

## **ADVANCING THE ECONOMIC RIGHTS OF DOMESTIC VIOLENCE SURVIVORS IN PROTECTION ORDER PROCEEDINGS**

Effective strategies to end violence against women must include strong measures that promote economic security and restitution for survivors. Many women are compelled to stay in abusive relationships or return to their batterers because of financial constraints and economic concerns. However, many forms of temporary economic relief are available through protection orders. Moreover, protection order proceedings are an appropriate and necessary venue to address the economic injustice that often characterizes domestic violence. The majority of states, the District of Columbia, and Puerto Rico authorize *some* form of economic relief in protection order proceedings.<sup>1</sup> In fact, most courts have statutory authority to grant financial support to domestic violence victims, maintain housing, child care and health insurance for victims and their children and award other forms of monetary relief in a protection order proceeding.<sup>2</sup>

For instance, child support and/or temporary spousal maintenance awards are specifically authorized by most state statutes; typically, these forms of emergency financial support to survivors and their children can be obtained in protection order proceedings. However, other forms of economic relief—housing and child care expenses, provisions for the use of property and/or joint debts (i.e., credit cards, loans, car notes) and other compensatory losses-- continue to be more difficult to obtain in protection orders even when the abuser has a legal duty to support his spouse and/or children. Although a protection order may not provide a *fully* adequate legal remedy in all cases<sup>3</sup>, financial provisions for household maintenance (e.g., rent, mortgage payments and/or utility bills), other credit and/or loan obligations, child care and health care expenses, should be sought whenever these economic supports may help to achieve safety and stability for domestic violence survivors.

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<sup>1</sup> See Catherine F. Klein and Leslye E. Orloff, Providing Legal Protection for Battered Women: an Analysis of State Statutes and Case Law, 21 Hofstra L. Rev. 801, 993 (1993); see also Fredrica L. Lehrman, DOMESTIC VIOLENCE PRACTICE AND PROCEDURE, Appendix 4A (West 1997).

<sup>2</sup> For example, 38 state statutes contain “catch-all” provisions. Specific forms of monetary relief are authorized by statute in 20 jurisdictions. Id.

<sup>3</sup> For instance, even if a judgment provides that the abuser must pay certain debts, a third party creditor is not bound by the judgment. The survivor is fully liable on joint debts. See Chi Chi Wu and Deanne Loonin, National Consumer Law Center, *Guide to Consumer Rights for Domestic Violence Survivors*, pp. 27-33 (2003); see also “Pathways to Economic Justice,” THE LAPTOP UPDATE, Spring 2004.

## HOUSING

### **Orders to Vacate:**

Several state statutes authorize orders to vacate and stay away from the survivor's home, regardless of ownership or lease agreements. Some laws, however, limit the scope of these provisions to circumstances in which the perpetrator has no ownership rights, or, in a case involving rental property, does not have his name on the lease. The following jurisdictions have statutes that specifically authorize the issuance of a protection order that directs the defendant to vacate a shared residence:

Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, N. Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

### **Advocacy Points:**

- Housing is necessary for the continued safety and security of the survivor (and her children).
- It is a proper and necessary exercise of the court's jurisdiction to address the victim's housing needs necessitated by the abuser's violence and to make every effort to reduce a heightened risk of future violence.
- Allowing an abuser to stay or granting possession to the abuser would make the court complicit in possibly forcing the victim out of her home and reward him for his bad behavior.
- Referral or deference to another court to determine the housing/possession of property issue(s), will cause unnecessary delay and denies the victim/survivor an effective remedy.

Of course, the financial implications for the survivor, once her batterer is ordered to vacate their shared residence, can be severe. If she is financially dependent upon him and she does not have an adequate income, savings or alternate resources, a court order that evicts her batterer but leaves her without any practical means to manage financially in the immediate aftermath of the abuse is inadequate.

## **HOUSING**

### **Future Rent or Mortgage Payments:**

In many states, it is possible to obtain a protection order that also directs defendant to continue to make mortgage or rent payments or, in the alternative, to provide suitable alternative housing for the survivor and/or his children. In these cases, most often these remedies are available to plaintiff where the court finds there is a duty to support the victim and/or children. For instance, certain state statutes include specific authority for the court to direct defendant to continue making rent or mortgage payments as may be necessary:

Indiana, Missouri, Nevada, New Hampshire, New Jersey and Pennsylvania.

## **HOUSING**

### **Suitable Alternative Housing for the Survivor and her Child/ren:**

In the alternative, it may be appropriate that defendant be directed to provide suitable housing arrangements for his victim and/or children. Some state statutes contain specific authority for the issuance of a protective order with this type of relief. For instance, the issuance of a protective order directing defendant to provide suitable alternative housing for a survivor is specifically authorized by statute in:

Alabama, Georgia, Kansas, Maine, Mississippi, New Jersey, New Mexico, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, Wyoming.

But, this legal option may not be available to a survivor who, for instance, is not legally married to her batterer. Moreover, what if these specific legal options cannot address the survivor's needs, as a practical matter? For instance, what if she and her family have resided together in a public housing unit and her batterer lacks sufficient income to pay for separate housing for her and the children (or,

for the matter, to continue paying the rent or mortgage on his own), or what if the survivor is subjected to a greater risk of danger and/or fear based on the continued (financial) relationship imposed by the court?

**PERSONAL PROPERTY RIGHTS, HOUSEHOLD EXPENSES,  
MEDICAL COSTS, REIMBURSEMENT FOR PROPERTY DAMAGE  
AND OTHER COMPENSATORY LOSSES.**

In addition to their immediate housing needs, survivors are often faced with other emergent economic concerns that may be addressed in protection order proceedings. Many forms of restitution are available to survivors in protection order proceedings.

**Temporary use of a vehicle or other property:**

For instance, courts may include provisions in protection orders that grant the petitioner the use of a vehicle or other personal property. The following state statutes specifically authorize courts to award the possession, use and control of personal property, including but not limited to a vehicle, in protection order proceedings:

Alabama, Alaska, California, Delaware,  
District of Columbia, Georgia, Illinois,  
Indiana, Kansas, Louisiana, Maine,  
Maryland, Minnesota, Missouri, New  
Jersey, North Carolina, North Dakota,  
Ohio, Oregon, Pennsylvania, South  
Carolina, Utah, Virginia, Washington,  
West Virginia.

For instance, an Alabama protection order may grant temporary possession of a vehicle to the plaintiff “if the plaintiff has no other means of transportation of his or her own and the defendant either has control of more than one vehicle or has alternate means of transportation.” Ala. Code §30-5-7(d)(6) (2004). Similar provisions exist among several other states. Alaska specifically authorizes a protection order that grants the survivor “possession and use of a vehicle and other essential personal items, regardless of ownership of the items.” Alaska Stat. §18.66.100 (B)(10) (2004).

**Future payment of financial obligations:**

Protection order proceedings may also provide the court an appropriate opportunity to address additional financial obligations ordinarily met or shared

by the defendant. For instance, the California Family Code specifically authorizes an ex parte order determining the temporary use, possession and control of real or personal property and “the payment of any liens or encumbrances coming due during the period the order is in effect.” Cal. Fam. Code §6324 (2004).

Critically, in many states, economic relief options may include protection orders that direct defendant to pay and/or contribute to household expenses including utilities bills, etc.

In Mugan v. Mugan, 555 A.2d 2 (N. J. 1989), the Superior Court of New Jersey upheld a lower court order that required a defendant to make weekly payments for household, medical, dental, mortgage and utilities expenses. 555 A.2d at 4. The Prevention of Domestic Violence Act authorized the issuance of a protection order granting monetary relief for compensatory losses including “loss of earnings or support.” Id. at 3; N.J.S.A. 2C:25-13(b)(6). In this case, the New Jersey Court clarified:

[w]hen a defendant’s violent acts result in his removal from the marital residence and bars contact with his wife, this may well cause the loss to her of the funds necessary to maintain herself and the house. Such consequences are as direct as the removal.

Id. at 3.

**Medical costs, property damages and/or other out-of-pocket expenses related to abuse:**

Payment and/or reimbursement for medical costs including hospital visits and/or injuries resulting from the abuse is specifically authorized by state statutes among several jurisdictions including:

Alaska, California, Delaware, Illinois, Massachusetts, Mississippi, New Hampshire, New York, Pennsylvania and Utah.

Likewise, courts in many states are authorized to award reimbursement to survivors for necessary repairs and/or restitution for property damages resulting from abuse.

### **Advocacy Points:**

- The victim is entitled to reimbursement/compensation for the costs of injury or damage that are a direct result of the perpetrator's violence.
- The defendant's financial obligations must not go unmet or unchecked and his bad behavior must not be rewarded. It is just and proper for the court to direct that defendant continue to pay his financial obligations.
- The victim of domestic violence should not be forced to choose between her personal safety and economic survival.
- The defendant is liable for his violent actions and, therefore, must compensate for the monetary losses, including future support, incurred by the victim.

### **ALTERNATE STRATEGIES FOR STATES WITHOUT SPECIFIC STATUTORY PROVISIONS FOR ECONOMIC RELIEF.**

Even if there is no specific statutory authority for economic relief, there may still be a strong argument for granting the use of personal property, directing defendant to continue paying for transportation and child care expenses, utilities and/or other household expenses, or including language that prohibits defendant from transferring, selling or encumbering property in which the survivor has an interest.

Most state statutes contain "catch-all" provisions that allow courts to grant other relief necessary or appropriate to survivors in protection order proceedings. In Powell v. Powell, 547 A.2d 973 (D.C. 1988), the Court of Appeals of the District of Columbia held that the "statutory power to award monetary relief **does** exist in the catchall provision of the [D.C. Intrafamily Offenses] Act" (emphasis added). In Powell, the lower court denied petitioner's request that, *inter alia*, her husband be ordered to continue making mortgage payments. 547 A.2d at 973. However, the Court of Appeals recognized that "financial dependency was a major factor in the perpetuation of the long history of violence in the family" and held the trial court erred in its conclusion that it had no power to award monetary relief in the protection order proceeding. *Id.* at 975.

### **Advocacy Points:**

- Monetary relief is proper and necessary to the protection and restoration of the victim. It is proper to hold defendant accountable.

- The victim of domestic violence should not be forced to choose between her personal safety and economic survival.
- Venue is proper. Referral to an alternate forum will cause unnecessary delay and deny the victim an effective remedy.

### **CONCLUSION**

Because economic dependence and severe financial stress on abused women can so acutely impact a survivor's choice to stay or leave an abusive relationship and because economic abuse by batterers is often an aspect of the power and control over their lives, stronger legal advocacy for economic safety and restitution is important to the economic empowerment of battered women and the goal of assuring that women may live free of violence and oppression by their intimate partners. Attorneys and advocates, together with their clients, should carefully evaluate the economic costs of past abuse and future survival so that clients' needs are assessed comprehensively and articulated to the court. The economic relief available through a protection order may be an essential temporary mechanism to ensure safety and promote economic justice for the survivor.