, or stalking, the officer shall use all reasonable means to provide assistance to the victim, including but not limited to:
    - i. Remaining at the location of the call for assistance so long as the officer reasonably suspects there is danger to the physical safety of individuals there without the presence of a law enforcement officer;
    - ii. Assisting the victim in obtaining medical treatment, including transporting the victim to the nearest medical facility capable of providing the necessary treatment; and

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<sup>39</sup> KRS 403.725(6)(b); KRS 456.030(6)(b), effective Jan. 1, 2016.

- iii. Advising the victim immediately of the rights available to them, including those found in Chapter 403 and 456.<sup>40</sup>
  - c. All petitions requested, completed, and signed by persons seeking an EPO/DVO or TIPO/IPO shall be accepted and filed with the court.<sup>41</sup>
  - d. No costs, fees, or bond shall be required of petitioner for any filing, hearing, service, or order authorized by or required to implement KRS 403.715 to 403.785 (EPOS/DVOs) or KRS Chapter 456 (TIPOs/IPOs).<sup>42</sup>
  - e. The Court of Justice, county and Commonwealth's attorneys, law enforcement agencies, and victim services organizations may jointly operate a domestic violence and/or interpersonal protective order intake center to assist persons who apply for relief under KRS 403.715 to 403.785 or Chapter 456.<sup>43</sup>
  - f. Referral to county attorney – “In cases where criminal conduct is alleged, a court may suggest the petitioner voluntarily contact the county attorney. A court may not withhold or delay relief if petitioner elects to not contact the county attorney.”<sup>44</sup>
  - g. A person's right to apply for relief under KRS Chapter 403 or Chapter 456 shall not be affected by that person leaving his or her residence to avoid domestic violence and abuse, dating violence and abuse, stalking, or sexual assault.<sup>45</sup>
2. Family Court Rules of Procedure and Practice 13. Domestic Violence Protocols
- a. "Domestic violence cases shall be conducted according to local protocol."
  - b. "The court shall not limit or restrict a victim's access to seek a protective order for domestic violence."

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<sup>40</sup> KRS 403.785(2) and KRS 456.090(2), effective Jan. 1, 2016.

<sup>41</sup> KRS 403.725(5) and KRS 456.030(5), effective Jan. 1, 2016.

<sup>42</sup> KRS 403.745(2) and KRS 456.070(2), effective Jan. 1, 2016.

<sup>43</sup> KRS 403.745(7)(a) and KRS 456.070(7)(a), effective Jan. 1, 2016.

<sup>44</sup> KRS 403.745(7)(b) and KRS 456.070(7)(b), effective Jan. 1, 2016.

<sup>45</sup> KRS 403.745(8) and KRS 456.070(8), effective Jan. 1, 2016.

- c. "The court shall provide 24-hour access to protection from domestic violence."
  - d. "Domestic violence cases shall retain the domestic violence case file number even if heard with another matter."
  - e. "The court shall establish schedules for domestic violence hearings and provide them to anyone authorized to verify domestic violence petitions."
3. Language access.
- a. Title VI of the Civil Rights Act of 1964 requires any entity that receives federal funding to provide meaningful access to services, including free interpretation and translation services for non-English speaking or limited English speaking service recipients. Please see <http://www.lep.gov> for more information.
  - b. Part IX of the Rules of Administrative Procedure of the Supreme Court of Kentucky outline in detail what the responsibilities of the courts and court personnel in the Commonwealth are, in regards to interpretation for those who are non-English speaking or limited English speaking, as well as those who are deaf or hard of hearing. The rules can be found at: [http://courts.ky.gov/courts/supreme/Rules\\_Procedures/201102.pdf](http://courts.ky.gov/courts/supreme/Rules_Procedures/201102.pdf).
- Additional guidance is found in KRS Chapter 30A.400 *et seq.*
4. Disabilities.
- a. Title II of the Americans with Disabilities Act and the Kentucky Civil Rights Act require our courts to be accessible to people with any type of disability, including physical, mobility, vision, communication, intellectual, and developmental disabilities. More information on the federal requirements can be found at <http://www.usdoj.gov/crt/ada>.
  - b. Practitioners should be knowledgeable about how to request an accommodation or interpreter in advance of appearing in court for the protective order hearing if at all possible. Information regarding requests for interpretation or assistive technology devices for individuals who are deaf or hard of hearing can be found at: [http://courts.ky.gov/resources/legalforms/LegalForms/AOC\\_INT10.pdf](http://courts.ky.gov/resources/legalforms/LegalForms/AOC_INT10.pdf).

F. The Petition

1. Verified petition required for EPO/DVO or TIPO/IPO.
  - a. Petition shall be filed on forms prescribed by the AOC and provided to petitioner by the circuit clerk, or other authorized individual such as law enforcement or county attorney.<sup>46</sup>
  - b. Petitioner is required to file a verified petition to request an EPO/DVO or a TIPO/IPO, which contains the following:
    - i. The name, age, address, occupation, residence, *and school or postsecondary institution of the petitioner* (effective January 1, 2016);
    - ii. The name, age, address, occupation, residence, *and school or postsecondary institution* (effective January 1, 2016) of the person who has engaged in the acts complained of in the petition and petitioner's relationship to that person.
    - iii. The facts and circumstances which constituted the alleged wrongful conduct;
    - iv. **Only in petition for EPO/DVO:**<sup>47</sup> The date and place of the marriage of the parties, if applicable; and
    - v. The names ages, and addresses of the parties' minor children, if applicable.<sup>48</sup>
  - c. Petitioner requests the relief they are seeking in the Motion for Relief found in the petition. It is important that petitioner check all the relief they are seeking. If petitioner is seeking relief on behalf of themselves and/or their minor children, they should enter their name and the name of any minor children on whose behalf they are filing for protection.
  - d. A court shall order the omission or deletion of the petitioner's address and the address of any minor children from any orders or documents to be made available to the

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<sup>46</sup> KRS 403.725(4) and KRS 456.030(4), effective Jan. 1, 2016.

<sup>47</sup> KRS 403.725(3)(d), effective Jan. 1, 2016.

<sup>48</sup> KRS 403.725(3) and KRS 456.030(3), effective Jan. 1, 2016.

public or to any person who engaged in the acts complained of in the petition.<sup>49</sup>

- e. All petitions requested, completed, and signed by person seeking protection shall be accepted and filed with the court.<sup>50</sup>
- f. Any family member or member of an unmarried couple who files a petition for an EPO/DVO shall make known to the court any custody or divorce actions involving both the petitioner and the respondent that are pending in any court.<sup>51</sup>
- g. If petitioner or respondent to an order of protection initiates an action under Chapter 403, the party initiating the action shall make known to the court the existence and status of any orders or protection, which shall remain effective and enforceable until superseded by order of the court in which the case is filed.<sup>52</sup>

- 2. IPO entered upon a criminal conviction for stalking, rape, sodomy, or sexual abuse.

An IPO entered on behalf of a victim of stalking, rape, sodomy, or sexual abuse in a criminal case following a conviction, does not require that the victim fill out a petition. An automatic application to the court is created upon a verdict or plea of guilty.<sup>53</sup>

#### G. Relief Available

- 1. Motion for relief in petition for EPO/DVO.

Petitioner may request in their petition for an EPO/DVO, any of the relief available in KRS 403.740:

- a. Restrain adverse party (AP) from committing further acts of domestic violence and abuse.
- b. Restrain AP from any unauthorized contact or communication with petitioner or other person specified by the court.

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<sup>49</sup> KRS 403.745(9) and KRS 456.070(9), effective Jan. 1, 2016.

<sup>50</sup> KRS 403.725(5) and KRS 456.030(5), effective Jan. 1, 2016.

<sup>51</sup> KRS 403.750(2)(a), effective Jan. 1, 2016.

<sup>52</sup> KRS 403.750(2)(b), effective Jan. 1, 2016.

<sup>53</sup> H.B. 8 at §§46-47.

- c. Restrain AP from disposing of or damaging any property of the parties.
- d. Restrain AP from approaching the petitioner or other person specified by the court within a distance specified in the order, not to exceed 500 feet.
- e. Restrain AP from going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located; and
  - i. **Petitioner should be aware that if requested, this information is not considered confidential and the physical address of the location will be available to the Respondent.**
  - ii. The court shall afford an opportunity for parties to testify on issue of locations and areas from which respondent should or should not be excluded.
  - iii. Only impose a location restriction where there is a specific, demonstrable danger to petitioner or other person protected by the order.
  - iv. Consider structuring a restriction so as to allow respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm, or attempt to harass or harm the petitioner.
- f. Restrain AP from damaging or disposing of any of the property of the parties.
- g. Request the court enter other orders that direct or prohibit other actions that petitioner believes would assist in eliminating future acts of domestic violence and abuse, except cannot request the use of a global positioning monitoring system in the EPO or initial DVO.
- h. Request that either or both of the parties receive counseling services available in the community in domestic violence and abuse cases. **Note: Because being ordered to counseling is an affirmative duty, it can only be ordered in the DVO, not the EPO.**
- i. Request that AP be ordered to vacate residence shared by the parties.
- j. Request that the court grant temporary child custody to the Petitioner, utilizing criteria set forth in KRS 403.270, 403.320, and 403.822.

- k. Request child support, utilizing criteria in KRS 403.211, 403.212, and 403.213. **Note: Because child support is an affirmative duty, it can only be ordered in the DVO, not the EPO.**
- l. Request that AP not possess a firearm. While the entry of a DVO automatically triggers the federal gun ban in 18 U.S.C. §922(g), the entry of an EPO does not. The court may, however, order AP not to possess a firearm as an express term of the EPO. Also, having gun prohibition as an express term of the order enables state law enforcement agencies to enforce the provision.

See U.S. v. Calor, 172 F.Supp.2d 900 (E.D. Ky. 2001). The court held it did not violate constitutional law when weighing respondent's private property right against governmental interest in protecting victim of domestic violence, and considering the short duration of the order.

2. Motion for relief in petition for TIPO/IPO.

Petitioner may request in a petition for a TIPO/IPO that the adverse party be restrained from:

- a. Committing further acts of dating violence and abuse, stalking, or sexual assault;
- b. Any unauthorized contact or communication with the petitioner or other person specified by the court;
- c. Approaching the petitioner or other person specified by the court within a distance specified in the order, not to exceed five hundred feet;
- d. Going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located; and
- e. Disposing of or damaging any of the property of the parties.
- f. The court may also direct or prohibit any other actions it believes will be of assistance in eliminating future acts of dating violence and abuse, stalking, or sexual assault, except that the court shall not order petitioner to take any affirmative action.

*While the legislative intent is clearly stated in Chapter 456 as not intending to trigger the application of the federal gun ban found in 18 U.S.C. § 922(g), it is possible given the individual circumstances of the case, that a state court*

*could prohibit a respondent from possessing a firearm as an express term of the IPO.*

- g. The court may also direct that either or both of the parties receive counseling services available in the community in dating violence and abuse cases.<sup>54</sup>
- 3. Relief available when IPO entered upon criminal conviction in stalking, rape, sodomy, and sexual abuse cases.

**NOTE:** There is no process for entering a *temporary* interpersonal protective order upon a criminal conviction for stalking, rape, sodomy, or sexual abuse. Upon a conviction, the victim in the criminal case is eligible for an interpersonal protective order (IPO) for up to ten years. Available relief is included in part IV of this overview.

### III. ISSUANCE OF EPO AND/OR SUMMONS OR TIPO AND/OR SUMMONS

#### A. Review of Petition

- 1. Review of petition for emergency protective order.
  - a. The court reviews the petition immediately upon its filing.<sup>55</sup>
  - b. EPO – standard for review of petition.
    - i. If the court determines after review the allegations contained in the petition for an order of protection indicates domestic violence and abuse exists, the court shall summons the parties to an evidentiary hearing not more than fourteen days in the future. If the court determines that such a basis does not exist, it may consider an amended petition or dismiss the petition without prejudice.<sup>56</sup>
    - ii. Pursuant to KRS 403.730(2)(a) (upon January 1, 2016), if the court determines after review that the allegations contained in the petition also indicate the presence of an immediate and present danger of domestic violence and abuse, the court shall issue, upon proper motion, *ex parte*, an emergency protective order that:

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<sup>54</sup> KRS 456.060(1), effective Jan. 1, 2016.

<sup>55</sup> KRS 403.730(1)(a), effective Jan. 1, 2016.

<sup>56</sup> *Id.*

- a) Authorizes relief appropriate to the situation utilizing the alternatives set out in the Act;
    - b) Expires upon the conclusion of the evidentiary hearing, unless extended or withdrawn by subsequent order of the court; and
    - c) Does not order or refer parties to mediation unless requested by petitioner, and court finds petitioner's request is voluntary and not coerced, and mediation is a realistic and viable alternative to or adjunct to issuance of an order sought by petitioner.
  - iii. If an EPO is not issued, the court shall note on the petition, for the record, any action taken or denied and the reason for it.<sup>57</sup>
  - c. A court shall not require mediation, conciliation, or counseling prior to or as a condition of issuing an order of protection.<sup>58</sup>
- 2. Family Court Rules of Procedure and Practice 10. Issuance of Summons
  - a. If insufficient relationship and failure to state act or threat of domestic violence between parties, judge notes reason for denial on petition, and no summons is issued.
  - b. If relationship is one recognized and there is a finding of domestic violence and abuse, and a finding of an immediate and present danger, an EPO and summons is issued.
  - c. If court recognizes domestic violence and abuse exists but finds no immediate and present danger, when relationship is one recognized, a summons is issued and hearing held to determine if a domestic violence order should be issued.
- 3. Review of petition for temporary interpersonal protective order.
  - a. The court shall review the petition immediately upon its filing.<sup>59</sup>

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<sup>57</sup> KRS 403.730(2)(b), effective Jan. 1, 2016.

<sup>58</sup> KRS 403.745(3), effective Jan. 1, 2016.

<sup>59</sup> KRS 456.040(1)(a), effective Jan. 1, 2016.

- b. TIPO – standard for review of petition.
- i. If the court determines after review, the allegations contained in the petition for an interpersonal protective order indicate that dating violence and abuse, stalking, or sexual assault exists, the court shall summons the parties to an evidentiary hearing not more than fourteen days in the future. If the court determines that such a basis does not exist, it may consider an amended petition or dismiss the petition without prejudice.<sup>60</sup>
  - ii. If the court determines after review the allegations contained in the petition for an IPO also indicate the presence of an immediate and present danger of dating violence and abuse, stalking, or sexual assault, the court shall issue, upon proper motion, *ex parte*, a temporary interpersonal protective order that:
    - a) Authorizes relief appropriate to the situation utilizing the alternatives set out in the Act;
    - b) Expires upon the conclusion of the evidentiary hearing, unless extended or withdrawn by subsequent order of the court; and
    - c) Does not order or refer parties to mediation unless requested by petitioner, and court finds petitioner's request is voluntary and not coerced, and mediation is a realistic and viable alternative to or adjunct to issuance of an order sought by petition.<sup>61</sup>
  - iii. If a temporary interpersonal protective order (TIPO) is not issued, the court shall note on the petition, for the record, any action taken or denied and the reason for it.<sup>62</sup>

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<sup>60</sup> *Id.*

<sup>61</sup> KRS 456.040(2)(a), effective Jan. 1, 2016.

<sup>62</sup> KRS 456.040(2)(b), effective Jan. 1, 2016.

B. Service of Court Order and Summons for EPO and TIPO

1. Personal service required.

- a. Service of summons and hearing order shall be made upon the adverse party personally. A summons may be reissued if service has not been made on the adverse party by the fixed court date and time.<sup>63</sup>
- b. The EPO or TIPO is binding on the respondent when respondent is given notice of the existence and terms of the order by a peace officer or the court or upon personal service of the order, whichever is earlier.<sup>64</sup>

2. Continuance of EPO or TIPO for non-service.

- a. If the adverse party is not present at the hearing and has not been served, the previously issued EPO or TIPO shall remain in place, and the court shall direct the issuance of a new summons for a hearing set not more than fourteen (14) days in the future. The court shall repeat the process of continuing the hearing and reissuing a new summons until AP served in advance of the scheduled hearing.<sup>65</sup>
- b. In Daugherty v. Telek, 366 S.W.3d 463 (Ky. 2012), the Kentucky Supreme Court overruled the Kentucky Court of Appeals decision which had held that continuing an EPO beyond fourteen (14) days from its issuance resulted in a loss of subject matter jurisdiction to hear the case, reissue an EPO, or enter a DVO. In its decision, the Court held that continuing an EPO hearing beyond fourteen (14) days from the date of issuance of the EPO does not result in a loss of subject matter jurisdiction, and that, "like virtually any other hearing conducted in our courts, the full hearing on a DVO may be rescheduled as the circumstances may reasonably require." This appeal initially arose out of a pre-Amanda's Law lower court decision, leaving the question as to how the Court would interpret KRS 403.740 in a case arising after Amanda's Law was passed.
- c. In Guenther v. Guenther, 379 S.W.3d 796 (Ky. App 2012), the Kentucky Court of Appeals held that the continuance of a DVO hearing is permissible when within the sound discretion of the court, and lower court held to have

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<sup>63</sup> KRS 403.730(1) and KRS 456.040(1), effective Jan. 1, 2016.

<sup>64</sup> KRS 403.745(1) and KRS 456.070(1), effective Jan. 1, 2016.

<sup>65</sup> KRS 403.735(2)(a) and KRS 456.050(2)(a), effective Jan. 1, 2016.

properly exercised its subject matter jurisdiction when it continued the DVO hearing. The DVO was vacated, however, because of insufficient evidence that domestic violence would occur again.

3. Seventy-two (72) hour notice requirements for DVO and IPO hearing.
  - a. If adverse party is not served prior to seventy-two (72) hours before the scheduled hearing, the EPO or TIPO remains in place and the court continues the hearing, issuing a new summons with a date and time for the hearing to occur within fourteen (14) days.<sup>66</sup>
  - b. The process is repeated until the adverse party is served at least seventy-two (72) hours in advance of the scheduled hearing.<sup>67</sup>
  - c. The court is required to transmit a copy of the summons or notice of its issuance and provisions to the petitioner.<sup>68</sup>
4. Family Court Rules of Procedure and Practice 12. Reissuance of EPO upon Transfer to Another Circuit

When local domestic violence protocol requires that a case be transferred to another circuit due to a pending dissolution case, EPO shall continue and summons is re-issued by initiating court, for a period not to exceed fourteen days if service not made on AP by date of transfer, or as court determines necessary for protection of petitioner.

5. Procedure if unable to serve EPO or TIPO on adverse party within six months.
  - a. The provisions of Chapter 403 and 456 allowing for the continuance of an EPO or TIPO for non-service shall be limited to six months (6) from the date of issuance of the EPO or TIPO.<sup>69</sup>
  - b. If respondent is not served within the six (6) month period, the EPO or TIPO shall be rescinded without prejudice. Prior to expiration of the EPO or TIPO, the court shall

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> KRS 403.735(2)(b) and KRS 456.050(2)(b), effective Jan. 1, 2016.

provide notice to the petitioner of the impending expiration of their un-served EPO or TIPO, stating that if petitioner does not file a new petition the order shall be rescinded without prejudice.<sup>70</sup>

#### IV. ENTRY OF DOMESTIC VIOLENCE ORDER OR INTERPERSONAL PROTECTIVE ORDER

##### A. Hearing for DVO or IPO Generally

1. Supreme Court of Kentucky, Family Court Rules of Procedure and Practice (FCRPP) 11. Contempt Proceedings

"No petitioner shall be held in contempt for failure to appear at a domestic violence hearing or failing to prosecute a civil or criminal contempt violation of a protective order except for good cause shown on the record. Failure to appear may result in denial of petition."

2. Respondent's Kentucky criminal protective order history and compliance records may be considered.

Prior to or at the hearing for a DVO/IPO the court may obtain respondent's Kentucky criminal and protective order history and utilize that information to assess what relief and which sanctions may protect against danger to the petitioner or other person for whom protection is being sought, with the information so obtained being provided to the parties.<sup>71</sup>

3. Discovery in domestic violence cases.
  - a. A primary legislative intent of KRS 403.715 to 403.785 is to allow victims to obtain effective, short-term protection against further wrongful conduct in order that their lives may be as secure and as uninterrupted as possible.<sup>72</sup>
  - b. While Hohman v. Dery held it was not an abuse of discretion to deny respondent's request to continue hearing to depose petitioner given legislative purpose stated in KRS 403.715(1), in Wolfe v. Wolfe, 393 S.W.3d 42 (Ky. App. 2013), the Court held that the time limits in domestic violence cases do not conflict with the civil rules, as domestic violence cases may be continued.

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<sup>70</sup> *Id.*

<sup>71</sup> KRS 403.735(1)(a) and KRS 456.050(1)(a), effective Jan. 1, 2016.

<sup>72</sup> KRS 403.715(1).

4. Court shall not require mediation, conciliation, or counseling prior to or as a condition of issuing an order of protection.<sup>73</sup>
5. Testimony offered by an adverse party in a hearing ordered pursuant to KRS 403.730 shall not be admissible in any criminal proceeding involving the same parties, *except for purposes of impeachment*.<sup>74</sup>

Under current law, testimony given at DVO hearing would have been inadmissible to impeach alleged perpetrator during his criminal proceeding arising from the same incident.<sup>75</sup>

6. Petitioner or Respondent is a minor.

If petitioner or respondent in a DVO or IPO hearing is a minor, the court shall inquire whether parties attend school in same school system to assist court in imposing conditions in order that have the least disruption in the administration of education to the parties while providing appropriate protection to the petitioner.<sup>76</sup>

7. Referral to the county attorney's office.

In cases where criminal conduct is alleged, a court may suggest that a petitioner voluntarily contact the county attorney. A court may not withhold or delay relief if the petitioner elects to not contact the county attorney.<sup>77</sup>

8. Mutual orders.

- a. Mutual orders of protection (DVOs and IPOs) may be issued only if separate petitions have been filed by both parties, and the orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order.<sup>78</sup>
- b. Requirement of separate petition and hearing before a cross-DVO can be entered.<sup>79</sup>

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<sup>73</sup> KRS 403.735(1)(a) and KRS 456.070(3), effective Jan. 1, 2016.

<sup>74</sup> KRS 403.745(6) and KRS 456.070(6), effective Jan. 1, 2016.

<sup>75</sup> Barnes v. Jevning, No. 2011-CA-001214-ME, 2012 WL 592411 (Ky. App. Feb. 24, 2012).

<sup>76</sup> KRS 403.735(1)(b) and KRS 456.050(1)(b), effective Jan. 1, 2016.

<sup>77</sup> KRS 403.745(7)(b), effective Jan. 1, 2016.

<sup>78</sup> KRS 403.745(4) and KRS 456.070(4), effective Jan. 1, 2016.

<sup>79</sup> Manning v. Willett, 221 S.W.3d 394 (Ky. App. 2007).

B. Legal Proof Required for Entry of Order of Protection

1. Standard of proof for a domestic violence order (DVO).

a. Following the hearing, the court must find from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may occur again.<sup>80</sup>

i. "The preponderance of the evidence standard is met when sufficient evidence establishes that the alleged victim 'was more likely than not to have been a victim of domestic violence.'"<sup>81</sup>

ii. In Hohman v. Dery, 371 S.W.3d 780 (Ky. App. 2012), the Court of Appeals affirmed a DVO entered by the Family Court based on respondent's actions which placed petitioner in fear of imminent physical harm. Petitioner had not suffered physical injury or assault, but respondent engaged in stalking behavior, driving up and down street in front of her boyfriend's house, contacting her by phone and text messages several times per day, using derogatory language and threatening suicide. Respondent also became aggressive when discussing arrangements for their child, causing petitioner to fear for her safety. The Court also held that it did not constitute an abuse of discretion to deny respondent's request to continue hearing to depose petitioner, as a timely hearing is essential to the purpose of KRS 403.715(1).

b. Full evidentiary hearing required.

i. A full evidentiary hearing is required before DVO can be entered.<sup>82</sup>

ii. In Rankin v. Criswell, 277 S.W.3d 621 (Ky. App. 2008), the court reiterated the holding in Wright, noting that a full evidentiary hearing is required, the rules of evidence apply, and that hearsay noted in a petition may not be admitted as evidence unless an exception applies.

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<sup>80</sup> KRS 403.740(1), effective Jan. 1, 2016.

<sup>81</sup> Baird v. Baird, 234 S.W.3d 385, 387 (Ky. App. 2007) (*quoting* Com. v. Anderson, 934 S.W.2d 276, 278 (Ky.1996)).

<sup>82</sup> See, e.g., Wright v. Wright, 181 S.W.3d 49 (Ky. App. 2005).

- c. Testimony taken at any hearing or other proceeding authorized by KRS 403.715 to 403.785 must be taken under oath.

In Carpenter v. Schlomann, 336 W.W.3d 129 (Ky. App. 2011), the court decided to vacate the DVO. Appellee testified Appellant had struck him with a piece of lumber nearly a year ago and attacked him while he was taking her to the hospital several weeks earlier. Lower court erred because the DVO was issued prior to a full hearing. Appellant gave brief testimony but was never sworn, so the lower court failed to conduct a full hearing.

2. Legal proof required for entry of an interpersonal protective order (IPO).

Following the hearing, if the court finds by a *preponderance of the evidence* that dating violence and abuse, sexual assault, or stalking has occurred and may again occur, the court may issue an interpersonal protective order for a period of up to three years.<sup>83</sup>

3. Legal proof required for entry of an IPO upon criminal conviction.

An IPO in a criminal case is entered upon a verdict of guilty or plea of guilty in a criminal case of stalking under KRS 508.140 or 508.150, or any degree of rape, sodomy or sexual abuse case under KRS Chapter 510. The burden of proof applied in a criminal case is *beyond a reasonable doubt*, so that is the burden of proof that must be met before an IPO is entered in a criminal case.

#### C. Relief Available

1. DVO relief available – KRS 403.740.

- a. Following hearing, if the court finds by a preponderance of the evidence that domestic violence and abuse has occurred and may occur again, a DVO can be entered for a period of up to three years and may be reissued upon expiration for subsequent periods of up to three years each. The fact that an order has not been violated since its issuance *may* be considered by a court in hearing a request for a reissuance of the order.<sup>84</sup>

- b. The court may order any of the following relief in the DVO:

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<sup>83</sup> KRS 456.040(1)(a), effective Jan. 1, 2016.

<sup>84</sup> KRS 403.740, effective Jan. 1, 2016.

- i. Restrain adverse party (AP) from committing further acts of domestic violence and abuse.
- ii. Restrain AP from any unauthorized contact or communication with petitioner or other person specified by the court.
- iii. Restrain AP from disposing of or damaging any property of the parties.
- iv. Restrain AP from approaching the petitioner or other person specified by the court, within a distance specified in the order, not to exceed 500 feet.
- v. Restrain AP from going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located.
  - a) This information is not considered confidential and the physical address of the location will be available to the Respondent.
  - b) The court shall afford an opportunity for parties to testify on issue of locations and areas from which respondent should or should not be excluded.
  - c) Only impose a location restriction where there is a specific, demonstrable danger to petitioner or other person protected by the order.
  - d) Consider structuring a restriction so as to allow respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm, or attempt to harass or harm the petitioner.
- vi. Restrain AP from damaging or disposing of any of the property of the parties.
- vii. Enter other orders that direct or prohibit other actions it believes would assist in eliminating future acts of domestic violence and abuse, except it cannot order the use of a global positioning monitoring system in the initial DVO.

- viii. Order that either or both of the parties receive counseling services available in the community in domestic violence and abuse cases.
- ix. Order that AP be ordered to vacate residence shared by the parties.
- x. Grant temporary child custody to the Petitioner, utilizing criteria set forth in KRS 403.270, 403.320, and 403.822.
- xi. Order child support, utilizing criteria in KRS 403.211, 403.212, and 403.213.

When temporary child support is granted, a court shall enter an order detailing how the child support is to be paid and collected.

- xii. Order AP not to possess a firearm. While the entry of a DVO automatically triggers the federal gun ban in 18 U.S.C. §922(g), the court may order AP not to possess a firearm as an express term of the DVO, thereby enabling local law enforcement to enforce this provision, and allowing violations to be prosecuted in Kentucky's state courts.

2. IPO relief available.

- a. Following hearing, if the court finds by a preponderance of the evidence that dating violence and abuse, sexual assault, or stalking has occurred and may occur again, a IPO can be entered for a period of up to three years and may be reissued upon expiration for subsequent periods of up to three years each. The fact that an order has not been violated since its issuance *may* be considered by a court in hearing a request for a reissuance of the order. (emphasis added).<sup>85</sup>
- b. The court may order any of the following relief in an IPO:
  - i. Restrain AP from committing further acts of dating violence and abuse, stalking, or sexual assault.
  - ii. Restrain AP from having any unauthorized contact or communication with the petitioner or other person specified by the court.
  - iii. Restrain AP from approaching the petitioner or other person specified by the court within a

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<sup>85</sup> KRS 456.060(1) and (3), effective Jan. 1, 2016.

distance specified in the order, not to exceed five hundred feet.

- iv. Restrain AP from going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located.
  - a) **This information is not considered confidential and the physical address of the location will be available to the Respondent.**
  - b) The court shall afford an opportunity for parties to testify on issue of locations and areas from which respondent should or should not be excluded.
  - c) Only impose a location restriction where there is a specific, demonstrable danger to petitioner or other person protected by the order.
  - d) Consider structuring a restriction so as to allow respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm, or attempt to harass or harm the petitioner.
- v. Restrain AP from disposing of or damaging any of the property of the parties.
- vi. Enter other orders that direct or prohibit any other actions the court believes will be of assistance in eliminating future acts of dating violence and abuse, stalking, or sexual assault, except that the court shall not order petitioner to take any affirmative action.

While the legislative intent is clearly stated in Chapter 456 as not intending to trigger the application of the *federal gun ban* found in 18 U.S.C. §922(g), it is possible given the individual circumstances of a case, that a state court could prohibit a respondent from possessing a firearm as an express term of the IPO.

- vii. Direct that either or both of the parties receive counseling services available in the community in dating violence and abuse cases.<sup>86</sup>
- 3. IPO entered upon criminal conviction for stalking, rape, sodomy, or sexual Abuse – relief available.
  - a. A victim in a criminal stalking case under KRS 508.140 or 508.150, or a rape, sodomy, or sexual abuse case under KRS Chapter 510, is eligible for a an IPO for a period of up to ten years, upon a verdict or plea of guilty.<sup>87</sup>
  - b. The court may order any of the following relief in an IPO issued pursuant to a criminal conviction for stalking, rape, sodomy, or sexual abuse:
    - i. Restrain the defendant from entering the residence, property, school, or place of employment of the victim.
    - ii. Restrain defendant from making contact with the victim, including an order forbidding the defendant from personally, or through an agent, initiating any communication likely to cause serious alarm, annoyance, intimidation, or harassment, including but not limited to personal, written, telephonic, or any other form of written or electronic communication or contact with the victim.
    - iii. An order entered relating to a school, place of business, or similar nonresidential location shall be sufficiently limited to protect the stalking victim but shall also protect the defendant's right to employment, education, or the right to do legitimate business with the employer of the victim.
    - iv. These provisions shall not apply to contact by an attorney regarding a legal matter.<sup>88</sup>

D. Mutual Civil Restraining Orders (MCO)

- 1. A common practice among family law attorneys involves agreeing to dismiss an emergency protective order or domestic violence order, instead entering into a mediated agreement called a mutual civil restraining order, sometimes referred to as a "civil order,"

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<sup>86</sup> KRS 456.060(1)(a)-(c), effective Jan. 1, 2016.

<sup>87</sup> KRS 508.155 and KRS 510.037, effective Jan. 1, 2016.

<sup>88</sup> KRS 508.155(4)(a) and (b), effective Jan. 1, 2016.

which is then entered into another type of family law case, *i.e.*, divorce, custody, child support, or paternity. This is a dangerous practice, which creates the illusion of safety for a victim of domestic violence, while actually providing almost no protection for victims, and can actually increase their risk of harm.

2. Some of the problems with MCOs are:
  - a. MCOs arising out of domestic violence court violate the statute's prohibition against mutual protective orders without the filing of a separate petition, and fails to provide adequate notice to the petitioner that an order might actually be entered against them as well, which violates petitioner's due process rights.
  - b. MCOs are mediated agreements, which are not advisable in situations where there is a great imbalance of power, as is the case in domestic violence cases.
  - c. Mutual orders of this kind can be used to further control victims of domestic violence or interpersonal violence. A respondent can retaliate against the petitioner, making false claims against them of violating the mutual order and filing contempt charges against them.
  - d. Victims are often pressured into agreeing to a mutual civil order by counsel for respondent, their own counsel, and/or the Court.
  - e. An MCO is not entered into the LINK system.
  - f. Violation of a MCO is not a crime, and there is no arrest if violated.
  - g. If MCO is violated, a victim must file a motion to hold their abuser in contempt, have the motion served on the respondent, the case must be docketed, a right to counsel secured for respondent, and a hearing held. If a victim is unrepresented, this process can be very burdensome and for some, next to impossible.
  - h. MCOs are usually drafted in *mutual* language, which assigns equal blame to both parties and fails to hold the batterer accountable, creating further risk to the petitioner.
  - i. If not properly worded with necessary findings of fact, full faith and credit and the federal gun prohibition will not apply. Even if the order is carefully crafted to bring the order within the scope of these federal laws, it is not entered into LINK, there is no record of it with law

enforcement, and the FBI will not be alerted if respondent attempts to purchase a firearm.

- j. Petitioners are often told that MCOs are *basically the same thing* as a domestic violence order, agreeing to them without understanding what they are and the protections they are giving up by dismissing their order of protection.
- k. MCOs are virtually invisible to courts, first responders, and prosecutors. They are not entered into the LINK system and do not appear on any record search.
- l. MCOs not only jeopardize the safety of victims, but they also jeopardize the safety of other people who attempt to assist victims or come in contact with them.

#### E. Post Hearing Matters

- 1. Motion to amend – Upon proper filing of a motion, either party may seek to amend an order of protection.<sup>89</sup>
- 2. Reissuance of DVOs and IPOs.
  - a. A DVO or IPO may be reissued upon expiration for subsequent periods of up to three years each. The fact that an order has not been violated since its issuance may be considered by a court in hearing a request for a reissuance of the order.<sup>90</sup>
  - b. Violation of DVO not required for extension. "The fact that DVO has been effective in preventing acts of domestic violence and abuse is not a reason to require the court to remove the protection that had previously been afforded to the victim, but must merely be factor for the court to consider when faced with a request to reissue the DVO."<sup>91</sup>
- 3. Right to appeal – Appeals are made to the Kentucky Court of Appeals in jurisdictions with Family Courts and to the Circuit Court where domestic violence hearings are heard in district court. IPOs heard in Circuit Court will be appealed to the Kentucky Court of Appeals, and those heard in District Court will be appealed to Circuit Court.

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<sup>89</sup> KRS 456.070(5), effective Jan. 1, 2016.

<sup>90</sup> KRS 456.060(3), effective Jan. 1, 2016.

<sup>91</sup> Kessler v. Switzer, 289 S.W.3d 223 (Ky. App. 2009); see also Kingrey v. Whitlow, 150 S.W.3d 67 (Ky. App. 2004).

"On appeal, we are mindful of the trial court's opportunity to assess the credibility of the witnesses, and we will only disturb the lower court's finding of domestic violence if it was clearly erroneous."<sup>92</sup>

4. Expungement.

If petition for an order of protection under Chapter 403 or 456 did not result in the issuance of an order of protection, court may for good cause shown order expungement of the records of case if:

- a. Six months have elapsed since case was dismissed; and
- b. During the six months preceding the expungement request, the respondent has not been bound by an order of protection issued for the protection of any person, including an IPO issued under Chapter 456.
- c. "Expungement" in this subsection has the same meaning as in KRS 431.079.<sup>93</sup>

**V. ORDERS OF PROTECTION – ENFORCEMENT AND VIOLATIONS**

A. Enforcement

1. EPO/DVO and TIPO/IPO.

- a. The EPO/DVO or TIPO/IPO is binding on the respondent when respondent is given notice of the existence and terms of the order by a peace officer or the court or upon personal service of the order, whichever is earlier. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation.<sup>94</sup>
- b. An order of protection shall be enforced in any county of the Commonwealth. Law enforcement officers acting in good faith in enforcing an order of protection shall be immune from criminal and civil liability.<sup>95</sup>
- c. A court issuing an order of protection shall direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with.<sup>96</sup>

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<sup>92</sup> Buddenberg v. Buddenberg, 304 S.W.3d 717, 720 (Ky. App. 2010).

<sup>93</sup> KRS 456.070(10)(a) and (b).

<sup>94</sup> KRS 403.745(5) and KRS 456.070(1), effective Jan. 1, 2016.

<sup>95</sup> KRS 403.785(3)-(4) and KRS 456.090(3)-(4), effective Jan. 1, 2016.

<sup>96</sup> KRS 403.785(1) and KRS 456.090(1), effective Jan. 1, 2016.

- d. To assist a court of another state in determining whether a protective order issued under Chapter 403 or Chapter 456 is entitled to full faith and credit pursuant to 18 U.S.C. §2265:
    - i. All DVOs and IPOs shall include a statement certifying that issuing court had jurisdiction over the parties and the matter, and that reasonable notice and an opportunity to be heard has been given to the AP, sufficient to protect their due process rights. AOC shall prescribe form to be used.<sup>97</sup>
    - ii. EPOs and TIPOs shall include a statement certifying that notice and opportunity to be heard has been provided within the time required by state law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.<sup>98</sup>
  - e. If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules.<sup>99</sup>
2. Enforcement of IPO issued pursuant to criminal conviction for stalking, rape, sodomy, or sexual abuse.

A restraining order issued under this section shall be enforced in any county of the Commonwealth. Law enforcement officers acting in good faith in enforcing a restraining order shall be immune from criminal and civil liability.<sup>100</sup>

## B. Violations

1. EPO/DVO and TIPO/IPO.
  - a. Any peace officer having probable cause to believe a violation has occurred of an order of protection after service on the respondent or the respondent has been given notice shall arrest the respondent without a warrant.<sup>101</sup>

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<sup>97</sup> KRS 403.7524(1)(a), (2) and KRS 456.130(1)(a), (2), effective Jan. 1, 2016.

<sup>98</sup> KRS 403.7524(1)(b) and KRS 456.130(1)(b), effective Jan. 1, 2016.

<sup>99</sup> KRS 403.725(8) and KRS 456.030(8).

<sup>100</sup> KRS 508.155(9), effective Jan. 1, 2016.

<sup>101</sup> KRS 431.015(1)(c), effective Jan. 1, 2016.

- b. A person is guilty of a violation of an order of protection when he or she intentionally violates the provisions of an order of protection after being served or given notice of the order.<sup>102</sup>
  - c. Violation of terms or conditions of order of protection after the person has been served or given notice of the order shall constitute contempt of court and a criminal offense. Once a criminal or contempt proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.<sup>103</sup>
    - i. Contempt of court proceedings for violation of an order of protection are held in the county where the order was issued.
    - ii. Court proceedings for criminal violation take place in the county where the criminal act occurred.
  - d. A criminal violation of an order of protection is a class A misdemeanor, punishable by up to one year in jail, when respondent intentionally violates protective order with which he or she has been served or has been given notice of.<sup>104</sup>
  - e. Nothing prevents the Commonwealth from prosecuting and convicting the respondent of criminal offenses other than violation of an order of protection.<sup>105</sup>
  - f. Family Court Rules of Procedure and Practice 11. Contempt Proceedings
 

"When contempt proceedings occur in domestic violence actions, party subject to contempt shall be represented by counsel unless waived, and court to appoint attorney if party is indigent."
2. Violation of IPO issued pursuant to criminal conviction for stalking, rape, sodomy, or sexual abuse.

A violation by defendant of an order issued pursuant to this section is a Class A misdemeanor, and is punishable by up to one

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<sup>102</sup> KRS 403.763(4)(a) and KRS 456.180(4)(a), effective Jan. 1, 2016.

<sup>103</sup> KRS 403.763(1) and KRS 456.180(1), effective Jan. 1, 2016.

<sup>104</sup> KRS 403.763(4)(b) and KRS 456.180(4)(b), effective Jan. 1, 2016.

<sup>105</sup> KRS 403.763(3) and KRS 456.180(3), effective Jan. 1, 2016.

year in jail. Nothing shall preclude the filing of a criminal complaint based on the same act which is the basis for the violation of the restraining order.<sup>106</sup>

C. Global Positioning Monitoring System (GPMS)

1. Global positioning monitoring system newly defined – effective January 1, 2016.

*"Global positioning monitoring system" means a system that electronically determines a person's location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person's latitude and longitude data to a monitoring entity.*<sup>107</sup>

2. When can a GPMS be ordered?

- a. DVO AND IPO.

A GPMS **cannot** be ordered in an emergency protective order (EPO) or in a temporary interpersonal protective order (TIPO). Similarly, a GPMS cannot be ordered in an initial domestic violence order (DVO) or an initial interpersonal protective order (IPO).<sup>108</sup>

- b. Upon a Petitioner's request and after an evidentiary hearing, a court may amend a DVO or an IPO to require a respondent to participate in a GPMS if:

- i. The respondent has committed a *substantial violation* of a previously entered DVO or IPO;
- ii. The court has reviewed an updated history of the respondent's Kentucky criminal and protective order history; and
- iii. The court makes a factual determination that the use of a GPMS would increase the petitioner's safety.<sup>109</sup>

- c. A "substantial violation" of either a DVO or an IPO is defined as criminal conduct which involves actual or

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<sup>106</sup> KRS 508.155(10), effective Jan. 1, 2016.

<sup>107</sup> KRS 403.720(4) and KRS 456.010(4), effective Jan. 1, 2016.

<sup>108</sup> KRS 403.761(1) and KRS 456.100(1), effective Jan. 1, 2016.

<sup>109</sup> *Id.*

threatened harm to the person, family, or property of an individual protected by an order of protection.<sup>110</sup>

- d. AOC shall prepare a publicly available informational pamphlet containing information on the method of applying for, hearing, amending, and terminating an order requiring participation in a global positioning monitoring system.<sup>111</sup>
3. An order for GPMS must include:
    - a. State with specificity the locations or areas where the respondent is prohibited from being located or persons with whom the respondent shall have no contact;
    - b. Require respondent to pay the cost of participation up to their ability to pay;
    - c. The date that the order expires which shall not be longer than the date the order of protection expires, but may be extended if the order of protection is extended;
    - d. Require the entity operating the monitoring system to immediately notify the petitioner, local law enforcement agency named in the order, and the court if a respondent violates the order; and
    - e. Any other information the court deems appropriate.<sup>112</sup>
  4. Who pays for the cost of monitoring?
    - a. The respondent is responsible for paying the costs associated with operating the global positioning monitoring system up to their ability to pay. The operator bears any uncovered costs for indigent respondents.<sup>113</sup>
    - b. The Supreme Court may establish by rule a sliding scale of payment responsibility for indigent defendants for use in establishing required payments.<sup>114</sup>

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<sup>110</sup> KRS 403.720(7) and KRS 456.010(8), effective Jan. 1, 2016.

<sup>111</sup> KRS 403.761(3) and KRS 456.100(1), effective Jan. 1, 2016.

<sup>112</sup> KRS 403.761(2) and KRS 456.100(2), effective Jan. 1, 2016.

<sup>113</sup> *Id.*

<sup>114</sup> KRS 403.761(4)(a) and KRS 456.100(4)(a), effective Jan. 1, 2016.

- c. A person, county, or other organization may voluntarily agree to pay all or a portion of respondent's monitoring costs.<sup>115</sup>
- 5. Duration of the order.
  - a. The GPMS cannot be in place longer than the duration of the order of protection. It can be extended if the order of protection is extended.
  - b. An order requiring participation in the GPMS can be shortened or vacated by the court either:
    - i. Upon request of the petitioner
    - ii. Upon request of the respondent at an evidentiary hearing if respondent has not violated the order, and
      - a) Three months have elapsed since entry of the order, and
      - b) No previous request has been made by respondent in previous six months.<sup>116</sup>
- 6. Response to violations of GPMS.
  - a. The court must provide to the petitioner who participates in a GPMS, the name and telephone number of an appropriate local law enforcement agency in the county in which the order is issued who the petitioner may call to request immediate assistance if the respondent violates a condition of the order of protection.
  - b. A respondent who fails to wear, removes, tampers with, or destroys a GPMS device they have been ordered to wear, shall be guilty of a Class D felony, punishable by up to five years in prison.<sup>117</sup>

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<sup>115</sup> KRS 403.761(4)(b) and KRS 456.100(4)(b), effective Jan. 1, 2016.

<sup>116</sup> KRS 403.761(5) and KRS 456.100(5), effective Jan. 1, 2016.

<sup>117</sup> KRS 403.761(6) and KRS 456.100(6), effective Jan. 1, 2016.

## VI. FOREIGN PROTECTIVE ORDERS

### A. Presumption of Validity

Presumption of Validity: All foreign protective orders (FPO) have the rebuttable presumption of validity. Only a court of competent jurisdiction can determine the validity of a FPO. Until declared to be invalid by a court of competent jurisdiction, it shall be given full faith and credit by all peace officers of the Commonwealth.<sup>118</sup>

### B. Filing of FPO

#### 1. Copy of FPO may be filed.

A copy of a FPO may be filed in the office of the clerk of any court of competent jurisdiction of this state. While a person seeking to enforce their order does not have to file it in order for it to be enforceable, filing a FPO will enable it to be entered into LINK, thereby improving the ability of law enforcement to respond to a violation of the order. A FPO so filed shall have same effect and be enforced in the same manner as an order of protection of this state.<sup>119</sup>

#### 2. Affidavit required for filing.

At time of filing the FPO, the person filing the order shall file with the clerk of the court an affidavit on an AOC prescribed form. The affidavit shall include:

- a. The name, city, county, and state or other jurisdiction of the issuing court.<sup>120</sup>
- b. The person shall certify in the affidavit the validity and status of the FPO, and attest to the person's belief that the order has not been amended, rescinded, or superseded by any orders from a court of competent jurisdiction.<sup>121</sup>
- c. All FPOs presented with a completed and signed affidavit shall be accepted and filed.<sup>122</sup>

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<sup>118</sup> KRS 403.7521(1) and KRS 456.120(1), effective Jan. 1, 2016.

<sup>119</sup> KRS 403.7527(1) and KRS 456.140(1), effective Jan. 1, 2016.

<sup>120</sup> KRS 403.7527(2)(a) and KRS 456.140(2)(a), effective Jan. 1, 2016.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

- d. The affidavit signed by the applicant shall include space where the reviewing judge shall place information necessary to allow the order's entry into LINK in the same manner as a Kentucky order.<sup>123</sup>
3. Filed with certified copy of FPO.

If the person seeking to file the order presents a certified copy of the order from the issuing court, the circuit clerk shall present it to the District or Circuit Judge, who shall read the order and enter on the affidavit information necessary for the order's entry into LINK. The order shall be accepted as authentic, current, and subject to full faith and credit.<sup>124</sup>

4. Filed without certified copy of FPO.
  - a. If FPO presented is current by the terms of the order but is not *certified* by the issuing court, the circuit clerk presents the order and affidavit to the District or Circuit Judge, who reads the order and enters information on the affidavit necessary to allow the order's entry into LINK.<sup>125</sup>
  - b. The order shall be subject to full faith and credit in the same manner as a Kentucky order of protection but shall be subject to verification by the circuit clerk.
    - i. The order shall be entered for fourteen days.<sup>126</sup>
    - ii. The circuit clerk shall contact the issuing court within two business days to request a certified copy of the order.<sup>127</sup>
    - iii. If circuit clerk receives a certified copy of the FPO within fourteen days, the clerk shall cause information that certification has been received to be entered into LINK and shall notify the applicant of the fact of its certification. A facsimile copy of the certified FPO will be acceptable for issuance of Kentucky order of protection.<sup>128</sup>

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<sup>123</sup> KRS 403.7527(2)(b) and KRS 456.140(2)(b), effective Jan. 1, 2016.

<sup>124</sup> KRS 403.7527(3)(a) and KRS 456.140(3)(a), effective Jan. 1, 2016.

<sup>125</sup> KRS 403.7527(3)(b) and KRS 456.140(3)(b), effective Jan. 1, 2016.

<sup>126</sup> *Id.*

<sup>127</sup> KRS 403.7527(3)(c) and KRS 456.140(3)(c), effective Jan. 1, 2016.

<sup>128</sup> *Id.*

- iv. If a certified copy of the FPO is not received within ten days, the clerk shall notify applicant on an AOC form that the order has not been received. Notice shall state that the FPO will be extended for another fourteen days, but will be dismissed at the expiration of that time.<sup>129</sup>
  - v. If the clerk informs the judge in writing that the certified FPO has been requested but not yet received, the judge shall extend the FPO for fourteen days.<sup>130</sup>
  - vi. If the circuit clerk has not received certification from the issuing jurisdiction within fourteen days, the order may be renewed once for an additional fourteen days.<sup>131</sup>
- c. If certification of the FPO is not received within twenty-eight days, the FPO shall expire and shall not be reissued.<sup>132</sup>
  - d. If applicant meets the qualifications for issuance of a Kentucky DVO, the court may, upon proper application and showing of evidence, issue a Kentucky protective order.<sup>133</sup>
  - e. The right of a person filing a foreign protective order to bring an action to enforce the order instead of proceeding with the filing of it remains unimpaired.<sup>134</sup>
5. Authentication.
- a. If court finds upon *ex parte* review of the FPO and affidavit that it is entitled to full faith and credit pursuant to 18 U.S.C. §2265, the court shall declare the FPO to be authenticated and record finding on the affidavit.<sup>135</sup>

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<sup>129</sup> KRS 403.7527(3)(d) and KRS 456.140(3)(d), effective Jan. 1, 2016.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> KRS 403.7527(4) and KRS 456.140(4), effective Jan. 1, 2016.

<sup>135</sup> KRS 403.7529(1) and KRS 456.150(1), effective Jan. 1, 2016.

- b. Upon authentication, the court shall notify the person who filed the FPO of the decision of the court and provide the person a certified copy of the affidavit declaring the authentication of the order.<sup>136</sup>

6. Obligation to inform the court of any changes to FPO.

A person who has filed a FPO in Kentucky is under an obligation to inform the court of any expiration, vacation, modification, or other change in the order within two working days of the occurrence, by notifying the clerk where filed, and presenting a copy of the order for authentication.<sup>137</sup>

Intentional failure of person who has filed a FPO to notify the court of any changes in their order within two working days of such change shall constitute contempt of court and may be grounds for an appropriate civil action brought by any person damaged by the intentional act of omission by the person failing to act.<sup>138</sup>

7. Circumstances clearing FPO from LINK.

- a. The order expires.
- b. A Kentucky court notifies LINK that the FPO has been dismissed.
- c. Circuit clerk notifies LINK that the FPO tendered has not been authenticated within the specified time limit.<sup>139</sup>

8. Annual validation by clerk.

For validation purposes, LINK shall provide the circuit court clerk with printouts of FPOs. The clerk shall validate FPOs annually by contacting the original issuing court or jurisdiction. If the clerk has not received information from the foreign jurisdiction within thirty-one days, the clerk shall cause those orders to be cleared from LINK.<sup>140</sup>

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<sup>136</sup> KRS 403.7529(3) and KRS 456.150(3), effective Jan. 1, 2016.

<sup>137</sup> KRS 403.7535(1) and KRS 456.170(1), effective Jan. 1, 2016.

<sup>138</sup> KRS 403.7535(4) and KRS 456.170(4), effective Jan. 1, 2016.

<sup>139</sup> KRS 403.7531(1)(a)-(c) and KRS 456.160(1)(a)-(c), effective Jan. 1, 2016.

<sup>140</sup> KRS 403.7531(2) and KRS 456.160(2), effective Jan. 1, 2016.

C. Enforcement and Violations of FPO

1. **Entry into LINK is not required for enforcement.**

The fact that a FPO is not filed or entered into LINK shall not be grounds for a peace officer not to enforce the order, unless it is readily apparent the FPO has expired according to date on the order, or provisions clearly do not prohibit conduct being complained of.<sup>141</sup>

2. Upon authentication the court shall direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with if applicable, and order its enforcement in any county of the Commonwealth in the same manner as a DVO of this state.<sup>142</sup>

3. All peace officers shall treat a FPO as a legal document valid in Kentucky, and shall make arrests for a violation thereof in the same manner as for a violation of an order of protection issued in Kentucky.<sup>143</sup>

4. No peace officer in Kentucky will be expected to enforce a change in the provisions of a FPO of which the court has not been given proper notice.<sup>144</sup>

5. Violation of Foreign Protective Order (FPO).

Civil proceedings and criminal proceedings for violation of a foreign protective order for the same violation shall be mutually exclusive. Once either proceeding has been initiated, the other shall not be undertaken, regardless of the outcome of the original proceeding.<sup>145</sup>

**VII. FEDERAL DOMESTIC VIOLENCE LAWS**

A. The Violence Against Women Act (VAWA)

1. Background.

*The Violence Against Women Act (VAWA) is a landmark piece of legislation that has resulted in improvements to criminal justice and community-based responses to domestic violence, dating*

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<sup>141</sup> KRS 403.7529(3) and KRS 456.120(1), effective Jan. 1, 2016.

<sup>142</sup> KRS 403.7529(2)(a)-(b) and KRS 456.150(2)(a)-(b), effective Jan. 1, 2016.

<sup>143</sup> KRS 403.7521(2) and KRS 456.140(2), effective Jan. 1, 2016.

<sup>144</sup> KRS 403.7535(3) and KRS 456.170(3), effective Jan. 1, 2016.

<sup>145</sup> KRS 403.7521(5) and KRS 456.180(5), effective Jan. 1, 2016.

*violence, sexual assault and stalking in the United States. The passage of VAWA in 1994, and its reauthorization in 2000, 2005, and 2013 has resulted in a paradigm shift in the way domestic violence, dating violence, sexual assault, and stalking cases are handled. Victims have been able to access services with increased protections for underserved and vulnerable populations; justice system professionals have become more effective in understanding and prosecuting these crimes; and community agencies have implemented policies, procedures, and training to educate their staff and improve their response to the needs of victims of domestic violence, dating violence, sexual assault, and stalking. Additionally, the VAWA created federal domestic violence crimes to be prosecuted by the Department of Justice, and amended the Gun Control Act to include domestic violence-related crimes.*

2. Full faith and credit provisions of VAWA 18 U.S.C. §2265.

Requires protective orders to be enforced in all fifty states, U.S. territories, the District of Columbia, and all tribal jurisdictions within the United States. Valid if the issuing court had personal and subject matter jurisdiction, and respondent had reasonable notice and an opportunity to be heard.

B. Federal Gun Control Act of 1968 as Amended by the Brady Handgun Violence Prevention Act of 1994 and the Lautenberg Amendment of 1996.

1. The Brady Gun Control Act of 1994.

The Brady Gun Control Act of 1994 prohibits under federal law a person subject to a *qualifying* state protection order from possessing, shipping, transporting or receiving any firearm or ammunition until expiration or termination of the Order.<sup>146</sup>

a. A "qualifying order of protection" is one entered following a hearing where the respondent had notice and an opportunity to be heard; was initiated by a person who is a spouse, former-spouse, intimate partner, or child of either party; and the court makes a finding that the respondent has harmed or threatened to harm petitioner and prohibits respondent from physically harming, threatening harm, stalking, or placing in fear of physical injury.<sup>147</sup>

b. Violation of the Gun Control Act is punishable by up to ten years in prison.

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<sup>146</sup> 18 U.S.C. §922(g)(8).

<sup>147</sup> *Id.* at §§922(g)(8), 921(32).

- c. It is also illegal to transfer a firearm to a person subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner.<sup>148</sup>
- 2. The official use exemption of 18 U.S.C. §925(a)(1).
    - a. The restrictions of §§922(d)(8) and (g)(8) do not apply to firearms issued by governmental agencies to a law enforcement officer or military personnel so long as the officer or military personnel is on duty. Personal firearms do not fall within this exemption nor may these personnel possess officially issued firearms when off duty.<sup>149</sup>
    - b. The official use exemption contained in 18 U.S.C. §925(a)(1) does not limit the ability of the court to exercise its discretion by entering any orders it believes will assist in the elimination of future acts of domestic violence and abuse, pursuant to KRS 403.740(f), such as ordering a law enforcement officer or military person not to be in possession of a firearm at any time while their DVO is in effect.
  - 3. The Lautenberg Amendment to the Brady Gun Control Act (enacted September 30, 1996).
    - a. It is a federal crime to possess, ship, transport or receive any firearm ammunition after conviction of a qualifying "misdemeanor crime of domestic violence."<sup>150</sup>
    - b. A "misdemeanor crime of domestic violence" means a criminal offense that:
      - i. Is a federal, state, local or tribal offense that is a misdemeanor under federal or state law;
      - ii. Has as an element the use or attempted use of "physical force," or the threatened use of a deadly weapon; and
      - iii. At the time the misdemeanor was committed the convicted offender was a current or former spouse, parent, or guardian of the victim, a person with whom the victim shared a child in common, and a

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<sup>148</sup> *Id.* at §922(d)(8).

<sup>149</sup> *Id.* at §925(a)(1).

<sup>150</sup> *Id.* at §922(g)(9).

person who was cohabiting with or had cohabited with the victim.

iv. In U.S. v. Castleman, 134 S.Ct. 1405 (2014), the U.S. Supreme Court adopted a broad definition of domestic violence, finding "physical force" under the Lautenberg Amendment to mean "offensive touching." A prior split among the circuits had interpreted "physical force" as a violent felony under the Armed Career Criminal Act.

c. The law can apply to persons who were convicted of a misdemeanor crime of domestic violence at any time, even before passage of the law in September 1996, with certain restrictions.

d. The official use exemption does not apply to §§922(d)(9) and 922(g)(9). This means that law enforcement officers or military personnel who have been convicted of a qualifying domestic violence misdemeanor will not be able to possess or receive firearms for any purpose, including the performance of official duties.

e. It is also illegal to transfer a firearm to a person convicted of a misdemeanor crime of domestic violence. A violation of §922(d)(9) must be knowing.<sup>151</sup>

### C. Federal Domestic Violence Crimes

1. Interstate travel to commit domestic violence, 18 U.S.C. §2261.

a. It is a federal crime to cross state lines and injure an "intimate partner." The injury must be physical and the defendant must have intended to commit the crime when crossing the state line.<sup>152</sup>

b. It is a federal crime to use force, coercion, duress, or fraud to cause an "intimate partner" to cross state lines if the force or coercion leads to physical harm to the victim.<sup>153</sup>

2. Interstate stalking, 18 U.S.C. §2261A.

It is a federal crime to cross a state line with the intent to stalk another person, if in the course of or as a result of such travel, the

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<sup>151</sup> *Id.* at §922(d)(9).

<sup>152</sup> *Id.* at §2261(a)(1).

<sup>153</sup> *Id.* at §2261(b)(2).

defendant places such person in reasonable fear of the death of, or serious bodily injury to, that person or a member of that person's immediate family.

3. Interstate travel to violate an order of protection, 18, U.S.C. §2262.
  - a. This law prohibits interstate travel with intent to violate a valid protection order that forbids credible threats of violence, repeated harassment, or bodily injury. This statute requires specific intent but does not require an intimate relationship or bodily injury.<sup>154</sup>
  - b. It is also a federal crime to cause a spouse or intimate partner to cross state lines (or leave or enter Indian country) by force, coercion, duress, or fraud during which or as a result of which, there is bodily harm to the victim in violation of a valid order of protection.<sup>155</sup>
  - c. Penalties for violating 18 U.S.C. §§2261 and 2262 depend on the severity of the injury to the victim. Terms of imprisonment can range from five years for bodily injury to life if the victim's injuries result in death.

## VIII. MISCELLANEOUS

- A. KRS 511.085: Domestic Violence Shelter Trespass
  1. "Domestic violence shelter" as used in this section means a residential facility providing protective shelter services for domestic violence victims. Domestic violence shelter trespass is a class A misdemeanor.
  2. A person is guilty of domestic violence shelter trespass when:
    - a. *The person enters the buildings or premises of a domestic violence shelter that the person knows or should know is a domestic violence shelter or which is clearly marked on the building or premises as being a domestic violence shelter; and*
    - b. *At the time of the entering, the person is the subject of an order of protection as defined in KRS 403.270 and 456.010.*
  3. It is a defense to prosecution under this section if the person entering the shelter had the permission of the operator of the

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<sup>154</sup> *Id.* at §2262(a)(1).

<sup>155</sup> *Id.* at §2262(b)(1).

shelter after disclosing to the operator that the person is the subject of an order of protection or foreign protective order. Authority to enter may not be granted by a person taking shelter at the facility.<sup>156</sup>

B. KRS 431.005 Warrantless Arrest

A peace officer may make a warrantless arrest:

1. When they have probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member, member of an unmarried couple, or another person with whom the person was or is in a dating relationship.<sup>157</sup>
2. If the law enforcement officer has probable cause to believe that a person has violated a restraining order issued under KRS 508.155, they shall arrest the violator, whether the violation was committed in or outside the presence of the officer.<sup>158</sup>

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<sup>156</sup> KRS 511.085 as amended by Ky. H.B. 8, §48(2), (3).

<sup>157</sup> KRS 431.005(2)(a), effective Jan. 1, 2016.

<sup>158</sup> KRS 431.005(7), effective Jan.1, 2016.



**WHY HB 8? WHY KENTUCKY NEEDS EXPANDED ACCESS TO CIVIL ORDERS OF PROTECTION FOR VICTIMS OF DATING VIOLENCE, SEXUAL VIOLENCE AND STALKING**

Catherine De Florio and Mary Savage

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## Dating Violence

Girls and young women between the ages of 16 and 24 experience the highest rate of intimate partner violence, almost **triple** the national average.

Dept. of Justice, Bureau of Justice Statistics, *Intimate partner violence in the United States, 1993 – 2004*. Dec, 2006

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## Violence On Campus

- 43 Percent of dating college women report experiencing some violent and abusive dating behaviors including physical, sexual, tech, verbal or controlling abuse.
- Over one in five college women (22 percent) report actual physical abuse, sexual abuse or threats of physical violence.
- 52 percent of college women report knowing a friend who has experienced violent and abusive dating behaviors including physical, sexual, tech, verbal or controlling abuse.

2011 College Dating Violence and Abuse Poll, Knowledge Networks, for Liz Claiborne Inc.

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## "Dating" begins EARLY!

- Nearly half of all tweens – 11 to 14 year olds - (47 percent) and more than one in three 11 to 12 year olds (37 percent) say they have been in a boyfriend/girlfriend relationship.
- Nearly three in four tweens (72 percent) say dating relationships begin by age 14.

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## Sexual activity begins EARLY!

- Roughly one in three tweens (37 percent) and parents (31 percent) say touching and feeling up is part of a dating relationship.
- Oral sex is said by 27 percent of tweens and 26 percent of parents to be a part of tween relationships.
- More than one in four tweens (28 percent) and parents (26 percent) also say that having sex is a part of tween relationships

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Amazingly, more than one in four kids and parents say sexual activity is part of TWEEN dating relationships!

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## Violence begins EARLY!

One in five 13 - 14 year olds in relationships (20 percent) say they know friends and peers who have been struck in anger (kicked, hit, slapped, or punched) by a boyfriend or girlfriend!

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## Correlation between early sexual activity and risk for violence

- Among all teens who had sex by age 14, 69 percent report having gone through one or more types of abuse in a relationship.
- An alarming one out of three teens who had sex by age 14 (34 percent) say they have been physically abused by an angry partner (hit, kicked, or choked).

- Statistics taken from Tween And Teen Dating Violence And Abuse Study, 2008, conducted by TRU (Teen Research Unlimited) and commissioned by Fifth & Pacific and the National Dating Abuse Hotline

## Lack of reporting and awareness

- Only 33 percent of teens who were in an abusive relationship ever told anyone about the abuse.
- Eighty-one (81) percent of parents believe teen dating violence is not an issue or admit they don't know if it's an issue.

“Women’s Health,” June/July 2004, Family Violence Prevention Fund and Advocates for Youth  
<http://www.med.umich.edu/whp/newsletters/summer04/p03-dating.html>.



Fifty-four (54) percent of femicide victims reported stalking to police before they were killed by their stalkers.

Judith McFarlane *et al.*, "Stalking and Intimate Partner Femicide," Homicide Studies 3, no. 4 (1999)

## Sexual Violence

- **One out of every six American women** has been the victim of an attempted or completed rape in her lifetime (14.8 percent completed rape; 2.8 percent attempted rape).
- **17.7 million American women** have been victims of attempted or completed rape.

- About **3 percent of American men** -- or **one in thirty-three** -- have experienced an attempted or completed rape in their lifetime.
- From 1995-2010, 9 percent of rape and sexual assault victims were male.
- 2.78 million men in the U.S. have been victims of sexual assault or rape.



## We still have EPOs/DVOs

- They are still governed by Chapter 403
- The new 403.715 *et seq.* reads differently from what we have currently but only because language has been streamlined and re-ordered, so that it is “cleaner.” Very little has been taken out or changed.

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## What’s new in 403?

- Adds “stalking” to the definition of domestic violence and abuse
- Adds “grandchild” to definition of family member
- Redefines “global position monitoring system”
- Defines “order of protection” as EPO, DVO or Foreign PO, so that term is used throughout the rest of 403.700 *et seq.*

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## New forms to come?

- Forms: not sure yet how these will be structured – if there will be different ones for EPOs/DVOs and IPOs – the working assumption is that there will still be one uniform set of forms
- Petition will now ask for parties' school or postsecondary institution, if applicable

## Three step process

- The review of a petition by the court has been brought into line with the way it's laid out in the FCRPP.
- First, a qualifying relationship has to be alleged, to meet the definition of DV and abuse – *i.e.*, family member or member of an unmarried couple
- Second, if the court believes DV and abuse exists, they shall issue a summons
- Third, if there is also an immediate and present danger of DV and abuse, the court shall enter an *ex parte* order (EPO)
- This clarifies that, as long as the petition has enough to establish DV and abuse exists, the petitioner is entitled to a hearing (the same steps apply for IPOs)

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- If the review of the petition does not indicate that domestic violence and abuse exist, the court may consider an amended petition or dismiss the petition without prejudice

A few more changes

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- Removal of mandate (shall) to court to consider respondent's KY criminal and PO history – it's now discretionary (may)
- Removal of maximum two year period during which petitioner can re-file petition to keep EPO in place (where there has been no service on the respondent) – at six months the EPO will be rescinded without prejudice, unless petitioner files a new petition before expiration

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- Court at hearing may order other relief that it believes will help eliminate further acts of DV except it cannot order the petitioner to take any affirmative action (except the petitioner can be ordered to DV counseling)
- If a DVO is never entered, records of the case may be expunged after six months if respondent has no other POs entered against them during that six months



- Continued:
- (d) The frequency and type of interaction between the persons, including whether the persons have been involved together over time and on a continuous basis during the course of the relationship;
- (e) The length and recency of the relationship; and
- (f) Other indications of a substantial connection that would lead a reasonable person to understand that a dating relationship existed;

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- "Dating violence and abuse" means physical injury, serious physical injury, stalking, sexual assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault occurring between persons who are or have been in a dating relationship;

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- "Sexual assault" refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or incest under KRS 530.020;
- "Stalking" refers to conduct prohibited as stalking under KRS 508.140 or 508.150; and

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## Who may file for an IPO?

- A petition for an interpersonal protection order may be filed by:
- (a) A victim of dating violence and abuse;
- (b) A victim of stalking;
- (c) A victim of sexual assault; or
- (d) An adult on behalf of a victim who is a minor otherwise qualifying for relief under this subsection (same for EPO – any adult can file on behalf of qualifying minor)

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## Which court?

- Jurisdiction over petitions filed under this chapter shall be concurrent between the District Court and Circuit Court.
- The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified above

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## Same process as EPO:

- If the review of the petition indicates that dating violence and abuse, stalking, or sexual assault exists, the court shall summons the parties
- If the review also indicates the presence of an immediate and present danger of dating violence and abuse, sexual assault, or stalking, the court shall issue *ex parte* a *temporary interpersonal protective order* (~EPO)

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## Other protections outside KRS 456

- Petitioner to IPO would be eligible for the address confidentiality program
- Warrantless arrest exception for assault on a family member or member of an unmarried couple expanded to also include assault on a person with whom the assailant was or is in a dating relationship

- Mandatory arrest, upon probable cause, for violation of an IPO, just like for violation of an EPO/DVO
- Upon arrest for violation of an IPO, court should set appropriate conditions of pre-trial release to protect victim, just like for violation of EPO/DVO
- Having an IPO in place added as a qualifying type of PO in regards to felony level stalking

## New sexual assault PO, upon conviction (as in stalking)

- As in cases where there is a conviction for stalking, now when there is a conviction for rape, sodomy or sexual abuse, it will act as an automatic petition for an IPO, unless the victim does not want one
- If entered by the trial court, it can last up to ten years
- But, as with stalking, now a victim can file for a regular (three year) IPO long before the criminal case concludes

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## NOTES

