

**TENNESSEE
DOMESTIC ABUSE
BENCHBOOK FOR
MAGISTRATES**

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Chapter 1: Understanding Domestic Abuse¹

Domestic abuse is a widespread societal problem with consequences reaching far beyond the realm of the family. It is conduct that has devastating effects on the victims, the children, and the entire community. In addition to its immediate effects, there is increasing evidence that violence within the family becomes the breeding ground for other social problems such as substance abuse, juvenile delinquency, and violent crimes of all types.

The roots of domestic abuse are embedded in our social structures and customs (Pence and Paymar, 1993). To eliminate the abuse and to bring about change, a coordinated community response is required. Each part of the community has a role to play: mental and medical health personnel, educators, clergy, the media, social activists, and the civil and criminal justice system. How we carry out our respective roles in responding to this problem is greatly influenced by our understanding of the realities of domestic abuse: what it is, why it occurs, and who is involved.

Domestic abuse is a pattern of behavior that consists of multiple, often daily, behaviors, including both criminal and non-criminal acts. While the legal process tends to focus on discrete behaviors, it is the entire pattern of abuse that shapes how the perpetrator and the victim function in Court and how each responds to interventions. Not only are the adults affected by the abuse, but so are the children in these families as they witness one parent abusing the other.

Consequently, the presence of domestic abuse is particularly relevant to certain issues before the courts, such as dissolution of marriages, child custody and visitation arrangements, Orders of Protection, tort actions, and findings and dispositions in criminal cases. Understanding the what, why, and who of domestic abuse enables judges to improve the Court's fact-finding and decision-making in domestic abuse cases and to develop appropriate court procedures designed to handle these cases more effectively and efficiently.

§1-1 Behavioral Definitions of Domestic Abuse

Domestic abuse is a pattern of violent and coercive behaviors whereby the perpetrator seeks to control the thoughts, beliefs, and conduct of his or her intimate partner and to punish the intimate partner for resisting the perpetrator's control over her or him. Perpetrators of domestic abuse can be found in all age,

¹ This chapter draws on materials prepared by Anne L. Ganley, Ph.D., for *Domestic Violence in Civil Court Cases: A National Model for Judicial Education* published by The Family Violence Prevention Fund in 1992.

racial, socioeconomic, educational, occupational, sexual orientation², and religious groups.

§1-1.01 Domestic abuse is behavior done in the context of an intimate relationship.

Women are up to six times more likely to suffer violence at the hands of a partner or ex-partner than from a stranger (Bachman and Saltzman, 1995; Koss, Woodruff, and Koss, 1994), and are more likely to suffer injury when their assailant is an intimate (Bachman and Saltzman, 1995). The victim is affected by domestic abuse in many of the same ways as victims of violence perpetrated by strangers, but also is affected in unique ways since the perpetrator is an intimate rather than a stranger. Both intimate violence and stranger violence can result in the victim being traumatized and terrorized. However, the effects of trauma are accentuated, and repeated violence is more likely in domestic abuse cases due to the fact that the perpetrator, unlike most perpetrators of stranger violence, has ongoing access to the victim, knows the victim's daily routine, and can continue to exercise considerable control over the victim's daily life, both physically and emotionally.

The complexity and strength of the intimate relationship creates many barriers to dissolution. Domestic abuse perpetrators may have good qualities in addition to their abusiveness. Furthermore, perpetrators of domestic abuse gain control over victims through their coercive tactics and violence because the intimacy of the relationship gives them social, and sometimes legal, permission to use such abuse.

§1-1.02 Domestic abuse is a pattern of assaultive and controlling behaviors, including physical, sexual, and psychological attacks, that one intimate partner does to another.

Domestic abuse consists of a wide range of behaviors, including some of the same behaviors found in stranger violence. Some acts of domestic abuse are criminal (hitting, choking, kicking, assault with a weapon, shoving, scratching, biting, rape, unwanted sexual touching, forcing sex with third parties, threats of violence, stalking, destruction of property, etc.) while other behaviors may not by themselves constitute criminal conduct (degrading comments, interrogating children or other family members, suicide threats or attempts, controlling access to the family resources as well as controlling the victim's own time and activities,

² Participants in lesbian and gay relationships may identify themselves as heterosexual, lesbian, gay, bisexual, or transgendered. The term "lesbian and gay relationship" is used here to indicate someone who is involved in an intimate sexual or romantic relationship with someone of the same sex, regardless of how they would describe their sexual identity. Tennessee's domestic abuse statutes apply equally to people in lesbian and gay relationships.

etc.). Domestic abuse perpetrators often act excessively jealous and possessive in order to isolate the victim. Whether or not there has been a finding of criminal conduct, evidence of these behaviors indicates a pattern of abusive control which has devastating effects on the family.

Batterers use the tactics best designed to control their particular victims. Violence within lesbian and gay relationships may include homophobic control, e.g., telling or threatening to tell family, friends, employers, police, the church community, etc., that the victim is lesbian or gay, telling the victim she or he deserves abusive treatment because of being lesbian or gay, reminding the victim that the homophobic world will not help (Hart, 1986). A bisexual woman may be assaulted by a male partner for her bisexuality and the same types of homophobic controls used against her as are used by same-sex partners.

Immigrant victims are vulnerable to threats related to their immigrant status. The batterer may threaten to report an undocumented victim to the authorities or to have her children removed from her custody. If the victim's facility with the English language is limited, she may be unable to access services or police assistance. The vulnerability of an immigrant victim is particularly acute if the batterer is a U.S. citizen and speaks English well.

Domestic abuse is not an isolated, individual event. One battering episode builds on past episodes and sets the stage for future episodes. All incidents of the pattern interact with each other and have a profound effect on the victim. There is a wide range of consequences, some physically injurious and some not; all are psychologically damaging.

Domestic abuse is purposeful and instrumental behavior. The pattern of abuse is directed at achieving compliance from or control over the victim. It is directed at circumscribing the life of the victim so that independent thought and action are eliminated and so that the victim will become exclusively devoted to fulfilling the needs and requirements of the perpetrator. The pattern is not impulsive or out of control behavior. The perpetrator selectively chooses tactics that work to control the victim.

Some of the acts may appear to be directed against or involve the children, property, or pets when in fact the perpetrator is doing these behaviors in order to control or punish the intimate partner (e.g., physical attacks against a child, throwing furniture through a picture window, strangling the victim's pet cat, etc.). Although someone or something other than the victim is physically damaged, that particular assault is part of the pattern of abuse directed at the victim.

Not all verbal attacks or insults between intimates are psychological battering. Again, it is the pattern of attempts to establish and maintain power and control through psychological abuse that is important. Prior use or threat of physical force against person or property gives additional power to psychological abuse.

In addition, psychological abuse, such as verbal abuse, isolation, threats of violence, etc., often escalates into and paves the way for physical abuse. The verbal abuse includes disparaging, degrading, and discrediting language. These verbal attacks are fabricated with particular sensitivity to the victim's vulnerabilities. Perpetrators are able to control victims by a combination of physical and psychological tactics since the two are so closely interwoven by the perpetrator.

§1-1.03 The consequences of domestic abuse are often lethal.

In Tennessee in 2003 there were seventy domestic violence murders (Tennessee Bureau of Investigation Crime Statistics Unit, 2004). Tennessee ranked 7th in the United States for women murdered by men in 2002 (Violence Policy Center, 2004). For homicides in which the weapon used could be identified, 71 percent of female victims (44 out of 62) were shot and killed with guns. There were 7 women killed with knives or other cutting instruments, 2 women killed by a blunt object, and 7 women killed by bodily force. For homicides in which the victim to offender relationship could be identified, 87 percent of female victims (53 out of 61) were murdered by someone they knew. Eight female victims were killed by strangers. Of the victims who knew their offenders, 66 percent (35 victims) were wives, common-law wives, ex-wives, or girlfriends of the offenders.

Access to guns, threats to kill, and most of all, unemployment, are the biggest predictors of the murder of women in abusive relationships (Campbell, et al., 2003). The incidence as well as the lethality of domestic abuse often increases when the perpetrator believes that the victim has left or is about to leave the relationship (Campbell, 1992; Harlow, 1991). Many homicides occur when the victim is in the process of separating from the perpetrator (Saunders, 1986; Langan and Innes, 1986; Stark, E., et al., 1980). Thus, victims may be at greater risk at the very time they come before the Court. For this reason it is critical that the Court use all available legal remedies such as Orders of Protection to provide the victim with protection throughout the duration of the court proceedings.

§1-2 Causes of Domestic Abuse

§1-2.01 Violent behavior is the result of learning, reinforcement, and choice rather than biology or genetics.

Male violence against women in intimate relationships is a social problem condoned and supported by the customs and traditions of society. Domestic abuse behaviors, as well as the rules and regulations of when, where, against whom, and by whom domestic abuse is to be used, are learned through

observation. It is learned and reinforced by interactions with all of society's major institutions: familial, social, legal, religious, educational, mental health, medical, and media. In all of these social institutions there are various customs that perpetuate the use of violence as a legitimate means of controlling family members at certain times (e.g., religious institutions that teach that a woman should submit to the will of her husband; laws that consider raping spouses a less serious crime). These practices reinforce the use of violence to control intimates by failing to hold the perpetrator accountable and by failing to protect the victim. (For a more complete listing, see Dobash and Dobash, 1983). Until recently, domestic abuse was rarely considered a crime and was often discounted as a private matter not worthy of the legal system's attention.

§1-2.02 Alcohol and most drugs do not cause domestic abuse.

Alcohol and drugs such as marijuana, depressants, anti-depressants, or anti-anxiety drugs do not cause nonviolent persons to become violent. Many people use or abuse those drugs without ever battering their partners. Alcohol and drugs are often used as an excuse for the battering although research indicates that the pattern of assaultive behaviors which constitutes domestic abuse is not being caused by those particular chemicals (Critchlow, 1986).

The majority (in one study, 76 percent) of physically abusive incidents occur in the absence of alcohol use (Kantor and Straus, 1987), and there is no evidence to suggest that alcohol use or dependence is linked to the other forms of coercive behaviors that are part of the pattern of domestic violence. Economic control, sexual violence, and intimidation, for example, are often part of a batterer's ongoing pattern of abuse, with little or no identifiable connection to his use of or dependence on alcohol (Zubretsky and Digirolama, 1996).

Unlike the relatively low levels of substance abuse among batterers in general, the incidence of substance abuse by batterers seen in criminal justice, mental health, or social service settings is well above 50 percent (Bennett, 1997). For example, a 1995 study of domestic violence calls in Memphis, Tennessee found that 92 percent of assailants had used drugs or alcohol during the day of the assault, as well as about 42 percent of victims, according to reports from victims and family members (Brookoff, 1997). Regardless of the exact role of alcohol and drugs, it is important to focus on the violent behavior and not allow substance use or addiction to become a justification or excuse for the violence. While the presence of alcohol or drugs does not alter the finding that domestic abuse took place, it is relevant to the assessment of lethality and in determining case dispositions. The use of or addiction to substances may increase the potential for lethality of domestic abuse and needs to be carefully considered when weighing safety issues concerning the victim, the children, and the community (Browne, 1989).

§1-2.03 Perpetrators of domestic abuse can be found in all age, racial, socioeconomic, educational, occupational, sexual orientation, and religious groups.

Perpetrators are a very heterogeneous population whose primary commonality is their use of violence. They do not fit into any specific personality diagnosis group. Because of the racism and classism in our criminal and civil justice systems, courts often deal more often with low-income people (and people of color and recent immigrants are more likely to be poor). This may lead to some inaccurate generalizations about perpetrators or victims. When the court process is accessible to all and domestic abuse issues are identified, then the diversity of perpetrators is apparent.

Certain cultural groups are viewed as being more violent than others in the United States in spite of a lack of evidence on this issue. Most often the question of whether there are cultural differences in the frequency or severity of domestic abuse is raised regarding cases that involve people of color or recent immigrants. The reality is that most cultures, including the white culture in the United States, have until recently been unwilling to take a stand against domestic abuse. Just as the Court would not find the values of a perpetrator's culture to be a mitigating circumstance in crimes such as robbery, speeding, or violence against a stranger, so it should not treat domestic abuse any less seriously based on assumptions regarding a particular culture's acceptability of domestic abuse.

§1-3 Impact of Domestic Abuse on the Victim

§1-3.01 Victims of domestic abuse are a heterogeneous group.

Victims of domestic abuse can be found in all age, racial, socioeconomic, educational, occupational, sexual orientation, and religious groups. Victims may or may not have been abused as children or in previous relationships. As with perpetrators, courts often see more victims from poor, often minority communities, due to the racism and classism of our criminal and civil justice systems. However, the fact remains that domestic violence can happen to anyone.

§1-3.02 What may appear at first to be crazy behavior may in fact be a normal reaction to a crazy situation.

The primary reason given by victims of domestic abuse for staying with the perpetrator is the realistic fear of the escalating violence. Victims may know from past experience that the violence gets worse whenever they attempt to get help.

Research shows that domestic abuse tends to escalate when the victim leaves the relationship. National crime statistics show that in almost 80 percent of reported spousal assaults, the partners were divorced or separated (Harlow, 1991). A perpetrator may repeatedly tell the victim that she will never be free of him. The victim may believe this as a result of past experience. When she did try to leave, the perpetrator may have tracked her down or abducted the children in an attempt to get the victim back. He may have enlisted help from family, friends, and others to pressure the victim to return.

It is not true that victims could easily leave the relationship if they wanted to and that the perpetrators would let victims leave. Perpetrators do not let victims leave their control. It is also not true that victims stay with perpetrators because they like to be abused. Even in cases where the victim was abused as a child, she or he does not seek out violence and does not want to be battered. The reasons for staying in a violent relationship are multiple and vary for each victim. In addition to fear, other reasons why victims stay in the relationship include:

- Lack of real alternatives for employment and financial assistance, especially for victims with children;
- Inability to afford an attorney;
- Lack of affordable, safe housing;
- Being immobilized by psychological and/or physical trauma;
- Cultural, family, or personal values that encourage the maintenance of the family unit at all costs;
- Being told by the perpetrator, counselors, the courts, police, ministers, family members, friends, etc., that the violence is the victim's fault and that she or he could stop the abuse just by complying with the perpetrator's demands;
- Hope that the perpetrator will change and stop using violence;
- Fear of a hostile response from police, courts, shelters, or counselors because of race, immigrant status, sexual orientation, or other factors.

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Chapter 2: Judicial Role in Domestic Abuse Cases

§2-1 Court Objectives

The legislature has clearly stated the policy of the State of Tennessee concerning domestic abuse:

The purpose of this part is to recognize the seriousness of domestic abuse as a crime and to assure that the law provides a victim of domestic abuse with enhanced protection from domestic abuse. A further purpose of this chapter is to recognize that in the past law enforcement agencies have treated domestic abuse crimes differently than crimes resulting in the same harm but occurring between strangers. Thus, the general assembly intends that the official response to domestic abuse shall stress enforcing the laws to protect the victim and prevent further harm to the victim, and the official response shall communicate the attitude that violent behavior is not excused or tolerated.³

When adjudicating a case which involves domestic abuse issues, it is important for the Court to understand and identify the outcomes the Court wishes to effect. When the objectives are identified, a decision can be made which will promote these outcomes. Following is a list of objectives which apply in both the civil and criminal courts when domestic abuse issues arise.

- To stop the violence;
- To protect the victim;
- To protect the children and other family members;
- To protect the general public and community;
- To hold the perpetrator accountable for the violent behavior, and for stopping that behavior;
- To provide restitution for the victim;
- To convey to the public that domestic abuse will not be tolerated;
- To rehabilitate the perpetrator, to the extent possible without compromising the other objectives.

When making decisions, such as whether to dismiss a case because the victim requests it, the Court can examine these objectives to see if the proposed action furthers the objectives of court intervention. Every court is called upon to make decisions that affect the outcome of the case and the continued behaviors of the parties. Reviewing the Court's objectives as part of the decision-making process can provide clarity for the Court.

³ Tenn. Code Ann. § 36-3-618 (2011); see *Kite v. Kite*, 22 S.W.3d 803; 1997 Tenn. LEXIS 284; 1997 WL 259332 (Tenn. 1997).

§2-2 Coordinated Community Response

[A]n effective response to family violence cannot be accomplished piecemeal. No one agency or office can expect that internal changes will result in improvement in the entire justice system. There are too many agencies, courts and persons, and too many interactions, as family violence cases are detected, investigated, prosecuted, and monitored. A failure in any part of the system will limit the success of the entire justice system. What is needed is a systems approach, a strategy which includes all parts of the justice system (Edwards, 1992).

The American Bar Association's Commission on Domestic Violence, after researching successful domestic abuse programs across the country, concluded that:

...only those programs which draw on the broad resources of the community—the judges, lawyers, doctors, nurses, social workers, psychiatrists, shelter workers, victim services professionals, law enforcement personnel, probation officers, military personnel, members of the business community and the media—have been able to begin the process of change that will end domestic violence in families (Valente, 1995).

A Domestic Abuse Coordinating Council is a community group consisting of representatives from all the agencies, departments, and groups which are a part of the system dealing with domestic abuse, i.e., law enforcement, prosecution, defense, probation, the courts (civil and criminal), court staff, corrections, social services, medical experts (including, perhaps, the coroner), intervention services for perpetrators and victims, community domestic violence groups, shelters, victim representatives, other relevant governmental agencies such as the Commission on the Status of Women, community leaders, as well as persons with special expertise in such areas as elder abuse, gay and lesbian abuse, immigrant victims, research and data collection, etc.

The general purposes of a Coordinating Council are:

to effectuate coordination between agencies, departments, and the courts with victims of domestic abuse;
to promote effective prevention, intervention, and treatment based on research and data collection; and
to improve the response to domestic abuse so as to reduce the incidence thereof.

The mission of coordinated community response programs is to streamline the process of investigation and conviction, increase conviction rates, and make the courts more consistent and conscientious in domestic violence cases. Tactics

include early intervention, prevention, counseling, education, and training of professionals, investigation, and prosecution. When Nashville implemented a coordinated community response program, the domestic violence homicide rates in Nashville fell 46% on average for three successive years (The Silent Witness National Initiative, 2000, 41, 43).

You are just one part of the system that is charged with protecting victims from domestic abuse. It is essential that you carry out your duties in a way that protects victims. It is also essential that you work cooperatively with other community agencies. If the victim has not been working with the local domestic violence program, you should make a referral. If you have a local domestic violence task force, you should participate. If your community does not have a local domestic violence task force, you should talk with others in your community about starting one.

§2-3 Ethical Considerations in Domestic Abuse Cases

In an article on judicial ethics in domestic abuse cases, Bernard W. Greene, points out that judges that hear domestic abuse cases will encounter a variety of ethical issues, generally related to issues of impartiality. For example,

[V]ictims may not present themselves to the court as likeable or as totally innocent. They may also present themselves multiple times before the court and not be as cooperative in pursuing remedies against their abuser as a judge may think a victim should. All of this may lend itself to conscious or unconscious biases of the judge against the victim of domestic violence. Similarly, such biases may be expressed against the accused. In addition to the many requirements that judges treat all parties before their court fairly and impartially, the Code includes new provisions in Section 3(B)(5) and (6), which prohibit judges from using words or conduct manifesting bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, social economic status or other biases. The obligation to avoid biases applies to the judge, his or her staff, court officials and others subject to his or her direction and it also is to be applied by the judge to lawyers appearing in proceedings before them [sic] (Greene, 1998).

Some victims may be difficult to work with because their batterers have threatened them. It is also common for batterers to switch tactics of control temporarily by promising not to hurt the victim and by being nice. Sometimes victims seem difficult to work with because they have not received adequate information or support from people in the system.

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Chapter 3: Orders of Protection⁴

Orders of Protection are a powerful tool to reduce domestic abuse. They are particularly helpful when seen as part of a comprehensive approach aimed at achieving the goals of civil court intervention. A common misconception regarding domestic abuse is that the violence will stop once the victim leaves the relationship, and therefore issuance of Orders of Protection after separation is unnecessary. Studies show that in fact a perpetrator often increases the violence after separation in an attempt to coerce the victim to return or in retaliation for the separation. Many perpetrators who kill their partners do so at the time the victim is in the process of separating from the perpetrator (Stark *et al.*, 1980; Langan and Innes, 1986). For this reason it is critical that the Court use all available legal remedies to provide the victim with protection throughout the duration of the court proceedings.

§3-1 Purpose of Orders of Protection

Orders of Protection have emerged during the past decade as an accessible and effective justice system response to domestic abuse. They can play a critical part in a comprehensive plan designed to protect victims from continuing violence in the home. In one study filing for an Order of Protection resulted in a significant decline (66%) in abuse over a two-year follow-up period (Carlson, Harris, and Holden, 1999). There is a strong correlation between an increase in legal protection and support services for battered women and a decrease in the number of domestic homicides (NCJFCJ, 1990).

Civil protective orders offer judges a unique additional tool for responding to the special difficulties of domestic violence cases. When properly used and enforced, protective orders can help prevent specific behavior such as harassment or threats which could lead to future violence. They also can help provide a safe location for plaintiff, if necessary, by barring or evicting an offender from the household, and establish safe conditions for any future interactions, for example, supervised child visitation (Finn and Colson, 1990).

§3-2 Filing of a Petition for Orders of Protection

⁴ This chapter draws on materials prepared by Leslye Orloff for the Family Violence Prevention Fund, San Francisco, CA (1992).

§3-2.01 The particular court which can issue an Order of Protection varies depending on the population of the county.

The particular court which can issue an Order of Protection varies depending on the population of the county. The statute sets forth specific requirements for certain counties based on population, as follows:

County	Definition	Court(s) with Jurisdiction
Davidson	Metropolitan form of government with a population of more than 100,000 ⁵	Any court of record with jurisdiction over domestic relation matters and the general sessions court
Hamilton, Knox	Population of not less than 200,000 nor more than 800,000 ⁶	Any court of record with jurisdiction over domestic relation matters
Shelby	Population in excess of 800,000 ⁷	Any court of record with jurisdiction over domestic relations matters or the general sessions criminal court
All other counties	All other counties ⁸	Any court of record with jurisdiction over domestic relation matters or the general sessions court

Judicial commissioners, magistrates, and other officials with the authority to issue an arrest warrant in the absence of a judge may issue Ex Parte Orders of Protection when a judge of one of the courts listed above is not available.⁹ The Attorney General and Reporter for the State of Tennessee has advised that “not available” means that:

the judge cannot carry out the duties of his office due to illness, disability or other cause, when the judge is away from his or her office or when the judge is engaged in the performance of other judicial duties such that he or she would not be able to address the application for an order of protection within a reasonable amount of time.¹⁰

§3-2.02 Personal jurisdiction

⁵ Tenn. Code Ann. § 36-3-601(2)(B) (2015).

⁶ Tenn. Code Ann. § 36-3-601(2)(A) (2015).

⁷ Tenn. Code Ann. § 36-3-601(2)(E) (2015).

⁸ Tenn. Code Ann. § 36-3-601(2)(C) (2015).

⁹ Tenn. Code Ann. § 36-6-601(2)(D) (2015); see Op. Att’y. Gen. 96-139 (1996) [(Attorney General's opinion that this delegation of authority is constitutional under State v. Bush, 626 S.W.2d 470 (Tenn.Cr. App. 1981)].

¹⁰ Op. Att’y Gen. 00-120 (2000).

A Tennessee court acquires personal jurisdiction over a non-resident if an incident or threat of domestic abuse has occurred in the state.¹¹ An offense can be considered to have occurred in the state if any part or element of the crime was committed in the state.¹² Lack of personal jurisdiction must be raised by the respondent and is easily waived by express or implied consent.¹³

§3-2.03 Venue

Venue for a petition for an order of protection and all other matters relating to orders of protection shall be in the county where the respondent resides or the county in which the domestic abuse, stalking, or sexual assault occurred. If the respondent is not a resident of Tennessee, the petition may be filed in the county where the petitioner resides.¹⁴ An Order of Protection is valid and enforceable in any county in Tennessee.¹⁵ Like personal jurisdiction, improper venue is waived if the respondent fails to enter a special appearance for the purposes of objecting to venue.¹⁶ When a defect in venue is waived by the respondent, the court can hear the case or the case can be transferred to a court in another county that does have venue, at the court's discretion.¹⁷

§3-2.04 Best Practice for Venue and Jurisdiction

Clarify jurisdictional and venue issues before issuing the Order of Protection to the victim.

§3-3 Grounds for Issuance of an Order of Protection

§3-3.01 The petitioner must have been subjected to, threatened with or placed in fear of domestic abuse, stalking, or sexual assault.¹⁸

“Domestic abuse” means committing abuse against a victim who meets the relationship requirement in the statute (see **§3-3.02** below).¹⁹

¹¹ Tenn. Code Ann. § 20-2-214 (2010); see Gentry v. Davis, 512 S.W.2d 4, 1974 Tenn. LEXIS 475 (1974).

¹² See, e.g., Adair v. United States, 391 A. 2d 288 (D.C. 1978); United States v. Baish, 460 A. 2d 38 (D.C. 1983); Anthony T. v. Anthony J., 510 N.Y.S. 2d 810 (N.Y. 1986) (telephone harassment initiated outside but received in the state could serve as basis for Order of Protection); Pierson v. Pierson, 555 N.Y.S. 2d 227 (N.Y. 1990) (appellant's return to New York and his presence and service in New York presented a risk of violence to plaintiff sufficient to establish personal jurisdiction although the acts of violence occurred outside the state).

¹³ Landers v. Jones, 872 S.W.2d 674, 1994 Tenn. LEXIS 46 (Tenn. 1994).

¹⁴ Tenn. Code Ann. § 36-3-602(2011).

¹⁵ Tenn. Code Ann. §36-3-606(f)(2011).

¹⁶ Kane v. Kane, 547 S.W.2d 559, 1977 Tenn. LEXIS 561 (1977).

¹⁷ Taylor v. Taylor, 903 S.W.2d 307, 1995 Tenn. App. LEXIS 169 (Tenn. App. 1995).

¹⁸ Tenn. Code Ann. § 36-3-601(9)(10)(11)(2015).

¹⁹ Tenn. Code Ann. § 36-3-601(11)(2015).

“Abuse” means:

- Inflicting or attempting to inflict physical injury on an adult or minor by other than accidental means;
- Placing an adult or minor in fear of physical harm;
- Physical restraint; or
- Malicious damage to the personal property of the abused party.
- Inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by an adult or minor, or placing an adult or minor in fear of physical harm to any animal owned, possessed, leased, kept, or held by such adult or minor.²⁰

"Stalking victim" means any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of the offense of stalking.²¹ "Sexual assault victim" means any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of any form of rape or sexual battery.²² A domestic abuse victim may also be a victim of stalking or sexual assault.

§3-3.02 The domestic abuse petitioner must meet the definition of a victim which requires a specific relationship with the respondent.

Victim is defined as:

- Adults or minors who are current or former spouses;
- Adults or minors who live together or who have lived together;
- Adults or minors who are dating or who have dated or who have or had a sexual relationship;
- Adults or minors related by blood or adoption;
- Adults or minors who are related or were formerly related by marriage; or
- Adult or minor children of a person in a relationship described above.²³

A person who commits a crime against a domestic abuse victim is subject to warrantless arrest²⁴, a twelve-hour holding period²⁵, and conditions of release²⁶.

²⁰ Tenn. Code Ann. § 36-3-601(11)(2015).

²¹ Tenn. Code Ann. § 36-3-601(10)(2015).

²² Tenn. Code Ann. § 36-3-601(9)(2015).

²³ Tenn. Code Ann. § 36-3-601(11) (2015).

²⁴ Tenn. Code Ann. §40-7-103 (2015).

§3-3.03 Dating Relationships

If the crime involves a dating relationship, apply the 12-hour hold and the other orders for conditions of release. The domestic assault criminal charge also includes dating relationships. The domestic assault criminal charge includes dating relationships.²⁷

§3-3.04 A minor who has been subjected to domestic abuse, sexual assault, or stalking may seek relief through an Order of Protection.²⁸

Any victim of domestic abuse, sexual assault, or stalking may file a petition for an Order of Protection.

A petition filed by an unemancipated minor must be signed by at least one parent or by the minor's guardian.²⁹ A minor can become emancipated in several ways:

- Marriage;³⁰
- Military service³¹;
- Consent of the parents, either express or implied³²; or
- An emancipation decree in circuit or chancery court³³.

The marriage of a minor child either with or without the consent of the parents fully emancipates such child from parental authority, even though the child may later be divorced while still a minor. Parents may give their consent to the minor's emancipation, and this consent may be either express or implied. For example, if the parents allow the minor to move out into his or her own apartment, do not contribute to his or her support, and do not exercise parental authority over the minor, consent to the minor's emancipation may be implied. Finally, a minor may have been emancipated by a Court. Circuit and chancery courts have concurrent jurisdiction to declare a minor emancipated.³⁴

In cases before the juvenile court where the department of children's services is a party or where a guardian ad litem has been appointed for the child by the juvenile court, the petition may be filed on behalf of the unemancipated person by the department or the guardian ad litem.³⁵

²⁵ Tenn. Code Ann. §40-11-150(h)(2015).

²⁶ Tenn. Code Ann. §40-11-150(b)(2015).

²⁷ Tenn. Code Ann. § 39-13-11(2015).

²⁸ Tenn. Code Ann. § 36-3-602(a)(2015).

²⁹ Tenn. Code Ann. § 36-3-602(b) (2015).

³⁰ *Going v. Going*, 8 Tenn. App. 690, 1928 Tenn. App. LEXIS 191 (Tenn. App. 1928).

³¹ *Glover v. Glover*, 319 S.W.2d 238, 1958 Tenn. App. LEXIS 107 (Tenn. App. 1958).

³² *Wallace v. Cox*, 188 S.W. 611, 1916 Tenn. LEXIS 101 (Tenn. 1916).

³³ Tenn. Code Ann. § 29-31-105 (2015).

³⁴ Tenn. Code Ann. § 29-31-101 (2015).

³⁵ Tenn. Code Ann. § 36-3-602(b) (2015).

This petition may also be signed by a caseworker at a not-for-profit organization which receives funds pursuant to Title 71, Chapter 6, Part 2 for family violence and child abuse prevention and shelters; provided, however, that petition signed by such a caseworker may not be filed against such unemancipated minor's parent or legal guardian.³⁶ Additionally, "[i]n every case, when the petitioner is under eighteen (18) years of age and if the court determines that service on the minor's parent or legal guardian would not create a threat of serious harm to the minor, a copy of the petition, notice of hearing and any ex parte order of protection shall also be served on the parents of the minor child, or if the parents are not living together and jointly caring for the child, upon primary residential parent."³⁷

§3-3.05 Minors may be subject to an Order of Protection.

The requirement that the abuse be by an adult was repealed by the legislature in 2005.³⁸

§ 3-3.06 Relatives may petition on behalf of a vulnerable adult.

The Tennessee Legislature in 2010, passed a law permitting a relative to file an order of protection on behalf of an "adult" as defined under the Adult Protection Act T.C.A. § 71-6-101, who is the victim of willful abuse, neglect or exploitation (T.C.A. § 71-6-117). The statute does not include a person while in the custody of intermediate care facilities for persons with mental retardation (ICFs/MR) and a person while receiving residential services or other services from a community provider through contracts with the division of intellectual disability services, department of finance and administration.

The relative filing the petition must be a spouse, child, including stepchild, adopted child or foster child; parents (stepparents, adoptive parents or foster parents); siblings of the whole or half-blood; step-siblings, grandparents, grandchildren, of any degree, and aunts, uncles, nieces and nephews.

Jurisdiction, venue and service of this order of protection are the same as other orders of protection in Tennessee. At the time of the hearing, if the judge finds by a preponderance of the evidence that the allegations are true, then the court may issue an order of protection for a definite period of time not to exceed 120 days. The court has the discretion to appoint a guardian ad litem under T.C.A. § 34-1-107.

³⁶ Tenn. Code Ann. § 36-3-602(b)(2015).

³⁷ Tenn. Code Ann. § 36-3-605(c)(2015).

³⁸ Tenn. Code Ann. § 36-3-602(a)(2015).

An order of protection pursuant to this section may: (1) (A) Order the respondent to refrain from committing a violation of this part against the adult, T.C.A. § 71-6-117; (B) Refrain from threatening to misappropriate or further misappropriating any monies, state or federal benefits, retirement funds or any other personal or real property belonging to the adult; (C) Order the return to the adult or the adult's caretaker or conservator or to the fiduciary any monies or benefits misappropriated from the adult. The court may also enter a judgment against the respondent for repayment. If the amount in question exceeds ten thousand dollars, the court may require the caretaker or custodian of funds appointed under this subsection to post a bond. (2) Enjoin the respondent from providing care for an adult on a temporary or permanent basis; (3) Prohibit the respondent from telephoning, contacting, or otherwise communicating with the adult, directly or indirectly, and any other necessary relief to protect the adult.

Any violation of the order of protection shall be treated as an order of protection issued under the Order of Protection Act. This would include contempt (T.C.A. § 36-3-610) and the violation of the order of protection (T.C.A. 39-13-113). The Tennessee firearms prohibition may apply depending on the relationship between the respondent and the adult.³⁹

§3-4 Ex Parte Orders

§3-4.01 The Court may issue an Ex Parte Order of Protection immediately upon the filing of a petition and before a hearing for good cause shown.

The good cause requirement is met upon a showing of an immediate and present danger of abuse to the petitioner.⁴⁰ In making the determination whether or not to issue an Ex Parte Order, the judge or other official must liberally construe the allegations of the Petition in favor of the petitioner, particularly if it is filed without the assistance of an attorney.⁴¹ Thus if, taking the allegations of the petition as true, it appears that the petitioner is at risk of continued harm, the Ex Parte Order should be issued.

The Court should consider the following when determining whether there is an immediate and present danger of domestic abuse:

- A history of violence;
- Petitioner's injuries;
- Respondent's access to weapons;
- Threats to attack the petitioner;
- Threats to attack or abduct the children;
- Threats or attacks on family or household members;

³⁹ T.C.A. § 71-6-124 (2015).

⁴⁰ Tenn. Code Ann. § 36-3-605(a) (2015).

⁴¹ Tenn. Code Ann. § 36-3-604(a)(2)(2015).

- Respondent's drug and alcohol abuse;
- Respondent's history of a mental disorder;
- Respondent's threats of suicide;
- Petitioner's fear of retaliation for attempts to leave the relationship.

Due process rights to notice and hearing are not required when irreparable harm may result if an Ex Parte Order is not entered.⁴² The petitioner need not testify other than by petition prior to the issuance of an Ex Parte Order. The fact that the petitioner has not recited a recent event of abuse or that the petitioner has waited to file a Petition is not grounds to deny the petition.

The National Council of Juvenile and Family Court Judges recommends that judges not issue mutual no contact orders (NCJFCJ, 1990). The Court lacks jurisdiction over the victim who is not a party to the criminal action. In some states, orders prohibiting both parties from contacting each other have been held unconstitutional in civil cases.⁴³ In addition, mutual no contact orders are often difficult for law enforcement to enforce.

Tennessee law provides that mutual orders shall not be enforceable against the petitioner in a foreign jurisdiction unless:

- (1) The respondent filed a cross- or counter-petition, or a complaint or other written pleading was filed seeking such a protection order; and
- (2) The issuing court made specific findings of domestic or family violence against the petitioner.⁴⁴

§3-4.02 Ex Parte Orders of Protection are intended to protect the petitioner until a full hearing on the petition.

A hearing must be held within fifteen days of service of the Ex Parte Order on the respondent.⁴⁵ If the hearing is held within fifteen (15) days of service of such order, the ex parte order shall continue in effect until the entry of any subsequent order of protection issued pursuant to 39-3-609. If no ex parte order of protection has been issued as of the time of the hearing, and the petitioner has proven the allegation of domestic abuse, stalking or sexual assault by a preponderance of the evidence, the court may, at that time, issue an order of protection for a definite period of time, not to exceed one (1) year.⁴⁶ The Ex Parte Order must be

⁴² See also Sanders v. Shepard, 185 Ill.App. 719, 541 N.E. 2d 1150, 1155 (1989) (no violation of procedural due process where affidavit in support of emergency Order contained allegation of harm if Order not entered); Marquette v. Marquette, 686 P. 2d 990 (Okla. App. 1984) (infringement minimized by statutory requirement of full hearing within ten days).

⁴³ Fitzgerald v. Fitzgerald, 406 N.W.2d 52, 1987 Minn. App. LEXIS 4380 (Minn. Ct. App. 1987).

⁴⁴ Tenn. Code Ann. § 36-3-622 (d) (2015).

⁴⁵ Tenn. Code Ann. § 36-3-605(b) (2015).

⁴⁶ Id.

served upon the respondent at least five days prior to the hearing.⁴⁷ The Ex Parte Order must be personally served on the respondent, unless the respondent is not a resident of Tennessee, in which case the Ex Parte Order is served by mail through the Secretary of State.⁴⁸

If the petitioner has visible injuries, the judge should include written findings concerning those injuries in the Order granting temporary relief. Recording this information may become important for use in the subsequent hearing on the extended Order of Protection since the evidence of the injuries may have healed by then.

Ex parte Orders of Protection are not generally appealable, since they are interlocutory in nature and subject to an expeditious hearing on the merits.⁴⁹

§3-4.03 If no Ex Parte Order is issued, the case should be scheduled for hearing.

When someone requests an Order of Protection, the office of the clerk must file the Petition for Orders of Protection whether or not an Ex Parte Order is granted. Even if the judge, judicial commissioner, or magistrate denies an Ex Parte Order, the Petition must be filed and the judge must still hold a hearing to determine, after presentation of sworn testimony and any documentary or other physical evidence, whether or not grounds exist for issuance of an Order of Protection.

If the judge or other official finds that there is no immediate and present danger of domestic abuse and no Ex Parte Order is issued, the following steps must be taken:

- The Petition must be filed;
- The case must be set for hearing;
- Process must be served on the respondent; and
- A hearing must be held at which the petitioner and the respondent (if he or she appears) can give sworn testimony, examine other witnesses to the abuse, and introduce documentary and other physical evidence⁵⁰ or at which the parties may announce their agreement in the case, subject to the approval of the judge.⁵¹

⁴⁷ Tenn. Code Ann. § 36-3-605(c) (2015).

⁴⁸ Tenn. Code Ann. § 36-3-602 (c) (2015).

⁴⁹ See Tenn. R. App. P. 9 (appeal of interlocutory orders is within the discretion of the trial and appellate courts).

⁵⁰ Tenn. Code Ann. § 36-2-605(b) (2015).

⁵¹ An Agreed Order signed by counsel for both parties, or by the parties themselves if they are unrepresented, and approved by the judge has the same force and effect as an order entered after a hearing.

§3-4.04 Best Practice for Ex Parte Orders

- Make specific findings, including observations of physical evidence of abuse and ask questions about abuse history.
- When deciding whether to grant the Ex Parte Order, consider whether the victim has sought assistance from a shelter or victim advocate.
- Do not issue mutual orders of protection. Check the appropriate boxes and fill in blanks where necessary.
- Evaluate question six carefully (specific findings), including whether there has been a history of abuse to include in your findings.
- Ask about children and weapons.
- Instruct the victim to make several copies of the order and keep it on her person at all times.
- Be available to offer assistance.

§3-5 Relief Available through an Order of Protection

§3-5.01 Relief granted in an Ex Parte Order is limited.

Relief granted in an ex parte Order may include only the following:

- Directing the respondent to refrain from committing domestic abuse, stalking or sexual assault or threatening to commit domestic abuse, stalking or sexual assault against the petitioner or the petitioner's minor children.⁵²
- Prohibiting the respondent from coming about the petitioner for any purpose, from telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly..⁵³
- Prohibiting the respondent from stalking the petitioner.⁵⁴

The magistrate may order the respondent to leave the shared residence while the order of protection petition is pending a hearing.⁵⁵

§3-5.02 After the respondent has had an opportunity to be heard, the Court has the inherent power to issue any constitutionally defensible relief.

⁵² T.C.A. § 36-3-606(a)(1)(2015).

⁵³ T.C.A. § 36-3-606(a)(2)(2015).

⁵⁴ T.C.A. § 36-3-606(a)(3)(2015). See T.C.A. § 39-17-315(2015).

⁵⁵ T.C.A. § 36-3-606 (a)(10) (2015); Attorney General No. 10-06 (2010).

Relief that may be granted only after the petitioner and respondent have been given an opportunity to be heard by the Court includes:⁵⁶

- Granting to the petitioner possession of the residence or household to the exclusion of the respondent by evicting the respondent, by restoring possession to the petitioner, or by both;
- Directing the respondent to provide suitable alternate housing for the petitioner when the respondent is the sole owner or lessee of the residence or household;
- Awarding temporary custody of or establishing temporary visitation rights with regard to any minor children born to or adopted by the parties;
- Awarding financial support to the petitioner and such persons as the respondent has a duty to support (except in cases of paternity, the Court shall not have the authority to order financial support unless the petitioner and respondent are legally married);
- Directing the respondent to attend available counseling programs that address violence and control issues or substance abuse problems.
- Directing the care, custody, or control of any animal owned, possessed, leased, kept, or held by either party or a minor residing in the household. In no instance shall such animal be placed in the care, custody, or control of the respondent but shall instead be placed in the care, custody, or control of the petitioner or in an appropriate animal foster situation.
- The respondent must surrender any weapons to a third party as outlined in T.C.A. 36-3-625. There is no exemption for law enforcement officers.⁵⁷

The Court is not limited to the relief specifically enumerated in the statute.⁵⁸ Such provisions in abuse statutes have been interpreted very broadly. The legislative intent of the Act is that "the official response to domestic abuse shall stress enforcing the laws to protect the victim and prevent further harm to the victim, and the official response shall communicate the attitude that violent behavior is not excused or tolerated."⁵⁹ To be effective, Orders of Protection must include all necessary protection against future abuse, given the needs of the victim. Victims of domestic abuse need a high level of protection if they are to be able to live a life safe and separate from the perpetrator because the perpetrator often has ready access to his victim (Finn and Colson, 1990). For example, where the petitioner is in hiding, the Court may want to order the respondent not to attempt to discover the location of the petitioner's residence and not to enlist the assistance of others in locating the petitioner. In addition the Court may want to specify a minimum distance that respondent must keep from the petitioner.⁶⁰ Either of these provisions would be permissible under the statute.

⁵⁶ T.C.A. § 36-3-606(a)(4) - (9)(2015).

⁵⁷ T.C.A. 36-3-625 (2015).

⁵⁸ T.C.A. § 36-3-606 (a)(2015).

⁵⁹ T.C.A. § 36-3-618 (2015).

⁶⁰ See, e.g., State v. Sutley, LEXIS 5520 (Ohio App. Ct. 1990) (order requiring defendant to stay

The relief provided should be explained fully and the terminology of the Order of Protection should be highly specific so that parties, law enforcement officers, and other judges will know exactly what is intended. Otherwise, enforcement will be difficult (Finn and Colson, 1990). Any Order of Protection must include a statement of the maximum penalty that may be imposed.⁶¹ The petitioner's right to relief is not affected by petitioner's leaving the residence to avoid abuse or by her use of physical force to defend herself or others.⁶²

Upon issuing an order that complies with provisions of 18 U.S.C. § 922 (g) (8), the Court must order the respondent to terminate physical possession of firearms by any lawful means within 48 hours of granting the order.⁶³

It is a federal and state offense for any person who is subject to an Order of Protection to ship, transport, possess, or receive any firearm, if such shipping, transport, possession, or receipt is in or affects interstate or foreign commerce.⁶⁴ Federal and Tennessee law prohibit the transfer (or return) of firearms to anyone currently subject to a protection order.⁶⁵ This firearms prohibition applies as long as the Order of Protection meets the following requirements⁶⁶:

Petitioner is an intimate partner of the respondent.

- Respondent received actual notice and had an opportunity to be heard.

- The order restrains the respondent from harassing, stalking, or threatening the intimate partner, child of the respondent, or child of the respondent's intimate partner
or
The order restrains respondent from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the partner or child.

- Finding of a credible threat to the physical safety of an intimate partner or child.

or

away from petitioner, her family members, and the quadrant of the city where she resided did not violate the defendant's freedom of association rights where the restrictions related to his offenses and would help insure future compliance with the court order).

⁶¹ T.C.A. § 36-3-606(c)(2015).

⁶² T.C.A. § 36-3-613(2015).

⁶³ T.C.A. 36-3-606(g)(2015).

⁶⁴ 18 U.S.C.A. § 922(g)(8)(B), (C) (2015).

⁶⁵ 18 U.S.C.A. § 922(d)(8); T.C.A. 36-3-606(g)(2015).

⁶⁶ 18 U.S.C.A. § 922(g)(8)(A)(2010); T.C.A. 39-17-1316(a)(1)(2015).

The order, by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

An intimate partner is defined as:

- A spouse or former spouse;
- A parent of the respondent's child;
- A person who is cohabiting or has cohabited with the respondent; or Someone similarly situated to a spouse who is covered by state protection laws⁶⁷.

Federal law creates an exception for law enforcement officers and members of the active duty military to carry their duty firearms.⁶⁸ This exception applies only to Orders of Protection. If these persons are convicted of any domestic abuse crime, the firearms restriction applies to them as well. This section has been held constitutional.⁶⁹ Tennessee law does not create an exemption for law enforcement or members of the active duty military.⁷⁰

Tennessee law mandates that the respondent dispossess himself or herself of any firearms by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms. The respondent may reassume possession of the dispossessed firearm at such time as the order expires or is otherwise no longer in effect.⁷¹

The Court must provide the following notices to the respondent:

To terminate his or her physical possession of the firearms in the respondent's possession by any lawful means, such as transferring possession to a third party who is not prohibited from possession firearms, within forty-eight (48) hours.

To complete and return the Affidavit of Firearm Dispossession form, which the court may provide the respondent or direct the respondent to the administrative office of the courts' Web site.

That if he or she possesses firearms as business inventory or that are registered under the National Firearms Act, there are additional statutory

⁶⁷ 18 U.S.C.A § 921(a)(32)(2015).

⁶⁸ 18 U.S.C.A. § 925(a)(2015).

⁶⁹ U.S. v. Emerson, No. 99-10331 (5th Cir., revised November 2, 2001) [Online.] Available:<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=5th&navby=case&no=9910331cr0>. [June 12, 2002]; U.S. v. Pierson, 139 F.3d 501 (5th Cir. 1998); U.S. v. Smith, 964 F.Supp. 286 (N.D. Iowa, 1997).

⁷⁰ T.C.A. 36-3-625(2015).

⁷¹ T.C.A. 36-3-625 (a) (2015).

provisions which apply and shall include these additional provisions in the content of the order.⁷²

Upon issuance of the order of protection, its provisions and date and time of issuance shall be transmitted to the sheriff and all local law enforcement agencies in the county where the respondent resides.

If the respondent possesses a firearm registered under the National Firearms Act or is a firearms dealer other provisions apply:

If the possession, including, but not limited to, the transfer of weapons registered under the National Firearms Act that requires the approval of any state or federal agency prior to the transfer of such firearm, the respondent may comply with the dispossession requirement by having the firearms or firearms placed into a safe or similar container which is securely locked and to which the respondent does not have the combination, keys or other means of normal access.

If the respondent is licensed as a federal firearms dealer or a responsible party under a federal firearms license, the determination of whether such an individual “possesses” firearms that constitute the business inventory under such federal license shall be determined based upon the applicable federal statutes or the rules, regulations and official letters, rulings and publications of the Bureau of Alcohol, Tobacco, Firearms and Explosives. The order of protection shall not require the surrender or transfer of any such inventory if there are one or more individuals who are responsible parties under the federal license who are not the respondent subject to the order of protection.⁷³

A person subject to an order of protection that fully complies with 18 U.S.C. § 922(g)(8) who knowingly fails to surrender or transfer all firearms commits a Class A Misdemeanor.⁷⁴ Failure to comply with the weapons surrender, including submission of the Affidavit of Surrender is considered a violation of the protective order.⁷⁵ Additionally, if a person possesses a firearm and is, at the time of the possession, subject to an order of protection that fully complies with the provisions of 18 U.S.C. § 922(g)(8) commits a Class A misdemeanor.⁷⁶ Tennessee law allows for a respondent to be punished for each of these crimes as separate offenses.⁷⁷

⁷² T.C.A. 36-3-625(b)(2015).

⁷³ T.C.A. 36-3-625(f)(2015).

⁷⁴ T.C.A. 36-3-625(h)(2015).

⁷⁵ T.C.A. 39-13-113(h)(2015).

⁷⁶ T.C.A. § 39-17-1307(e)(2015).

⁷⁷ T.C.A. § 36-3-625(h)(3)(2015).

Tennessee law forbids sales of firearms to persons who have been convicted of the offense of stalking or are addicted to alcohol, and sales to persons ineligible to receive them under 18 U.S.C. § 922, which includes people under Orders of Protection and those convicted of a “misdemeanor crime of domestic violence.”⁷⁸

§3-6 Pre-Trial Issues in Order of Protection Cases

§3-6.01 There is no limitation on the time within which a petitioner must file for an Order of Protection.⁷⁹

§3-6.02 The victim shall not be required to pay any filing fees, litigation taxes, or any other costs associated with the filing, issuance, service, or enforcement of an Order of Protection upon the filing of the petition.

⁸⁰

Notwithstanding any other provision of law to the contrary, no victim shall be required to bear the costs, including any court costs, filing fees, litigation taxes or any other costs associated with the filing, issuance, registration, service, dismissal or nonsuit, appeal or enforcement of an ex parte order of protection, order of protection, or a petition for either such order, whether issued inside or outside of the state. If the court, after the hearing, issues or extends an order of protection, all court costs, filing fees, litigation taxes and attorney fees shall be assessed against the respondent.⁸¹ There is no initial fee for a petition to the court for any action on an order of protection.

If the court does not issue or extend an order of protection, the court may assess all court costs against the petitioner if the court finds by clear and convincing evidence: (a) the petitioner is not a victim and that such determination is not based on the petitioner’s request to dismiss the order, failure to attend the hearing or incorrectly filled out the petition; AND (b) the petitioner knew that the allegations were false at the time the petition was filed.

The Court shall not require the petitioner to execute a bond to issue an Order of Protection.⁸²

§3-6.03 The Administrative Office of the Courts in consultation with the Domestic Violence State Coordinating Council has developed forms for use in Order of Protection cases.⁸³

⁷⁸ T.C.A. § 39-17-1316 (2015).

⁷⁹ Since there is no limitation in the Order of Protection statute itself, the statute of limitations governing actions not expressly provided for would govern, i.e., 10 years, Tenn. Code Ann. § 28-3-110 (2015).

⁸⁰ T.C.A. § 36-3-617 (2015)

⁸¹ T.C.A. § 36-3-617 (2015)

⁸² Tenn. Code Ann. § 36-3-607 (2015).

⁸³ Tenn. Code Ann. § 36-3-604(b)(2015). These forms are included in the Appendices and are

The following forms have been developed:

- Petition for Orders of Protection;
- Ex parte Order of Protection;
- Order of Protection;
- Dismissal.

The administrative office of the courts has authority to develop other forms in the future as needed. These forms shall be used exclusively in all courts exercising jurisdiction over Orders of Protection.⁸⁴ The petitioner is not limited to the use of these forms and may file any legally sufficient petition.⁸⁵ The office of the clerk of court is required to provide these forms to the petitioner.⁸⁶

§3-6.04 The petitioner has a right to proceed pro se.⁸⁷

The office of the clerk must assist a petitioner who is not represented by counsel by filling in the name of the Court on the petition, by indicating where the petitioner's name shall be filled in, by reading through the petition form with the petitioner, and by rendering any other assistance as is necessary for the filing of the petition.⁸⁸ All such petitions which are filed pro se shall be liberally construed in favor of the petitioner.⁸⁹

The clerk of court may provide Order of Protection petition forms to agencies that provide domestic abuse assistance. Any agency that meets with a victim in person and recommends that an Order of Protection be sought shall assist the victim in the completion of the form petition for filing with the clerk. No agency shall be required to provide this assistance unless it has been provided with the appropriate forms by the clerk.⁹⁰

§3-7 Enforcement of Orders of Protection

The effectiveness of Orders of Protection depends largely on how well they are enforced by both the judiciary and law enforcement. Judges who hold perpetrators accountable for their actions send a clear message to the community that domestic abuse will not be tolerated (Dakis and Karan, 1996).

also available at <http://www.tsc.state.tn.us/>.

⁸⁴ Tenn. Code Ann. § 36-3-604(c)(2015).

⁸⁵ Tenn. Code Ann. § 36-3-604(a)(2015).

⁸⁶ Id.

⁸⁷ Tenn. Code Ann. §36-3-604(a)(2015).

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Tenn. Code Ann. § 36-3-617(2015).

§3-7.01 The respondent can be arrested for violation of an Order of Protection.

A copy of any Order of Protection and any subsequent modifications or dismissal shall be issued to the petitioner, the respondent, and the local law enforcement agencies having jurisdiction in the area where the petitioner resides.⁹¹ Service of the Order upon a party or counsel shall be made by delivering to such party or counsel a copy of the Order of Protection, or by the clerk mailing it to the party's last known address. In the event the party's last known address is unknown and cannot be ascertained upon diligent inquiry, the certificate of service shall so state. Service by mail is complete upon mailing.⁹²

An Order of Protection is valid and enforceable in any county in Tennessee⁹³ and in any court having jurisdiction over Orders of Protection⁹⁴. An arrest can be made on an Ex Parte Order of Protection once the respondent has been served with the Order or otherwise has actual knowledge of the Order.⁹⁵ An officer may arrest for violation of an Order of Protection with or without a warrant.⁹⁶ The arrest shall be made without a warrant if:

the officer has jurisdiction over the area in which the violation occurred;
the officer has reasonable cause to believe the respondent has violated or is in violation of an Order of Protection;
the officer has verified the existence of an Order of Protection. Verification may be made by telephone or radio communication.

A person who is arrested and alleged to have violated an Order of Protection must be taken without unnecessary delay before a magistrate or the Court having jurisdiction to answer a charge of contempt for violation of the Order of Protection. The Court must:

notify the clerk to set a time for a hearing on the alleged violation of the Order within ten working days after the arrest. The time period may be extended by the Court on motion of the arrested person;
set a reasonable bond pending the hearing; and
notify the person who obtained the Order of Protection and direct that person to show cause why a contempt order should issue.

⁹¹ Tenn. Code Ann. § 36-3-609(e) (2015).

⁹² Tenn. Code Ann. § 36-3-609(b) (2015).

⁹³ Tenn. Code Ann. § 36-6-606(f)(2015).

⁹⁴ State v. Gray, 46 S.W.3d 749, 2000 Tenn. App. Lexis 677 (Tenn. App. 2000).

⁹⁵ Tenn. Code Ann. § 36-3-611(b) (2015); Tenn. A.G. Opinion No. 06-094.

⁹⁶ Tenn. Code Ann. § 36-3-611(a) (2015).

§3-7.02 The Court may punish a violation of the Order of Protection as either civil or criminal contempt or both.⁹⁷

A judge of the General Sessions Court has the same power as a court of record to punish a respondent for civil or criminal contempt. If the General Sessions Judge is not a licensed attorney, the judge must appoint an attorney referee to hear charges of criminal contempt.

Classification of contempt as civil or criminal depends on the purpose for which the power is exercised.⁹⁸ When the primary purposes of the finding of contempt are to provide a remedy for an injured party and to coerce compliance with an order, the contempt is civil. Civil contempt is imposed to compel compliance with an order and parties in contempt may purge themselves by compliance.⁹⁹ When the primary purpose of the finding of contempt is to preserve the Court's authority, the contempt is criminal. Criminal contempt is punishment for failing to comply with an order, and the contemptuous party cannot be freed by eventual compliance with the order.¹⁰⁰

Under Tennessee law, if the contempt is criminal contempt, as determined by the nature of the remedy, the contemnor is entitled to due process rights similar to those of the criminal defendant.¹⁰¹ In a criminal contempt proceeding, the contemnor has the right of confrontation¹⁰² and the right to remain silent¹⁰³. The notice must fairly and completely apprise the respondent of the events and conduct constituting the alleged contempt.¹⁰⁴ The respondent probably has a right to a trial by jury in criminal contempt proceedings.¹⁰⁵

A respondent may be entitled to assistance of counsel even during a civil contempt proceeding where the respondent faces incarceration.¹⁰⁶ Tennessee law does not provide for appointment of counsel for petitioner, even though the respondent may be entitled to court-appointed counsel. There is some support that the Court may have inherent authority to enforce its orders by means of appointment of state's counsel to prosecute contempt.¹⁰⁷

⁹⁷ Tenn. Code Ann. § 36-3-610 (2015).

⁹⁸ Garrett v. Forest Lawn Memorial Gardens, 588 S.W. 2d 309 (Tenn. Civ. App. 1979).

⁹⁹ Crabtree v. Crabtree, 716 S.W. 2d 923 (Tenn. Civ. App. 1986); Shiflet v. State, 217 Tenn. 690, 400 S.W. 2d 542, 543 (1966).

¹⁰⁰ Crabtree v. Crabtree, *supra*; Shiflet v. State, *supra*.

¹⁰¹ See Tenn. R. Crim. P. 42.

¹⁰² See Guthrie v. Oldham, 1985 Tenn. Crim. App. LEXIS 2682 (Tenn. Crim. App., 1985).

¹⁰³ See Gompers v. Bucks Stove, 221 U.S. 418 (1911) and Kornick v. Kornick, 3 Tenn. Civ. App. 41 (1931).

¹⁰⁴ See United States v. United Mine Workers of America, 330 U.S. 258 (1947) and Storey v. Storey, 835 S.W. 2d 593 (Tenn. Civ. App. 1992).

¹⁰⁵ Brown v. Latham, 914 S.W.2d 887 (Tenn. 1996).

¹⁰⁶ See Sevier v. Turner, 742 F.2d 262 (6th Cir. 1984); Mastin v. Fellerhoff, 526 F.Supp. 969 (S.D. Ohio 1981) (practice of domestic relations court of incarcerating indigent persons for contempt without appointing counsel violated due process).

¹⁰⁷ See, e.g., Young v. United States ex rel. Vuitton et Fils S.A., 481 U.S. 787 (1987); Marcisz v.

The standard of proof for criminal contempt is the same as for criminal charges, i.e., beyond a reasonable doubt.¹⁰⁸ The standard of proof for civil contempt is clear and convincing evidence.¹⁰⁹ The Supreme Court in *Overnite Transportation Co. v. Teamsters Local Union No. 480*¹¹⁰, held that:

- a trial court's order declining to hold an alleged contemnor in civil contempt may be appealed;
- compensatory damages for civil contempt are available pursuant to
- Tennessee Code Annotated section 29-9-105 (1980 & 2000) from a contemnor who commits an act forbidden by a trial court's order; and, those damages may be recovered if the violation is not ongoing at the time of the hearing.

Punishment of contempt may be by fine, imprisonment, or both. The perpetrator may be punished by a fine of up to \$50.00 and imprisonment of up to 10 day.¹¹¹ Separate punishments may be given for separate violations so long as they are sufficiently distinct to support separate violations.¹¹² A judge of the General Sessions Court shall have the same power as a court of record to punish the defendant for contempt when exercising jurisdiction pursuant to this part or when exercising concurrent jurisdiction with a court of record.¹¹³ A judge of the General Sessions Court who is not a licensed attorney shall appoint an attorney referee to hear charges of criminal contempt. If the contempt consists of an omission to perform an act that is yet in the power of the person to perform, the person may be imprisoned until the act is performed.

In addition to the authorized punishments for contempt of court, the judge may assess a civil penalty of \$50.00 against a person who violates an Order of Protection or a court-approved consent agreement.¹¹⁴ The Court may not punish a perpetrator for contempt of an Order of Protection by ordering the perpetrator into counseling but the Order of Protection may be modified to include counseling if warranted.¹¹⁵ In order for the Court to order the contemnor into intervention,

Marcisz, 357 N.E. 2d 477 (Ill. 1976) (contempt action based on divorce Order of Protection was an action "in which the people of the state may be concerned" under Ill. Rev. Stat. 1990 34 3-9005 (1)). See also In re Marshall, 549 A. 2d 311 (D.C.App. 1988) (judge not strictly prohibited from prosecuting contempt); State v. Rudolph, 240 Iowa 726, 37 N.W. 2d 483 (1949) (generally, contempt proceedings may be brought either by a party or in the name of the state).

¹⁰⁸ See O'Brien v. State ex rel. Bibb, 26 Tenn. App. 270, 170 S.W. 2d 931 (1943); State ex rel. Anderson v. Daugherty, 137 Tenn. 125, 191 S.W. 974 (1917).

¹⁰⁹ See Oriel v. Russell, 278 U.S. 358 (1929). See also Wright, Federal Practice and Procedure (Criminal) § 701-13 (2nd ed. 1982).

¹¹⁰ 2005 Tenn. LEXIS 550 (Tenn. 2005).

¹¹¹ Tenn. Code Ann. § 29-9-103(b)(2015).

¹¹² State v. Wood, 91 S.W.3d 769; 2002 Tenn. App. LEXIS 330 (Tenn. App. 2002).

¹¹³ Tenn. Code Ann. § 36-3-610(a) (2015).

¹¹⁴ Tenn. Code Ann. § 36-3-610(b) (2015).

¹¹⁵ Cable v. Clemmons, 36 S.W.3d 39, 2001 Tenn. Lexis 1 (Tenn. 2001); see also, State v. Wood, 91 S.W.3d 769; 2002 Tenn. App. LEXIS 330 (Tenn. App. 2002).

there would have to be a motion to amend the Order of Protection made by the petitioner, the respondent, or by the Court, sua sponte.

When an Order of Protection is violated as to child support, the respondent may be punished by imprisonment in the county workhouse or county jail for a period not to exceed six months.¹¹⁶ In addition the Court shall have the discretion to require an individual who fails to comply with the order or decree of support and maintenance to remove litter from the state highway system, public playgrounds, public parks, or other appropriate locations for any prescribed period or to work in a recycling center or other appropriate location for any prescribed period of time in lieu of or in addition to any of the penalties otherwise provided; provided, however, that any person sentenced to remove litter from the state highway system, public playgrounds, public parks, or other appropriate locations or to work in a recycling center shall be allowed to do so at a time other than such person's regular hours of employment.¹¹⁷ When an Order of Protection is violated as to child or spousal support, the Court should order payment to be made under an income assignment to the clerk of court.¹¹⁸

§3-7.03 Either the Court that originally issued the Order of Protection or a Court having jurisdiction over Orders of Protection in the county where the alleged violation of the order occurred shall have the authority and jurisdiction to conduct a contempt hearing.¹¹⁹

If the Court conducting the contempt hearing is not the same court that originally issued the Order of Protection, the Court conducting the hearing shall have the same authority to punish a violation of the Order of Protection as the Court originally issuing such order.

§3-7.04 Best Practice for Civil and Criminal Contempt

Charge both civil and criminal contempt.
Make specific findings as to whether the charge is civil or criminal contempt.

§3-7.05 Violation of an Order of Protection is a criminal misdemeanor.

A person who knowingly violates an order of protection issued pursuant to this part or a restraining order issued to a party who is a victim as defined in Section 36-3-601(8) (the relationship categories defined in the statute) commits the

¹¹⁶ Tenn. Code Ann. § 36-5-104(a) (2015).

¹¹⁷ Tenn. Code Ann. § 36-5-104(c) (2015)

¹¹⁸ Tenn. Code Ann. § 36-3-610(b) (2015).

¹¹⁹ Tenn. Code Ann. § 36-3-612(b) (2015).

offense of violation of a protective order.¹²⁰ Furthermore, federal and Tennessee law prohibit any person who is under an Order of Protection from possessing a weapon.

In order to be found guilty under this section:

- The person must have received notice of the request for an order of protection or restraining order;
- The person must have had an opportunity to appear and be heard in connection with the order of protection or restraining order; and
- The court made specific findings of fact in the order of protection or restraining order that the person had committed domestic abuse, sexual assault, or stalking as defined in this part.¹²¹

Any act that constitutes the offense of violation of a protective order shall be subject to arrest with or without a warrant, as outlined above.¹²² A person who is arrested for violation of a protective order shall be considered within the provisions of Section 40-11-150(a) (requiring that bond conditions be set) and subject to the twelve-hour hold period authorized by Section 40-11-150(h).¹²³ At the time the issue of bond is being determined, the magistrate shall notify or cause to be notified the victim of violation of a protective order that the defendant has been arrested.¹²⁴ Neither an arrest nor the issuance of a warrant or *capias* for the offense of violation of a protective order shall in any way affect the validity or enforceability of any order of protection or restraining order.¹²⁵

Violation of a protective order is a Class A misdemeanor and any sentence imposed shall be consecutive to any other offense that is based in whole or in part on the same factual allegations (for example, a finding of contempt or conviction of aggravated assault) unless the sentencing judge or magistrate specifically makes the sentences for any such offenses arising out of the same facts to be concurrent with one another.¹²⁶ Furthermore, a person convicted of the violation of protective order is prohibited from possessing a firearm.¹²⁷

¹²⁰ Tenn. Code Ann. § 39-13-313(a) (2015).

¹²¹ Tenn. Code Ann. § 36-3-612(b) (2015).

¹²² Tenn. Code Ann. § 39-13-113(b)(2015).

¹²³ Tenn. Code Ann. § 39-13-113(c)(2015).

¹²⁴ Tenn. Code Ann. § 39-13-113(d)(2015).

¹²⁵ Tenn. Code Ann. § 39-13-113(e)(2015).

¹²⁶ Tenn. Code Ann. § 39-13-113(g)(2015).

¹²⁷ Tenn. Code Ann. § 39-17-1352(2015); Tenn. Code Ann. § 39-17-1316(2011).

§3-7.06 Best Practice for the Misdemeanor Violation

Make sentences imposed as a result of an Order of Protection violation consecutive to any other offense that is based in whole or in part on the same factual allegations.

Hold violators in civil and criminal contempt only if there has not been a due process hearing on the Ex Parte Order of Protection.

Charge civil and criminal contempt and the misdemeanor violation if there has been a full hearing on the Ex Parte order.

Be patient as we work together to resolve some of the issues related to this new law.

§3-7.07 The Judge or Magistrate may hold the defendant for up to twelve hours for an Order of Protection.

Any offender arrested for an offense against the person committed against a victim as defined in the Order of Protection Act or for stalking, aggravated stalking, or especially aggravated stalking, or for the misdemeanor offense of violation of a protective order may not be released within twelve hours of such arrest if the magistrate or other official duly authorized to release such offender finds that such offender is a threat to the alleged victim.¹²⁸

§3-7.08 The Court must consider certain statutory factors when making a decision concerning the amount of bail required for the release of a defendant when it is alleged that the defendant is in violation of an Order of Protection.¹²⁹

The magistrate or judge shall review the facts of the arrest and detention and determine whether the defendant:

- Is a threat to the alleged victim or other family or household member;
- Is a threat to public safety;
- Is reasonably likely to appear in court.

In determining whether the defendant is a threat to the victim or to public safety, the magistrate or judge may wish to consider the following:

- Degree of injury to the victim;
- History of domestic abuse as documented by police reports and/or convictions;
- Whether the frequency or severity of violence appears to be escalating;

¹²⁸ T.C.A. § 40-11-150(h)(1)(2015); see Attorney General Opinion No. 97-069 (1997) (holding mandatory hold provision constitutional).

¹²⁹ Tenn. Code Ann. § 40-11-150(a) (2015).

- Threats of retaliation towards the victim or the children;
- Use or threatened use of a weapon;
- Prior criminal history of the defendant;
- Danger posed to the public, including threats to family or co-workers;
- The use of drugs or alcohol;
- The defendant's access to the victim and family;
- The defendant's mental and physical health;
- Any threats of suicide by the defendant.

Before releasing the defendant, the judge or magistrate shall make findings on the record, if possible, concerning the Court's determination as to the factors used in setting the amount of bail. The three statutory factors should be specifically addressed.

§3-7.09 The judge or magistrate shall impose one or more conditions of release which are designed to protect the victim from further violence.¹³⁰

Conditions of bail may be:

- An order enjoining the defendant from threatening to commit or committing specified offenses against the alleged victim or other family or household member;
- An order prohibiting the defendant from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, either directly or indirectly;
- An order directing the defendant to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;
- An order prohibiting the defendant from using or possessing a firearm or other weapon specified by the magistrate;¹³¹
- An order prohibiting the defendant from possession or consumption of alcohol or controlled substances; and
- Any other order required to protect the safety of the alleged victim and to ensure the appearance of the defendant in court.
- An order requiring the defendant to carry or wear a global positioning monitoring system device and, if able, pay the costs associated with operating that device and electronic receptor device provided to the victim, pursuant to T.C.A. § 40-11-152.

¹³⁰ Tenn. Code Ann. § 40-11-150(b) (2015).

¹³¹ The Court should inquire as to the defendant's possession of a weapon, since possession of a firearm or ammunition by a person subject to a valid Order of Protection is a federal offense, punishable by incarceration up to 10 years and a fine up to \$250,000.00.

If conditions of release are imposed, the judge or magistrate must issue a written order for conditional release.¹³² A copy of the order must be sent to the law enforcement agency which has custody of the defendant. At the same time, the judge or magistrate must provide the law enforcement agency with any available information on the location of the victim in a manner which protects the victim.

Before a judge or magistrate imposes the condition of the global positioning monitoring system device, the magistrate or judge must consider the likelihood that the defendant's participating will deter the defendant from seeking to kill, physically injure, stalk, or otherwise threatened the victim before trial. The magistrate or judge must also provide the victim with the following notifications:

1. The victim's right to participate in a global positioning monitoring system or to refuse to participate in that system and the procedure for requesting that the magistrate terminate the victim's participation.
2. The manner in which the global positioning monitoring system technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim's location and movements.
3. Any locations that the defendant is ordered to refrain from going to or near and the minimum distances, if any, that the defendant must maintain from those locations.
4. Any sanctions that the magistrate may impose on the defendant for violating a condition of bond imposed related to the global positioning monitoring system.
5. The procedure that the victim is to follow, and support services available to assist the victim, if the defendant violates a condition of bond or if the global positioning monitoring system equipment fails.
6. Community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other assistance available to address the consequences of domestic violence.
7. The fact that the victim's communications with the magistrate concerning the global positioning monitoring system and any restrictions to be imposed on the defendant's movements are not confidential.

In addition to the information described above, the magistrate or judge shall provide the victim who participates in a global positioning monitoring system with the name and phone number of an appropriate person employed by a local law enforcement agency who the victim may call to request immediate assistance if the defendant violates a condition of bond related to the global positioning monitoring system.

¹³² Tenn. Code Ann. § 40-11-150(c) (2015).

If conditions of release are imposed, the judge or magistrate must issue a written order for conditional release.¹³³ A copy of the order must be sent to the law enforcement agency which has custody of the defendant. At the same time, the judge or magistrate must provide the law enforcement agency with any available information on the location of the victim in a manner which protects the victim.

- The law enforcement agency is then required to give a copy of the order to the defendant.¹³⁴ The defendant may request a hearing before the trial judge over the conditions, and a hearing shall be held promptly.¹³⁵
- When a defendant who is arrested for a domestic abuse offense or a violation of an Order of Protection is released from custody, the law enforcement agency having custody of the defendant shall:
- Use all reasonable means to immediately notify the victim of the alleged offense of the release; and
- Furnish the victim of the alleged offense at no cost a certified copy of any conditions of release.¹³⁶
- Release of a domestic abuse defendant shall not be delayed because of the victim notification requirements.¹³⁷

Enforcement of the conditions of release must be swift and certain. The Court must send the message to the defendant, the victim, and the community at large that domestic abuse and violation of court orders will not be tolerated. A person who violates a condition of release imposed pursuant to this section shall be subject to immediate arrest with or without a warrant. Such a violation shall be punished as contempt of the Court imposing the conditions and the bail of such violator may be revoked.¹³⁸ Additionally, it can be punished as a misdemeanor Violation of a Protective Order if it meets the statutory elements.¹³⁹

§3-7.10 Double jeopardy.

Often the violence that prompts a contempt hearing is criminal conduct as well. For example, any assault done in contempt of an Order of Protection is an aggravated assault. Similarly, breaking into a petitioner's home to commit an assault is burglary. The Tennessee Supreme Court has held that "neither the Double Jeopardy Clause of the United States Constitution nor that of the Tennessee Constitution bars separate proceedings and punishments for

¹³³ Tenn. Code Ann. § 40-11-150(c) (2015).

¹³⁴ Tenn. Code Ann. § 40-11-150(d) (2015).

¹³⁵ Tenn. Code Ann. § 40-11-150(e) (2015).

¹³⁶ Tenn. Code Ann. § 40-11-150(f) (2015); See Tenn. Code Ann. § 36-3-615 (2015).

¹³⁷ Tenn. Code Ann. § 40-11-150(g) (2015).

¹³⁸ Tenn. Code Ann. § 40-11-150(i) (2015).

¹³⁹ Tenn. Code Ann. § 40-11-150(k)(3)(B)(2015).

contempt and the substantive offense underlying the contempt.”¹⁴⁰ The General Assembly expanded the consequences for violating some Orders of Protection to constitute a criminal misdemeanor while leaving intact the provisions of the Act which make violation of an Order of Protection civil or criminal contempt.¹⁴¹ The Court is empowered to punish the respondent for either criminal contempt or the misdemeanor Violation of a Protective Order. In addition, violations not covered by the misdemeanor definition must continue to be prosecuted by punishment for contempt.

§3-7.11 Tennessee courts must enforce Orders of Protection from other states.

The full faith and credit section of the Violence Against Women Act¹⁴² requires that when a victim goes to a new state, any valid Order of Protection issued in the old state must be enforced by the new state as if it were issued by the new state. In other words, whatever the implications of violating an Order of Protection in the new state, these apply to enforcement of the Order from the old state. In addition, if the victim is ineligible for an Order of Protection in the new state but she or he was eligible for the Order of Protection in the old state, the new state must still enforce the out-of-state Order.

Full faith and credit extends to both temporary and final Orders of Protection. It also applies to both civil and criminal Orders of Protection. However, full faith and credit does not extend to mutual Orders of Protection where no cross- or counter-petition was filed against the petitioner and where the judge did not make a finding that the petitioner had committed domestic abuse. The full faith and credit section does not require that the Order of Protection from the old state be registered in the new state to be enforceable. However, the section does require that (1) the Court that issued it had personal and subject matter jurisdiction and (2) the opposing party had reasonable notice and opportunity to be heard.

§3-7.12 An Order of Protection may be extended upon violation.

A Victim should file a motion for modification for an Order of Protection upon a violation of the Order of Protection or make an oral request to the judge. Tennessee law provides that “within the time the order of protection is in effect, any court of competent jurisdiction may modify the order of protection, either upon the court’s own motion or upon motion of the petitioner. If a respondent is properly served and afforded the opportunity for a hearing pursuant to § 36-3-

¹⁴⁰ State v. Winningham, 958 S.W.2d 740; 1997 Tenn. LEXIS 632 (Tenn. 1997) [citing State v. Denton, 938 S.W.2d 373, 378 (Tenn. 1996)].

¹⁴¹ Tenn. Code Ann. § 39-13-113(2015).

¹⁴² 18 U.S.C.A. § 2265 (2015). Tenn. Code Ann. § 36-3-622 (2011) provides guidance and procedures to assist in implementation of the full faith and credit provisions of the Violence Against Women Act.

612, and is found to be in violation of the order, the court may extend the order of protection up to 5 years. If the respondent is properly served and afforded the opportunity for a hearing, and is found to be in a second or subsequent violation of the order, the court may extend the order of protection up to 10 years. No new petition is required to be filed in order for a court to modify an order or extend an order pursuant to this subsection.”¹⁴³

§3-7.13 Performance Bond Required for Order of Protection Violations

Respondents, who have been convicted of violating an order of protection, are required to post a bond in an amount of no less than \$2500.¹⁴⁴ This bond is in addition to any other penalties provided by law. The bond must be at least \$2500, but the court can set a reasonable amount greater than \$2500 to assure the safety of the petitioner. If the respondent does not post the bond, the respondent may be held in contempt of court.

If the respondent fails to comply with the bond requirements, the court must enter an order declaring the bond forfeited. The clerk must mail notice of the order indicating that the bond has been forfeited to the respondent at the respondent’s last known address. The respondent has 30 days to show compliance with the conditions of bond. If the respondent cannot satisfy to the court compliance with the bond conditions, then the court shall enter a judgment in favor of the state against the respondent in the amount of the bond and costs of the court proceedings. The clerk may enforce the judgment as in other civil actions.

The proceeds of a judgment for the amount of the bond would be paid quarterly to the Administrative Office of the Courts and would be allocated equally on an annual basis in the following manner:

- (1) To provide legal representation to low-income Tennesseans in civil matters in such manner as determined by the Supreme Court. One fourth of such funds would be allocated to an appropriate statewide nonprofit organization capable of providing continuing legal education, technology support, planning assistance, resource development and other support to organizations delivering civil legal representation to indigents. The remainder would be distributed to organizations delivering direct assistance to clients with Legal Services Corporation funding;
 - (2) To the Domestic Violence State Coordinating Council;
 - (3) To the Tennessee Court Appointed Special Advocates Association (CASA);
- and
- (4) To Childhelp.

¹⁴³ T.C.A. §36-3-605 (2015).

¹⁴⁴ T.C.A. § 36-3-610 (2015)

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Chapter 4: Criminal Domestic Abuse Cases

Domestic abuse perpetrators commit a wide variety of criminal offenses in their attacks on victims. Almost any offense that can be committed against a person can be committed by a domestic abuse perpetrator.

§4-1 Assault Charges

§4-1.01 Assault is the most common charge in domestic abuse cases.

The misdemeanor assault charges are:

- Assault (a person commits assault who: (1) intentionally, knowingly or recklessly causes bodily injury to another; (2) intentionally or knowingly causes another to reasonably fear imminent bodily injury; or (3) intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive and provocative.);¹⁴⁵
- Domestic Assault (the relationship for domestic assault is now consistent with the domestic abuse definition in T.C.A. § 36-3-601: (1) adults or minors who are current or former spouses; (2) adults or minors who live together or who have lived together; (3) adults or minors who are dating or who have dated or who have or had a sexual relationship but does not include fraternization between two individuals in a business or social context; (4) adults or minors related by blood or adoption; (5) adults or minors who are related or were formerly related by marriage; or (6) adults or minor children of a person in a relationship that is described in (1)-(5). This means domestic assault also applies to dating relationships and roommate situations.)¹⁴⁶

The criminal offense of aggravated assault has the following elements:

- (a) A person commits aggravated assault who: (1) Intentionally or knowingly commits an assault as defined in T.C.A. § 39-13-101, and (A) causes serious bodily injury to another; (B) uses or displays a deadly weapon; or (C) attempts or intends to cause bodily injury to another by strangulation; or (2) Recklessly commits an assault as defined in § 39-13-101(a)(1), and: (A) causes serious bodily injury to another; or (B) uses or displays a deadly weapon.
- (b) A person commits aggravated assault who, being the parent or custodian of a child or the custodian of an adult, intentionally or knowingly fails or refuses to protect the child or adult from an

¹⁴⁵ Tenn. Code Ann. § 39-13-101(2015).

¹⁴⁶ Tenn. Code Ann. § 39-13-111(2015).

aggravated assault as defined in subdivision (a)(1) or aggravated child abuse as defined in § 39-15-402.

- (c) A person commits aggravated assault who, after having been enjoined or restrained by an order, diversion or probation agreement of a court of competent jurisdiction from in any way causing or attempting to cause bodily injury or in any way committing or attempting to commit an assault against an individual or individuals, intentionally or knowingly attempts to cause or causes bodily injury or commits or attempts to commit an assault against the individual or individuals.
- (d) A person commits aggravated assault who, with intent to cause physical injury to any public employee or an employee of a transportation system, public or private, whose operation is authorized by title 7, chapter 56, causes physical injury to the employee while the public employee is performing a duty within the scope of the public employee's employment or while the transportation system employee is performing an assigned duty on, or directly related to, the operation of a transit vehicle.¹⁴⁷

Note that the first three aggravated assault classifications are felonies, while the fourth offense is a misdemeanor.

§4-1.02 Domestic Assault

The relationship requirements for domestic assault are consistent with the domestic abuse definition in T.C.A. § 36-3-601:

- Adults or minors who are current or former spouses;
- Adults or minors who live together or who have lived together;
- Adults or minors who are dating or who have dated or who have or had a sexual relationship but does not include fraternization between two individuals in a business or social context;
- Adults or minors related by blood or adoption;
- Adults or minors who are related or were formerly related by marriage;
- Adults or minor children of a person in a relationship that is described above.

This means domestic assault also applies to dating relationships and roommate situations.)¹⁴⁸

The penalties for a first offense of domestic assault and assault under subsections T.C.A. § 39-13-101(a)(1) or (a)(2) are the same. However, after a

¹⁴⁷ Tenn. Code Ann. § 39-13-102 (2015).

¹⁴⁸ Tenn. Code Ann. § 39-13-111(2015).

second conviction of domestic assault, the judge must order a mandatory sentence and fine:

(1) A first conviction for domestic assault and a second or subsequent conviction for domestic assault committed in a manner prohibited by § 39-13-101 (a)(2) and (a)(3) is punishable the same as assault under § 39-13-101, and additionally, as provided in subdivisions (c)(2) and (c)(3) and subsection (d) of this section.

(2) A second conviction for domestic assault committed in a manner prohibited by § 39-13-101(a)(1), is punishable by a fine of not less than three hundred fifty dollars (\$350) nor more than three thousand five hundred dollars (\$3,500), and by confinement in the county jail or workhouse for not less than thirty (30) days, nor more than eleven (11) months and twenty-nine (29) days.

(3) A third or subsequent conviction for domestic assault committed in a manner prohibited by § 39-13-101(a)(1), is punishable by a fine of not less than one thousand one hundred dollars (\$1,100) nor more than five thousand dollars (\$5,000), and by confinement in the county jail or workhouse for not less than ninety (90) days, nor more than eleven (11) months and twenty-nine (29) days.

(4) For purposes of this section, a person who is convicted of a violation of § 39-13-111, committed in a manner prohibited by § 39-13-101(a)(1), shall not be subject to the enhanced penalties prescribed in this subsection (c), if ten (10) or more years have elapsed between the date of the present violation and the date of any immediately preceding violation of § 39-13-111, committed in a manner prohibited by § 39-13-101 (a)(1), that resulted in a conviction for such offense.

However, the domestic assault law provides that the sentencing judge has discretion to order the defendant to complete available counseling programs that address violence and control issues, including batterer's intervention programs certified by the domestic violence state coordinating council or any court-ordered drug or alcohol treatment program. Failure of the defendant to complete the program is considered a violation of the defendant's alternative sentencing

program and the judge may revoke the defendant's participation in such program and order execution of the sentence.¹⁴⁹ The law specifically states that:

As part of a defendant's alternative sentencing for a violation of this section, The sentencing judge may direct the defendant to complete a drug or alcohol treatment program or available counseling programs that address violence and control issues including, but not limited to, a batterer's intervention program that has been certified by the domestic violence state coordinating council. Completion of a non-certified batterer's intervention program shall only be ordered if no certified program is available in the sentencing county. No batterer's intervention program, certified or non-certified, shall be deemed complete until the full term of the program is complete, and a judge may not require a defendant to attend less than the full term of a program as part of a plea agreement or otherwise. The defendant's knowing failure to complete such an intervention program shall be considered a violation of the defendant's alternative sentence program and the sentencing judge may revoke the defendant's participation in such program and order execution of sentence.

Additionally, a person convicted of domestic assault shall be required to terminate, upon conviction, possession of all firearms that the person possesses as required by T.C.A. § 36-3-625.¹⁵⁰ There is no crime called aggravated domestic assault. A person who commits aggravated assault against a person in a relationship described above would be charged with aggravated assault.¹⁵¹

The criminal offense of aggravated assault has the following elements:

- (a) A person commits aggravated assault who: (1) Intentionally or knowingly commits an assault as defined in T.C.A. § 39-13-101, and (A) causes serious bodily injury to another; (B) uses or displays a deadly weapon; or (C) attempts or intends to cause bodily injury to another by strangulation; or (2) Recklessly commits an assault as defined in § 39-13-101(a)(1), and: (A) causes serious bodily injury to another; or (B) uses or displays a deadly weapon. "Strangulation" means intentionally or knowingly impeding normal breathing or circulation of the blood by applying pressure to the throat or neck or by blocking the nose and mouth of another person, regardless of whether that conduct results in any visible injury or whether the person has any intent to kill or protractedly injure the victim.
- (b) A person commits aggravated assault who, being the parent or custodian of a child or the custodian of an adult, intentionally or

¹⁴⁹ T.C.A. § 39-13-111(2015).

¹⁵⁰ T.C.A. § 39-13-111(c)(3)(2015).

¹⁵¹ T.C.A. § 39-13-102(2015).

knowingly fails or refuses to protect the child or adult from an aggravated assault as defined in subdivision (a)(1) or aggravated child abuse as defined in § 39-15-402.

- (c) A person commits aggravated assault who, after having been enjoined or restrained by an order, diversion or probation agreement of a court of competent jurisdiction from in any way causing or attempting to cause bodily injury or in any way committing or attempting to commit an assault against an individual or individuals, intentionally or knowingly attempts to cause or causes bodily injury or commits or attempts to commit an assault against the individual or individuals.
- (d) A person commits aggravated assault who, with intent to cause physical injury to any public employee or an employee of a transportation system, public or private, whose operation is authorized by title 7, chapter 56, causes physical injury to the employee while the public employee is performing a duty within the scope of the public employee's employment or while the transportation system employee is performing an assigned duty on, or directly related to, the operation of a transit vehicle.¹⁵²

§4-2 Arrest for Crimes Involving Domestic Abuse

§4-2.01 Arrest for a crime involving domestic abuse.¹⁵³

If a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic abuse, whether the crime is a misdemeanor or a felony or was committed within or without the presence of the officer, the preferred response of the officer is arrest. The arrest may be without a warrant.¹⁵⁴ Preferred response is defined as requiring that law enforcement officers shall arrest a person committing domestic abuse unless there is a clear and compelling reason not to arrest.¹⁵⁵ A domestic abuse crime means any crime committed where the relationship between the victim and the perpetrator is:

- Adults or minors who are current or former spouses;
- Adults or minors who live together or who have lived together;
- Adults or minors who are dating or who have dated or who have or had a sexual relationship;
- Adults or minors related by blood or adoption;
- Adults or minors who are related or were formerly related by marriage; or

¹⁵² Tenn. Code Ann. § 39-13-102 (2015).

¹⁵³ Tenn. Code Ann. § 36-3-619 (2015).

¹⁵⁴ Tenn. Code Ann. § 40-1-103 (a)(7) (2015).

¹⁵⁵ Tenn. Code Ann. § 36-3-601(7) (2015).

- Adult or minor children of a person in a relationship described above.¹⁵⁶

Offenders should be charged with appropriate violations of the law, such as assault, domestic assault, or aggravated assault.

If an officer has probable cause to believe that two or more persons committed a misdemeanor or a felony, or if two or more persons make complaints to the officer, the officer shall try to determine who was the primary aggressor. Arrest is the preferred response only with respect to the primary aggressor. Arrest is not the appropriate response for persons who were not the primary aggressor. If the officer believes that all parties are equally responsible, arrest is not the preferred response for any party, and the officer shall exercise his or her best judgment in determining whether to arrest all, any, or none of the parties.

In determining the primary aggressor, the officer shall consider:

- History of domestic abuse between the parties;
- Relative severity of injuries inflicted on each person;
- Evidence from the persons involved in the domestic abuse;
- The likelihood of future injury to each person;
- Whether one of the persons acted in self- defense; and
- Evidence from witnesses.

An officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage future requests for intervention by police or base the decision of whether to arrest on:

- The consent or request of the victim; or
- The officer's perception of the willingness of the victim or a witness to testify or participate in a judicial proceeding.

When investigating an alleged domestic abuse incident, the officer shall make a complete report and file the report with his or her supervisor. If the officer decides not to make an arrest, or decides to arrest two or more parties, the officer must include the grounds for the decision in the report. If the officer seizes any weapons, an inventory shall be attached to the report. Every month, the officer's supervisor shall forward the compiled data on domestic abuse cases to the administrative director of the courts.

An officer who has probable cause to believe that a crime has been committed involving domestic abuse shall seize all weapons that are alleged to have been used or threatened to be used by the abuser in the commission of a crime.¹⁵⁷ An officer may seize a weapon that is in plain view or discovered pursuant to a consensual search, if necessary for the protection of the officer or other persons.

¹⁵⁶ Tenn. Code Ann. § 36-3-601(11) (2015).

¹⁵⁷ Tenn. Code Ann. § 36-3-620 (2015).

An officer is not required to remove a weapon that the officer believes is needed by the victim for self defense.

When arrest is for assault, domestic assault, or aggravated assault, the arresting officer shall inform the victim that the person arrested may be eligible to post bond for the offense and be released until the date set for trial for the offense.¹⁵⁸

A law enforcement officer may arrest without a warrant when the officer has probable cause to believe a person has committed the offense of stalking.¹⁵⁹ When a person is charged and arrested for the offense of stalking, aggravated stalking or especially aggravated stalking, the arresting law enforcement officer shall inform the victim that the person arrested may be eligible to post bail for the offense and to be released until the date of trial for the offense.¹⁶⁰

§4-2.02 Issuance of a criminal summons in lieu of arrest.

If a law enforcement officer does not make an arrest or if law enforcement is not called, a victim may request a warrant from a magistrate.¹⁶¹ The judges of the supreme, appellate, chancery, circuit, general sessions and juvenile courts throughout the state, judicial commissioners and county executives in such officers' respective counties, are magistrates for this purpose.¹⁶² In addition, clerks of courts of general sessions and their duly sworn deputies have jurisdiction and authority, concurrent with that of the judges thereof, to issue warrants for the arrest of persons.¹⁶³

If a law enforcement officer does not make an arrest or if law enforcement is not called, a victim may request a warrant from a magistrate.¹⁶⁴ The judges of the supreme, appellate, chancery, circuit, general sessions and juvenile courts throughout the state, judicial commissioners and county executives in such officers' respective counties, are magistrates for this purpose.¹⁶⁵ In addition, clerks of courts of general sessions and their duly sworn deputies have jurisdiction and authority, concurrent with that of the judges thereof, to issue warrants for the arrest of persons.¹⁶⁶

In determining whether to issue an arrest warrant pursuant or a criminal summons pursuant to § 40-6-215, the following shall apply: If a single or multiple affiants are seeking a warrant of arrest for a felony or misdemeanor offense, and

¹⁵⁸ Tenn. Code Ann. § 36-3-615 (2015).

¹⁵⁹ Tenn. Code Ann. § 40-7-103(a)(9) (2015).

¹⁶⁰ Tenn. Code Ann. § 39-17-315(j) (2015).

¹⁶¹ Tenn. Code Ann. § 40-6-203 (2015).

¹⁶² Tenn. Code Ann. § 40-1-106 (2015).

¹⁶³ Tenn. Code Ann. § 40-6-214 (2015).

¹⁶⁴ Tenn. Code Ann. § 40-6-203 (2015).

¹⁶⁵ Tenn. Code Ann. § 40-1-106 (2015).

¹⁶⁶ Tenn. Code Ann. § 40-6-214 (2015).

at least one (1) or more of the affiants is a law enforcement officer, as defined by § 39-11-106, the magistrate shall issue an arrest warrant unless the law enforcement officer requests a summons be issued instead. If a single or multiple affiants are seeking a warrant of arrest for a misdemeanor offense, as defined in § 39-11-110, and none of the affiants is a law enforcement officer, as defined by § 39-11-106, there is a presumption that the magistrate shall issue a criminal summons. The presumption is overcome if: (A) The affiant or affiants request a warrant, submit sufficient information demonstrating the need for a warrant, and the magistrate agrees that an arrest warrant should be issued instead of a summons; or (B) The magistrate finds an arrest warrant is necessary to prevent immediate danger to a victim of domestic abuse, sexual assault or stalking as defined in § 36-3-601.¹⁶⁷

In most instances of domestic abuse, the issuance of an arrest warrant rather than a criminal summons will be necessary, and magistrates should inquire into the circumstances and make findings accordingly. Judges and magistrates should also work with their local Domestic Abuse Coordinating Council to insure that law enforcement officials in their jurisdictions are making arrests or requesting warrants when appropriate in domestic abuse cases and that officials responsible for issuing arrest warrants or criminal summonses are properly educated on the law and on domestic violence.

§4-2.03 Best Practice for Arrests Involving Domestic Abuse

- Always impose Conditions of Release when the victim meets the definition of domestic abuse, not just in domestic assault cases.
- Err on the side of caution when deciding whether to issue a citation or a warrant.
- Make a colorable argument for findings and issue the warrant.

4-3 Pre-Trial Release

§4-3.01 In making a decision concerning the amount of bail required for the release of a defendant who is arrested for the offense of child abuse, child neglect, or child endangerment, as defined in § 39-15-401, the offense of aggravated child abuse, aggravated child neglect, or aggravated child endangerment, as defined in § 39-15-402, the offense of stalking, aggravated stalking or especially aggravated stalking, as defined in § 39-17-315, any criminal offense defined in title 39, chapter 13, in which the alleged victim of the offense is a victim as defined in § 36-3-601(5), (10) or

¹⁶⁷ T.C.A. § 40-6-205(b)(3) (2015).

(11), or is in violation of an order of protection as authorized by title 36, chapter 3, part 6, the magistrate shall review the facts of the arrest and make certain findings.

The Court must determine whether the defendant:

- Is a threat to the alleged victim or other family or household member;
- Is a threat to public safety; and
- Is reasonably likely to appear in court.¹⁶⁸

Before releasing the defendant, the Court shall make findings on the record if possible concerning its determination with respect to the three factors listed above.

Before releasing the defendant, the Court shall make findings on the record if possible concerning its determination with respect to the three factors listed above.

§4-3.02 The Court must impose conditions on the pre-trial release of a defendant who is arrested for the offense of child abuse, child neglect, or child endangerment, as defined in § 39-15-401, the offense of aggravated child abuse, aggravated child neglect, or aggravated child endangerment, as defined in § 39-15-402, the offense of stalking, aggravated stalking or especially aggravated stalking, as defined in § 39-17-315, any criminal offense defined in title 39, chapter 13, in which the alleged victim of the offense is a victim as defined in § 36-3-601(5), (10) or (11), or is in violation of an order of protection as authorized by title 36, chapter 3, part 6, the magistrate shall review the facts of the arrest and make certain findings and impose one or more conditions of release or bail on the defendant to protect the alleged victim of any such offense and to ensure the appearance in court.¹⁶⁹

Those must include one or more of the following:

- Issuance of no contact order prohibiting contact with the victim;
- Prohibiting the defendant from using or possessing a firearm or other weapon specified by the Court;
- Prohibition against possessing or using alcohol or controlled substances;

¹⁶⁸ Tenn. Code Ann. § 40-11-150(a) (2015). See also Tenn. Code Ann. § 40-11-118 (2015).

¹⁶⁹ Tenn. Code Ann. § 40-11-150(b) (2015).

Any other order required to protect the safety of the alleged victim and to insure the appearance of the defendant in court.

- An order requiring the defendant to carry or wear a global positioning monitoring system device and, if able, pay the costs associated with operating that device and electronic receptor device provided to the victim, pursuant to T.C.A. § 40-11-152.

If conditions of release are imposed, the judge or magistrate must issue a written order for conditional release.¹⁷⁰ A copy of the order must be sent to the law enforcement agency which has custody of the defendant. At the same time, the judge or magistrate must provide the law enforcement agency with any available information on the location of the victim in a manner which protects the victim.

Before a judge or magistrate imposes the condition of the global positioning monitoring system device, the magistrate or judge must consider the likelihood that the defendant's participating will deter the defendant from seeking to kill, physically injure, stalk, or otherwise threatened the victim before trial. The magistrate or judge must also provide the victim with the following notifications:

1. The victim's right to participate in a global positioning monitoring system or to refuse to participate in that system and the procedure for requesting that the magistrate terminate the victim's participation.
2. The manner in which the global positioning monitoring system technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim's location and movements.
3. Any locations that the defendant is ordered to refrain from going to or near and the minimum distances, if any, that the defendant must maintain from those locations.
4. Any sanctions that the magistrate may impose on the defendant for violating a condition of bond imposed related to the global positioning monitoring system.
5. The procedure that the victim is to follow, and support services available to assist the victim, if the defendant violates a condition of bond or if the global positioning monitoring system equipment fails.
6. Community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other assistance available to address the consequences of domestic violence.
7. The fact that the victim's communications with the magistrate concerning the global positioning monitoring system and any restrictions to be imposed on the defendant's movements are not confidential.

¹⁷⁰ Tenn. Code Ann. § 40-11-150(c) (2015).

In addition to the information described above, the magistrate or judge shall provide the victim who participates in a global positioning monitoring system with the name and phone number of an appropriate person employed by a local law enforcement agency who the victim may call to request immediate assistance if the defendant violates a condition of bond related to the global positioning monitoring system.

The Court may enjoin the defendant, as a condition of release or bail, from threatening to commit or committing specified offenses against the alleged victim, from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly, and from coming about the alleged victim's home or other place where the victim is likely to be.¹⁷¹

When conditions of release are imposed, the Court must:

- Issue a written order for conditional release;
- Immediately distribute a copy of the order of release to the law enforcement agency having custody of the defendant; and
- Provide such law enforcement agency with any available information concerning the location of the victim in a manner that protects the safety of the victim.¹⁷²

The conditions of release shall be indicated on a form prepared by the administrative office of the courts, in consultation with the Tennessee task force against domestic violence and distributed to judges and magistrates by the administrative office of the courts. The law enforcement agency having custody of the defendant shall provide a copy of the conditions to the defendant upon his or her release. Failure to provide the defendant with a copy of the conditions of release does not invalidate the conditions if the defendant has notice of such conditions.¹⁷³

If conditions of release are imposed without a hearing, the defendant may request a prompt hearing before the Court having jurisdiction of the offense for which the defendant was arrested or is charged to review the conditions. Upon such a request, the Court shall hold a prompt hearing to review the conditions.¹⁷⁴

A person who violates a condition of release imposed pursuant to this section shall be subject to immediate arrest with or without a warrant. Such a violation shall be punished as contempt of the Court imposing the conditions and the bail of such violator may be revoked.¹⁷⁵ A violation can also amount to a

¹⁷¹ Tenn. Code Ann. § 40-11-150(b)(1), (2) and (3) (2015).

¹⁷² Tenn. Code Ann. § 40-11-150(c) (2015).

¹⁷³ Tenn. Code Ann. § 40-11-150(d) (2015).

¹⁷⁴ Tenn. Code Ann. § 40-11-150(e) (2015).

¹⁷⁵ Tenn. Code Ann. § 40-11-150(i) (2015).

misdemeanor charge as a Violation of a Protective Order if the statutory requirements are met.¹⁷⁶

If a defendant upon whom conditions of release have been imposed is for any reason discharged or released from such conditions, the discharging or releasing Court shall notify all law enforcement agencies within its jurisdiction that such defendant is no longer subject to the conditions originally imposed.¹⁷⁷ The Administrative Office of the Courts, in consultation with the Domestic Violence State Coordinating Council, shall prepare a Discharge from Conditions of Release notification form and distribute such form to all courts with the authority to discharge or release a defendant from conditions of release.¹⁷⁸

§4-3.03 Any offender arrested for any crimes against the person, in which the alleged victim is a victim as defined in the Order of Protection statute, or for the offense of stalking, aggravated stalking or especially aggravated stalking shall not be released within twelve hours of such arrest if the magistrate or other official duly authorized to release such offender finds that such offender is a threat to the alleged victim.¹⁷⁹

Any offender arrested for the offense of stalking, aggravated stalking, or especially aggravated stalking, as defined in § 39-17-315, or any criminal offense defined in title 39, chapter 13, in which the alleged victim is a victim as defined in § 36-3-601, shall not be released within twelve (12) hours of the time of arrest. The magistrate or other official duly authorized to release the offender may, however, release the offender in less than twelve (12) hours if the official finds that the offender is not a threat to the alleged victim.

The findings shall be reduced to writing. The written findings must be attached to the warrant and shall be preserved as a permanent part of the record. The arresting officer shall make official note of the time of the arrest in order to establish the beginning of the twelve-hour period required by this subsection.

If the offender is released prior to the conclusion of the twelve-hour period, the official shall make all reasonable efforts to directly contact the victim and inform the victim that the person charged with the offense will be released prior to the conclusion of the twelve-hour period mandated in subdivision.¹⁸⁰

¹⁷⁶ Tenn. Code Ann. § 40-11-150(i)(2015).

¹⁷⁷ Tenn. Code Ann. § 40-11-150(j)(1) (2015).

¹⁷⁸ Tenn. Code Ann. § 40-11-150(j)(2) (2015).

¹⁷⁹ Tenn. Code Ann. § 40-11-150(h) (2015).

¹⁸⁰ T.C.A. § 40-11-150(h)(1)(2015); see Attorney General Opinion No. 97-069 (1997) (holding mandatory hold provision constitutional).

§4-3.04 Best Practice for Bonds and Conditions of Release

Set substantive bonds in cases of domestic abuse.

- Err on the side of caution when determining whether to waive or shorten the twelve-hour hold.
- Note that the twelve-hour hold runs from the time of arrest.
- Get information from the victim where possible in deciding the amount of the bond.
- Conditions of Release are not a replacement for the Order of Protection; victims should have both. The Order of Protection affords a more fixed period of protection and has more remedies attached to it.

§4-3.05 The victim is entitled to notification of the defendant's release.

When a defendant who is arrested for a domestic abuse offense or a violation of an Order of Protection is released from custody, the law enforcement agency having custody of the defendant shall:

Use all reasonable means to immediately notify the victim of the alleged offense of the release; and

Furnish the victim of the alleged offense at no cost a certified copy of any conditions of release.¹⁸¹

Release of a domestic abuse defendant shall not be delayed because of the victim notification requirements.¹⁸²

§4-4 Weapons and Domestic Violence

§4-4.01 State Law Regarding Weapons and Domestic Violence

A person is not eligible for a handgun permit if the individual is subject to any Order of Protection. The applicant must provide a copy of the order.¹⁸³

Before obtaining a handgun permit, an applicant must show that he has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C section 921(33)¹⁸⁴. Such a misdemeanor is an offense which

is a misdemeanor under Federal or State law; and

¹⁸¹ Tenn. Code Ann. § 40-11-150(f) (2015).

¹⁸² Tenn. Code Ann. § 40-11-150(g) (2015). See Tenn. Code Ann. § 36-3-615(2015).

¹⁸³ Tenn. Code Ann. §39-17-1351(c)(8)(2015).

¹⁸⁴ Tenn. Code Ann. §39-17-1351(c)(16)(2015).

has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon,

committed by a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

The Department of Safety shall suspend or revoke a handgun permit upon sufficient evidence that the permit holder poses a material likelihood of risk of harm to the public, has been arrested for a felony involving the use or attempted use of force, violence or a deadly weapon or a felony drug offense, has been convicted of a felony, convicted of domestic assault, a misdemeanor crime of domestic violence, or is subject to a current order of protection that fully complies with the provisions of 18 U.S.C. § 922(g)(8).¹⁸⁵ This means that the defendant must submit an Affidavit of Firearms Dispossession form to the court and surrender any firearms in the defendant's possession in 48 hours.

Courts have the authority to inquire about handguns and to confiscate weapons and suspend handgun permits if the defendant has been arrested for a felony offense involving violence or the use of a firearm.¹⁸⁶

§4-4.02 A person convicted of domestic assault cannot possess a firearm.

A person arrested and charged with domestic assault cannot purchase or carry a weapon. Furthermore, a person who is convicted of domestic assault or a misdemeanor crime of domestic violence can be charged with the misdemeanor for unlawful possession of a weapon.¹⁸⁷

§4-4.03 Best Practice for Firearms

- Ask victim and defendant about weapon possession.
- Confiscate weapons
- Involve the police or sheriff's department in confiscating weapons.
- Failure to do so could create liability and accountability issues.

¹⁸⁵ Tenn. Code Ann. §39-17-1352(a)(2015).

¹⁸⁶ Tenn. Code Ann. §39-17-1352(e)(2)(2015).

¹⁸⁷ Tenn. Code Ann. §39-17-1352(e)(2)(2015).

References

NCJFCJ (1990). *Family Violence: Improving Court Practice*. Reno, Nevada: National Council of Juvenile and Family Court Judges.