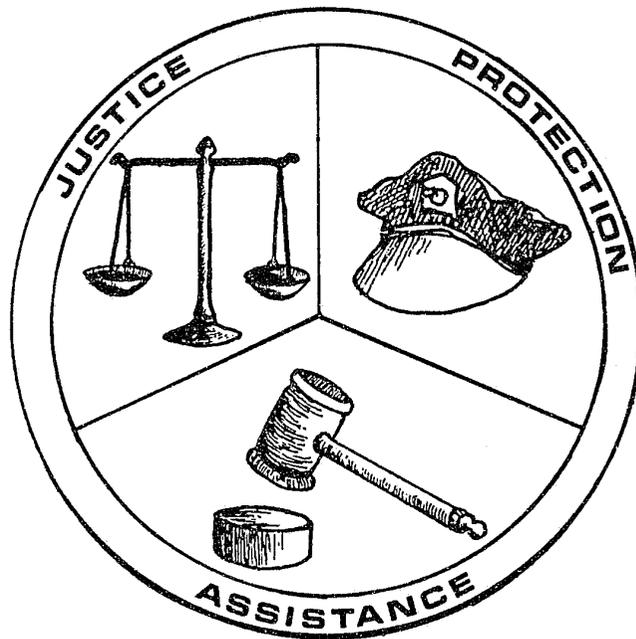




THE DOMESTIC VIOLENCE ORDER OF PROTECTION:

CIVIL COURT PRACTICE

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ILLINOIS COALITION AGAINST DOMESTIC VIOLENCE

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The Domestic Violence Order of Protection: Civil Court Practice

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Gregory L. Coler, Director

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Neil F. Hartigan, Attorney General

Preface

The Illinois Coalition Against Domestic Violence is a statewide network of more than thirty-five community-based domestic violence programs. These programs provide victims of assault by other family members with 24-hour protection and safety, support, advocacy and referral through both residential and non-residential services.

The Illinois Coalition Against Domestic Violence, under a grant from the Illinois Department of Public Aid and the Chicago Resource Center, has developed materials and presented training on the recently enacted Illinois Domestic Violence Act. The Act, which is designed to provide effective legal remedies to domestic violence victims, requires full implementation by law enforcement officials, state's attorneys, and judges in order to provide victims with the protection they need. In addition, it is essential that attorneys who represent battered women understand not only how to use the Domestic Violence Act on their behalf but also the complex issues inherent in domestic violence cases. This Manual includes a thorough description of the value and availability of Domestic Violence Orders of Protection and includes practical tools for lawyers to use when representing domestic violence victims.

Other materials on the Act, including manuals for law enforcement officers, state's attorneys and advocates, are available from the Illinois Coalition (please see Appendix D for list). The Coalition welcomes the opportunity to distribute these materials, to answer questions and to cooperate with anyone attempting to implement or utilize the law.

The Illinois Coalition Against Domestic Violence is very grateful to the numerous attorneys who served on an Advisory Committee to review and comment on this Manual (please see Appendix E for the Committee members' names).

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I. INTERVIEWING AND COUNSELING THE DOMESTIC VIOLENCE CLIENT

A. Goals and Methods

The lawyer's first obligation to a battered woman¹ is to help her arrange for a safe place to spend the coming night, if necessary, and to take other steps to prevent the recurrence of the abuse. But this need for direct protection cannot remain isolated from the related needs to retain or regain child custody and to design a new basis for economic security. These three categories of goals--prevention of future abuse, child custody and visitation and economic matters--are used throughout the office² and court³ forms provided in this manual, to help lawyers provide comprehensive assistance to their domestic violence clients.

There are three basic methods for achieving the three principal goals: (1) provide the victim with information about rights and resources; (2) increase the visibility of the abuse as a crime; and (3) provide for physical separation of parties.

1. Information as Power

Domestic violence victims are frequently uninformed or misinformed about their legal rights and the legal and social service resources available to them. If you supply a battered woman with accurate, relevant information, you enhance her power to reclaim control of her life and to create and follow a plan of action. Simple advice, like the following, can undo the paralyzing effect of common myths:

- A crime victim can file a complaint and request criminal prosecution even if the police made neither an arrest nor a report.
- It may be wise to follow through with criminal prosecution even if the victim does not want the abuser jailed. A first conviction of a misdemeanor rarely results in imprisonment, and other criminal sanctions (e.g., supervision with written conditions, mandatory counseling) may deter future abuse. These other sanctions can be designed to ensure no interference with employment and no criminal record.
- It is possible to have the abuser temporarily evicted from the home, when that is necessary to the safety and well being of other family or household members.
- If notice that the victim is taking legal action would provoke further abuse or other wrongdoing, orders of protection can be obtained without prior notice to the abuser. That means, for example, that the papers telling him about a divorce proceeding may be accompanied by an order telling him to immediately leave the family home.

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1. The focus is on battered women because in 94% of family violence cases women are the victims of assault by men (Dobash, R. Emerson and Russell P., "Wives: The 'Appropriate' Victims of Marital Violence," Victimology: An International Journal, Vol. 2, 1977-78, No.'s 3-4, pp. 426-442, Visage Press, Inc., Washington, D.C.). Also, other victims such as children and the elderly are less likely to turn to attorneys.
 2. The Domestic Violence Intake Form, Appendix A.
 3. The Petition for a Domestic Violence Order of Protection, Appendix B.

- You do not need your spouse's consent or "signature" to get a divorce.
- A woman will not necessarily lose custody just because she has taken a paying job, left children briefly unattended, committed adultery or otherwise failed to be a "perfect" wife and mother.
- Legal custody and child support may be obtained even without a divorce.
- Illinois may have the authority to decide legal custody even if one of the parents has removed the children from the state.
- It is a crime for a non-custodial parent to take the children out of state in violation of a custody order, and interstate enforcement may be possible.
- Any owner of a joint bank account has the right to withdraw some or all of the money, although a divorce court may later order that the money be shared.

Do not expect most domestic violence clients to immediately absorb all the advice provided and choose from the options identified. In fact, if the client is initially confused or ambivalent and then is rushed into a decision to litigate, she is very unlikely to follow through. For that reason, be sure to have and distribute written⁴ information on rights and referrals for victims of domestic violence.⁵

2. Visibility of the Abuse as a Crime

Many people -- family, friends, neighbors, even the police -- probably have been aware of the abuse suffered by your client. Yet that abuse has been regarded as a shame, a family problem, insignificant or even appropriate, rather than as "a serious crime against the individual and society" which is likely to escalate and may "culminate in intra-family homicide."⁶ Such societal minimization or even approval of the abuser's conduct allows him to continue the abuse at no risk to his personal liberty or his reputation and standing in the community.

Filing and following through with criminal charges for past abuse and/or with an action for a Domestic Violence Order of Protection⁷ will heighten the visibility of the abuse as a crime and warn the abuser that there will be no more "free shots." A warning letter, like the sample letter which follows, may be appropriate when the client is not prepared to make the substantial commitments of time and energy needed for successful legal action, or as a stopgap

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4. Visiting a lawyer for protection against domestic violence can be as frightening and exhausting as visiting a doctor for treatment of serious illness. Oral information and advice may be forgotten or distorted.
 5. The Illinois Coalition Against Domestic Violence (ICADV) is distributing such information for victims, printed in English and in Spanish.
 6. Illinois Domestic Violence Act (IDVA), Ill.Rev.Stat. ch.40, ss2301-1-2305-1 at s102(1) (1981) (P.A. 82-621, eff. March 1, 1982). All subsequent citations are to IDVA unless otherwise noted.
 7. These orders may be obtained independently or as part of a criminal action or of a proceeding under the marriage and dissolution of marriage law. s202(a).

SAMPLE WARNING LETTER

Dear

I am writing to inform you that _____ is now representing _____. It is our intention to see that _____ (and the children) suffer no future abuse at your hands. We will be representing her(them) in any necessary civil legal actions (including a divorce) and helping her file and prosecute necessary criminal charges.

As you know, it is a crime called battery to make "harmful or offensive" contact with another. It is a crime called assault to give another person cause to worry that you will make such harmful or offensive contact. These criminal laws apply to husbands and wives, as well as to strangers.

Additionally, any person being abused by a family or household member may obtain a Domestic Violence Order of Protection. These orders may:

- (1) forbid any further striking, threatening, harassing, or interference with personal liberty;
- (2) evict the abuser from the family home;
- (3) order the abuser to obtain counseling;
- (4) grant temporary child custody and visitation rights;
- (5) forbid child snatching and concealment and require appearance in court with the child;
- (6) forbid transfer or destruction of property;
- (7) require the abuser to pay for any financial losses resulting from the abuse, including lost wages, moving expenses, cost of temporary shelter, medical expenses, etc.;
- (8) require the abuser to pay temporary spousal and child support;
- (9) require the abuser to pay court costs and the victim's attorney fees;
- (10) provide other needed protection and assistance.

Violation of a Domestic Violence Order of Protection may result in arrest and imprisonment or fine.

_____ believes that this warning letter (plus her action for divorce) will be adequate to protect her (and the children), and so she has postponed filing criminal charges or a petition for a Domestic Violence Order of Protection. I hope that she is right, but I will be making it my business to stay in touch with her to be sure that she (and the children) are in fact safe.

Sincerely,

P.S. You might be interested to know that wife (and child) abuse are all too common in our society and that there are excellent, confidential, counseling programs available for abusers who want to learn other ways of dealing with life's stresses. The (_____) can identify counseling services for batterers.

measure during delays in litigation. Needless to say, no warning letter should be sent without clear authorization from the client.

3. Physical Separation of the Parties

The Illinois Domestic Violence Act (IDVA)⁸ recognizes that "the separation of the parties (may be necessary) to prevent further abuse."⁹ The need for this physical separation may be immediate and therefore not satisfactorily met by filing for dissolution of the marriage. Domestic Violence Orders of Protection, which are available immediately in emergency situations,¹⁰ may address the three basic components of a workable separation: (1) safe shelter, (2) resolution of custody and visitation issues and (3) economic security.

a. Safe Shelter

The primary source of safe shelter for the abused family members is the family home itself. The court may temporarily evict the abuser from the family or shared dwelling, without regard to his property interest in that dwelling, if (1) your client was abused by the adverse party,¹¹ and (2) she is either married to him or is a sole or joint owner or lessee of the residence or is legally entitled to support from him for herself or for a minor child.¹²

In the past, such "vacate orders" have been inordinately difficult to obtain. The old maxim that "a man's home is his castle" has operated to deny battered women and children their rights to safe and peaceful occupancy of the family dwelling. Now, IDVA requires all Orders of Protection to include written explanation for denial of any IDVA remedy.¹³ Further, when the court denies a vacate order, IDVA requires findings as to:¹⁴

the manner in which the hardship which would result from temporary exclusion of the respondent from his or her residence substantially outweighs the hardship which would result if the petitioner or any family or household members were deprived of safe and peaceful occupancy of the home by the threat of future abuse of the petitioner.

8. See n.6., supra.

9. s102(4).

10. s204(a).

11. s208(a).

12. s208(c)(2).

13. s209(a).

14. s208(d)(3).

A second method for removing the abuser from the family home is arrest; its great advantage is its immediate availability. However, the decision to arrest and the implementation of that decision are not within the control of your client and, if the abuser can post bond, he may return immediately to the family dwelling.

A third method, available if the victim is not married to the abuser and he has no property interest in the shared residence¹⁵ is lockout of the abuser. However, this method may be physically or economically impossible for the client.

Each of the first three methods attempts to create safe shelter for the client by excluding the abuser from the family home. The fourth method, public or private emergency shelter,¹⁶ may be a necessary supplement to such exclusion or may be the only method which offers adequate physical security and social service support.

Only rarely will any one method of obtaining safe shelter be adequate in itself. Rather, it is typically necessary to consider the advantages and disadvantages of each and to use them in combination. For example, the police may arrest the abuser and remove him from the house, giving the victims adequate time to gather essential belongings and escorting them to a place of temporary shelter. If possible and lawful, the victims may wish to change locks before the abuser is released, to avoid theft and property destruction. Then the victim might retain a lawyer to obtain a Domestic Violence Order of Protection which includes a vacate order or might persuade the State's Attorney to request such an order at the pre-trial release hearing or as a condition of probation, conditional discharge or supervision.

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15. A lockout in violation of spousal or property rights could result in civil action against your client. Although such a lockout is not a crime and does not authorize the police to force entry, they may nevertheless press your client to admit the abuser to the dwelling.
 16. ICADV publishes a list of its member organizations. Any member organization in your area can help your client locate safe space, whether in a shelter, a private residence designated as a "safe home," a church basement, police station or YWCA, etc. Of course, your client will want to consider the availability and safety of the homes of relatives and friends.

b. Custody & Visitation Issues

The threat to "take the children away from you if you try to leave me" can be a powerful deterrent to the physical separation necessary for safety. While no law can actually prevent such threatened child snatching, IDVA does authorize temporary custody and visitation orders,¹⁷ as well as orders requiring the abuser to bring the children to court and to refrain from concealing them or removing them from the jurisdiction.¹⁸

The value of these orders lies in their potential deterrent effect and the right to enforce them through contempt of court proceedings. Additionally, Illinois custody orders, including those entered under IDVA: (1) authorize Illinois police to arrest for and warn against commission of the class 4 felony of child abduction,^{18a} and (2) are entitled to full faith and credit, hence enforceable through contempt of court procedures, in all jurisdictions.^{18b} Absent a court order, parents have equal rights to physical custody of a child.^{18c}

If your client is thinking of leaving the state with the children to avoid further abuse (without waiting to obtain legal custody and permission to remove the children from the jurisdiction),

17. s208(c)(3).

18. s208(c)(4).

18a. Ill.Rev.Stat. ch.38, s10-5 (1979). Child abduction includes concealing the child within, as well as removing the child from, Illinois in knowing violation of an Illinois custody order s10-5(b). Affirmative defenses include submitting the child to an Illinois court within 72 hours of the abduction. s10-5(c). However, passage of this 72 hour period is not an element of the felony, and delay in contacting the police or filing charges is not necessary. The Parental Kidnapping Prevention Act of 1980, (P.L.96-611, ss6-10, 94 Stat. 3568) clarifies congressional intent that the Fugitive Felon Act (18 U.S.C. 1073) shall apply in state felony parental kidnapping cases. "The primary purpose of the Fugitive Felon Act is to permit the federal government to assist in the location and apprehension of fugitives from state justice." Use of the Federal Parental Kidnapping Law, June 1981 Clearinghouse Rev. 138, 139.

18b. Section 8 of the Parental Kidnapping Prevention Act of 1980 (n.18a, supra) amends chapter 115 of title 28 U.S.C. by adding s1738A. That section "provides that the appropriate authorities of every state shall enforce and not modify (except in limited circumstances) child custody determinations entered by a court of another state exercising jurisdiction consistent with . . . (its provisions) which are themselves derived from the . . . (Uniform Child Custody Jurisdiction Act)." Use of the Federal Parental Kidnapping Law, n.18a, supra.

18c. However, the police do have authority to remove a child from a parent's custody, without a warrant, if the child is in imminent danger of abuse or neglect. Ill.Rev.Stat. ch.37; s703-1(1).

you must compare the risk of harm to her or the children if they remain to the effects of such a departure on her prospects for legal and physical custody.^{18d} For example, the father of the children may respond to your client's departure by filing for custody in Illinois. Since she is unlikely to provide him with her forwarding address, she may never receive actual notice of that action until he later locates her and attempts to enforce his custody award through self help or the courts of her new state. If she does obtain actual notice of the action (because for example, you are periodically checking court files), she may lack the money to return to Illinois to contest jurisdiction or litigate custody. Of course, departure would create no significant legal risks for your client if: (1) the new state will have custody jurisdiction as soon as she arrives there; (2) that state will not decline to exercise its jurisdiction (because, for example, it is an inconvenient forum or your client lacks clean hands); and (3) your client will succeed in filing her action for custody before the children's father reaches the Illinois courthouse door.^{18e}

c. Economic Security

Similarly, financial need may compel a battered woman to return to her abuser, even though doing so will subject her and the children to serious danger of abuse. Therefore, financial planning is an essential component of competent representation of battered women. The IDVA authorizes: a ban on transfer or destruction of the victim's property,¹⁹ monetary compensation for losses resulting from the abuse,²⁰ temporary spousal and child support,²¹ and requiring the abuser to pay court costs and the victim's attorney fees.²² However, none of these remedies provides immediate financial assistance to the victim,²³ and it may be necessary for her to spend savings from sole or joint accounts, borrow from family or friends or apply for emergency and regular cash assistance and food stamps from the Illinois Department of Public Aid.²⁴

18d. Your client's choice of residence will affect the physical and social environment she offers the children and, therefore, her ability to obtain legal custody. Also, plans to leave the state prior to obtaining legal custody must be evaluated against the statutory prerequisites to custody jurisdiction and grounds for refusal to exercise that jurisdiction. See discussion at 28, infra.

18e. See discussion at 28, infra.

19. s208(c)(6).

20. s208(c)(8).

21. s208(c)(7).

22. s208(c)(9).

23. The ban on property destruction protects assets, but doesn't provide income. The other economic remedies are unavailable in ex parte proceedings. s204(b). Even after economic remedies are obtained, enforcement may be difficult and time consuming.

24. Local ICADV members can advise your client about eligibility for public assistance. If it appears that your client has been wrongfully denied any type of public assistance, you should immediately contact the local legal aid office to obtain technical assistance or a representative for the client.

B. Overcoming Barriers to Effective Representation

1. Management of Facts

A battered woman typically must evaluate all the major issues in her life: marriage, employment, place of residence, childcare, financial support, etc. The multitude and complexity of relevant facts -- not to mention their high emotional content -- can be exhausting, confusing and discouraging for the lawyer, as well as for the abuse victim.

The practice aids in this manual -- the Domestic Violence Intake Form, the sample Petition for a Domestic Violence Order of Protection and the form Orders of Protection -- are designed to simplify the lawyer's fact management task. Because they are a "matched set" -- organized around the same key concepts and based on the requirements of the Illinois Domestic Violence Act -- they should promote a smooth case flow, from the initial client interview to entry of final judgment.

2. Client Follow Through

It is generally believed that battered women often fail to follow through with their legal actions. This poor follow-through, if unexamined and uncorrected, can diminish the attorney's respect for the clients and drain her/his reservoirs of compassion and commitment to public service. The resulting cynicism can and sometimes does undermine competent representation.

When examining client follow-through, the first step is to ask whose agenda is being used to measure that follow-through, the client's agenda or the lawyer's agenda. They may be quite different.

For example, many battered women want the lawyer to somehow "make him stop beating me" and have no clear idea of the burdens and advantages of the various methods for protecting their rights. When the lawyer assumes that litigation is the best or only solution, without full and respectful dialogue with the client, "poor client follow-through" with the lawyer's agenda for action is likely.

For another example, the client may have wanted legal action filed, but the tone of the interview did not allow her to frankly disclose that her current goals might be fully achieved by service of the summons and petition. If the lawyer knows in advance that she is waiting to judge the impact of this service and may proceed no further, fees and expectations could be adjusted accordingly.

Other common causes for lack of client follow-through include inadequate or delayed provision for physical safety, child custody or economic needs, despair based on prior unsuccessful efforts

and the illness and injuries (including depression, chronic pain, etc.) caused by the abuser.

Interviewing techniques which may help reduce these problems are outlined below:²⁵

a. Establish an Encouraging Relationship

- (1) Make yourself unique and human, not just another indifferent authority figure.
- (2) Stress your intention to be "on her side."

b. Assess Needs and Create a Plan of Action via Dialogue

- (1) Let the client tell her story in her own words first.
- (2) Fill in the details.
- (3) Restate client's needs, both long and short range.
- (4) Make corrections.
- (5) Create a plan of action:
 - (a) Give reasons for your recommendations. Identify any assumptions (e.g. about her needs, his likely behavior, resources available to her) upon which your recommendation is based. Open those assumptions to challenge by her.
 - (b) Be frank about limitations of legal system; you cannot work miracles.
 - (c) Stress the importance of what you can do to prevent her from becoming discouraged and not coming back.

c. Discuss Mutual Expectations and Responsibilities

- (1) Outline and summarize
- (2) Emphasize her active role. Assist her to identify and prioritize tasks.
- (3) Admit your limitations, but acknowledge your commitment and competence.
- (4) Acknowledge obstacles facing her, but stress evidence of her competence and commitment to overcoming them.

d. Acknowledge Future Problems and Feelings

- (1) Explore her fears and objections to the plan of action (e.g. to possibly identify the abuser's blocking responses and prepare her for them). Provide written information on her rights and resources.

25. These suggestions are from an outline prepared in October, 1980 by Connie Geiger and Kathleen Flaherty, Women's Law Project, Legal Assistance Foundation of Chicago.

- (2) Help her to anticipate second thoughts. This not only helps her to expect them and plan accordingly but it also allows her to realize that you are familiar with the problem and that it is a social problem rather than a strictly individual one.
- (3) Persuade her to stay in touch (especially if she changes her mind).
- (4) Emphasize the need for support; try to give a personalized referral, not just a number. (She is more likely to go there for assistance if she knows she can expect help. If she does go, she will probably get encouragement to come back to you.)

e. Double Check Immediate Problems and Solutions

- (1) Her safety
- (2) Safety of children
- (3) Actual and legal custody of children
- (4) Financial needs
- (5) Counseling
- (6) Criminal prosecution

3. Attorney and Judicial Attitudes

Like rape and incest victims, battered women seeking protection from the legal system are frequently accused of causing the abuse, liking it or exaggerating it to extort some benefit. While the abuser may insist that his violence is justified by some (real or imagined) conduct by the victim--such as "nagging," inattentiveness, "disobedience," inefficiency or unfaithfulness--lawyers and judges must remember these facts:

- Many women are abused "out of the blue," even while sleeping;
- The law does not require women to buy their safety with their silence or with acquiescence to sexual or other demands;
- Even unpleasant or offensive victim behavior (short of criminal acts) is no defense to the crime of battery.

A sharp distinction must be drawn between conduct which establishes legal cause or provocation for the abuse and conduct which does not. IDVA recognizes and averts the danger of blurring this distinction by requiring a written explanation for the denial of any of the remedies which may be included in an Order of Protection.²⁶ This distinction will also help the lawyer avoid language and attitudes which interfere with competent representation of battered women. For example, asking a client what she did to cause the beating implies that she is equally or even more responsible for the violence. The lawyer should instead obtain needed information about the events surrounding the abuse by asking non-loaded questions, such as: "What led up to the abuse?" or "What were each of you doing immediately before the abuse?"

26. s209(a).

It is also important to distinguish between the woman's speed and persistence in terminating an abusive relationship and the immediacy and severity of the danger now confronting that woman. The former does not accurately measure the latter. For example, as IDVA recognizes, battered women are often financially and/or emotionally dependent on their abusers and "therefore unable to appropriately protect themselves from violence."²⁷ Additionally, a woman may remain in an abusive relationship because of fear of retaliation, religious or moral convictions or prior unsuccessful efforts to obtain the help theoretically available from the legal system or social service agencies.

IDVA addresses and resolves this recurring relevance problem: "the court's decision to deny any or all of these remedies shall not be based in whole or in part on evidence as to whether or not the petitioner has acted in defense or himself or herself, another family or household member or any minor child, or has left the residence or household to avoid further abuse by the respondent."²⁸ The principle of relevancy should also guide the lawyer's language and attitude: for example, it is inappropriate to cite the client's continued cohabitation with the abuser to contradict her estimation of the danger of future abuse.

27. s102(2).

28. s208(b).

II. THE ILLINOIS DOMESTIC VIOLENCE ACT

A. Purposes and Effects

Domestic Violence Orders of Protection are authorized and governed by the Illinois Domestic Violence Act (IDVA),²⁹ which became effective on March 1, 1982. The "underlying purposes" of IDVA are to:³⁰

- (1) *Recognize domestic violence as a serious crime against the individual and society which produces family disharmony in thousands of Illinois families, promotes a pattern of escalating violence which frequently culminates in intra-family homicide, and creates an emotional atmosphere that is not conducive to healthy childhood development;*
- (2) *Recognize that victims of domestic violence are often emotionally and financially dependent on their abuser and are therefore unable to appropriately protect themselves from violence;*
- (3) *Provide tools for law enforcement officers to provide immediate, effective assistance and protection of victims of domestic violence, recognizing that law enforcement officers often become the secondary victims of domestic violence in the high rates of police injuries and deaths that occur in response to domestic violence calls; and*
- (4) *Expand the civil and criminal remedies for victims of domestic violence, including, if necessary, the physical separation of the parties to prevent further abuse.*

The Act implements its purposes by (1) creating the new Domestic Violence Order of Protection and effecting related improvements in the judicial remedies available to victims and (2) providing new tools for law enforcement officers and clarifying their duties to assist victims.

IDVA effects seven major improvements in the judicial remedies available to victims of domestic violence:

- (1) creates a new remedy, the Domestic Violence Order of Protection (Article II);

29. Ill.Rev.Stat. ch.40, ss2301-1 - 2305-1 (1981)(P.A. 82-621). Section 404 of IDVA repeals the 1977 domestic violence injunction act, Ill.Rev.Stat. ch.69, s25 (1979). IDVA supplements, rather than repeals, the preliminary injunctive relief authorized by the Illinois Marriage and Dissolution of Marriage Act (IMDMA), Ill.Rev.Stat. ch.40, ss501,701 (1979). However, IDVA Order of Protection remedies are available in IMDMA actions (IDVA, s202(a)(1)) and are more comprehensive, accessible and enforceable than IMDMA preliminary injunctions. (See discussion at 12, infra.)

30. IDVA, s102. All citations are to IDVA unless otherwise noted.

- (2) extends availability of this remedy to all abused family or household members (s202(c));
- (3) authorizes commencement of actions independently or as part of a domestic relations or a criminal action (s202);
- (4) clarifies and adapts the prerequisites to ex parte relief (s204);
- (5) creates guidelines for judicial decision making (s208);
- (6) limits spousal immunity from personal injury damage actions by allowing suit where the tort was intentional and physical harm was inflicted (s403);
- (7) speeds enforcement of orders by creating a new Class A misdemeanor and by expedited contempt procedures for emergency cases (s212).

IDVA effects three major improvements in police response:

- (1) provides essential information to police at the scene by adding Orders of Protection to the statewide Law Enforcement Agencies Data System (ss210(b), 302);
- (2) increases police power to prevent further violence by creating a new Class A misdemeanor, violation of an Order of Protection (remedies (1) and (2) only) (s212(a));
- (3) clarifies and details police responsibilities to assist and advise victims (ss303, 304).

B. Legislative History

The principal force behind passage of H.B.366--now the Illinois Domestic Violence Act--was a statewide coalition of grassroots organizations providing supportive services to the victims of domestic violence, but it was drafted and advocated by an even broader network which also included professional associations,³¹ civic and other organizations.³² In addition to the vigorous efforts of its principal sponsors,³³ the bill enjoyed 108 co-sponsors in the House. As a result of the cooperative

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31. E.g., Chicago Council of Lawyers, Illinois Association of Chiefs of Police, Illinois Federation of Teachers, Illinois Nurses Association, Illinois Police Association, Illinois State's Attorneys Association.
 32. E.g., Coalition for Public Education, Illinois Commission on the Status of Women, Illinois Congress of Parents and Teachers, Illinois Consortium on Governmental Concerns, Illinois Federation of Women's Clubs, Illinois National Organization for Women, Independent Voters of Illinois-Independent Precinct Organization, League of Women Voters of Illinois, Legislative Support Center, State Federation of Labor, AFL-CIO.
 33. Principal House sponsors were Greiman, Telcser, Oblinger, Alexander and Catania. Senate sponsor was Senate President Rock.

drafting process, there was little floor debate³⁴ on the bill itself or its 7 House amendments³⁵ or 3 Senate amendments.³⁶ The House passed H.B.366, as amended, on May 6, 1981; the Senate unanimously passed S.H.B.366, as amended, on June 26, 1982.³⁷

Principal and technical amendments which clarify otherwise debatable or obscure legislative intent are discussed in the related sections of this manual.

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34. The following issues were discussed prior to passage on third reading, May 6, 1981: double jeopardy, tort immunity, warrantless arrest, the civil/criminal distinction, the new class A misdemeanor of violation of an Order of Protection and the definition of abuse. Tort immunity was also discussed on June 28, 1981, prior to House concurrence with Senate amendments.
 35. The first three House amendments, adopted by Judiciary I Committee on March 19, 1981, were as follows: (1) added right to jury trial prior to order for monetary compensation under s208(c)(8); (2) provided that interspousal suits for personal injury would be allowed only when the tort was intentional and the spouse inflicted physical harm, replacing H.B.366's original provision allowing such actions whenever the tort was not merely one of negligence; (3) made several changes to provisions governing Orders of Protection in criminal actions. House amendments 4, 5 and 7 addressed the effective date of the Act, which was ultimately set at March 1, 1982. Amendment 7 was adopted without debate on first reading, April 22, 1981. House Amendment 6, adopted without debate on second reading, April 22, 1981, consisted of five pages of technical and editorial amendments.
 36. Senate amendments 1 and 2 were recommended unanimously by Senate Judiciary I Committee and adopted on second reading, June 9, 1981. Both amendments made numerous technical and editorial changes. Amendment 1 also clarified the intended standards for ex parte relief, and amendment 2 provided standards to guide judges in deciding whether or not particular remedies should be granted. Senate amendment 3, adopted without debate on recall, June 18, 1981, added a final technical amendment.
 37. The House vote was 152 aye, 7 no, 6 present; the Senate vote, 55 aye, 0 no, 0 present. The House concurred with the Senate amendments on June 28, 1981: 163 aye, 3 no, 1 present.

III. THE DOMESTIC VIOLENCE ORDER OF PROTECTION

A. Definition of a Domestic Violence Order of Protection

A Domestic Violence Order of Protection is a written³⁸ judicial order directing an abusive family or household member to refrain from specified conduct and to meet specified responsibilities. It may include "any or all of the remedies outlined" below:³⁹

- (1) WARNING: "Order the respondent to refrain from striking, harassing or interfering with the personal liberty of the petitioner or any other family or household member;"
- (2) SEPARATE RESIDENCE: "Granting possession of the residence or household to the petitioner, to the exclusion of the respondent, when (i) the parties are spouses; or (ii) the residence or household is solely or jointly owned or leased by the petitioner; or (iii) the respondent has a legal duty to support the petitioner or minor children. No order under this act shall affect title to real property. Nothing in this paragraph shall preclude the court from ordering the respondent to provide suitable alternative housing for the petitioner or minor children in lieu of excluding the respondent from the mutual residence or household;"
- (3) CUSTODY & VISITATION: "Upon motion by the petitioner and upon determination by the court that it has jurisdiction under Section 4 of the Illinois Uniform Child Custody Jurisdiction Act, as now or hereafter amended, awarding temporary custody or establishing visitation rights with regard to minor children, in accordance with standards set forth in Part VI of the Illinois Marriage and Dissolution of Marriage Act, as now or hereafter amended;"
- (4) ABDUCTION OR CONCEALMENT: APPEARANCE: "Prohibiting the respondent from removing a minor child from the jurisdiction or concealing a minor child from his or her parent or person in loco parentis, or ordering the respondent to appear in court with a minor child;"
- (5) COUNSELING: "Requiring or recommending the respondent to undergo counseling for a specified duration with a social worker, psychologist, clinical psychologist, psychiatrist, family service agency, mental health center guidance counselor, or any other guidance service the court deems appropriate;"
- (6) PROPERTY: "Restraining the respondent from transferring, encumbering, concealing, damaging or otherwise disposing of petitioner's property or joint property of the petitioner and respondent;"
- (7) SUPPORT: "Requiring the respondent to pay temporary support for the petitioner or any child in the petitioner's custody, or both, when the respondent has a legal obligation to support that person, in accordance with standards set forth in Sections 504 and 505 of the Illinois Marriage and Dissolution of Marriage Act as now or hereafter amended;"

38. s209.

39. s208(c). IDVA's definition of an Order of Protection, in s103(3), directs attention to the additional remedies available if the order is sought in conjunction with a juvenile court proceeding or criminal prosecution.

- (8) COMPENSATION: "Requiring the respondent to pay to the petitioner actual monetary compensation for losses suffered as a direct result of the abuse. Compensatory losses shall include, but not be limited to, medical expenses related to the abuse, loss of earnings or support, out-of-pocket losses for injuries sustained, and moving expenses. The respondent shall have a right to a jury trial on the issue of whether to require any payment under this subsection (8). Upon the motion of either party, for sufficient cause, the court may set a later hearing on the issue of the amount of damages, if any, to be awarded;"
- (9) COURT COSTS AND ATTORNEY FEES: "Requiring the respondent to pay court costs and reasonable attorney's fees, in connection with any action to obtain, modify, enforce, appeal or reopen any Order of Protection, in accordance with standards set forth in Section 508 of the Illinois Marriage and Dissolution of Marriage Act, as now or hereafter amended;"
- (10) INJUNCTIVE RELIEF: "Entering such injunctive relief as may be necessary or appropriate."

Additionally, the Order may bar the abuser from "contact with the alleged victim or victims who are family or household members and . . . (from) entering the residence, school or place of business of the alleged victim or victims."⁴⁰

The above remedies fall into four categories, which are listed below and used throughout the practice aids provided in this manual:

(a) Prevention of Future Abuse

- (1) Warning
- (1) Contact Prohibited (the last remedy described above)
- (2) Separate Residence
- (5) Counseling

40. s401, adding a new s111-8(b) to ch.38. Although s401 itself authorizes this remedy only when the Order of Protection is sought in conjunction with prosecution for the specified crimes, there is no question that civil court Orders of Protection may also prohibit all contact between respondent and family and household members. First, for those clients needing such protection, any contact by respondent probably is a threatening act, harassment or interference with personal liberty, and therefore "abuse" which can be prohibited under s208(c)(1). Further, when contact would not be abusive in itself, the prohibition may be a necessary and appropriate corollary to the court's orders regarding child custody and visitation under s208(c)(3), (4). Finally, even where contact cannot be prohibited under any of these sections, this remedy may be available as injunctive relief authorized by s208(c)(10).

(b) Child Custody & Visitation

- (3) Custody & Visitation
- (4) Abduction or Concealment; Appearance

(c) Economic Matters

- (6) Property
- (7) Support
- (8) Compensation
- (9) Court Costs and Attorney Fees

(d) (10) Injunctive Relief

IDVA explicitly limits spousal immunity from personal injury damage actions: the monetary compensation authorized by remedy (8) may include losses suffered as a result of a "tort to the person committed during coverture," if that tort was "intentional" and the "spouse inflicted physical harm"⁴¹

B. Persons Protected

Domestic Violence Orders of Protection are available to all persons who have been abused by a family or household member.⁴² IDVA defines abuse as "the act of striking, threatening, harassing or interfering with the personal liberty of any family or household member by any other family or household member, but excluding reasonable discipline of a minor child by a parent or person in loco parentis of such minor child."⁴³

The category "family or household members" includes spouses, former spouses, "individuals sharing a common household" and parents and children.⁴⁴ It does not include former cohabitants who are not related by blood or marriage. However, even unrelated individuals do not necessarily forfeit eligibility by leaving "the residence or household to avoid further abuse."⁴⁵ Eligibility will depend on whether they have merely sought temporary refuge elsewhere or established a new residence and ceased to "share a common household" with the abuser.

41. s403.

42. ss202(c), 208(a), 103(1).

43. s103(1).

44. s103(2).

45. s208(b).

Any person may seek an Order "on behalf of a minor child . . . (or) on behalf of any person prevented by physical or mental incapacity from seeking an order of protection on his or her behalf."⁴⁶

C. Commencement of Actions

An action for an Order of Protection can be commenced: (1) by requesting the Order in a proceeding under the Illinois Marriage and Dissolution of Marriage Act;⁴⁷ (2) by filing an independent civil action for the Order;⁴⁸ or (3) through the State's Attorney, by requesting the Order at a pre-trial release hearing or as a condition of probation, conditional discharge or supervision.⁴⁹

Petitions must "allege abuse by a family or household member" and must be "verified or accompanied by affidavit."⁵⁰

D. Pauper Suits

If the petitioner "lacks the funds to pay the costs of filing and service," s/he may proceed in forma pauperis.⁵¹ This status avoids not only the charge for filing and service, but also the fee for copies of the Order of Protection.⁵² The court may not consider the income of the allegedly abusive family or household member when determining petitioner's ability to pay.⁵³

Petitioner's application for leave to proceed as a pauper ordinarily must be supported by an affidavit in compliance with Illinois Supreme

46. s202(b).

47. s202(a)(1).

48. s202(a)(2).

49. s202(a)(3).

50. s202(c).

51. s207(a), (b). Senate amendment 2, adopted on second reading, June 9, 1981, made it clear that "indigency" is not a prerequisite to suing as a poor person by deleting the following sentence from the end of s207(b) of S.H.B.366: "If the court determines at a hearing on such application that the petitioner is indigent, the petition shall be filed and service made without payment of costs."

52. s210(a).

53. s207(c).

Court Rule 298 and heard prior to filing the action.⁵⁴ However, the case shall be filed and service made "without payment of . . . costs or prior leave of the court," if petitioner files an affidavit that s/he "is seeking a temporary order of protection ex parte and lacks the funds to pay the costs of filing and service."⁵⁵ In that case, the court will determine petitioner's eligibility for pauper status at the hearing for ex parte relief.⁵⁶

E. Venue

Independent actions may be filed in any county where petitioner or respondent resides or where the abuse occurred.⁵⁷ Where the Order of Protection is sought in connection with a domestic relations or criminal proceeding, the venue provisions of the Illinois Marriage and Dissolution of Marriage Act or the Criminal Code apply.⁵⁸ Objections to venue must be made before expiration of the time for filing a response.⁵⁹

F. Service of Process

In an independent civil action for an Order of Protection, the petition must be served with summons by the sheriff's deputy and must be given emergency priority by the sheriff's office. The respondent then has seven days to file his/her appearance.⁶⁰

When the Order is requested in connection with a domestic relations or a criminal proceeding, duplicate service of process is not required and the time allowed for contest by respondent is not shortened.⁶¹

G. Ex Parte Orders

Orders of Protection "shall issue ex parte" if:⁶²

- (1) *The petitioner has diligently attempted to obtain service of process upon the respondent and has diligently attempted to serve written notice of the date, time and location of the hearing, together with a copy of the petition and all supporting affidavits upon the respondent in accordance with Illinois Supreme Court Rules 11 and 12; or (emphasis added)*

54. s207(b).

55. s207(a).

56. Id.

57. s205(a).

58. s205(b).

59. s205(c).

60. s203(a).

61. s203(b).

62. s204(a). Senate amendment 1, adopted on second reading, June 9, 1981, underscores the legislative intent to require, rather than merely authorize, ex parte relief when the prerequisites for the remedy (s208) and for ex parte issuance (s204(a)) have been satisfied.

- (2) *For each specific remedy sought by the petitioner, the irreparable injury which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or earlier notice than was actually given, of the petitioner's efforts to obtain judicial relief.*

A petitioner seeking a remedy ex parte under s204(a)(2) need not plead and prove that the threatened injury would be an irreparable injury (unless the remedy is sought as injunctive relief under s208(c)(10)).⁶³ Instead, s/he must establish the need to avoid triggering wrongful conduct by notice or risking it by delay: a remedy "shall issue ex parte" if the petitioner shows "the irreparable injury which that remedy is intended to prevent would be likely to occur if the respondent were given . . . notice, or earlier notice"64

The legislature answered the question of what potential injuries would be irreparable injuries by dividing s208 remedies into two groups: (1) those available in ex parte orders, and (2) those not available because the delay necessary for process and notice would pose no threat of irreparable injury. The following remedies are not available in ex parte orders: (1) counseling, (2) support, (3) monetary compensation and (4) court costs and attorney fees.⁶⁵

Ex parte orders must note the time of issuance and expiration, the reason for granting the relief ex parte and the time and place of the hearing for extension.⁶⁶ They expire within 10 days, unless extended for an additional 10 days or dissolved earlier upon petition by respondent.⁶⁷

For a discussion of judicial balancing of the victim's need for immediate protection with the alleged abuser's rights to notice and an opportunity to be heard, see Boyle v. Boyle, which upheld the constitutionality of an ex parte order evicting the abuser from the jointly owned marital residence.^{67-A}

H. Contents of Orders

Orders must be clear and detailed to give respondent fair notice of what s/he must do and not do.⁶⁸ If any IDVA remedy is denied, the Order must state the court's reason for that denial.⁶⁹ All orders must include "conspicuous" notice to respondent that "willful violation of any provision constitutes contempt of court and may further result in fine or imprisonment."⁷⁰

63. ss204(a)(2), 204(b).

64. s204(a)(2).

65. s204(b).

66. s209(b).

67. s211(b).

67-A. 5 Family L.Rep. 2916 (Pa. C.P., Allegheny County, 1979).

68. s209(a).

69. Id.

70. s209(c).

Ex parte orders must state, additionally, the time of issuance and expiration, reason for granting relief ex parte and the time and place of the hearing for extension.⁷¹

I. Duration of Orders

Generally, an Order of Protection may remain in effect for up to one year; if issued for less than the maximum time, it can be extended for a total duration of one year.⁷² However, Orders issued as preliminary relief in actions under the Illinois Marriage and Dissolution of Marriage Act expire upon entry of final judgment;⁷³ when authorized by that Act and included in a final judgment, their duration is governed by that Act.⁷⁴ Orders entered in criminal proceedings expire with the pre-trial release, probation, conditional discharge or supervision with which they are connected.⁷⁵

Ex parte orders, whether independent or in connection with a domestic relations or criminal action, expire within 10 days unless extended for another 10 days or dissolved upon request by respondent.⁷⁶

J. Trial by Jury

In an action to obtain or modify an Order of Protection, the respondent has no right to jury trial, except on the issue of compensatory damages.⁷⁷

Nor is respondent ordinarily entitled to jury trial in a contempt of court proceeding to enforce the Order. First, there is no constitutional right to trial by jury in a contempt of court proceeding unless the sanction imposed exceeds six months imprisonment and a \$500 fine.⁷⁸ Second, Illinois law establishes a statutory right to trial by jury only in trials for violation of penal statutes,⁷⁹ not for trials in contempt of court cases (where the violation is the willful disobedience to the court's order). Although IDVA disavows any intent to limit "any existing right" to jury trial in actions to enforce orders, it does not create any new rights.⁸⁰

71. s209(b).

72. s211(a).

73. s211(c).

74. s211(d).

75. s211(e).

76. s211(b).

77. ss213, 208(c)(8).

78. County of McLean v. Kickapoo Creek, Inc., 51 Ill.2d 353, 282 N.E.2d 720 (1972).

79. Ill.Rev.Stat. ch.28, ss103-6, 102-15 (1979).

80. s213. This is underscored by House amendment 6, adopted on second reading, April 22, 1981. Prior to that amendment, s203 disavowed any intent to deny "the" right to trial by jury in enforcement proceedings.

K. Enforcement of Orders

1. Contempt of Court

Knowing violation of any of the terms of an Order of Protection is contempt of court, and IDVA does not diminish the "inherent authority of the courts to enforce their lawful orders."⁸¹ IDVA does, in fact, expedite the contempt procedure: if the petitioner states in writing and on oath that respondent has knowingly violated a provision of an Order and there is "an immediate and present danger that the respondent will flee the jurisdiction or inflict physical violence on the petitioner or minor children, the court may order the attachment of the respondent without prior service of the rule to show cause."⁸²

2. Criminal Prosecution

Violation of an Order of Protection may also be a crime. IDVA creates a new Class A misdemeanor: knowing violation of an Order of Protection's ban on abuse or ban on entering or remaining in petitioner's residence.⁸³ As a result, the police can arrest (for the new misdemeanor) without waiting for the respondent to batter once again.

The primary purpose of this new class A misdemeanor is to allow meaningful enforcement of orders barring the abuser from the home. Previously, the police had no power to arrest for violation of such an order and could only advise the victim to see her attorney and call the police again if the abuser did become violent after their departure. Now, the police can arrest for the fact of presence in the home if the abuser had prior "notice" or "actual knowledge" of the exclusive possession order.⁸⁴

The acts which violate the Order of Protection may, independently, constitute an offense defined in the Criminal Code of 1961 (e.g., assault, battery, deviate sexual assault, rape, reckless conduct, intimidation, criminal damage to property, arson).

81. s212(b).

82. Id.

83. s212(a).

84. Id.

3. Warrantless Arrest

Warrantless arrest is authorized when there is probable cause to believe the person is guilty of either the new class A misdemeanor or other crime against the person, "even if the violation did not occur in the presence of the officer."⁸⁵

4. Double Jeopardy

No person can be tried twice for the same wrongful acts.⁸⁶ Hence, for each wrongful act by the abuser, the victim must decide whether to proceed to trial on a contempt of court charge, criminal prosecution for the new class A misdemeanor or criminal prosecution for some offense defined in the Criminal Code.⁸⁷

85. s301(a), (b). IDVA's authorization of warrantless arrests merely restates prior Illinois law allowing warrantless arrest when there is "reasonable grounds" to believe the person has committed or is committing an offense. Ill.Rev.Stat. ch.38, s107-2 (1979).

86. U.S. Constitution, Art.V.

87. On third reading in the House, May 6, 1981, the chief House sponsor stressed the constitutional protection against double jeopardy and its application to enforcement of Orders of Protection.

IV. OBTAINING ORDERS OF PROTECTION

A. Guidelines for Judicial Decision Making

Although the overwhelming majority of states have enacted domestic violence legislation, IDVA is the first comprehensive law to include detailed guidelines for judicial decisions to grant or deny protection.⁸⁸ IDVA not only establishes general⁸⁹ and special⁹⁰ prerequisites, it further identifies factors which are especially probative of the nature, severity and probability of future harm,⁹¹ as well as "confusion factors" which do not justify denial of remedies.⁹² IDVA also requires the court to make findings on relevant factors⁹³ and to record in its order the reason for denial of any requested IDVA remedy.⁹⁴

Thus, IDVA not only promotes equitable and consistent standards which can be debated and refined in the trial courts, it also establishes a basis for appellate review and community appraisal of judicial balancing of the rights and needs of the parties.

B. Prerequisites

The petitioner must prove two facts before any Domestic Violence Order of Protection may issue: (1) the petitioner, or a minor child or

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88. These guidelines were added to S.H.B.366 by Senate amendment 2, adopted on second reading, June 9, 1981. Development and endorsements were influenced by the Illinois appellate court's (unpublished) opinion in Johnson v. Johnson (Docket No. 80-662) (1st Dist. June 5, 1980). See, letter to Senate President Philip Rock, Senate sponsor of S.H.B.366 and of Senate amendment 2, from Kathleen Flaherty, May 26, 1981. The Johnson decision emphasized the need for guidelines because it sustained the trial court's denial of exclusive possession of the marital apartment, despite respondent's admission of repeated violence and of violation of a prior order of exclusive possession, and despite the lack of any evidence of potential hardship to respondent.
89. See discussion at 23, infra.
90. See discussion of the 10 Order of Protection remedies, infra at 25.
91. See discussion at 24, infra.
92. See discussion at 25, infra.
93. s208(d).
94. s209(a).

incapacitated person on whose behalf she seeks relief,⁹⁵ has been abused;⁹⁶ and (2) this abuse was inflicted by a family or household member.⁹⁷

IDVA also establishes special prerequisites for a number of the remedies which may be included in an Order of Protection. These are discussed in Section E below.

To obtain relief ex parte, the petitioner must also satisfy at least one of the prerequisites of s204(a) of IDVA.⁹⁸

C. Relevant Factors

Once the general and specific prerequisites are satisfied, the court "shall consider relevant factors . . . and shall make findings thereon" in order to decide "whether to grant a specific remedy . . ."⁹⁹ IDVA includes a non-exclusive list of such relevant factors:¹⁰⁰

- (1) *the frequency, severity, pattern and consequences of the respondent's past abuse of the petitioner or any family or household members, including the concealment of his or her location in order to evade service of process or notice, and the likelihood of danger of future abuse to the petitioner or any family or household members;*
- (2) *whether any minor child is in danger of abuse or neglect by the respondent, or whether the respondent has threatened or attempted to remove the child from the jurisdiction of the court; and*
- (3) *where the court has denied a remedy under paragraph (2) of subsection (c) of this Section, the manner in which the hardship which would result from temporary exclusion of the respondent from his or her residence substantially outweighs the hardship which would result if the petitioner or any family or household members were deprived of safe and peaceful occupancy of the home by the threat of future abuse of the petitioner.*

95. s202(b).

96. s208(a). "'Abuse' means the act of striking, threatening, harassing or interfering with the personal liberty of any family or household member by any other family or household member, but excluding reasonable discipline of a minor child by a parent or person in loco parentis of such minor child." s103(1).

97. s103(1), (2).

98. See discussion at 18, supra.

99. s208(d).

100. Id.

The Domestic Violence Intake Form provided in Appendix A is designed to help the attorney identify, elicit and organize information about these relevant factors and to explain key concepts.

D. "Confusion Factors"

No remedy may be denied because petitioner defended against the abuse or fled the residence to avoid it or because s/he failed to defend or flee.¹⁰¹ These provisions implement IDVA's stated purpose to "(r)ecognize that victims of domestic violence are often emotionally and financially dependent on their abuser(s) and are therefore unable to appropriately protect themselves from violence."¹⁰²

Suggestions on minimizing the influence of such "confusion factors" on the attorney-client relationship are discussed in Part I of this manual.¹⁰³

E. The 10 Order of Protection Remedies: Special Prerequisites and Other Factors

1. Warning

The first remedy authorized by IDVA is an order directing "respondent to refrain from striking, threatening, harassing or interfering with the personal liberty of the petitioner or any other family or household member."¹⁰⁴ This prohibited conduct matches IDVA's definition of abuse.¹⁰⁵ There are no special prerequisites¹⁰⁶ for this remedy,

101. s208(a). Note that these factors are not labelled wholly irrelevant and can be used to support the granting of a remedy.

102. s102(2).

103. See discussion at 9, supra.

104. s208(c)(1). To enhance the deterrent effect and enforceability of this remedy, specify prohibited conduct in greater detail; e.g., following, nocturnal telephone calls, forced sexual contact. For more examples, see Appendix A, The Domestic Violence Intake Form.

105. s103(1).

106. Whatever remedy is sought, the court's authority to issue an Order of Protection arises only after a finding of "abuse." s208(a). Further, the court must consider and make findings on all relevant factors. s208(d). Section 208(d) lists some of the factors relevant to remedies which address the physical (rather than economic) relationship between the parties.

which is merely a judicial warning against future abuse.¹⁰⁷ However, as with the other preventative remedies,¹⁰⁸ some risk of harm is implicitly required, and the remedy should issue unless the hardship thereby created for respondent substantially outweighs the hardship to petitioner if the remedy is denied.¹⁰⁹

2. Separate Residence

IDVA's second remedy is an order "(g)ranting possession of the residence or household to the petitioner, to the exclusion of the respondent"¹¹⁰ This remedy is available only if the petitioner has a right to occupy the premises because: (1) s/he is married to the respondent (and therefore has homestead occupancy rights¹¹¹); (2) she is joint or sole owner or lessee of residence (property rights); or (3) respondent has a legal duty to support petitioner or the minor children (support rights).¹¹²

IDVA recognizes that "the physical separation of the parties" may be necessary "to prevent further abuse" and expresses a legislative purpose to "expand civil and criminal remedies for victims" including those remedies which create that "physical separation of the parties."¹¹³ This statutory goal--to make orders of exclusive possession more available--is implemented by IDVA's guidelines for judicial decision making.¹¹⁴ If cohabitation would pose a threat of future abuse by

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107. This warning increases the visibility of the abuse as a crime (see discussion at 2, supra) and makes future abuse punishable as a class A misdemeanor (s212(a)) or contempt of court (s212(b)). Exclusive reliance on this remedy is, of course, inappropriate when "the frequency, severity, pattern and consequences" of past abuse (s208(d)(1)) or other relevant factors indicate that continued cohabitation with the abuser would subject the victim to "the threat of future abuse" (s208(d)(3)).
108. s208(c)(2), (4), (5), (6), (10).
109. This "substantially greater hardships" approach to balancing the equities is supported by both the manifest legislative intent of IDVA and the common law of injunctive relief. See IDVA, ss 208(d)(3), 102(1), (4). At common law, once the petitioner has satisfied the prerequisites to injunctive relief, "the equitable doctrine of the balance of equities or conveniences between the parties may be applied whereby the trial court determines whether the burden upon the defendant, should the injunction issue, outweighs the benefit to the plaintiff" ABC Trans National Transport, Inc. v. Aeronautics Forwarders, Inc., 62 Ill.App.3d 671, 379 N.E.2d 1228, 20 Ill.Dec. 160, 168 (1st Dist. 1978). However, where the defendant's "actions were done with full knowledge of the plaintiff's rights and with an understanding of the consequences which might ensue," injunctive relief will issue even if the hardship resulting to the defendant outweighs that which the plaintiff would otherwise suffer. ABC Trans National, 20 Ill.Dec. at 168.
110. s208(c)(2).
111. Ill.Rev.Stat., ch.40, s1016 (1979).
112. s208(c)(2). See n.106.
113. s102(4). See discussion of supplementary or alternative methods of accomplishing physical separation, supra at 3.
114. See n.88.

respondent, then an order for exclusive possession must issue unless "the hardship which would result from temporary exclusion of the respondent from his or her residence substantially outweighs the hardship which would result if the petitioner or any family or household members were deprived of safe and peaceful occupancy of the home" by that threat of future abuse.¹¹⁵

IDVA thus establishes a four-part test: (1) does or would cohabitation pose a threat of future abuse; (2) are the nature, severity and probability of future harm sufficient to deprive a family or household member of "safe and peaceful occupancy of the home";¹¹⁶ (3) if so, how much hardship would result; and (4) is that hardship substantially outweighed by the hardship to respondent from temporary exclusion from his home. This four-part test preserves the flexibility required for the appropriate exercise of judicial discretion, while fostering visible and reviewable debate on the measure and balance of the rights and needs of the parties.

3. Child Custody and Visitation

The third remedy which may be included in an Order of Protection is an award of "temporary custody" and the "establishing (of) visitation rights with regard to minor children."¹¹⁷ There are two special prerequisites¹¹⁸ to custody and visitation orders; they may be granted: (1) only "(u)pon motion by the petitioner"¹¹⁹ and (2) only if the court "has jurisdiction under Section 4 of the Illinois Uniform Child Custody Jurisdiction Act."¹²⁰

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115. s208(d)(3). Although s208(c)(2) provides that nothing in that "paragraph shall preclude the court from ordering the respondent to provide suitable alternate housing for the petitioner or minor children in lieu of excluding the respondent from the mutual residence or household," if s208(d)(3) requires an order for exclusive possession, provision of alternate housing cannot be substituted without petitioner's consent.
116. The "frequency, severity, pattern and consequences" of past abuse (s208(d)(1)) are especially relevant to the first two parts of this test.
117. s208(c)(3).
118. See n.106.
119. If custody is awarded to petitioner, the non-custodial parent automatically acquires reasonable visitation rights, unless visitation is denied or restricted. Illinois Marriage and Dissolution of Marriage Act (IMDMA), Ill.Rev.Stat. ch.40, ss101-802, s607 (1979).
120. s208(c)(3). These prerequisites were added to S.H.B.366 by Senate amendment 2, adopted on second reading, June 9, 1981.

a. Custody Jurisdiction

If both parents and the children have resided in Illinois for more than six months, are well settled and do not intend to leave, custody jurisdiction is usually just a formality to be pleaded, testified to and incorporated in the custody judgment.¹²¹ However, greater familiarity with custody jurisdiction issues¹²² is essential if the child's state of residence has shifted in the recent past or a parent wishes to remove the child to another state.¹²³

(1) Prerequisites to Jurisdiction

The prerequisites to custody jurisdiction focus on the state's relationship to the child. Illinois has custody jurisdiction only if: (1) Illinois is the child's "home state" when the custody action is filed; (2) Illinois was the home state until less than six months earlier, and a parent or parent-figure still lives in Illinois; (3) the child and at least one contestant have a "significant connection" with Illinois, and "substantial evidence" about the child's welfare is available here; (4) the child is in Illinois, and is abandoned, endangered, neglected or dependent; or (5) no other state has jurisdiction, and Illinois jurisdiction would be in the child's best interest.¹²⁴ The "home state" test typically requires the child's residence in the state, with a parent or parent-figure, for at least six consecutive months.¹²⁵ Physical presence of the child in Illinois is not always essential for custody jurisdiction, nor is it always adequate.¹²⁶

121. The Petition for a Domestic Violence Order of Protection in Appendix B was drafted to satisfy the pleading requirements of the Illinois Uniform Child Custody Jurisdiction Act (UCCJA), Ill.Rev.Stat. ch.40, ss2101-2126, s2110 (1979).

122. See especially those UCCJA provisions addressing prerequisites to jurisdiction and reasons for declining to exercise it (introduced at 28, infra), notice requirements (ss2105, 2106) and binding force and res judicata effect (s2113). For discussion of full faith and credit, see n.186, supra. Also, familiarity with Illinois' UCCJA should be of very practical value in advising and representing clients on interstate custody issues, since by 1980 all but five states had adopted the UCCJA: Massachusetts (which applies its principles), New Mexico, South Carolina, Texas and West Virginia. The District of Columbia, Puerto Rico and the Virgin Islands have also failed to enact it. Freed, Divorce in the Fifty States: An Overview as of August 1, 1980, 6 Fam.L.Rptr. 4043, 4055 (1980).

123. See discussion at 5, supra.

124. UCCJA, s2104(a).

125. UCCJA, s2103.04.

126. UCCJA, s2104(c), (d).

Once an Illinois court has obtained jurisdiction over a child, it "shall retain such jurisdiction unless it concedes jurisdiction to a foreign state, or none of the parties to the action, including the child, remain in Illinois."^{126a}

(2) Reasons for Refusing to Exercise Jurisdiction

The court must decline to exercise custody jurisdiction if:

- (a) A custody action was first pending in another state which has jurisdiction and has not stayed its proceeding;¹²⁷
- (b) a court of another state has made a valid custody judgment, still has jurisdiction and has not declined exercise of its jurisdiction;¹²⁸ or
- (c) petitioner has violated the provisions of a custody judgment of another state by child snatching, and exercise of jurisdiction by Illinois is not required for the child's welfare.¹²⁹

The court may decline to exercise custody jurisdiction if:

- (a) Illinois is an inconvenient forum and another state is a more appropriate forum;¹³⁰
- (b) the petitioner seeking an initial custody judgment has "wrongfully taken the child from another state" or engaged in "similar reprehensible conduct";¹³¹ or
- (c) the petitioner has violated the provisions of a custody judgment (other than by child snatching) of another state with jurisdiction.¹³²

b. The Custody Decision

If a petition for an Order of Protection requests child custody, the award shall be made "in accordance with standards set forth in Part VI of the Illinois Marriage and Dissolution of Marriage Act" (IMDMA).¹³³

IMDMA requires custody to be awarded in accordance with the best interest of the child and identifies several of the factors relevant to the child's best interest, including the wishes of the child and the parents, the child's personal relationships and adjustment to home, school and community and the health of all involved.¹³⁴ Since 1979, that (non-exclusive) list of relevant factors has included "the physical violence or threat of physical violence by the child's

126a. UCCJA, s2104(b), as amended by P.A. 81-541 (1979)

127. UCCJA, s2107(a), (c).

128. UCCJA, ss 2109(b), 2115.

129. UCCJA, 2109(b).

130. UCCJA, s2108.

131. UCCJA, s2109(a).

132. UCCJA, s2109(b).

133. s208(c)(3).

134. IMDMA, s602.

potential custodian, whether directed against the child or against another person but witnessed by the child."¹³⁵

The issue in a custody contest is ultimately one of fact: who can best provide the child with the guidance and nurturance necessary for optimal growth and development. The court must refrain from considering "conduct of a present or proposed custodian that does not affect his relationship to the child."¹³⁶

c. Visitation

Absent court order, a non-custodial parent is automatically entitled to reasonable visitation with a minor child.¹³⁷ Visitation may be denied or restricted¹³⁸ only if the court finds "that visitation would endanger seriously the child's physical, mental, moral or

-
135. IMDMA, s602(a)(6). Wife abuse, or violence against other persons, is relevant to determination of child custody, even if the child did not witness the violence. Williams v. Williams, Ill.App.3d , N.E.2d (3d Dist) (no.81-393, February 26, 1982).

The legislative history of s602(a)(6) supports this position and contradicts any argument that the provision limits relevance to violence witnessed by the child. See P.A.81-419 (1979), which adds ss602(a)(6), 708 and the last sentence of s602(a) to IMDMA. The manifest intent of this package of amendments was to recognize the seriousness of domestic violence and expand legal protection against future abuse.

136. IMDMA, s602(b).
137. IMDMA, s607. Section 208(c)(3) of IDVA provides that visitation shall be decided under IMDMA standards.
138. "Reasonable" visitation typically includes overnight visits, some weekends and holidays and a summer vacation. Restrictions most often needed when the non-custodial parent has been abusive to family members are supervised visitation and a ban on overnight visitation. Once it is established that reasonable visitation would seriously endanger the child, the degree of restriction is determined in accordance with the best interest of the child. Solomon v. Solomon, 84 Ill.App.3d 901, 405 N.E.2d 1289 (1st Dist. 1980).

emotional health."¹³⁹ Obviously, recent or severe child abuse is strong evidence that visitation should be denied or limited.¹⁴⁰ Violence against others, particularly against the child's mother or other family or household members, should also be carefully weighed.¹⁴¹

If the custodial parent establishes that disclosure of her street address would seriously endanger her or a child, that address may be omitted from court records,¹⁴² and "the court shall require the parties to identify reasonable alternative arrangements for visitation"¹⁴³

-
139. IMDMA, s607(b). "Courts are reluctant to deny all visitation rights because of the underlying rationale that parents have a natural or inherent right of access to their children and . . . sound public policy . . . encourages the maintenance of strong inter-family relationships, even in post-divorce situations." Frail v Frail, 54 Ill.App.3d 1013, 370 N.E.2d 303, 12 Ill.Dec. 680, 681 (1977) (mother serving 14-20 year sentence for murder granted twice a month visitation with children).
140. In establishing past physical or verbal abuse of the child, it is important to distinguish abuse from "discipline." Evidence of surrounding circumstances helps make that distinction; for example, consider the conduct of the child before the abuse, the abuser's intoxication, comments, abuse of others or property destruction and any other signs that the parent acted in rage or with cold malice, rather than to correct the child's behavior.
141. Taraboletti v Taraboletti, 56 Ill.App. 3d 854, 372 N.E.2d 155 (1978). In affirming denial of the mother's visitation rights, the court cited not only her child abuse (she yelled at the children, threw things at them, threatened them and stabbed her son with a ballpoint pen), but also her repeated attacks on her husband and the children's grandmother (she chased her husband with boiling water, tried to hit him and the grandmother with her car, etc.). The court's conclusion that this conduct demonstrated the mother's "violent propensities" was supported by its list of the mother's violence against others outside the presence of the children, as well as that violence witnessed by them.
142. IMDMA, s708.
143. IMDMA, s607(a).

4. Removal or Concealment of Child; Appearance in Court

The fourth IDVA remedy authorizes orders "prohibiting the respondent from removing a minor child from the jurisdiction or concealing a minor child from his or her parent or person in loco parentis, or ordering the respondent to appear in court with a minor child."¹⁴⁴

Petitioner need not have legal custody of the child in order to obtain all or part of this remedy.¹⁴⁵ Even if the respondent has legal custody, the ban on removal from the state may be granted unless he has obtained the required judicial authorization for that removal.¹⁴⁶ Also, his legal custody does not permit concealment of the child contrary to the petitioner's visitation rights.¹⁴⁷

Evidence as to "whether any minor child is in danger of abuse or neglect by the respondent, or whether the respondent has threatened or attempted to remove the child from the jurisdiction of the court" ¹⁴⁸, to conceal the child, or refused or failed to appear in court with the children for custody-related hearings, is particularly relevant.¹⁴⁹

5. Counseling

There are no special prerequisites¹⁵⁰ to entry of an order "(r)equiring or recommending the respondent to undergo counseling for a specified duration with a social worker, psychologist, clinical psychologist, psychiatrist, family service agency, mental health guidance counselor, or any other guidance service the court deems appropriate."¹⁵¹

6. Protection of Property

IDVA lists no special prerequisites¹⁵² for its sixth remedy, orders "(r)estraining the respondent from transferring, encumbering,

144. s208(c)(4).

145. The original H.B.366 remedy prohibited removal or concealment of a child only if done with "intent to violate a valid court order awarding custody . . . to the petitioner." House amendment 6, adopted on second reading, April 22, 1981, deleted this custody prerequisite.

146. See IMDMA, s609.

147. See discussion at 30, supra.

148. s208(d)(2).

149. See n.106 and n.109.

150. See n.106 and n.109.

151. s208(c)(5).

152. See n.106 and n.109.

concealing, damaging or otherwise disposing of petitioner's property or joint property of the petitioner and respondent."¹⁵³

7. Financial Support

IDVA's seventh remedy authorizes orders "(r)equiring the respondent to pay temporary support for the petitioner or any child in the petitioner's custody, or both, when the respondent has a legal obligation to support that person, in accordance with standards set forth in Sections 504 and 505" of IMDMA.¹⁵⁴

a. Child Support

The court may direct "either or both parents" to pay "an amount reasonable and necessary" for the support of the child.¹⁵⁵ In general, this duty of support ends when the child is emancipated, unless the parents have agreed to extend it.¹⁵⁶ However, parents may be required to contribute to the educational expenses of non-minor children and to the general support of disabled children who have reached majority age but are otherwise unemancipated.¹⁵⁷ A parent's support duty is not terminated by the parent's death.¹⁵⁸

IMDMA provides a non-exclusive list of five factors relevant to the amount of support owed.¹⁵⁹ One factor is the standard of living during the marriage. The remaining four focus on the needs and financial resources¹⁶⁰ of each of the parents and of the child. Marital misconduct is labelled irrelevant.¹⁶¹

153. s208(c)(6). If a petition for dissolution or declaration of invalidity of marriage has been filed under IMDMA, that Act authorizes an injunction protecting even property which petitioner does not own, if that property is owned by petitioner's spouse and is marital property. IMDMA, s503(b); 503(c); 501(a)(2)(i).

154. s208(c)(7). See 106.

155. IMDMA, s505(a).

156. IMDMA, s510(c).

157. IMDMA, s513.

158. IMDMA, s510(c).

159. IMDMA, s505(a). Contact the district court for local guidelines for support and maintenance.

160. A parent's financial resources under IMDMA, s505(a)(5) include not only assets and actual earnings, but the amount which could be earned with good faith effort to contribute to child support. In Re Marriage of Ebert, 81 Ill.App.3d 44, 400 N.E.2d 995, 36 Ill.Dec. 415 (5th Dist. 1980) (refusal to reduce child support obligation affirmed, where non-custodial parent quit his job to evade his support responsibility).

161. IMDMA, s505(a).

b. Spousal Maintenance

To establish a right to spousal maintenance, the petitioning spouse must prove that s/he: (1) lacks sufficient property, including apportioned marital property, to meet reasonable needs; (2) cannot support herself through appropriate employment or must provide full time care to a minor child; and (3) lacks sufficient income from any source.¹⁶² Unless otherwise agreed, the obligation to pay maintenance ends when either spouse dies or if the receiving spouse remarries or cohabits with another on a "resident, continuing conjugal basis."¹⁶³

IMDMA identifies six factors relevant to the amount of maintenance:¹⁶⁴
(1) the financial resources and needs of the petitioning spouse;
(2) the education or training necessary to prepare the petitioning spouse for appropriate employment; (3) standard of living during the marriage; (4) duration of the marriage; (5) age and condition of the parties; (6) ability of the other spouse¹⁶⁵ to contribute to the needs of the petitioning spouse. Marital misconduct is not relevant.¹⁶⁶

8. Monetary Compensation

IDVA's eighth remedy authorizes orders "(r)equiring the respondent to pay to the petitioner actual monetary compensation for losses suffered as a direct result of the abuse. Compensatory losses shall include, but not be limited to, medical expenses related to the abuse, loss of earnings or support, out-of-pocket losses for injuries sustained, and moving expenses. The respondent shall have a right to a jury trial on the issue of whether to require any payments under this subsection (8). Upon the motion of either party, for sufficient cause, the court may set a later hearing on the issue of the amount of damages, if any, to be awarded."¹⁶⁷

162. IMDMA, s504(a).

163. IMDMA, s510(b).

164. IMDMA, s504(b). Contact the district court for local guidelines for support and maintenance.

165. A spouse's "ability to pay" maintenance is determined by "the level at which...[he] is able to contribute, not merely the level at which he is willing to work...particularly where the difference between actual and potential income is the result of totally voluntary retirement." In Re the Marriage of Smith, 77 Ill.App.3d 858, 396 N.E.2d 859, 33 Ill.Dec. 332, 336 (2d Dist. 1979).

166. IMDMA, s504(b).

167. s208(c)(8).

Those losses resulting from respondent's injury to petitioner's person "during coverture" can be recovered only if the injury was "intentional" and respondent "inflicted physical harm."¹⁶⁸ These special prerequisites¹⁶⁹ do not apply to injury to the property of a spouse or to any injury to a non-spouse.¹⁷⁰

9. Court Costs and Attorney Fees

IDVA's ninth remedy authorizes orders "(r)equiring the respondent to pay court costs and reasonable attorney fees, in connection with any action to obtain, modify, enforce, appeal or reopen any order of protection, in accordance with standards set forth in Section 508 of the Illinois Marriage and Dissolution of Marriage Act (IMDMA) . . ."171

Section 508 of IMDMA requires consideration of the "financial resources of the parties," that is, their relative ability to pay attorney fees.¹⁷² When the economic facts support an order directing respondent to pay all or part of petitioner's attorney fees, that order may require payment to petitioner or directly to the attorney.¹⁷³

10. Injunctive Relief

Even when the relief needed by the petitioner is not provided by any of IDVA's nine specific remedies,¹⁷⁴ IDVA's final remedy authorizes "such injunctive relief as may be necessary or appropriate."¹⁷⁵

There are special prerequisites¹⁷⁶ to injunctive relief. The petitioner must establish: (1) a clear right or interest, (2) which is in danger of irreparable injury for which there is no adequate remedy at law, as well as (3) a favorable balance of equities.¹⁷⁷ A remedy

168. s403, amending Ill.Rev.Stat. ch.40, s1001. See also, P.A.82-569, s2 (1981).

169. See n.106.

170. s403.

171. s208(c)(9).

172. IMDMA, s508(a).

173. IMDMA, s508(b).

174. In most situations, the wide range of wrongful behaviors which may be prohibited under s208(c)(1) make it unnecessary to proceed under this injunctive relief section. Pleading under s208(c)(1) avoids the special prerequisites to injunctive relief and enhances the enforceability of the resulting order, since violation of a s208(c)(1) remedy is a class A misdemeanor. s212.

175. s208(c)(10).

176. see n.106.

177. ABC Trans National Transport, supra at n.109. A fifth requirement typically listed in common law injunction decisions, "probability of success on the merits," has no application to injunctions under IDVA's 208(c)(10). These injunctions are temporary remedies which do not require the pendency of any other legal action. Even where injunctions are sought in conjunction with a criminal or domestic relations proceeding, the final adjudication "on the merits" (e.g. criminal conviction, child custody) will be based on different facts.

at law is not adequate unless it is as "clear, complete, practical and efficient" as the injunction.¹⁷⁸ The balance of equities favors granting the injunction unless the hardship thereby created for the respondent substantially outweighs the hardship to petitioner if the remedy is denied.¹⁷⁹

178. Bio-Medical Laboratories, Inc. v. Trainor, 68 Ill.2d 540, 370 N.E.2d 223 (1977).

179. See n. 109, supra.

Appendix A

THE DOMESTIC VIOLENCE INTAKE FORM

The Domestic Violence Intake form is designed to provide the interviewer with basic information about the dynamics of domestic violence and the applicable legal theories and remedies, guide the interviewing process itself and help elicit and organize the facts needed to help the client develop a plan of action and, where appropriate, to prepare a petition for an Order of Protection and a supporting affidavit.

Its key concepts and categories, derived from the new Illinois Domestic Violence Act, match those used in the sample petition and sample orders.

Because it is detailed and "self guiding," it is quite lengthy. Obviously, not all sections will be used for all clients.

DOMESTIC VIOLENCE INTAKE

Client: _____ Phone: _____

Observable Injury or Illness? (Consider photographing) _____

Do the client and children have a safe place to spend the night? _____
If not, help client locate safe shelter before proceeding.

Interviewer: _____ Date of Interview: _____

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I. Presenting Problems	1
II. The Parties	2
III. The Minor Children	3
IV. Detailed History of Abuse	3
V. Detail Re Child Custody & Visitation	15
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VII. Summary of Legal and Extralegal Services	19

I. PRESENTING PROBLEMS

(notes on client's initial description of her problems and the kind of help she is seeking)

A. Danger of Abuse

B. Child Custody & Visitation

C. Economic Issues (food, shelter, property, income)

II. THE PARTIES

	<u>Client</u>	<u>Adverse Party</u>
1. Name:	_____	_____
2. Current Address:	_____	_____
	_____	_____
Whose Residence is This:	_____	_____
How Long will S/he be staying there:	_____	_____
Current Phones:	_____	_____
4. "Permanent" Address:	_____	_____
	_____	_____
Owner or Lessee:	_____	_____
5. "Permanent" Phone:	_____	_____
6. Physical Description:		
a. Height:	_____	_____
b. Weight:	_____	_____
c. Hair:	_____	_____
d. Eyes:	_____	_____
e. Skin:	_____	_____
7. Birthdate:	_____	_____
8. Relationship between client and the adverse party:	_____	

9. If the client is seeking an order of protection on behalf of an incapacitated adult, specify that person's name, address, telephone, birthdate, type of physical or mental incapacity and relationship to the adverse party and to the client:	_____	

10. Best places and times to serve process on the adverse party:	_____	

Color, make, model, year and license plate number of adverse party's auto:	_____	

III. THE MINOR CHILDREN

- | | <u>name</u> | <u>birthdate</u> |
|---|-------------|------------------|
| 11. Children born to or adopted by client <u>and</u> the adverse party: | | |
| 12. Children born to or adopted by the client: | | |
| 13. Children born to or adopted by the adverse party: | | |

IV. DETAILED HISTORY OF ABUSE

NOTE: Section 208(d) of the Illinois Domestic Violence Act requires the courts to make findings on the "frequency, severity, pattern and consequences of . . . past abuse . . . and the likelihood of danger of future abuse . . ." This part, designed to elicit and organize that information, has the following sections:

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A. General Types, History and Patterns of Abuse	4
Types of Abuse	4
History	5
Patterns	5
B. The 3 Most Severe Beatings	6
#1	6
#2	8
#3	10
C. Recent Physical Abuse & Threats of Violence	12
#1	12
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A. General Types, History & Pattern of Abuse

TYPES OF ABUSE, IN GENERAL

NOTE: The four categories used in this section -- striking, threatening, harassment and interference with personal liberty -- are from the definition of abuse in s103(1) of the Illinois Domestic Violence Act. Space for details will be provided later.

a. Abuse of Petitioner

- (1) Striking: (include burning, shooting, biting, pushing, pushing into objects, forcible restraint, poking and pinching, as well as cutting, stabbing, punching, slapping, kicking, "spanking," etc.) _____

- (2) Threats: (include threats of violence, property destruction, child snatching, etc.) _____

- (3) Harassment: (include repeated or nocturnal phone calls, public verbal assault, following, etc.) _____

- (4) Interference with Personal Liberty: (include the costs -- to liberty, security and dignity -- of avoiding further abuse; for example, unwanted sexual contact endured to prevent violence or shield the children, isolation from family or friends, jobs lost or never sought) _____

b. Abuse of Minor Children

- (1) Striking: _____

- (2) Threats: (include exposure to violence and sexual behavior) _____

- (3) Harassment: (include sleep deprivation) _____

- (4) Interference with Personal Liberty: (include any sexual contact) _____

GENERAL HISTORY OF ABUSE

a. Abuse of Petitioner

- (1) First abuse: _____
- (2) Dates of severe abuse: (record details on pages 6 - 11)

- (3) Dates of recent abuse: (record details on pages 12 - 14)

- (4) Frequency of recent abuse: _____

b. Abuse of Children

- (1) First abuse: _____
- (2) Dates of severe abuse: (record details on pages 6 - 11)

- (3) Dates of recent abuse: (record details on pages 12 - 14)

- (4) Frequency of recent abuse: _____

PATTERNS OF ABUSE

NOTE: Pattern evidence, required by Section 208(d)(1) of the Illinois Domestic Violence Act, is especially important when the frequency and severity of recent abuse do not adequately convey the client's need for ex parte relief or for particular remedies (e.g. exclusive possession of the common residence).

Consider the "cycle of violence"; i.e., the (1) buildup, (2) explosion and (3) cooling down/remorse periods. Where is the abuser in his cycle? How long does he typically remain in each phase? What behavior warns of an imminent shift to the next phase?

Other important pattern evidence involves "triggering events," such as alcohol or other drug abuse, failure to take medication, unemployment, frustration of some personal or professional goal, vacations, holidays, the victim's pregnancy or "disobedience," etc.

B. The 3 Most Severe Beatings

SEVERE BEATING #1

a. Details of Abuse

- (1) Date: _____ (2) Time: _____
- (3) Describe the beating and other abuse in full detail. For each abused person, indicate: general health, pregnancy, type of abuse (e.g. kicked, punched, shoved, sexually molested, etc.), areas of body assaulted, weapons and objects used, threats, insults, etc. _____

- (4) What events led up to the abuse: _____

- (5) How long did abuse last: _____
- (6) Where did it occur: _____
- (7) Did any minor children witness abuse: _____
- (8) Identify other actual or probable witnesses (to the abuse or its consequences) and describe other available evidence (e.g., torn clothing, photographs of injuries or property damage): _____

- (9) Describe the physical, mental and emotional consequences for each household member who was abused or who witnessed abuse. Note how long these consequences persisted. If medical attention was received, specify name and address of health practitioner and of hospital or clinic and the nature and length of the treatment: _____

b. Police Involvement:

(1) Were police called: _____ By Whom: _____ When: _____
(date & time)

(2) Station, officer(s) involved: _____

(3) Did they come to the house: _____ When: _____

(4) Injuries or other evidence of crime visible to police: _____

(5) What happened while police were in the house: _____

(6) Did the police provide the following help or information (required by s304 of the Illinois Domestic Violence Act):

	<u>Yes</u>	<u>No</u>	<u>N/A</u>
transportation for medical treatment	_____	_____	_____
transportation for shelter	_____	_____	_____
safe escort to remove personal items	_____	_____	_____
written information on victim's rights	_____	_____	_____
officer's name and badge in writing	_____	_____	_____
referral to social service agency	_____	_____	_____
arrest of abuser	_____	_____	_____
completion of police report	_____	_____	_____
if no arrest, advice on pressing charges	_____	_____	_____
if no arrest, advice on preserving evidence	_____	_____	_____

(7) Does client want a copy of this intake form*? _____

(8) If criminal charges were filed, specify the crime charged, the date, time and place of the trial and, if trial has been held, the sanctions imposed: _____

* The client may wish to contact a local shelter or battered woman hotline for support and assistance. The Illinois Coalition Against Domestic Violence (217/789-2830) can provide information about local programs.

SEVERE BEATING #2

b. Details of Abuse

(1) Date: _____ (2) Time: _____

(3) Describe the beating and other abuse: _____

(4) What events led up to the abuse: _____

(5) How long did abuse last: _____

(6) Where did it occur: _____

(7) Did any minor children witness abuse: _____

(8) Witnesses and other evidence: _____

(9) Consequences for abused persons and witnesses: _____

b. Police Involvement:

(1) Were police called: _____ By Whom: _____ When: _____
(date & time)

(2) Station, officer(s) involved: _____

(3) Did they come to the house: _____ When: _____

(4) Injuries or other evidence of crime visible to police: _____

(5) What happened while police were in the house: _____

(6) Did the police provide the following help or information (required by s304 of the Illinois Domestic Violence Act):

	<u>Yes</u>	<u>No</u>	<u>N/A</u>
transportation for medical treatment	_____	_____	_____
transportation for shelter	_____	_____	_____
safe escort to remove personal items	_____	_____	_____
written information on victim's rights	_____	_____	_____
officer's name and badge in writing	_____	_____	_____
referral to social service agency	_____	_____	_____
arrest of abuser	_____	_____	_____
completion of police report	_____	_____	_____
if no arrest, advice on pressing charges	_____	_____	_____
if no arrest, advice on preserving evidence	_____	_____	_____

(7) Does client want a copy of this intake form*? _____

(8) If criminal charges were filed, specify the crime charged, the date, time and place of the trial and, if trial has been held, the sanctions imposed: _____

* The client may wish to contact a local shelter or battered woman hotline for support and assistance.' The Illinois Coalition Against Domestic Violence (217/789-2830) can provide information about local programs.

SEVERE BEATING #3

b. Details of Abuse

(1) Date: _____ (2) Time: _____

(3) Describe the beating and other abuse: _____

(4) What events led up to the abuse: _____

(5) How long did abuse last: _____

(6) Where did it occur: _____

(7) Did any minor children witness abuse: _____

(8) Witnesses and other evidence: _____

(9) Consequences for abused persons and witnesses: _____

b. Police Involvement:

(1) Were police called: _____ By Whom: _____ When: _____
(date & time)

(2) Station, officer(s) involved: _____

(3) Did they come to the house: _____ When: _____

(4) Injuries or other evidence of crime visible to police: _____

(5) What happened while police were in the house: _____

(6) Did the police provide the following help or information (required by s304 of the Illinois Domestic Violence Act):

	<u>Yes</u>	<u>No</u>	<u>N/A</u>
transportation for medical treatment	_____	_____	_____
transportation for shelter	_____	_____	_____
safe escort to remove personal items	_____	_____	_____
written information on victim's rights	_____	_____	_____
officer's name and badge in writing	_____	_____	_____
referral to social service agency	_____	_____	_____
arrest of abuser	_____	_____	_____
completion of police report	_____	_____	_____
if no arrest, advice on pressing charges	_____	_____	_____
if no arrest, advice on preserving evidence	_____	_____	_____

(7) Does client want a copy of this intake form*? _____

(8) If criminal charges were filed, specify the crime charged, the date, time and place of the trial and, if trial has been held, the sanctions imposed: _____

* The client may wish to contact a local shelter or battered woman hotline for support and assistance. The Illinois Coalition Against Domestic Violence (217/789-2830) can provide information about local programs.

c. Recent Physical Abuse and Threats of Violence

NOTE: Many battered women do not refer to abuse as a "beating" unless it caused serious injury. So, it is often helpful to ask about "hittings" and to specifically ask about some of the very common forms of physical abuse which may not cause lasting injury, such as:

- slapping, pinching, poking
- pushing to the floor or into objects
- dousing with food or garbage
- "stroking" with dangerous or noxious objects
- physical restraint, such as gagging or tying
- sexual contact by force, threat of harm or threat of exposing children to the sexual behavior

If the most recent abuse has included severe beatings, record above in "The 3 Most Severe Beatings."

RECENT PHYSICAL ABUSE OR THREATS: #1

(1) Date: _____ (2) Time: _____

(3) Describe the physical abuse, threats and other abuse in full detail. For each abused person, indicate: general health, pregnancy, type of abuse and areas of body assaulted, weapons and objects used, threats, insults, etc.: _____

(4) What events led up to the abuse: _____

(5) How long did abuse last: _____

(6) Where did it occur: _____

(7) Did any minor children witness abuse: _____

(8) Witnesses and other evidence: _____

(9) Physical, mental and emotional consequences for abused persons and witnesses, including details of any medical attention: _____

(10) Describe police involvement, if any, including assistance provided or denied and status of any criminal charges filed. (See detailed questionnaire about police involvement in Section A above.)

RECENT PHYSICAL ABUSE OR THREATS: #2

(1) Date: _____ (2) Time: _____

(3) Describe the physical abuse, threats and other abuse: _____

(4) What events led up to the abuse: _____

(5) How long did abuse last: _____

(6) Where did it occur: _____

(7) Did any minor children witness abuse: _____

(8) Witnesses and other evidence: _____

(9) Consequences for abused persons and witnesses: _____

(10) Describe police involvement, if any, including assistance provided or denied and status of any criminal charges filed. (See detailed questionnaire about police involvement in Section A above.)

RECENT PHYSICAL ABUSE OR THREATS: #3

(1) Date: _____ (2) Time: _____

(3) Describe the physical abuse, threats and other abuse: _____

(4) What events led up to the abuse: _____

(5) How long did abuse last: _____

(6) Where did it occur: _____

(7) Did any minor children witness abuse: _____

(8) Witnesses and other evidence: _____

(9) Consequences for abused persons and witnesses: _____

(10) Describe police involvement, if any, including assistance provided or denied and status of any criminal charges filed. (See detailed questionnaire about police involvement in Section A above.)

V. DETAIL RE CHILD CUSTODY & VISITATION

A. Emergency Issues

NOTE: Describe the evidence of danger and the action necessary.

- (1) Child abuse: (If evidence of danger, note here and record details in Part IV above) _____

- (2) Child neglect: _____

- (3) Removal of child from state: _____

- (4) Concealment of child from client: _____

B. Custody Jurisdiction Issues

C. Custody

- (1) Who has physical custody: _____
- (2) Legal custody
 - a. Orders obtained or actions pending: _____

 - b. Does client want to petition for legal custody: _____
If so, is a contest likely: _____
Preliminary information re "best interests of children":

D. Visitation

(1) Any reason to try to deny or limit the other parent's visitation rights: (note that statutory prerequisite is "serious endangerment") _____

(2) Proposed times for visitation: _____

(3) Pick up and drop off points: _____

VI. DETAIL RE ECONOMIC ISSUES

A. Emergency Issues

NOTE: Describe the advice given (e.g., on applying for public aid and food stamps), referrals made (e.g., to battered woman hotline or shelter, local food pantry) and litigation planned (e.g., petition for an ex parte order of protection which, among other things, evicts the abuser from the home).

(1) Cash for food and other essentials: _____

(2) Shelter: _____

B. Compensation for Losses

NOTE: List losses suffered as a direct result of the abuse. Such losses can now be recovered by one spouse against the other (as part of an action for an order of protection or independently) if the abuse was "an intentional tort" and the "spouse inflicted physical harm." See ss208(c)(8) and 403 of the Illinois Domestic Violence Act.

(1) Medical expenses: _____

(2) Pain and suffering: _____

(3) Loss of earnings: _____

d. Ability to contribute to support of spouse and children _____

(3) Minor children

a. Financial resources: _____

b. Expenses:

<u>item</u>	<u>amount</u>	<u>item</u>	<u>amount</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

c. Special needs: _____

D. Endangered Property Rights

NOTE: An order of protection under the Illinois Domestic Violence Act can restrain the adverse party from "transferring, encumbering, concealing, damaging or otherwise disposing of" the client's sole or joint property.

VII. SUMMARY OF LEGAL AND EXTRALEGAL SERVICES

		<u>done</u>	<u>to be done by</u>
A.	<u>Advice</u>		
	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
	6. _____	_____	_____
B.	<u>Referrals</u> (<i>indicate need and resource</i>)		
	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
C.	<u>Negotiation and Agency Advocacy</u> (<i>indicate subject and contact</i>)		
	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
D.	<u>Litigation</u> (<i>indicate remedies needed and adverse parties</i>)		
	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
	6. _____	_____	_____
	7. _____	_____	_____
	8. _____	_____	_____
	9. _____	_____	_____
	10. _____	_____	_____
E.	<u>Other</u>		
	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____

PLEADING

The Sample Petition

The sample Petition for a Domestic Violence Order of Protection seeks each of the specific remedies authorized by IDVA. Like the Domestic Violence Intake form, it is designed to introduce the practitioner to the key concepts and provisions of IDVA. It includes the allegations required by IDVA and by related statutes such as the Illinois Marriage and Dissolution of Marriage Act (IMDMA)¹ and the Uniform Child Custody Jurisdiction Act.²

The sample petition does not recite the details of prior abuse, even though IDVA requires the court to make findings about the "frequency, severity, pattern and consequences of...past abuse...and the likelihood of danger of future abuse...."³ Such details are more visible, and hence more persuasively presented, in a supporting affidavit than in the center of a lengthy petition. A carefully prepared affidavit, reciting the facts recorded on pages 3 through 14 of the Domestic Violence Intake form, will yield the text of your opening statement, an outline for your direct examination and insurance against accidental omission of important evidence.

To adapt this sample petition to a particular client: (1) select or reject the alternatives listed in the parentheses; (2) omit irrelevant paragraphs; and, (3) if relief is sought ex parte, allege the applicable justification. Although the sample petition is designed for independent actions, it can be incorporated into a petition for preliminary, final or post-judgment relief in a proceeding under IMDMA.

The Form Orders

The form Domestic Violence Order of Protection and the form Ex Parte Domestic Violence Order of Protection are designed to make it easier for the court clerks, county sheriffs and state Department of Law Enforcement to comply with IDVA's requirement that the contents of Orders of Protection be included in the computerized data bank available to police officers.⁴ Its presence is a reminder of the importance of statewide use of these forms.

Each of IDVA's specific remedies is granted on the face of these form orders. To adapt the appropriate form to a particular client: (1) read the form carefully and check applicable statements; and (2) fill in the blanks.

-
1. Ill.Rev.Stat. ch.40, ss101-802 (1979).
 2. Ill.Rev.Stat. ch.40, ss2101-2126 (1979).
 3. s208(d)(1).
 4. ss210(b); 302(a), (b); 301(c).

IN THE CIRCUIT COURT OF

DEPARTMENT

(county) (municipal) (division) (district)

PETITIONER, on her/his own behalf and on behalf of

v.

No.

RESPONDENT

PETITION FOR A DOMESTIC VIOLENCE ORDER OF PROTECTION

by her attorneys

, alleges:

the cause & the parties

s202(c)

1. Respondent has abused Petitioner and the minor children within the definition of abuse in s103(1) of the Illinois Domestic Violence Act.

s202(c)
s103(2)

2. Respondent ((is the spouse, former spouse, parent or child of) or (shares a common household with)) Petitioner and ((is the parent) or (shares a common household with)) the minor children.

3. has been abused by Respondent and is prevented by (physical and/or mental) incapacity from seeking an order of protection on (her/his) own behalf. S/he ((is the parent, child, spouse or former spouse of) or (shares a common household with)) Respondent. (If relevant, add reference to this person to subsequent paragraphs.)

*Citations in the margins are to the relevant sections of the Illinois Domestic Violence Act.

jurisdiction & venue

§201 4. This court has jurisdiction to grant the relief requested.

§205 5. ((Petitioner and/or Respondent reside(s)) or (the abuse occurred)) in County, Illinois.

history & danger of abuse

§208(d)(1) 6. Respondent's past abuse of Petitioner has included the (physical violence, threats, harassment and/or interference with Petitioner's personal liberty) which is detailed in the verified affidavit attached hereto, and Petitioner is in danger of future abuse by Respondent.

§208(d)(1),
(2) 7. Respondent's past abuse of the minor children has included the (physical violence, threats, harassment and/or interference with personal liberty) which is detailed in the verified affidavit attached hereto, and these minor children are in danger of future abuse by Respondent.

contact restrictions

8. Protection of (Petitioner and/or the minor children) from future abuse by Respondent requires that Respondent be prohibited from (entering the place of business or school of Petitioner or any of the minor children and from initiating or attempting to initiate contact with Petitioner or any of the minor children).

§208(c)(1) 9. Because of Respondent's past abuse of (Petitioner and/or the minor children) and recent threats to (), contact of Petitioner or the minor children by Respondent would itself constitute (a threatening act, harassment, and/or interference with personal liberty) which the court may prohibit under section 208(c)(1) of the Illinois Domestic Violence Act.

separate residence

s208(c)(2) 10. ((The marital residence of Petitioner and Respondent is located at _____.) or (Petitioner is the sole/a joint owner/lessee of the residence at _____, which she has shared with Respondent.) or (Respondent has a legal duty, under ch. _____, s of Illinois Revised Statutes to support Petitioner and/or the minor children _____, who has/have resided with him at _____ .))

s208(d)(3) 11. The threat of future abuse by Respondent deprives Petitioner and the minor children of safe and peaceful occupancy of said residence, and that threat cannot be eliminated while the parties occupy the same residence.

s208(d)(3) 12. Any hardship which would result from temporary exclusion of Respondent from the common residence does not substantially outweigh the hardship which would result if Petitioner and the minor children continue to be deprived of safe and peaceful occupancy by the threat of future abuse by Respondent.

child custody & visitation

s208(c)(3) 13. This Court has jurisdiction to determine child custody, in accordance with the Illinois Uniform Child Custody Jurisdiction Act.

14. The minor children have resided in Illinois ((for the past five years.) or (since birth.)) (If this is not true, state where they have resided.)

15. The minor children have resided with Petitioner and Respondent ((for the past five years) or (since birth)) except that they have resided with Petitioner alone since _____. (If this is not true and complete, identify all persons with whom children have resided.)

16. That Petitioner has participated in no other litigation concerning the custody of the minor children, has no information about any other custody proceeding now pending, and knows of no person not a party to this proceeding who claims custody or visitation rights.

17. That there has been no arrangement made between the parties as to custody, visitation, maintenance or child support, as of the filing of this Petition.

18. That Petitioner is a fit and proper person to have the care, custody and control of the minor children.

19. That the best interests of the minor children will be served by awarding temporary and permanent care, custody and control to the Petitioner. (*If the welfare of the children requires denial or restriction of Respondent's visitation rights, allege that the "physical, mental, moral or emotional" well being of the children will be "seriously endangered" unless Respondent's visitation is denied or restricted.*)

§208(c)(4) 20. (*abduction*) Respondent has (*threatened and/or attempted*) to remove the minor children from the state of Illinois.

§208(c)(4) 21. (*concealment*) Respondent has physical custody of the minor children and (*has refused to notify Petitioner of their whereabouts.*) or (*has barred Petitioner from reasonable access to and communication with them.*)

§208(c)(4) 22. (*appearance in court*) Respondent has physical custody of the minor children, and his past (*threats to abduct/conceal the children*) or (*declarations that he will not be bound by any adverse custody orders*) establish that an order directing his appearance in court with the minor children will be necessary to effectuate any custody decisions of this Court.

maintenance & child support

s208(c)(7) 23. (spousal maintenance) Petitioner lacks sufficient property and income to provide for her reasonable needs, and Respondent is well able to contribute to her maintenance and support.

s208(c)(7) 24. (child support) Respondent is well able to contribute to the support of his minor children, and a substantial contribution from Respondent is fitting and proper in view of the financial resources and needs of Petitioner, Respondent and the minor children.

monetary compensation

s208(c)(8) 25. Petitioner suffered losses, including financial losses, as a direct result of abuse by Respondent, including but not limited to medical expenses related to the abuse, loss of earnings, loss of financial support, out-of-pocket losses for injuries sustained and moving expenses.

s403 26. Said abuse of Petitioner by Respondent was intentional and inflicted physical harm.

court costs and attorney fees

s208(c)(9) 27. This action would not have been necessary but for Respondent's abuse of Petitioner and the minor children, and Respondent's financial resources exceed those of Petitioner, so that it is fitting and proper that this Court order Respondent to pay court costs and Petitioner's attorney fees.

property protection

s208(c)(6) 28. Respondent has (threatened and/or attempted) to (damage, destroy, remove from the common residence, conceal, sell, transfer, encumber or otherwise dispose of) Petitioner's (separate and/or joint) property and has already intentionally (damaged/destroyed food, furnishings, appliances, etc. in the common residence, Petitioner's clothing, Petitioner's automobile, etc..)

injunctive relief

§208(c)(10) 29. Petitioner's (*right to/interest in*) is threatened by Respondent's _____, and the danger of irreparable injury, for which Petitioner lacks an adequate remedy at law, will persist unless this Court enjoins Respondent from

WHEREFORE PETITIONER PRAYS: For a Domestic Violence Order of Protection, to remain in full force and effect ((*for one full year from the date of entry*) or (*until* _____)), which includes the following remedies authorized by the Illinois Domestic Violence Act:

A. Prevention of Future Abuse

1. WARNING: That respondent be ordered to refrain from striking, threatening, harassing or interfering with the personal liberty of the petitioner or any other family or household member.

2. CONTACT RESTRICTIONS: That Respondent be ordered to refrain from entering the place of business or school of Petitioner or any of the minor children and from initiating any contact with them.

3. SEPARATE RESIDENCE: That possession of the residence at _____ be granted to Petitioner, to the exclusion of Respondent, and that Respondent be ordered to refrain from entering or remaining in that residence.

4. COUNSELLING: That the court require or recommend the Respondent to undergo counselling for a specified duration with a social worker, psychologist, clinical psychologist, psychiatrist, family service agency,

mental health guidance counselor or any other guidance service the court deems appropriate.

B. Child Custody and Visitation

5. CUSTODY: That temporary care, custody and control of the minor children be entrusted to Petitioner.

6. VISITATION: (*If necessary, pray for denial or restriction of Respondent's visitation rights.*) That Respondent be directed to pick up and drop off the children at a suitable private or public facility, and to refrain from coming to Petitioner's residence when exercising his/her visitation rights.

7. ABDUCTION OR CONCEALMENT: That Respondent be prohibited from removing any of the minor children from the jurisdiction and from concealing any of them from Petitioner.

8. APPEARANCE: That Respondent be ordered to appear in court with those minor children in his custody or under his control.

C. Economic Matters

9. COMPENSATION: That Respondent be ordered to pay to Petitioner actual monetary compensation for losses suffered as a direct result of the abuse.

10. MAINTENANCE & CHILD SUPPORT: That Respondent be ordered to pay temporary monthly support for Petitioner, his spouse, and for his minor children, who are in Petitioner's custody.

11. PROPERTY: That Respondent be restrained from transferring, encumbering, concealing, damaging or otherwise disposing of Petitioner's sole or joint property.

12. COURT COSTS & ATTORNEY FEES: That Respondent be ordered to pay court costs and Petitioner's attorney fees in connection with this action.

D. Injunctive Relief

13. That Respondent be enjoined to:

STATE OF ILLINOIS)
COUNTY OF) SS

PETITIONER

VERIFICATION

, being first duly sworn on oath, deposes and says that she is the Petitioner in the above Petition for a Domestic Violence Order of Protection, by her subscribed, and that she has read the contents thereof and knows it to be true in substance and in fact.

PETITIONER

SUBSCRIBED AND SWORN TO before me
this ____ day of _____, 198 ____.

Attorney for Petitioner
Address
City & State
Telephone

NOTARY PUBLIC

STATE OF ILLINOIS

COUNTY OF _____

IN THE CIRCUIT COURT OF

— Vs. —

No. _____ <input type="checkbox"/> Independent Petition <input type="checkbox"/> Criminal Proceeding <input type="checkbox"/> IMDMA Proceeding

File Stamp Here

PETITIONER/PLAINTIFF	ADDRESS	CITY
----------------------	---------	------

On behalf of:

RESPONDENT/DEFENDANT	ADDRESS	CITY
----------------------	---------	------

SERVICE MADE ON RESPONDENT BY: Presence in Court Personal Service Date: _____

DOMESTIC VIOLENCE ORDER OF PROTECTION

The Court, having jurisdiction over the subject matter and the parties, finds that the respondent has committed abuse as defined by the Illinois Domestic Violence Act.

IT IS HEREBY ORDERED THAT:

- 1. The respondent shall refrain from striking, threatening, harassing or interfering with the personal liberty of _____ or any other family or household member, namely, _____
Particularly s/he shall not: _____
- 2. Possession of the residence located at _____ is granted to _____ to the exclusion of the respondent, who shall not enter it even with the consent of any of its inhabitants. This order does not affect title to property.

Any violation of paragraphs 1 or 2 of this Order of Protection constitutes a CLASS A MISDEMEANOR and subjects the respondent to immediate arrest, provided s/he has been served notice or has actual knowledge of this order.

WILLFUL VIOLATION OF ANY PROVISION OF THIS ORDER CONSTITUTES CONTEMPT OF COURT AND MAY RESULT IN FINE OR IMPRISONMENT.

- 3. Temporary custody of the minor child/ren _____ is awarded to the petitioner, subject to visitation on the following days and times: _____
Respondent shall pick up and drop the child/ren at: _____
- 4a. The respondent is prohibited from removing the minor child/ren from the jurisdiction of the Court and from concealing them from the parent or person in loco parentis.
- 4b. The respondent shall appear in Courtroom _____ at _____ m. on _____ with the minor child/ren.
- 5. The respondent shall undergo counseling at _____ at least _____ per _____, beginning no later than _____ and continuing at least until _____.

DOMESTIC VIOLENCE ORDER OF PROTECTION

Case No. _____

6. The respondent shall not transfer, encumber, conceal, damage, or otherwise dispose of any property solely or jointly owned by the petitioner, or any other family or household member, except as follows:

7. The respondent shall pay temporary monthly maintenance of \$ _____ and monthly child support of \$ _____. Payments must reach _____ by no later than the _____ of each month.

8. The respondent shall pay petitioner \$ _____ by no later than ____/____/____, as compensation for the following losses resulting directly from abuse by the respondent: _____

This amount does not include any other such losses, nor preclude future recovery thereof.

9. The respondent shall reimburse petitioner \$ _____ for court costs and shall pay for any future costs in connection with any action to obtain, modify, enforce, appeal or re-open any Order of Protection. Respondent shall pay \$ _____ for/toward petitioner's attorney fees. Payment shall be made to _____ no later than ____/____/____.

This order is enforceable by petitioner or the attorney.

10. The respondent is further enjoined as follows: _____

The following remedies, requested by the petitioner pursuant to the Illinois Domestic Violence Act, Subsection (c) of Section 2302-8, were denied for the stated reasons:

This order was issued on: _____ Date _____ Time.

This order will remain in full force and effect until: Date: _____; or
 The occurrence of the following event: _____

Name _____
 Attorney for _____
 Address _____
 City _____
 Telephone _____

ENTER: _____ JUDGE

The petitioner, the petitioner's attorney or Clerk of the Court should complete the following information about the respondent so that this order can be entered into the Illinois Department of Law Enforcement's LEADS computer system by the sheriff.

BIRTHDATE	SEX	RACE	HEIGHT	WEIGHT	HAIR	EYES	SOCIAL SECURITY NUMBER
DISTINGUISHING FEATURES AND ALIAS INFORMATION							DRIVER'S LICENSE

STATE OF ILLINOIS

COUNTY OF _____

IN THE CIRCUIT COURT OF _____

— Vs. —	No. _____ <input type="checkbox"/> Independent Petition <input type="checkbox"/> Criminal Proceeding <input type="checkbox"/> IMDMA Proceeding	File Stamp Here
PETITIONER/PLAINTIFF	ADDRESS	CITY
On behalf of:		
RESPONDENT/DEFENDANT	ADDRESS	CITY

EX PARTE DOMESTIC VIOLENCE ORDER OF PROTECTION

The Court, having jurisdiction over the subject matter, finds that the respondent has committed abuse as defined by the Illinois Domestic Violence Act.

AND BASED ON THE FOLLOWING FURTHER FINDINGS:

- The petitioner has diligently attempted to obtain service of process upon the respondent and has diligently attempted to serve written notice of the date, time and location of the hearing together with a copy of the petition and all supporting affidavits upon the respondent in accordance with Supreme Court Rules 11 and 12; and/or
- The irreparable injury which the following remedies are intended to prevent would have been likely to occur if respondent had been given prior or earlier notice of this hearing;

IT IS HEREBY ORDERED THAT:

- 1. The respondent shall refrain from striking, threatening, harassing or interfering with the personal liberty of _____
or any other family or household member, namely, _____

- Particularly s/he shall not: _____
- 2. Possession of the residence located at _____
is granted to _____
to the exclusion of the respondent, who shall not enter it even with the consent of any of its inhabitants.
This order does not affect title to property.

Any violation of paragraphs 1 or 2 of this Order of Protection constitutes a CLASS A MISDEMEANOR and subjects the respondent to immediate arrest, provided s/he has been served notice or has actual knowledge of this order.

WILLFUL VIOLATION OF ANY PROVISION OF THIS ORDER CONSTITUTES CONTEMPT OF COURT AND MAY RESULT IN FINE OR IMPRISONMENT.

EX PARTE DOMESTIC VIOLENCE ORDER OF PROTECTION

Case No. _____

3. Temporary custody of the minor child/ren _____
_____ is awarded to the petitioner, subject to visitation on the following days and times:

Respondent shall pick up and drop the child/ren at: _____

4a. The respondent is prohibited from removing the minor child/ren from the jurisdiction of the Court and from concealing them from the parent or person in loco parentis.

4b. The respondent shall appear in Courtroom _____ at _____ m. on _____
_____ with the minor child/ren.

5. The respondent shall not transfer, encumber, conceal, damage, or otherwise dispose of any property
(LEADS #6) solely or jointly owned by the petitioner, or any other family or household member, except as follows:

6. The respondent is further enjoined as follows: _____
(LEADS #10) _____

Petitioner, having filed a proper affidavit, shall be permitted to proceed with this claim as a pauper and shall not be required to pay fees for filing, service, transcripts or copies of orders.

The following remedies, requested by the petitioner pursuant to the Illinois Domestic Violence Act, Subsection (c) of Section 2302-8, were denied for the stated reasons:

The hearing for an extension of this Order of Protection will be held on:

Date _____ Time _____ Courtroom _____

This Order was issued on:

Date _____ Time _____

This Order will expire on:

Date _____ Time _____

Name _____

Attorney for _____

Address _____

City _____

Telephone _____

ENTER: _____

JUDGE

The petitioner, the petitioner's attorney or Clerk of the Court should complete the following information about the respondent so that this order can be entered into the Illinois Department of Law Enforcement's LEADS computer system by the sheriff.

BIRTHDATE	SEX	RACE	HEIGHT	WEIGHT	HAIR	EYES	SOCIAL SECURITY NUMBER
DISTINGUISHING FEATURES AND ALIAS INFORMATION							DRIVER'S LICENSE

NOTICE TO RESPONDENT:

Upon 2 days notice to the petitioner who has obtained an ex parte order, or upon such shorter notice as the Court may prescribe, a respondent who is subject to an ex parte order may appear and move for its dissolution or modification. Any motion for dissolution or modification by the respondent must be supported by affidavit.

STATE OF ILLINOIS

COUNTY OF _____

IN THE CIRCUIT COURT OF

<p>— Vs. —</p>

No. _____

- Independent Petition
- Criminal Proceeding
- IMDMA Proceeding

File Stamp Here
LEADS # _____
Respondent's Date of Birth: _____

ORDER

The Court Finds that

- An Ex Parte Domestic Violence Order of Protection was issued on _____
- A Domestic Violence Order of Protection was issued on _____

THE COURT HAVING JURISDICTION OF THE SUBJECT MATTER, IT IS HEREBY ORDERED THAT:

- 1. An extension of the ex parte Order of Protection is granted and is hereby extended to _____ 19 _____ at _____ m.
- 2. A hearing on the ex parte Order of Protection is set for _____ m., on _____ 19 _____ in Courtroom No. _____.
- 3. The ex parte Order of Protection is vacated.
- 4. The Order of Protection previously issued is extended to _____ 19 _____.
- 5. A hearing on the Order of Protection is set for _____ m., on _____ 19 _____, in Courtroom No. _____.
- 6. The Order of Protection is vacated.
- 7. The ex parte Order of Protection is modified as follows:
 The Order of Protection is modified as follows:

Name _____

Attorney for _____

Address _____

City _____

Telephone Number _____

Enter: _____
JUDGE

Date: _____

OUTLINE OF PROCEDURES

Independent Actions for Orders of Protection

The following outline of procedures in independent actions for orders of Protection provides a checklist, as well as space for recording and conveying practical local detail.

1. Filing the Case-in-Chief

- a. Form of petitions _____
- b. Number of copies _____
- c. Filing fee _____
- d. Place of filing _____

- e. Appropriate division of court _____
- f. Case assignment system _____
- g. Additional court forms required _____
- h. Place and time of hearings of pauper suit applications _____

2. Obtaining Service of Process

- a. Number of copies of summons _____
- b. Number of copies of petition _____
- c. Place summons issued _____
- d. Place to file summons for service _____
- e. Fee for service _____
- f. Proof of pauper status required for fee waiver _____
- g. Procedures for expedited service _____
- h. Place to check on service _____
- i. Phone number to check on service _____

3. Advancing The Case to Trial

- a. Default procedures _____

- b. Place, time and grounds to advance contested cases and set for trial _____

- c. Case assignment system _____

- d. Precautions to avoid _____
being DWP'd _____

4. Motion Practice

- a. Time and place motions heard
 - 1. Ex Parte _____
 - 2. Emergency noticed _____
motions _____
 - 3. Regular noticed _____
motions _____

5. Service of Orders¹

- a. Place to file _____
- b. Number of copies _____
- c. Fees _____
- d. Procedures for expedited _____
service _____

Actions Connected to an IMDMA Proceeding

If the Order of Protection is sought as part of the preliminary relief in a proceeding under IMDMA, the above outline applies. If it is sought as part of the final judgment, only sections 1, 2, 3 and 5 apply; if requested as post-judgment relief, only sections 4 and 5. The ways in which procedures vary under these circumstances may be noted below:

- 1. Preliminary Relief:
- 2. Final Judgment:
- 3. Post-Judgment Relief:

1. In addition to filing Orders of Protection with the sheriff for service, it is wise to serve the abuser by mail and to provide the client with several copies of the Order and the advice to protect at least one from destruction by the abuser. If the Order is not yet recorded on the Law Enforcement Agencies Data System computer, the police must see a copy of it in order to arrest for its violation. §201(c), 212(a).



ILLINOIS COALITION AGAINST DOMESTIC VIOLENCE

931 South Fourth Street — Springfield, Illinois 62703 — (217) 789-2830

Materials Available

on the

Illinois Domestic Violence Act

- . Illinois Domestic Violence Act booklets with section by section summary (\$.50)
- . Professional Manuals:
 - Law Enforcement (\$2.00)
 - State's Attorneys (\$2.00)
 - Civil Court Practice (\$3.00 + \$1.00 shipping)
 - Advocates and Service Providers (\$3.00 + \$1.00 shipping)
 - Pro Se Handbook (\$2.00)
- . Victim Rights Sheets (master copy) Free
- Original Pads of Victim Rights Sheets (\$3.00 per 100)
- . Videotape for Law Enforcement Role Call Training (\$15.00 to purchase*)
- . Slide/tape presentation for victims (\$50.00 to purchase)*
- . General information brochures and posters (Free)
(English and Spanish)
- . A Handbook for Domestic Violence Victims (Free)
- . A Family Affair, an excellent 30 minute film which effectively demonstrates the use of an Order of Protection to stop violence within a family.*

To request any of the materials or the slide show, Please contact Merrill McDaniels at (217) 789-2830 or at the address above.

To reserve the film please contact Karen Reesor at the same address and telephone number.

*These can all be borrowed at no charge, except for shipping costs, from ICADV.



ILLINOIS COALITION AGAINST DOMESTIC VIOLENCE

1131 South Second Street - Springfield, Illinois 62704 - (217).789-2830

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Amendments to the Illinois Domestic Violence Act

Public Acts 82-888 and 83-101 amended the following sections of the Illinois Domestic Violence Act. The new statutory language is underlined.

(Ch. 40, par. 2301-3)

Sec. 103. "Definitions. For the purposes of this Act, the following terms shall have the following meanings:

- (1) 'Abuse' means the act of striking, threatening, harassing or interfering with the personal liberty of any family or household member by any other family or household member, but excludes any excluding reasonable discipline of a minor child by a parent or person in loco parentis of such minor child.
- (2) 'Family or household members' means spouses, individuals who were formerly spouses, individuals sharing a common household, parents and children, or persons related by blood or marriage."

Sec. 202(b). "A person may seek an order of protection (1) for herself or himself; (2) on behalf of a minor child; or (3) on behalf of any person prevented by physical or mental incapacity or because of advanced age from seeking an order of protection on his or her behalf."

Sec. 202(d) "The court shall provide, through the office of the clerk of the court, simplified forms and clerical assistance to help with the writing and filing of a petition under this section by any person not represented by counsel."

Sec. 208(c)(6). "Restraining the respondent from transferring, encumbering, concealing, damaging or otherwise disposing of petitioner's property or joint property of the petitioner and respondent; or from improperly using an aged family member's resources, financial or otherwise, for respondent's profit or advantage, or for the profit or advantage of another person."

Sec. 208(c)(10). "Entering such injunctive relief as may be necessary or appropriate and referring to the aging network petitioners 60 years of age or older."

Sec. 214. Immunity from Prosecution. "Any individual or organization acting in good faith to do any of the following in complying with the provisions of this Act shall not be subject to criminal prosecution or civil liability as a result of such action: providing any information to the appropriate law enforcement agency, provided that the giving of any information does not violate any privilege of confidentiality under law; assisting in any investigation; assisting in the preparation of any materials for distribution under this Act; or by providing services ordered under an order of protection."



ILLINOIS COALITION AGAINST DOMESTIC VIOLENCE

931 South Fourth Street — Springfield, Illinois 62703 — 217/789-2830

- ALEDO**
Mercer County CADV
309/582-7233 (day/evening)
- ALTON**
Oasis Women's Center
618/465-1978
- AURORA**
Mutual Ground
312/897-0080
- BELLEVILLE**
Women's Crisis Center
618/235-0892
- BLOOMINGTON**
YWCA of McLean County —
Countering Domestic and
Sexual Violence
800/322-5015
309/827-4005
- CAIRO**
Community Health Services —
Cairo Women's Shelter
618/734-HELP
- CANTON**
Fulton County Women's
Crisis Service
309/647-8311
- CARBONDALE**
Women's Center
618/529-2324
- CENTRALIA**
Call For Help/Women In Need
618/533-SAFE
- CHARLESTON**
Coalition Against Domestic
Violence
217/345-4300
217/235-4300
- CHICAGO**
Chicago Abused Women
Coalition
312/278-4566
- Chicago Department of
Human Services
312/744-5829
- Family Rescue
312/375-8400
- Loop YWCA — Women's
Services
312/372-6600 (office)
- Neopolitan Lighthouse
312/248-9261
- Rainbow House/Arco Iris
312/521-4865
- Southwest Women Working
Together
312/436-0550 (office)
- Travelers & Immigrants Aid
312/889-6611 (day/evening)
312/686-7562 (night/weekend)
- Uptown Center Hull House —
Family Violence Task Force
312/561-3500 (day)
312/769-0205 (night/weekend)
- CLAY CITY**
Stopping Woman Abuse Now
618/676-1911
- DANVILLE**
Danville YWCA/Woman's
Alternative Shelter
217/443-5566
- DECATUR**
DOVE Domestic Violence
Project
217/423-2238
- DE KALB**
Safe Passage
815/756-2228
- DES PLAINES**
Life Span
312/824-4454
- DIXON**
Sterling-Rock Falls YWCA —
COVE
815/288-1011
- EAST ST. LOUIS**
Women's Crisis Center
618/398-8540
- ELGIN**
Community Crisis Center
312/697-2380
- EVANSTON**
Evanston YWCA
312/864-8780
- FREEPORT**
YWCA of Freeport
815/235-9421 (day)
815/233-HELP (night/weekend)
- GLEN ELLYN**
Family Shelter Service
312/469-5650
- HAZEL CREST**
South Suburban Family
Shelter
312/335-3028
- JACKSONVILLE**
Women's Crisis Center
217/243-4357
- JOLIET**
Guardian Angel Home
815/722-3344
- KANKAKEE**
Kankakee County Coalition
Against Domestic Violence
815/932-5800
- OAK PARK**
Sarah's Inn
312/386-4225
- PEORIA**
Tri-County WomenStrength
309/674-4443
- PRINCETON**
Freedom House
815/875-8233
- QUINCY**
Quincy Area Network Against
Domestic Abuse
217/222-2873
- ROCHELLE**
HOPE of Rochelle
815/562-8890
- ROCKFORD**
WAVE/PHASE
815/962-6102
- ROSICLARE**
Anna Bixby Women's Center
618/252-8389
- SPRINGFIELD**
Sojourn Women's Center
217/544-2484
- STERLING**
Sterling-Rock Falls YWCA —
COVE
815/626-7277
- STREATOR**
Against Domestic Violence
800/892-3375
- SUMMIT**
Des Plaines Valley
Community Center
312/485-5254
- URBANA**
A Woman's Place
217/384-4390
- WAUKEGAN**
A Safe Place
312/249-4450
- WOODSTOCK**
Turning Point
815/338-8080
- WORTH**
Crisis Center for South
Suburbia
312/974-1791

Unless otherwise indicated, all
numbers listed are 24-hour crisis
lines.