DOMESTIC AND INTERPERSONAL VIOLENCE PROSECUTION

POLICY PROCEDURE MANUAL

2026

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ATTORNEY GENERAL
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July 31, 2026

Dear Colleagues,

Combating domestic violence in Kentucky remains and urgent priority, and your continued partnership in this effort is making our communities and families safer. Thank you for your commitment to these cases and the victims of domestic violence who depend on your work.

This updated Manual is the latest tool for prosecutors, victims' advocates, and allied criminal justice professionals to address domestic violence cases thoroughly and efficiently. As you know, these cases are complex and challenging, which is why I'm especially grateful to the professionals across the Commonwealth who contributed to this publication.

Incidents of domestic violence in Kentucky and across the nation remain shockingly high, and each one represents an individual, a family, and a community that needs our help. Together, we can make clear that domestic violence should not and will not be tolerated.

Your steadfast commitment to these cases is truly appreciated. Should you have any questions or require further assistance, please do not hesitate to reach out to the Attorney General's Office of Victims Advocacy at (502) 696-5312. We look forward to further collaboration in our collective pursuit of justice.

Gratefully,

Russell M. Coleman

RUSSELL COLEMAN
ATTORNEY GENERAL

ACKNOWLEDGEMENTS

The Domestic and Interpersonal Violence Prosecution Policy and Procedure Manual is revised and updated, pursuant to KRS 15.717, through a multidisciplinary partnership among Kentucky criminal justice professionals. We are grateful to all contributors, both past and present, for their zealous collaboration and daily commitment to public safety, justice and protecting victims' rights. Their collective contribution will continue to make this Manual a valuable resource in the fight to end domestic violence.

The multidisciplinary team was led by the Office of Kentucky Attorney General Russell Coleman, including Criminal Chief Rewa Zakharia, Special Counsel Denise Durbin, Assistant Attorney General Barbara Whaley, Violent Crime Resource Prosecutor Thomas Lockridge, Domestic Violence Resource Prosecutor Kathy Phillips, and Executive Director of the Office of Victims Advocacy Robyn Diez d'Aux.

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POLICY STATEMENT

Domestic violence and interpersonal violence (dating violence, stalking and sexual assault) occur with alarming frequency in our nation and in our Commonwealth. According to the Centers for Disease Control and Prevention, approximately 34% (or nearly 43.5 million) of women and about 17% (or nearly 20.7 million) of men have experienced intimate partner violence in their lifetimes.[1] The impact upon those who have experienced intimate partner violence is profound and often begins at a young age. According to the CDC, about 16 million women and 11 million men reported that they first experienced intimate partner violence before the age of 18.[2] This early exposure to violence creates lasting trauma that extends well beyond childhood, affecting survivors' physical health, mental well-being, and economic stability throughout their lives.

Survivors frequently experience mental health problems such as depression and post-traumatic stress disorder. They are at higher risk for engaging in self-destructive behaviors, including smoking, binge drinking, and risky sexual activity.[3]

Beyond the immeasurable human suffering, intimate partner violence imposes an extraordinary economic burden on society. The lifetime economic cost of intimate partner violence, including medical care, lost productivity from paid work, and criminal justice costs is $3.6 trillion.[4] The estimated cost of intimate partner violence over a victim's lifetime was $103,767 for women and $23,414 for men.[5]

In Kentucky, the prevalence and consequences of intimate partner violence are particularly severe. Research from the CDC indicates that 39.6% of women and 22.2% of men in Kentucky have experienced physical violence, sexual violence, or stalking by their intimate partner.[6]

Additionally, almost one in two women (45%) in Kentucky will experience contact sexual violence in their lifetime.[7] Also, female Kentuckians have their first experience of sexual violence victimization at a younger age than the national average, with almost half of such incidents occurring before the age of 18.[8] The lifetime cost of sexual and intimate partner violence in Kentucky is estimated to be over $211 billion, a figure that reflects both the

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[1] U.S. Ctr. for Disease Control & Prevention., Intimate Partner Violence Data Brief (2026).

[2] U.S. Ctr. for Disease Control & Prevention, About Intimate Partner Violence (Feb. 11, 2026).

[3] Id.

[4] Id.

[5] Id.

[6] Team Ky. Just. And Pub. Safety Cabinet: Domestic Violence Data Report (2025).

[7] What is Sexual Violence?, Ky. Ass'n of Sexual Assault Programs, https://www.kasap.org/sexual-assault-overview/ and http://www.kasap.org/images/files/GetInfo/KYFactsheet.pdf

[8] Id.

widespread nature of the problem and its devastating economic toll on the Commonwealth.[9]

The most frequent charges of domestic violence in the Commonwealth of Kentucky include assault 4th degree, strangulation and violation of a protective order.[10]

Domestic and interpersonal violence results in tremendous costs to victims, their families and society through loss of life, injury, medical bills, and lost wages. In addition to the tangible losses caused by interpersonal violence, the fact remains that no Kentuckian should live fearfully in their own home.

Prosecutors play a key role in protecting victims and upholding public safety in cases of domestic violence, dating violence, stalking, and sexual assault.[11] Prosecutorial intervention through the criminal justice system greatly influences the behavior of both domestic violence offenders and their victims. It sends a clear message to perpetrators that their behavior is criminal, will not be tolerated in this Commonwealth, and will result in serious consequences.

Because of the unique dynamics of, and, oftentimes, inherent difficulties with domestic violence cases, the successful prosecution of these cases requires specialized techniques. Prosecutors must approach cases of domestic violence with not only specific legal knowledge of criminal and civil sanctions, but also an understanding of the dynamics of domestic and interpersonal violence and their traumatic impact upon the victim.

"Domestic violence and abuse" means physical injury, serious physical injury, stalking, sexual abuse, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault between family members or members of an unmarried couple; or "any conduct prohibited by KRS 525.125, 525.130, 525.135, or 525.137, or the infliction of fear of such imminent conduct taken against a domestic animal when used as a method of coercion, control, punishment, intimidation, or revenge directed against a family member or member of an unmarried couple who has a close bond of affection to the domestic animal."[12]

While an act of domestic violence can be a civil contempt, a criminal violation, a misdemeanor offense, or a felony offense depending upon the facts of the case, all cases of domestic violence should be treated as illegal conduct.[13] A helpful tool when making

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[9] Id.

[10] Team Ky. Just. And Pub. Safety Cabinet: Domestic Violence Data Report (2025).

[11] See American Bar Association Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protective Order Cases, http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/0908/Standards_of_Practice_for_Lawyers_Representing_Victims_of_DV_SA_Stalking.authcheckdam.pdf

[12] KRS 403.720.

[13] KRS 456.010(2); See KRS 525.135 (torture of a dog or cat is a Class D felony).

charging decisions is to ask whether this “would be tolerated if a stranger exhibited the same conduct.”

A person who commits an act of domestic violence in any one of Kentucky’s 120 counties has committed a crime against the “peace and dignity of the Commonwealth of Kentucky.” Perpetrators should receive the consistent, direct, and clear message that domestic violence is a crime and that they alone are responsible for their behavior. While victims’ safety is paramount, accountability is the second most important goal.

All perpetrators of domestic violence should receive appropriate sanctions as well as meaningful treatment for their abusive behavior.[14] All victims of domestic violence should receive appropriate, trauma-informed, supportive services and referrals.[15]

GOALS

The prosecutor should work to accomplish the following objectives at each stage of the criminal court process:

1. Stop the violence and prioritize safety.
2. Protect the victim through collaboration with victim services, law enforcement, and other community partners.
3. Protect the children and other family members.
4. Upon the victim’s request, ensure that the victim is informed of all stages and decisions in the court process.
5. Protect the general public.
6. Uphold the legislative intent and public sentiment that domestic violence be treated as a serious crime and communicate that intent to both the defendant and the victim.
7. Hold the offender accountable so that the violent behavior is not repeated.
8. Rehabilitate the offender so that the violent behavior is not repeated.
9. Assist in the recovery of restitution for the crime victim.

[14] Under no circumstances should victims be ordered to complete treatment with the perpetrator. The perpetrators’ conduct is their responsibility to fix, not the victims’. Moreover, batterer’s treatment is best practice, not general anger management. Look for programs in the region that offer a certified batterer’s intervention program. Additionally, the victim should not be allowed to pay for the treatment.

[15] It is best practice to require appropriate treatment for batterers. Appropriate treatment does not include a traditional “anger management program.” Instead, controlling abusers require specific batterers’ intervention programs in order to adequately address the underlying problem surrounding their need to control others. Only after adequate treatment will future risk of similar behavior diminish.

CHAPTER 1: *Prosecution Policy in Domestic and Dating Violence Cases*

A. The Role of the Prosecutor

1. What Constitutes Domestic and Dating Violence

As a general rule, in criminal actions, Kentucky does not distinguish cases which involve domestic violence from any other criminal case, be it in charging or disposition[16]. However, statutory definitions can be found in KRS 403.720 and below that may assist prosecutors in identifying cases where the risk of further harm may occur. Prosecutors may wish to flag criminal case files that fall under these definitions with a D.V. stamp or colored sticker for the purpose of stricter monitoring by all prosecutors and victim advocates who may work on that case.[17] For the same reason, it is important to use the correct UOR code on charging documents, so the "domestic violence" specifier is known to those involved. This is equally important to enhance the penalty under KRS. 508.032.

Definitions

- *"Domestic animal"* means a dog, cat, or other animal that is domesticated and kept as a household pet, but does not include animals normally raised for agricultural or commercial purposes;[18]

- *"Domestic violence and abuse"* means physical injury, serious physical injury, stalking, sexual abuse, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault between family members or members of an unmarried couple; or any conduct prohibited by KRS 525.125, 525.130, 525.135, or 525.137, or the infliction of fear of such imminent conduct taken against a domestic animal when used as a method of coercion, control, punishment, intimidation, or revenge directed against a family member or member of an unmarried couple who has a close bond of affection to the domestic animal; [19]

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[16] One exception being KRS 508.032 which provides for an enhanced penalty if an individual is adjudged guilty on a third or subsequent offense of assault fourth degree domestic violence upon a victim who meets the definition of family member or member of an unmarried couple as defined in KRS 403.720.

[17] Because studies show that 74.5% of victims of violent crimes with domestic relationships were female and 77.2% of the offenders of violent offenses with domestic relationships were male, throughout this manual the victim will be referred to as "she" and the perpetrator as "he". (U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Domestic Relationships and Violent Crimes, 2020-2024, February 2026, available at https://cde.ucr.cjis.gov/LATEST/resources/reports/Domestic%20Relationships%20and%20Violent%20Crimes%202020-2024.pdf)

[18] KRS 403.720(1).

[19] KRS 403.720(2).

- *"Family member"* means a spouse, including a former spouse, a grandparent, a grandchild, a parent, an adult sibling, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim;[20]

- *"Foreign protective order"* means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 that was issued on the basis of domestic violence and abuse;[21]

- *"Member of an unmarried couple"* means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together;[22]

- *"Order of protection"* means any interpersonal protective order, including those issued on a temporary basis, and includes a foreign protective order. [23]

- *"Physical injury"* means substantial physical pain or any impairment of physical condition;[24]

- *"Serious physical injury"* means physical injury which creates a substantial risk of death, causes serious and prolonged disfigurement, prolonged impairment of health, prolonged loss or impairment of the function of any bodily organ, or eye damage or visual impairment. For a child twelve years of age or less at the time or if the relationship between the perpetrator and the victim meets the definition of family member or member of an unmarried couple, or a dating relationship, a serious physical injury includes but is not limited to the following: bruising near the eyes, or on the head neck, or lower back overlying the kidneys, serious burns, rib, scapula or sternum fracture, any broken bone that requires surgery, abdominal injury, serious head injury, concussion, and any injury requiring surgery.

- *"Sexual assault"* refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or incest under KRS 530.020, or a criminal attempt, conspiracy, facilitation, or solicitation to commit rape, sodomy, sexual abuse, or incest;[25]

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[20] KRS 403.720(3).

[21] KRS 403.720(4).

[22] KRS 403.720(6). The statutes do not define "couple" or "living together". See Ireland v. Davis, 957 S.W.2d 312, 313 (Ky. App. 1997) (Interpreting the word "couple"). Barnett v. Wiley, 103 S.W.3d 17 (Ky. 2003) (Interpreting "unmarried couple"). See also, Randall v. Stewart, 223 S.W.3d 121 (Ky. App. 2007); Rivers v. Howell, 276 S.W.3d 279 (Ky. App. 2008).

[23] KRS 456.010(6).

[24] KRS 500.080(17).

[25] KRS 403.720(8).

- *"Stalking"* means intentionally engaging in a course of conduct directed at another person(s) that serves no legitimate purpose, that seriously alarms, annoys, intimidates, or harasses the person(s), and causes the other person(s) to suffer substantial mental distress, including, but not limited to, interference with the person's sense of safety or well-being. The perpetrator must consciously disregard a substantial and unjustifiable risk that the course of conduct would cause the other person(s) to suffer substantial mental distress.

- *"Strangulation"* means intentionally or wantonly impeding the normal breathing or circulation of the blood of another person by applying pressure to the throat or neck or by blocking the nose or mouth of the other person, as prohibited by KRS 508.170 and 508.175, including a criminal attempt, conspiracy, facilitation, or solicitation to commit strangulation.[26]

- *"Substantial violation"* means criminal conduct which involves actual or threatened harm to the person, family, or property, including domestic animal, of an individual protected by an order of protection;[27]

- *"Torture"* means the intentional infliction of or subjection to extreme physical pain or serious injury or death to a dog or cat, motivated by intent or wanton disregard that causes, increases, or prolongs the pain or suffering of the dog or cat, including serious physical injury or infirmity;

2. Policy for Filing Actions in Cases of Domestic and Dating Violence

The prosecutor's office should not serve as an obstacle to the initiation of domestic violence cases. When considering a charge or indictment, the prosecutor needs to consider the dynamics of domestic violence. The victim's safety should be considered at each stage. Additionally, once a charge is made, risks to the victim and lethality of the perpetrator should again be assessed. The prosecutor's office, in cooperation with the court, should work with law enforcement to provide for 24-hour accessibility for warrants, protective orders and prompt relief when protective orders or conditions of release are violated.

Prosecutors should consider applicable charges without regard to the marital status or availability of the victim.[28] Moreover, a prosecutor should not decline to prosecute because a victim is reluctant to participate in the criminal justice process. Instead, the decision to prosecute a domestic violence case should be based on the same probable cause standard upon which all other criminal charges are based. However, prosecutors may find

[26] KRS 403.720(9).

[27] KRS 403.720(10).

[28] The ability to prosecute a case, without the participation of the victim, is dependent upon the strength of the evidence with out the victim's testimony.

that domestic violence cases require further investigation to sustain the burden of proof beyond a reasonable doubt.

According to the National District Attorneys Association, "Prosecutorial discretion is an effective tool for addressing domestic violence cases and is favored over a blanket no drop policy, which prevents a victim from dropping the charges once they have been filed. Given the dynamics of domestic violence and issues unique to domestic violence victims, a blanket policy may be too restrictive."[29]

a. Dynamics of Domestic Violence

Appropriate intervention within domestic violence requires a comprehensive understanding of the dynamic of power and control.

Recognizing that victims may be abused or controlled by a partner requires an understanding of the range of violence and abuse to which they have been exposed, the strategies they may have used to protect themselves and their children, and the ways in which the violence may have impacted them psychologically, physically, economically and socially. It is essential that prosecutors understand the dynamics of domestic violence in order to properly consider and appropriately charge each case and avoid the risk that a case may "fall through the cracks" and result in deadly consequences.

Forms of Domestic Violence

Domestic violence can take many forms such as physical assault; sexual assault, including intimate partner sexual assault; emotional or psychological violence; psychological battering and destruction of property or pets; and threats to personal safety of self and loved ones.

With each form of domestic violence, the abuse:

- Is done with the intent to harm the well-being of the victim, either mentally or physically.
- Is done to exert control and domination.
- Usually is recurring and tends to escalate in frequency and severity unless effective intervention occurs.
- Can take different forms, and the various forms usually occur together; rarely is one form of abuse used by itself.
    - ***Tactics of abuse - Power and Control or Coercive Control*** There are universal tactics used in dating and domestic abuse, all of which are

[29] NATIONAL DOMESTIC VIOLENCE PROSECUTION BEST PRACTICES GUIDE, National District Attorneys Association, Women Prosecution Section, p 24 (July 17, 2017).

centered on power and control by the perpetrator. These tactics include the use of emotional abuse; isolation; minimization, denial, and blaming; the children; male privilege; economic abuse; coercion and threats; and intimidation. These behaviors are reinforced by the perpetrator through acts of violence intended to control the thoughts, feelings, and actions of the victim (see appendices A3-A7 for Power and Control Wheels).

b. Lethality and Risk Assessment

The dynamics of domestic violence, its recurrence, and its lethal nature require that cases involving domestic violence be strictly monitored and promptly charged or indicted when probable cause exists.

Without effective early intervention, domestic violence can escalate in severity and lead to death. When domestic violence results in homicide, it is often a reflection of the community's failure to recognize the severity and potential lethality of the problem, and to address its critical role in early intervention.

"When battered women are killed by their abusers, it frequently occurs after they have been separated from them or taken other action to end the relationship. Since society continues to question why women remain in abusive relationships, it is essential to consider how dangerous and difficult it often is for battered women to leave abusive partners. Many women stay because of a reasonable fear that they will suffer severe injury or death if they attempt to end the relationship."[30]

Lethality Checklist/Danger Assessment

A critical component of intervention in these cases is the assessment of the perpetrator's lethality: during court proceedings, setting bail, subsequent motions for bond reduction, and when considering conditions of release or conditions of an EPO/DVO/IPO. While it may be difficult to foresee who might commit a homicide, there are some "red flag" factors that may assist judges and prosecutors in determining when a victim may be at greater risk of severe injury or death at the hands of a perpetrator. This information can be obtained from the victim, the perpetrator, family members, friends, law enforcement personnel responding to a call, social services workers or advocates of other agencies assisting the victim. Further, this information should be obtained as early in the process as possible. A procedure could be established to allow this information to be collected when law enforcement responds to a domestic violence call, when an EPO is sought or when criminal complaints are initially filed. *See Pettingill v. Pettingill,* 480 S.W. 3d 920 (Ky. 2015) (In decision to grant a protective order a Judge may rely on his knowledge of lethality factors. Lethality factors for intimate partner violence are risk factors used by courts, law enforcement, counselors, and social scientists to evaluate the threat of domestic violence between partners.)

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[30] Paymar, Michael, Building a Coordinated Community Response to Domestic Violence Assault: An Overview of the Problem.

A risk/danger assessment tool can be utilized, prior to or after the charge, to gather important information. A danger/risk assessment tool can be found at http://www.dangerassessment.org/ If the complaining witness, whether the victim or a law enforcement officer, provides an affirmative answer to any of the risk and lethality questions, the prosecutor should proceed with caution. If several of these behaviors or issues are present, a serious domestic violence case exists which requires intervention (see Appendix A-9 for Domestic Violence Screen for First Responders).

When charges are not filed or an indictment is not returned, documentation of this decision should be retained by the prosecutor's office. When appropriate, the matter should be referred to an agency for follow-up and contact with the victim (e.g. law enforcement, Department for Community Based Services, domestic violence shelters). If previously identified evidentiary problems are resolved, the case should be returned promptly to the prosecutor to reassess whether it should be charged or presented to the grand jury.

B. Management of Domestic and Dating Violence Cases

The complexity and dynamics of domestic violence cases require special attention and training to ensure successful prosecution.

1. Designation of Specific Prosecutor

The prosecutor's office should designate a specific prosecutor or unit to prosecute domestic violence cases and use vertical prosecution, when possible. Options available to effectuate vertical prosecution include the Commonwealth's Attorney's Office assisting the County Attorney in the district court phase of a felony, or the County Attorney's Office assisting the Commonwealth's Attorney in the circuit court trial of a felony. Designated individuals in the prosecutor's office should also be responsible for reviewing all agency reports, for example, Department for Community Based Services and law enforcement, involving incidents of domestic violence. They should develop an expertise in dealing with domestic violence in an effort to more accurately evaluate and effectively prosecute these cases. Specialized training for **all staff** in the prosecutor's office regarding the complexities of domestic violence crime will facilitate communication and increase the victim's trust in the prosecutor and participation in the prosecution.

2. Priority for Domestic Violence Cases

Prosecutors should give priority to domestic violence cases, expediting them through the criminal justice system due to the inherent danger to the victim and the psychological dynamics of domestic violence, which, over time, can cause a deterioration of evidence. In most cases, the prosecutor should seek the earliest possible trial date and object to the defendant's motions for continuance. Offenders often utilize litigation abuse and should not be permitted to do so.

3. Pursue Additional Charges During Prosecution of Original Charges

One of the main reasons victims are reluctant to initiate domestic violence proceedings is their fear of retaliation by the perpetrator against them or their family members. Therefore, the prosecutor must be willing to pursue additional charges against the perpetrator if he or his attorney attempts to harass, threaten, injure, or intimidate the victim or other witnesses during the pendency of the original charges.

Possible charges to consider may be Intimidating a Participant in the Legal Process or Tampering with a Witness, Violation of Protection Order and Violation of Condition of Pretrial Release pursuant to KRS 431.064. When prosecuting additional charges, the prosecutor should consider higher bonds and the availability of consecutive sentences since these offenses are committed while the perpetrator is on bond for the original charges. Filing motions to revoke bond or asking the court to increase the amount are other options when the offender violates the court's bond conditions.

Because most domestic violence cases involve a history of coercive control by the perpetrator, often accompanied by various forms of violence and abuse, the prosecutor should conduct a thorough inquiry into the dynamics of the relationship. This inquiry should specifically explore any prior acts of violence, abuse, coercion, intimidation, threats, and control being exerted by the perpetrator against the victim.

Prior convictions and protection orders should be investigated along with any unreported and uncharged conduct. Such criminal conduct could be the basis of additional charges like intimidating or stalking. If not charged as a separate criminal offense, the acts may be admissible as evidence under KRE 404(b), if offered for some other purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident; or is inextricably intertwined with other evidence in the case. [31]

The prosecutor should ensure victims are aware of their right to petition for an Emergency Protective Order (EPO), Domestic Violence Order (DVO), Temporary Interpersonal Protective Order (TIPO), or Interpersonal Protective Order (IPO) and make the appropriate referral to professionals who can assist them in that process.

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[31] See, *Jenkins v. Commonwealth*, 496 S.W.3d 435 (Ky. 2016) (quoting *Noel v. Commonwealth*, 76 S.W.3d 923, 931 (Ky. 2002) [prior acts of violence or threats against the same victim are "almost always admissible" under KRE 404(b) because it will almost always be significantly probative of a material issue aside from the defendant's character]; *Davis v. Commonwealth*, 147 S.W.3d 709, 722 (Ky. 2004) [evidence of prior threats and animosity of the defendant against the victim is admissible as evidence of motive, intent, or identity whereas evidence of prior threats or violence against an unrelated third-party is generally regarded as inadmissible character evidence]; *Lampkins v. Commonwealth*, 701 S.W.3d 99, 117 (Ky. 2024); *McCarthy v. Commonwealth*, 867 S.W.2d 469 (Ky. 1994) (overruled on other grounds); *Lawson v. Commonwealth*, 53 S.W.2d 534 (Ky. 2001) [introduction of both the history of EPOs and pending EPO]; *Matthews v. Commonwealth*, 709 S.W.2d 414 (Ky. 1986), cert. denied 107 S.Ct. 245, 479 U.S. 871, 93 L.Ed.2d 170 [relevant pattern of conduct]; *Todd v. Commonwealth*, 716 S.W.2d 242 (Ky. 1986) ["state of feeling" between the parties to establish motive]; *Driver v. Commonwealth*, 361 S.W.3d 877 (Ky. 2012) [evidence of defendant's prior assaultive behavior toward victim was admissible to show the absence of accident or mistake]. See KRE 404(b); See KRS 508.130 (stalking statute encompasses all conduct that is intentionally directed at another person and consciously disregards a substantial and unjustifiable risk that the conduct would cause the person to suffer substantial emotional distress as a Class C felony.)

Criminal prosecution is not a substitute for civil proceedings to obtain a protective order. Likewise, the existence of a protective order does not preclude the criminal prosecution of the defendant.

Protective orders not only provide an additional measure of safety for victims but may also result in additional charges if violated.[32] Domestic Violence Orders are governed by 403.735, and Interpersonal Protective Orders by KRS 456.030. These civil protection orders may be entered for a period of up to three years.

Protection Orders may also be entered up to a period of 10 years following a conviction for certain qualifying offenses. These include convictions for stalking under KRS 508.155 following a conviction under conviction under KRS 508.130,[33] qualifying sexual offenses under KRS 510.037, and qualifying felony assault offenses under KRS 508.025.[34] As a result, the protection provided by these orders may extend well beyond the defendant's jail sentence, probation, or conditional discharge.

In certain high-risk cases, seeking court-ordered protection may increase the risk of future violence or homicide. A trained advocate or other qualified professional can assist the victim in conducting a danger assessment, developing a safety plan, and evaluating whether seeking a protective order is the safest option under the circumstances.

4. Kentucky Revised Statutes Applicable to Domestic Violence Cases

- **KRS 508.010 relating to assault in the first degree.**

First degree assault is a Class B felony. This statute criminalizes the intentional "serious physical injury" of a person by a "deadly weapon" or "dangerous instrument" or "under circumstances manifesting extreme indifference to the value of human life he wantonly engages in conduct which creates a grave risk of death to another and thereby causes serious physical injury to another person."

- **KRS 508.020 relating to assault in the second degree.**

Second degree assault is a Class C felony. This statute criminalizes the intentional "serious physical injury" of another; or the intentional physical injury by means of a "deadly weapon" or "dangerous instrument"; or the wanton "serious physical injury" caused by a "deadly weapon" or "dangerous instrument."

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[32] While a violation could amount to contempt or a criminal offense, both cannot be pursued. KRS 403.763(1) states: Violation of the terms or conditions of an order of protection after the person has been served or given notice of the order shall constitute contempt of court and a criminal offense under this section. Once a criminal or contempt proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.

[33] KRS 508.155 (stalking).

[34] KRS 510.037 (sexual assault IPO).

- **KRS 508.022 relating to certain assault convictions operating as applications for protective orders.**

The entering of a judgment of conviction for assault in the first degree or assault in the second degree, or for a felony criminal attempt, conspiracy, facilitation, or solicitation to commit assault in the first degree or assault in the second degree, shall operate as an application for an order of protection or an interpersonal protective order if the relationship between the defendant and the victim meets the definition of a family member or member of an unmarried couple as defined in KRS 403.720; or dating relationship as defined in KRS 456.010. The order may be effective for up to ten (10) years, with further renewals in increments of up to ten (10) years.

- **KRS 508.030 relating to assault fourth degree.**

Assault in the Fourth Degree is a Class A misdemeanor when a person intentionally or wantonly causes physical injury to another person, or recklessly causes physical injury to another person by means of a deadly weapon or dangerous instrument. When the defendant and victim are family members, members of an unmarried couple, as defined in KRS 403.720, or are in a dating relationship, as defined in KRS 456.010, it is essential that the charging document and the appropriate UOR court code accurately reflect the qualifying relationship. Proper designation ensures the case is identified as involving domestic or interpersonal violence and that all applicable statutory provisions and protections are available.

- **KRS 508.032 relating to subsequent assault fourth degree.**

If a person commits a third or subsequent offense of Assault Fourth Degree (KRS 508.030) within a five-year period, and the relationship between the defendant and each victim meets the definition of family member or member of an unmarried couple as defined in KRS Chapter 403, the defendant may be convicted of a Class D felony. The victim of each offense need not be the same person. The five-year period on the prior offenses is measured by the date of the offense, not the date of conviction.

- **KRS 508.080 relating to terroristic threatening.**

A person is guilty of terroristic threatening in the third degree when they threaten to commit any crime likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person. Terroristic threatening in the third degree is a Class A misdemeanor.

- **KRS 508.130 relating to stalking.**

Stalking is a **Class D felony**. The offense may be enhanced to a **Class C felony** under the circumstances specified in KRS 508.130.

A person is guilty of stalking when he or she intentionally engages in a course of conduct, consisting of two or more acts evidencing a continuity of purpose, directed at another person that seriously alarms, annoys, intimidates, or harasses the other person, serves no legitimate purpose, and causes the other person to suffer substantial mental distress. The conduct may be direct or indirect and specifically includes conduct committed through electronic means, including the use of a social media platform.

The statute provides that **substantial mental distress** includes, but is not limited to, interference with the person's **sense of safety or well-being**, recognizing the significant emotional and psychological impact stalking can have on victims. The defendant must consciously disregard a substantial and unjustifiable risk that the course of conduct would cause the other person to suffer substantial mental distress.

- **KRS 508.155 relating to interpersonal protective order following stalking conviction.**

A verdict of guilty or a plea of guilty to KRS 508.130 shall operate as an application for an interpersonal protective order unless victim requests otherwise. This provision allows for a ten-year IPO for the victim after the defendant is convicted of stalking under KRS 508.130.

- **KRS 508.170 and 508.175 relating to strangulation.**

Both statutes criminalize an individual impeding the "normal breathing or circulation of the blood of another person" by either applying pressure to the throat or neck or by blocking the nose of the victim. First-Degree Strangulation includes an "intentional" mental state and Second-Degree Strangulation contemplates a "wanton" mental state.

- **KRS 510.037 relating to interpersonal protective order following sexual assault conviction.**

Entering of a judgment of conviction for any degree of rape, sodomy, or sexual abuse or a criminal attempt, conspiracy, facilitation, or solicitation to commit aforementioned crimes shall operate as an application for an interpersonal protective order unless the victim requests otherwise. This provision allows for a ten-year IPO for the victim after the defendant is convicted of certain enumerated crimes under Chapter 510.

- **KRS 511.085 relating to domestic violence shelter trespass.**

Domestic Violence Shelter Trespass occurs when a person who is subject to a protective order knowingly enters the building or premises of a domestic violence shelter that is known or clearly identified as such. Domestic violence shelter trespass is a Class A misdemeanor.

- **KRS 520.095 relating to fleeing or evading police.**

Fleeing or Evading Police is a Class C felony when a person flees in a vehicle immediately after committing an act of domestic violence, as defined in KRS 403.720, and a Class A misdemeanor when the person flees on foot.

- **KRS 524.040 relating to intimidating a participant in the legal process.**

Intimidating a Participant in the Legal Process is a Class D felony. The statute prohibits the use of harassing communications (as defined in KRS 525.080), physical force, or threats against a participant in the legal process, or the participant's immediate family, when the conduct is related to the participant's role in the legal process. A person commits this offense by attempting to influence a participant's testimony, vote, decision, or opinion; induce the participant to avoid legal process or fail to appear at an official proceeding; withhold, alter, destroy, or conceal evidence; or hinder, delay, or prevent the communication of information regarding a crime or a violation of probation, parole, or release conditions to law enforcement or a judge.

- **KRS 524.050 relating to tampering with a witness.**

Tampering is a Class D felony. This statute criminalizes inducing or attempting to induce a witness to avoid appearing or testifying with the intent to influence the outcome or knowingly making a false statement or engaging in any fraud or deceit with the intent to affect the witness' testimony.

- **KRS 524.055 relating to retaliating against a participant in the legal process.**

Retaliating is a Class D felony. This statute criminalizes engaging or threatening to engage in conduct causing or intending to cause bodily injury or damage to property of a participant because that person participated in a legal proceeding.

- **KRS 525.070 relating to harassment.**

The penalty for harassment increases from a violation to a Class B misdemeanor if there is striking, shoving, kicking or other physical contact.

- **KRS 525.135 relating to the torture of dog or cat.**

A person is guilty of torture of a dog or cat when he or she, without legal justification, intentionally tortures a domestic dog or cat. Torture of a dog or cat is a Class D felony. Each act of torture of a dog or cat may constitute a separate offense.

- **KRS 531.125 relating to sextortion.**

Sexual Extortion occurs when a person threatens to harm another's person, property, or reputation, or threatens to distribute sexually explicit or nude images, with the intent to coerce the victim into engaging in sexual conduct, producing or distributing intimate images, providing money or something of value, or taking or refraining from an act against the victim's will.

Sexual extortion is generally a Class A misdemeanor but is elevated to a Class D felony if the victim complies with the demands, suffers serious physical injury, or other aggravating circumstances exist. The offense may be further enhanced to a Class C felony under specified circumstances, including certain prior sexual offense convictions, abuse of a position of trust or authority, use or threatened use of a deadly weapon, offenses against certain minor victims, or when committed during a kidnapping. If the victim attempts or dies by suicide as a proximate result of the offense, the defendant may also be subject to applicable homicide or assault charges.

- **KRS 532.025(2)(a)(8) relating to aggravating factors in death penalty cases.**

In cases for which the death penalty may be authorized, the judge or jury determining the sentence shall consider as an aggravating circumstance whether the offender murdered the victim when an emergency protective order or a domestic violence order was in effect, or when any other order designed to protect the victim from the offender, such as an order issued as a condition of a bond, conditional release, probation, parole, or pretrial diversion, was in effect.

- **KRS 503.050(3) relating to admissibility of evidence of prior acts of domestic violence and abuse.**

Any evidence presented by the defendant to establish the existence of a prior act or acts of domestic violence and abuse as defined in KRS 403.720 by the person against whom the defendant is charged with employing physical force shall be admissible.

- **KRS 403.725. Family Court Rules of Procedure and Practice (FCRPP) 10-12. KRS 456.030** relating to domestic violence case procedures in family court and criminal court.

- **KRS 403.730 relating to the use of mediation.**

Parties may not be ordered or referred to mediation unless requested by the petitioner, and the court finds that:

1. The petitioner's request is voluntary and not the result of coercion; and

2. Mediation is a realistic and viable alternative or adjunct to the issuance of an order sought by the petitioner.

- **KRS 403.735 relating to renewal of emergency protective orders when the respondent has not been served.**

This law provides that when a respondent has not been served with notice of an EPO, the EPO shall remain in place and a new summons with a new date and time for a hearing shall be set within 14 days of the original hearing date. This process may continue for up to 6 months. After that time the order is rescinded without prejudice, but the petitioner may file a new petition before the first order is rescinded.

- **KRS 403.7521 relating to foreign (out of state) protective orders.** This law establishes a process for the full faith and credit of foreign domestic violence protective orders.

- **KRS 403.761 relating to failure to wear a global positioning monitoring system monitoring device.**

This law makes it a Class D felony to fail to wear, remove, or tamper with or destroy a GPS monitoring system monitoring device which the individual has been ordered to wear as a condition of a DVO unless the individual has written permission from a court.

- **KRS 403.763 relating to violation of an order of protection and third offense VPO.**

A person is guilty of a violation of an order of protection when he or she intentionally violates the provisions of an order of protection after the person has been served or given notice of the order.

Violation of an order of protection is a Class A misdemeanor, unless the person who stands convicted of a violation under this subsection has been convicted of two or more previous violations of orders of protection under statute within the last five (5) years, in which case it is a Class D felony if the third or subsequent violation involves the:

1. Use or attempted use of physical force; or
2. Threat of physical harm.

The protected person in the third or subsequent violation is not required to be the same protected person in the previous violations. The five year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.

- **KRS 421.350 relating to child testimony in sexual assault prosecutions.**

This law permits the testimony of a child who is 12 years of age or younger (at the time of the crime) who witnesses, as well as one who is a victim of, one of the listed offenses; (1) to testify outside of the courtroom and viewed by the court and jury by closed circuit television, or (2) to have his or her testimony videotaped before trial to be shown to the court and jury during the trial. Before either of the procedures may be used the court must find that there is a compelling need for the use of these procedures.

- **KRS 421.575 relating to victim advocates.**

This law permits a victim advocate, upon request of the victim, to accompany the victim in all court proceedings to provide moral and emotional support. The victim advocate is permitted to confer orally and in writing with the victim in a reasonable manner but is specifically prohibited from providing legal advice.

- **KRS 431.005(2)(a) relating to a peace officer's authority to arrest without a warrant**

Any peace officer may arrest a person without a warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member, member of an unmarried couple, or another person with whom the person was or is in a dating relationship.

- **KRS 431.005(5) relating to arrest for violation of a condition of release.**

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

- **KRS 431.015(1)(c) relating to arrest for violation of protective order.**

A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 or an order of protection as defined in KRS 456.010.

- **KRS 431.064 relating to pretrial release.**

The court or agency having authority to make a decision concerning pretrial release of a person arrested for a violation of KRS Chapters 508 or 510, or charged with a crime involving a violation of an order of protection as defined in KRS 403.720 or 456.010 is required to review the facts of the arrest and detention of the person and determine whether the person is a threat to the alleged victim or other family or household member and whether he or she is reasonably likely to appear in court. The statute also provides a list of conditions that may be imposed, provides that the victim is entitled to a free certified copy of the conditions of release, and makes a violation of an order issued pursuant to this statute a Class A misdemeanor. Pretrial release conditions must be entered into the computer system maintained by the Administrative Office of the Courts within 24 hours of the filing of the order of release, excluding weekends and holidays, and the information must be accessible to any agency designated a terminal agency for the Law Information Network of Kentucky.

- **KRS 456.180 relating to the violation of an order of protection and third offense VPO.**

Violation of an order of protection is a Class A misdemeanor, unless the person who stands convicted of a violation under this statute has been convicted of 2 or more previous violations of orders of protection under statute within the last 5 years, in which case it is a Class D felony if the third or subsequent violation involves the:

1) Use or attempted use of physical force or;

2) Threat of physical harm.

The protected person in the third or subsequent violation is not required to be the same protected person in the previous violations. The 5 year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.

- **KRS 237.095 relating to persons barred by federal law from purchase of firearms.**

When someone who is barred from purchasing a firearm under U.S.C. sec. 922(g)(8) has purchased a firearm, the appropriate agency shall notify the court where the DVO was issued, and the law enforcement agency that has jurisidction in the county of the victim's residence.

- **KRS 237.100 relating to notification of purchase of firearm or attempt to purchase firearm.**

When a person who is barred from purchasing a firearm under 18 U.S.C. sec. 922(g)(8) has purchased or attempted to purchase a firearm, the Justice and Public Safety Cabinet shall make a reasonable effort to provide notice to the petitioner who obtained the domestic violence order that the respondent of the order has or has attempted to purchase a firearm.

- **KRS 237.110 relating to firearms.**

Prohibition to be licensed to carry concealed firearms or other deadly weapons if a person has been convicted of a violation of KRS 508.030 or KRS 508.080 within the three (3) years immediately preceding the date the application is submitted. Prohibition may be waived by the Commissioner of the Department of the Kentucky State Police upon "good cause shown" and a "determination that the applicant is not a danger and that a waiver would not violate federal law".

- **KRS 196.280 relating to confinement release notification.**

This law established the nation's first statewide computerized victim notification system referred to as Victim Information and Notification Every day, "V.I.N.E". The Department of Corrections has created this system, and jails and detention facilities are required to provide information to the Department prior to the release of an incarcerated person. In turn, the Department of Corrections is to provide to members of the public who request notification, notification of the release of an incarcerated person from a penitentiary, facility for youthful offender, county jail or regional jail.

- **KRE 504 relating to husband – wife privilege.**

This statute generally protects a spouse from being compelled to testify against the other spouse and protects confidential marital communications. However, **no privilege exists** when the spouses conspired or acted jointly in the charged crime; when one spouse is charged with wrongful conduct against the other spouse, a child of either spouse, a household member, or a third person injured during that conduct; or when the spouses are adverse parties. The court may also refuse to recognize the privilege if doing so would adversely affect the interests of a minor child.

5. Double Jeopardy and Domestic Violence Cases

Kentucky applies the **Blockburger** "same elements" test to determine whether multiple charges violate double jeopardy. Under this analysis, separate offenses arising from the same course of conduct may each be prosecuted if each offense requires proof of an element that the other does not. Accordingly, a conviction for **contempt** based on the violation of a protection order will rarely, if ever, bar prosecution for the underlying criminal offense because contempt requires proof that the defendant knowingly violated a valid court order, an element not required for the underlying crime. *Burge, 947 S.W. 2d 805 (Ky. 1996), McCombs, 304 S.W. 3d 676 (Ky. 2009), Dixon, 263 S.W. 3d 583 (Ky.2008).*

6. Violation of Protective Order or Interpersonal Violence Order

KRS 403.763 and its counterpart KRS 456.180 specifically state that the violation of the terms or conditions of an order of protection (after the person has been served or given notice of the order shall constitute a contempt of Court AND a criminal offense under these sections. However, both sections also state that once a criminal or contempt proceeding has been initiated the other shall not be undertaken. In other words, although a violation of a protective order qualifies as both contempt and a criminal offense, a prosecutor cannot proceed with a violation of protective order charge in criminal court if the respondent has already been held in contempt. Additionally, these statutes specifically state that nothing contained within them shall preclude the Commonwealth from prosecuting the Respondent for criminal offenses other than the violation of an order of protection.

C. Disposition of Domestic and Dating Violence Cases

The appropriate disposition of a domestic violence case plays a critical role in alleviating the conditions which would otherwise allow the violence to continue and escalate. The adjudication of criminal charges defuses the perpetrator's minimization, denial, and externalization by holding him responsible for the abusive behavior, with the goal of changing that behavior to prevent future violence. A disposition which includes clear consequences sends a powerful message to both the victim and the perpetrator that violence will not be tolerated and will be treated as a serious crime.

When the prosecutor makes a clear statement that the acts of violence were committed against the "peace and dignity of the Commonwealth," it becomes apparent that it is the Commonwealth, not the victim, that decides whether or not to pursue criminal charges.[35] At this point, the perpetrator's control over the victim is severely weakened. As a result, the

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[35] Kentucky indictments contain the language "against the peace and dignity" of the Commonwealth. *See Ingram v. Commonwealth*, 427 S.W.2d 815 (1968).

perpetrator is forced to realize that coercing the victim to request a dismissal or deny the incident no longer provides him or her an effective means of avoiding criminal sanctions for his or her conduct. Further, the imposition of negative consequences on the perpetrator will counteract the belief that violence is an effective and acceptable means of maintaining such power and control. The prosecutor should **always** absorb the responsibility for the charges, relieving the perceived blame the perpetrator attributes to the victim.

1. Evidence-Based Prosecution

An evidence-based prosecution policy should be adopted by all prosecutors' offices within the Commonwealth. This policy recognizes the dynamics of the crime of domestic violence by not allowing the victim's level of prosecutorial participation to dictate whether a perpetrator is punished for criminal conduct.

When a victim appears for a case conferencing in a domestic violence case, she may be experiencing continued coercive control by the perpetrator, who may no longer be attempting to control the relationship by violence but is doing so in implicit, nonphysical ways. This often includes apologies, gifts, promises to attend counseling, and discovery of religion. If these attempts at reconciliation are unsuccessful, the perpetrator will often resort to threats, crying, begging, and even threatening to take away the children or suspend child support.

Recognizing the ploys of manipulation, the prosecutor should not be discouraged if the victim attempts to minimize the perpetrator's accountability for the criminal offense. By allowing the victim to make these prosecutorial decisions, the Commonwealth rewards perpetrators who are successful in the manipulation of their victim. The effect of disposing of a case according to the victim's wishes reinforces the perpetrator's conduct, giving the perpetrator ultimate control over the disposition of the case.

Instead of focusing on the desires of the victim in deciding whether to prosecute domestic violence cases, the prosecutor should focus on the conduct of the perpetrator and make a legal determination regarding the criminality of the perpetrator's conduct. This procedure will alleviate the pressures applied to victims once the perpetrator realizes that the victim does not control the prosecutor's decision-making process. Building a case without the victim, if possible, is preferable, rather than dismissing a case.

Due to the dynamics of domestic violence, victims may become reluctant to testify, refuse to testify, or recant prior statements made to law enforcement, victim service providers, or prosecutors. Because victim participation may change over time, prosecutors should develop and present cases using all available evidence, including relevant corroborating evidence, whenever possible.

A domestic violence case should not be dismissed solely because the victim has made a request that the charges be dismissed. Likewise, a domestic violence case should not be dismissed due to a heavy caseload, or availability of a civil remedy or settlement. Absent a clear determination by an experienced prosecutor that insufficient evidence exists to go forward, the prosecutor should be committed to prosecuting the domestic violence case to its appropriate conclusion. As always, safety of the victim and community should be incorporated into all decisions.

2. Pretrial Release and Conditions of Release

The prosecutor shall consider the safety of the victim and the dynamics of domestic violence when recommending a bond in domestic violence cases. Often the pretrial detainment of the defendant allows the victim to explore available resources and options which the victim could not otherwise explore while under the defendant's influence and pressure. Pre-trial officers are instructed to advise the court if the case involves allegations of domestic violence.

Pretrial release of the defendant should include *specific* non-financial conditions *in writing* and signed by the defendant pursuant to RCr 4.14. These conditions may include an order prohibiting the defendant from contacting the victim and victim's family. This order should define "no contact" in detail to prevent the defendant's presence within a specific proximity of the victim's person, family, and residence. The order should also prevent contact by telephone, mail, messenger, e-mail and through third persons acting on behalf of the defendant.

- ***Mutual No-Contact Order. (KRS 403.745(4) and KRS 456.070(4))*** Mutual "no-contact" orders should not be requested and should be opposed. These orders are inappropriate for multiple reasons: First, the criminal court lacks jurisdiction over the victim because the victim is not a party to the criminal action. Second, mutual orders create enforcement problems. For instance, the defendant may harass the victim, but tell law enforcement the victim initiated the contact. In this scenario, prosecutors should remember that it is the defendant who is subject to the conditions of bond.

Victims' Rights to Written Conditions of Release (KRS 431.064)

KRS 431.064, relating to pretrial release of a person charged with a criminal offense under KRS Chapter 508 (assaults), KRS Chapter 510 (sex offenses) or the criminal offense of violating an Order of Protection under 403.720 (DVO) and 456.010 (IPO), sets out specific conditions of release which may be imposed, provides for a written order of conditions, and mandates a **free certified copy** of the conditions, upon request, be provided to the victim. The court and the prosecutor should ensure that the victim is informed of the victim's right to a certified copy of release conditions and should encourage the victim to request a copy. Such simple advice could later save the victim's life. Should an act violating a condition occur during the hours when the office of the clerk holding the bond papers is closed or the responding law enforcement officer is unable to verify the conditions through pretrial services or LINK, the victim's certified copy of the conditions of release will be sufficient to support an arrest. Additionally, violation of [any] condition of an order issued under KRS 431.064 is a Class A misdemeanor.

Arrest for Violation of Condition of Release. (KRS 431.005)

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

Victim's Right to Verbal Notice of Release: Victim Information and Notification Everyday (V.I.N.E.) (KRS 196.280)

The victim should be advised of his or her right to register with the V.I.N.E. system to be notified upon the release of the defendant from incarceration.

3. Case Conferencing Among Agencies

The prosecutor should organize case conferencing to encourage review and exchange of information in domestic violence cases. Case conferencing benefits from the collaboration of different perspectives: those of law enforcement, prosecution and community-based victim advocates, social workers, mental health treatment providers and your local domestic violence shelter. A multidisciplinary approach to conferencing child sexual abuse cases is proving successful throughout the Commonwealth. While an organized meeting may prove challenging, it is vital for victim safety and offender accountability that each multi-disciplinary team member share information.

After consultation with the victim and the multi-disciplinary team, the prosecutor will determine if the case will proceed to trial, be plea bargained or otherwise resolved. Consider all relevant factors when determining the appropriate case resolution including the impact testifying may have on the victim, the likely outcome at trial, and the enhancement of penalty available under KRS 508.032 for a third or subsequent offense of assault fourth degree domestic violence (KRS 508.030) within five years. The prosecutor is mandated under 421.500(6) to communicate these decisions and any position regarding probation of the offender to the victim.

Continued trauma-informed and victim-centered communication with the victim through the assistance of a victim advocate increases rapport with and participation by the victim.

Case conferencing can be particularly effective in complex or "revolving door" types of domestic violence cases where there is a history within the system by developing a deeper understanding of the dynamics of the abuse and coercive control specific to each particular case.

4. Conflict of Interest

The prosecutor should evaluate each domestic violence case, as any other case would be evaluated, for any potential conflict of interest or the appearance of a conflict of interest. If the prosecutor has personal ties or has represented the perpetrator in any civil action or other legal action through the private practice of law, that prosecutor should not be involved in screening or prosecution of that case. The Kentucky Bar Association has recommended that the prosecutor also turn over the private action to another attorney when these circumstances exist.[36] KBA Ethics Opinion E-415 specifically states that a part-time prosecutor may not represent a respondent in a matter involving a civil domestic violence order.

Additionally, the prosecutor should not attempt to influence or affect the outcome of the domestic violence case in the event a prosecutor in that office subsequently handles the criminal case.

5. Mediation In Domestic and Dating Violence Cases

The prosecutor should not agree to mediate domestic violence cases prior to charging, because the perpetrator's appearance in the judicial process is an important step toward recognition and reform of his criminal behavior. Further, mediation of domestic violence cases may foster archaic attitudes that regard violence as family matters not worthy of the judicial system. The generic definition of "mediation" is an attempt to resolve a legal dispute through a third party neutral and come to a mutual agreement.[37] This makes mediation inappropriate for cases involving interpersonal violence because mediation presupposes equal power between the parties. In dating and domestic violence relationships, the abuser enjoys a power imbalance.

KRS 403.730 and KRS 456.040 provide that if the court finds that there is domestic violence and abuse, the court is not allowed to order mediation unless the victim requests it, and the court finds that the request is voluntary and uncoerced, and that mediation is a viable alternative to or adjunct to the issuance of a protective order.

KRS 403.745 and KRS 456.070(3) provide that a court which enters an order of protection may direct either or both parties to receive counseling but **shall not order** or refer the parties to participate in **mediation, or conciliation, or counseling** prior to or as a condition of issuing a protective Order and for resolution of the issues alleged in the petition filed pursuant to KRS 403.750 to 403.785 or 456.010 through 456.180.

6. Alternative Sentencing Policy

In certain cases, probation or formal court-approved diversion may be appropriate. Alternative sentencing should never be considered merely because of the relationship of the perpetrator to the victim. Before agreeing to alternative sentencing, the prosecutor should fully consider the dynamics of domestic violence and the need to hold the batterer criminally accountable.

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[36] Attorney General's Task Force on Domestic Violence Crime, October, 1991.

[37] *See* Legal Dictionary.com, https://dictionary.law.com/Default.aspx?selected=1233.

When the injuries are severe, the perpetrator has a prior conviction for a violent offense, children were present during the violence, the victim was pregnant or the victim appears to remain in danger, alternative sentencing is not appropriate. Restitution and assessment for court-ordered counseling for the perpetrator by an approved provider should **always** be a condition of an alternative sentence.

KRS 533.260 & 533.262 requires that felony pretrial diversion programs must be authorized by the Supreme Court. The statutes set out the elements each program must contain, the duties of the Commonwealth's Attorney when considering an application for pretrial diversion, requirements for payment of restitution, consequences of failure to complete the provision of a diversion agreement and the effects of successful completion of the diversion agreement. See KRS 533.015 - 533.262.

D. Mandatory Domestic Violence Training for Criminal Justice Professionals

The law requires key professionals, including domestic violence center staff, social workers, judges, prosecutors, victim advocates, medical professionals, and court clerks to receive training on domestic violence. The Justice Cabinet, the Attorney General's Office, the Administrative Office of the Courts, and the Cabinet for Families and Children are required by the law to develop appropriate training curricula for the professions under their auspices.

1. Prosecutors

KRS 15.718. Before handling domestic violence cases, prosecutors should receive specialized training in working with domestic violence victims and prosecuting these cases. KRS 15.718 requires the Office of the Attorney General to provide initial training courses and, at least once every two (2) years, continuing education courses for Commonwealth's attorneys and county attorneys and their staffs concerning:

1. The dynamics of domestic violence, child physical and sexual abuse, rape, effects of crime on adult and child victims, legal remedies for protection, lethality and risk issues, profiles of offenders, model protocols for addressing domestic violence, child abuse, rape, available community resources and victims' services, and reporting requirements; and

2. The appropriate response to victims of human trafficking, including but not limited to screening for victims of human trafficking, federal and state legislation on human trafficking, appropriate services and referrals for victims of human trafficking, working with interpreters, and agency protocol for handling child trafficking cases.

Per the statute:

- The training shall be developed in consultation with prosecutors, victim's services, victim advocacy, and mental health professionals with an expertise in domestic violence, child abuse, human trafficking, and rape.

- Each Commonwealth's Attorney, assistant Commonwealth's Attorney, county attorney, and assistant county attorney shall successfully complete the training.

2. Victim Advocates

KRS 421.570 sets forth training requirements for all victim advocates. For the purposes of the statute and KRS 421.575, "victim advocate" means an individual at least eighteen (18) years of age and of good moral character, who is employed by, or serves as a volunteer for, a public or private agency, organization, or official to counsel and assist crime victims as defined in KRS 421.500 (The Crime Victims Bill of Rights), and includes a victim advocate employed by a Commonwealth's Attorney pursuant to KRS 15.760 and a victim advocate employed by a County Attorney pursuant to KRS 69.350.[38]

KRS 421.570(2) provides that each victim advocate shall complete training which shall include information concerning the difference between advocacy and the practice of law, and the appropriate intervention with crime victims, including victims of domestic violence, child physical and sexual abuse, human trafficking and rape. Victim advocates employed by a Commonwealth's or County Attorney must also receive training related to the appropriate intervention with victims of elder abuse, neglect or exploitation or other crimes against the elderly. Commonwealth's Attorneys and County Attorneys must ensure that victim advocates employed by them complete training related to appropriate intervention with crime victims, specifically including victims of domestic violence. *See* KRS 15.760, 69.350.

3. Law Enforcement

KRS 15.334(3) requires the Justice and Public Safety Cabinet to provide training on domestic violence and abuse. All certified peace officers must complete the training at least once every two years.

KRS 15.334(2) requires the Kentucky Law Enforcement Council to establish, by January 1, 2017, a forty (40) hour sexual assault investigation training course. By January 1, 2019, agencies shall have one (1) or more officers trained in this curriculum, as follows:

- Agencies with five (5) or fewer officers shall have at least one (1) officer trained in sexual assault investigation;

- Agencies with more than five (5) officers but fewer than thirty (30) officers shall have at least two (2) officers trained in sexual assault investigation; and

[38] KRS 421.570(1).

- Agencies with thirty (30) or more officers shall have at least four (4) officers trained in sexual assault investigation.

E. Innovative Ideas in Response to Domestic Violence

Interagency/multidisciplinary approaches to prevention, investigation, and prosecution of domestic violence have proved to be effective in many communities. These approaches include participation on domestic violence coordinating councils, multidisciplinary case review teams, domestic violence fatality review teams, domestic violence high risk response teams, sexual assault response teams and sexual assault interagency councils. In the appendix of this manual are tools to assist you in implementing a Lethality Assessment Program as well as resources to enhance your response to underserved populations including non-English speaking victims or victims with a disability.

CHAPTER 2: *The Domestic Violence and Abuse Act*

A. Statutory Provisions

KRS 403.715 through 403.785 sets forth the law as it relates to civil aspects of domestic violence.

1. Legislative Intent of the Act (KRS 403.715)

KRS 403.715 to 403.785 shall be interpreted to:

- Allow victims to obtain effective, short-term protection against further wrongful conduct in order that their lives may be as secure and as uninterrupted as possible;
- Expand the ability of law enforcement officers to effectively respond to further wrongful conduct so as to prevent future incidents and to provide assistance to the victims;
- Provide peace officers with the authority to immediately apprehend and charge for violation of an order of protection any person whom the officer has probable cause to believe has violated an order of protection and to provide courts with the authority to conduct contempt of court proceedings for these violations;
- Provide for the collection of data concerning incidents of domestic violence and abuse in order to develop a comprehensive analysis of the numbers and causes of such incidents; and
- Supplement and not repeal or supplant any duties, responsibilities, services, or penalties under KRS Chapters 209, 209A, and 620.

2. Definitions for the Act (KRS 403.720)

- *"Domestic violence and abuse"* means physical injury, serious physical injury, stalking, sexual abuse, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple;

- *"Family member"* means a spouse, including a former spouse, a grandparent, a grandchild, a parent, an adult sibling, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim;

- *"Foreign protective order"* means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 that was issued on the basis of domestic violence and abuse;

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

- *"Member of an unmarried couple"* means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together;

- *"Order of protection"* means an emergency protective order or a domestic violence order and includes a foreign protective order;

- *"Sexual assault"* refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or incest under [KRS 530.020,] or a criminal attempt, conspiracy, facilitation, or solicitation to commit rape, sodomy, sexual abuse, or incest;

- *"Strangulation"* refers to conduct prohibited by KRS) (508.170) and 508.175), or a criminal attempt, conspiracy, facilitation, or solicitation to commit the crime of strangulation; and

- *"Substantial violation"* means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

3. Additional Definitions

- *"Domestic Violence Order"* ("DVO") means a court order issued under the provisions of KRS 403.740 following a hearing against a family member or a member of an unmarried couple where the court has found violence has occurred and is likely to occur again. In Kentucky, a "DVO" is valid for up to three years and may be reissued upon expiration for subsequent periods of up to three years each (the date of expiration should appear on the order);

- *“Emergency Protective Order*”(“EPO”) means an ex parte court order (an order issued at the request of one party without a hearing) issued under the provisions of KRS 403.730 against a family member or a member of an unmarried couple who have been determined to present an immediate and present danger. KRS 403.730;

- *“Mutual Protection Order”* is an order of protection against both the Petitioner and Respondent and may only be issued if both parties have filed separate petitions and the orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order. KRS 403.745(4). KRS 456.070(4). *See Manning v. Willett*, 221 S.W.3d 394 (Ky. App. 2007).

- *“Physical Injury”* means “substantial physical pain or any impairment of physical condition. KRS 500.080(13).

NOTE: Mutual Protection Orders are discouraged by interpersonal violence professionals in most cases. Mutuality perpetuates the mistaken belief that *both* parties are to blame in abusive relationships, when in reality, the controlling, abusive partner is the person who needs to cease the abusive behavior.

4. Identifying Victims of Domestic and Dating Violence and Abuse and Making Referrals for Voluntary Services under KRS Chapter 209

Note: The KRS 209A requirement for reporting Spouse Abuse was **repealed** by 17 HB 309. Reporting may be required under KRS Chapter 209 in some cases.

Purpose

- To identify victims of domestic violence and abuse and dating violence and abuse, to link those victims to services and to provide protective or therapeutic services for those who choose to accept them.

- A victim of domestic or dating violence or abuse who has a mental or physical disability or who cannot carry out the activities of daily living or protect himself or herself without the assistance of others may be served under the provisions of KRS Chapter 209.

Definitions (KRS 209A.020)

- *“Cabinet”* means the Cabinet for Health and Family Services;

- *“Dating violence and abuse”* has the same meaning as in KRS 456.010;

- *“Domestic violence and abuse”* has the same meaning as in KRS 403.720;

- *“Law enforcement officer”* means a member of a lawfully organized police unit or police force of county, city, or metropolitan government who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as a sheriff, sworn deputy sheriff, campus police officer, law enforcement support personnel, public airport authority security officer, other public and federal peace offer responsible for law enforcement, special local peace officer appointed pursuant to KRS 61.360, school resource officer, public school district security officer, and any other enforcement officer as defined by law;

- *“Professional”* means a physician, osteopathic physician, coroner, medical examiner, medical resident, medical intern, chiropractor, nurse, dentist, optometrist, emergency medical technician, paramedic, licensed mental health professional, therapist, cabinet employee, child-care personnel, teacher, school personnel, ordained minister or the denominational equivalent, victim advocate or any organization or agency employing any of these professionals;

- *“Victim”* means an individual who is or has been abused by a spouse or former spouse or an intimate partner who meets the definition of a member of an unmarried couple as defined in KRS 403.720, or a member of a dating relationship as defined in KRS 456.010;

- *“Victim advocate”* has the same meaning as in KRS 421.570.

Reporting – at the request of the victim

- Upon the request of a victim, a professional shall report an act of domestic violence and abuse or dating violence and abuse to a law enforcement officer.

- A professional who makes a report under Chapter 209A shall discuss the report with the victim prior to contacting a law enforcement officer.

Reporting – suspected domestic or dating violence or abuse related death

- A professional **shall report** to a law enforcement officer his or her belief that the death of a victim with whom he or she has had a professional interaction is related to domestic violence and abuse or dating violence and abuse.

- Nothing in KRS Chapter 209A shall relieve a professional of the duty pursuant to KRS 620.030 to report any known or suspected abuse, neglect, or dependency of a child.

- Nothing in KRS Chapter 209A shall relieve a professional of the duty pursuant to KRS 209.030 to report to the cabinet any known or suspected abuse, neglect, or exploitation of a person eighteen (18) years of age or older who because of mental or physical dysfunction is unable to manage his or her own resources, carry out the activity of daily living, or protect himself or herself from neglect, exploitation or a hazardous or abusive situation without assistance form others.

Law Enforcement Response to Report

- If a law enforcement officer receives a report of domestic violence and abuse or dating violence and abuse, the officer shall use all reasonable means to provide assistance as required under KRS 403.785 and 456.090.
- A professional shall report to a law enforcement officer his or her belief that the death of a victim with whom he or she has had a professional interaction is related to domestic violence and abuse or dating violence and abuse.
- A law enforcement officer who responds to a report of domestic violence and abuse or dating violence and abuse shall use the JC-3 form, or its equivalent replacement, as provided by the Justice and Public Safety Cabinet to document any information or injuries related to the domestic violence and abuse or dating violence and abuse.
- A completed JC-3 form, or its equivalent replacement, shall be kept in the records of the law enforcement officer's agency of employment.
- If the JC-3 form, or its equivalent replacement, includes information that only relates to a victim as defined in Section 4 of this Act, (Section 4 defines victim as individuals meeting the definition of a member of an unmarried couple as defined in KRS 403.720 or a member of a dating relationship as defined in KRS 456.010), the form shall not be forwarded to the cabinet.
- If the JC-3 form, or its equivalent replacement includes information on known or suspected child abuse or neglect or the abuse or neglect of an elderly or disabled adult, the form shall be forwarded to the cabinet.

Duty of Professionals to Provide Educational Materials

If a professional has reasonable cause to believe that a victim with whom he or she has had a professional interaction has experienced domestic violence and abuse or dating violence and abuse, the professional shall provide the victim with educational materials related to domestic violence and abuse or dating violence and abuse, including:

- information about how he or she may access regional domestic violence programs or rape crisis centers; and
- Information about how to access protective orders.

The cabinet designated primary service provider for domestic violence shelter, crisis, and advocacy services in the district in which the provider is located shall make the educational materials available on its website or in print form for professionals to provide to potential victims of domestic violence and abuse or dating violence and abuse. To access educational materials from ZeroV visit: https://www.zerov.org/krs_209a

NOTE: Professionals, including prosecutors and law enforcement, should never direct a victim to obtain a protection order without understanding all material facts of the case and determination of future lethality. Preferably, the victim should be referred to a victim service provider or experienced and DV-trained attorney to assess safety and determine on a case-by-case basis if a protection order is appropriate.

Privilege

Neither the psychotherapist–patient privilege nor the husband-wife privilege shall be a ground for excluding evidence regarding the domestic violence and abuse or dating violence and abuse of an adult or the cause thereof in any judicial proceeding resulting from a report pursuant to KRS Chapter 209A.

Immunity from Liability

Any person acting upon reasonable cause in complying with the provisions of KRS Chapter 209A shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed and shall have the same immunity with respect to participation in any judicial proceeding resulting there from.

Penalty for Failure to Report

A professional knowingly or wantonly violating the provisions of KRS Chapter 209A shall be guilty of a Class B misdemeanor and penalized in accordance with KRS 532.090. Each violation shall constitute a separate offense.

B. Filing a Domestic Violence Petition

Domestic violence proceedings allow all victims of domestic violence to obtain short-term protection against further violence through court protective orders and expanded law enforcement authority to intervene and assist victims. No filing fee or court cost shall be assessed upon the victim for either the filing of domestic violence petition or the service of the petition upon the perpetrator. KRS 403.730 and 403.745(2).

The petition is a request for a hearing on the issue of the alleged abuse. A victim/petitioner who feels in immediate danger may, in the petition, ask the judge to issue an emergency protective order to control the perpetrator/ respondent until the hearing is held.

Note: An EPO is the emergency, *ex parte* order that can be granted if the statutory elements exist. The court may also deny the issuance of an EPO, but still set the case for a DVO hearing. This simply means the reviewing judge did not identify a threat of immediate harm but believed that a claim for domestic violence was stated in the complaint (*i.e.* petition).

A legal proceeding started by this petition is a *civil proceeding, not a criminal one*.

A protective order is not a substitute for a criminal prosecution or a divorce proceeding. Criminal prosecution should not be declined solely because the victim has obtained an order of protection. There are many benefits and protections afforded to a victim from a protective order that are not available in a criminal prosecution alone[39].

1. Who Can File a Domestic Violence Petition?

A petition for an Order of Protection may be filed by

- A victim[40] of domestic violence and abuse; or
- An adult on behalf of a victim who is a minor otherwise qualifying for relief under KRS 403.725.

For purposes of a domestic violence petition, "victim" means:

- A "*family member*" means a spouse, including a former spouse, a grandparent, a grandchild, a parent, an adult sibling, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim;[41]
- A "*member of an unmarried couple*" means each member of an unmarried couple which allegedly has a child in common, any children of the couple, or a member of an unmarried couple who are living together or have formerly lived together.[42]

All the above listed persons may file and receive protection through issuance of an EPO or DVO in court, notwithstanding the existence of or intent to file a divorce or custody action in the Circuit Court by either party. However, when an EPO is sought in District or Circuit Court, the person making the petition shall make any pending custody or divorce actions, involving both the petition and the respondent, known to the Court. (KRS 403.750 (2) (a)). may file and receive protection through issuance of an EPO or DVO in court, notwithstanding the existence of or intent to file a divorce or custody action in the Circuit Court by either party. However, when an EPO is sought in District or Circuit Court, the

[39] These benefits include: protective orders are available 24 hours a day, seven (7) days a week; protective orders are entered into the LINK protective order file and are available to law enforcement officers 24 hours a day; intentionally violating the provisions of a protective order with which the respondent has been served or has been given notice is a Class A misdemeanor; arrest is mandatory when the officer has probable cause to believe that a protective order has been violated and the respondent has been served with or given notice of the order; other states must enforce Kentucky protective orders which meet the requirements of 18 U.S.C. sec. 2265; and state and federal laws place restrictions on the ability of persons, against whom a qualifying protective order has been issued, to ship, transport, or possess weapons and to have a license to carry a concealed deadly weapon.

[40] It is worth noting that "victim" does not specify the "victim" must be an adult. Presumably, the "victim" may be a juvenile.

[41] KRS 403.720(3).

[42] KRS 403.720(6).

Note: A person's right to apply for relief shall not be affected by that person leaving his or her residence to avoid domestic violence and abuse. KRS 403.745(8).

2. What Behavior Constitutes Domestic Violence and Abuse?

- *"Domestic violence and abuse"* means physical injury, serious physical injury, stalking, sexual abuse, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault between family members or members of an unmarried couple. KRS 403.720.

3. What is the Difference Between an EPO and a DVO?

EPO (Emergency Protective Order). Pursuant to KRS 403.730, an EPO is an ex parte court order issued against a family member or a member of an unmarried couple when a judge determines that the allegations contained in the petition indicates the presence of an immediate and present danger of domestic violence and abuse. Typically, no court hearing occurs with an EPO. A judge can opt to not issue an EPO, but still set the matter for a DVO hearing at a later point in time.

DVO (Domestic Violence Order). Pursuant to KRS 403.740, a DVO is a court order issued following a hearing against a family member or a member of an unmarried couple where a judge has found by a preponderance of the evidence that acts of domestic violence and abuse have occurred and may occur again. In other words, after a full due process hearing, this is the resulting order after hearing the evidence.

Note: In Kentucky, a domestic violence order shall be effective for a period of time fixed by the court, not to exceed three (3) years, and may be reissued upon expiration for subsequent periods of up to three (3) years each. The fact that an order has not been violated since its issuance may be considered by a court in hearing a request for a reissuance of the order. See *Buddenberg v. Buddenburg*, 304 S.W. 3d 717 (Ky.App., 2010). The date of expiration should appear on the Order. (KRS 403.740 (3)).

Note: KRS 403.735 (1) provides that, prior to or at a hearing on a petition for an order of protection, the court may obtain the respondent's Kentucky criminal and protective order history and utilize that information to assess what relief and which sanctions may protect against danger to the petitioner or other person for whom protection is being sought, with the information so obtained being provided to the parties in accordance with the Rules of Civil Procedure. Also, if the petitioner or respondent is a minor, the court shall inquire whether the parties attend school in the same school system to assist the court in imposing conditions in the order that have the least disruption in the administration of education to the parties while providing appropriate protection to the petitioner.

Note: If an EPO is not issued, the court shall note on the petition, for the record, any action taken or denied and the reason for it. KRS 403.730(2) (b).

4. Where, When and How is an Order of Protection to be Filed?

Where is the petition filed?

KRS 403.725(2). The petition may be filed in the victim's county of residence or a county where the victim has fled to escape domestic violence and abuse.

KRS 403.725(6) (a). Jurisdiction over petitions filed under this chapter shall be concurrent between the District Court and Circuit Court, and a petition may be filed by a petitioner in either court, except that a petition shall be filed in a family court if one has been established in the county where petition is filed.

KRS 403.725(8). If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules.

Note: All petitions requested, completed, and signed by persons seeking protection under this chapter shall be accepted and filed with the Court.

KRS 403.725(5).

When may a petition be filed?

All Kentucky courts are required to provide twenty-four (24) hour access to emergency protective orders.

- **KRS 403.725(6) (b).** The Court of Justice shall provide a protocol for twenty-four (24) hour access to orders of protection in each county with any protocol, whether statewide or local, being subject to Supreme Court review and approval of the initial protocol and any subsequent amendments. This protocol may allow for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.
- **KRS 403.725(6) (c).** The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.

How is a petition filed?

The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual specifically authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers, and County or Commonwealth's attorneys.

All petitions requested, completed and signed by persons seeking protection under the Act shall be accepted and filed with the court. KRS 403.725 (5).

Additionally, upon proper filing of a motion, either party may seek to amend an order of protection. KRS 403.745 (5).

Note: No costs, fees, or bond shall be assessed against or required of a petitioner for any filing, hearing, service, or order authorized by or required to implement KRS 403.715 to 403.785.KRS 03.745 (2)

Note: A court may issue mutual protective orders only if: 1) both parties have filed separate petitions and 2) the orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order. (If there is probable cause to believe a violation of the order has occurred.) KRS 403.745(4). KRS 456.070(4). See *Manning v. Willett*, 221 S.W.3d 394 (Ky. App. 2007).

5. When does the protective order become effective and for how long?

- An emergency protective order and a domestic violence order shall become **effective and binding on the respondent when the respondent is given notice** of the existence and terms of the order by a peace officer or the court or upon personal service of the order, whichever is earlier. A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order's personal service upon the respondent. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation**.** KRS 403.745(1).

- An EPO can be effective for up to six (6) months. Once a petition is filed, the court must review the petition immediately. If the court determines domestic violence and abuse exists and there is a presence of an immediate and present danger of domestic violence and abuse, the court shall enter an emergency protective order, and hold an evidentiary hearing within fourteen (14) days from the day the protective order is granted. If the respondent is not present at the hearing, the court shall issue a summons for a new hearing within fourteen (14) days. The court may continue to issue a new summons with a new hearing date every fourteen (14) days for up to six (6) months if the summons is not served upon the perpetrator/respondent. At the end of six (6) months without service the order will be rescinded without prejudice, however the petitioner may, before the expiration of the order, file a petition for a new order. A new six (6) month process will begin at this time. KRS 403.730 and 403.735(2) (b). See *Daugherty v. Telek,* 366 S. W. 3d 463 (Ky. 2012).

- A DVO shall be effective for a period of time as fixed by the court not to exceed three (3) years and may be reissued upon expiration for subsequent periods of up to three (3) years each. See *Wooldridge v. Zimmerer*, 311 S.W.3d 254 (Ky. App. 2010); *Kessler v. Switzer*, 289 S.W.3d 228 (Ky. App. 2009). KRS 403.740(4).

Note: The fact that an Order has not been violated since its issuance may be considered by a court in hearing a request for a reissuance of the order. KRS 403.740(4)

6. What behavior may be prohibited / What relief may be ordered?

- EPO--KRS 403.730*:* If, upon review of the petition as provided for in KRS 403.730(2)(a), the court determines that the allegations contained therein indicate the presence of an immediate and present danger of domestic violence and abuse, the court shall issue, upon proper motion, ex parte, an emergency protective order which authorizes the use of relief options set out in KRS 403.740, other than awarding temporary support or counseling.

The EPO may not order or refer the parties to mediation unless requested by the petitioner, and the court finds that the petitioner's request is voluntary and not the result of coercion and mediation is a realistic and viable alternative to or adjunct to the issuance of an order sought by the petitioner. KRS 403.730.

- DVO--KRS 403.740: Following the hearing provided for under KRS 403.730, if the court finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may again occur, the court may:

1. Restrain the adverse party from:
    - Committing further acts of domestic violence and abuse;
    - Any unauthorized contact or communication with the petitioner or other person specified by the court;
    - Approaching the petitioner or other person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;
    - Going to or within a specified distance of a specifically described residence, school, or place of employment area where such a place is located; and
    - Disposing of or damaging any property of the parties;
2. Direct or prohibit any other actions that the court believes will be of assistance in eliminating future acts of domestic violence and abuse cases, except that the court shall not order the petitioner to take any affirmative action;
3. Direct that either or both of the parties receive counseling services available in the community in domestic violence and abuse cases; and
4. Additionally, if applicable:
    - Direct the adverse party to vacate a residence shared by the parties to the action;
    - Utilize the criteria set forth in KRS 403.270, 403.320, and 403.822, to grant temporary custody; and

- Utilizing the criteria set forth in KRS 403.211, 403.212, and 403.213, to award temporary child support. KRS 403.740.

Note: Location Restrictions (KRS 403.740(2))

When imposing a location restriction described in KRS 403.740(1) (a) (4) the court shall:

- Afford the petitioner and respondent, if present, an opportunity to testify on the issue of the locations and areas from which the respondent should or should not be excluded;
- Only impose a location restriction where there is a specific, demonstrable danger to the petitioner or other person protected by the order;
- Specifically describe in the order the locations or areas prohibited to the respondent; and
- Consider structuring a restriction so as to allow the respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm or attempt to harass or harm the petitioner.

Note: When temporary child support is granted, the court shall enter an order detailing how the child support is to be paid and collected. The child support ordered may be enforced utilizing the same procedures as any other child support order. KRS 403.740(3).

Note: A court shall not require mediation, conciliation, or counseling prior to or as a condition of issuing an order of protection. KRS 403.745(3).

7. Consequences of Violating an EPO, DVO, or a Foreign Protective Order.

- KRS 456.180: VPO and 3rd offense VPO: (b) Violation of an order of protection is a Class A misdemeanor, unless the person who stands convicted of a violation under this subsection has been convicted of two (2) or more previous violations of orders of protection under this subsection, KRS 403.763(4)(a), or 508.155, or 510.037 within the last five (5) years, in which case it is a Class D felony if the third or subsequent violation involves the: 1. Use or attempted use of physical force; or 2. Threat of physical harm. The protected person in the third or subsequent violation is not required to be the same protected person in the previous violations. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgements of conviction were entered.

State Criminal Charge

Violation of a protective order. A person commits this crime, which is a Class A misdemeanor, when he or she intentionally violates the provisions of an Order of

Protection with which he or she has been served or has been given notice. KRS 403.763. A Class A misdemeanor carries a penalty of up to 12 months in jail and a $500 fine.

Court proceedings for a criminal violation of an order of protection shall follow the rules of venue applicable to criminal cases generally. KRS 403.763(2) (b).

Contempt of Court Proceeding

Violating the provisions of an EPO, DVO or foreign protective order shows contempt for an order of the court, and a proceeding for contempt of court may be brought.

Court proceedings for contempt of court for violation of an order of protection shall be held in the county where the order was issued or filed. KRS 403.763(2) (a).

Federal Criminal Charge

The Violence Against Women Act created federal offenses in cases where an abuser crosses state lines to violate a protection order or injure, harass, or intimidate a spouse or intimate partner. These federal remedies are important tools in cases when movement across state lines makes state prosecution difficult and where state law penalties may not be tough enough. They also offer important benefits to victims, including strengthened restitution provisions and an opportunity to address the court concerning the danger posed by a defendant prior to any pre-trial release.

Additionally, federal law generally prohibits a person from possessing a firearm while subject to a qualifying domestic violence protection order. 18 U.S.C. § 922(g)(8). In United States v. Rahimi, the Supreme Court upheld the constitutionality of this prohibition. The federal firearm restriction applies only to qualifying protection orders issued after notice and an opportunity to be heard, as required by § 922(g)(8).

C. Processing of Domestic Violence Civil Complaints

1. Duties of the Judge

Reviewing the Petition (KRS 403.730)

The judge reviews the petition immediately upon its filing, and, if the petition does describe a domestic violence and abuse situation, the judge proceeds as follows.

Acting on the Petition

- Petitioner not in imminent danger (KRS 403.730(1)(a)) The court reviews the petition seeking an order of protection immediately upon its filing.

If the review indicates that *domestic violence and abuse exists*, the court shall summon the parties to an evidentiary hearing not more than fourteen (14) days in the future.

If the review indicates that such a *basis does not exist*, the court may consider an amended petition or dismiss the petition without prejudice.

- Petitioner in danger (KRS 403.730(2)(a))

If the Judge decides the Petition shows an immediate and present danger of domestic violence and abuse, the court shall, upon proper motion, issue ex parte an emergency protective order. The order may contain some, all, or a combination of the protections that are set forth in KRS 403.740. (Other than awarding temporary support and counseling). This Order expires upon the conclusion of the evidentiary hearing, unless extended or withdrawn by subsequent order of the court.

A copy of the EPO, as well as a copy of the order fixing the date of the hearing, and a copy of the petition are served on the respondent (KRS 403.730(1) (b)).

- A court may *issue mutual protective orders* **only** if separate petitions have been filed by both parties and the orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order. KRS 403.745(4).

Obtaining Information and Review of Documents (KRS 403.735)

Prior to a hearing on the Order of Protection the Court may obtain the Respondent's Kentucky criminal history and protective order history. The court shall review and assess which sanctions may protect against danger to the petitioner or a family member or member of an unmarried couple for whom protection is being sought. The court shall provide a copy of the information to petitioner and respondent or to their counsel. KRS 403.741 (3).

Referral to County Attorney (KRS 403.745(7) (b))

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

Conducting the Hearing (KRS 403.740)

At the hearing, the judge hears evidence from both the petitioner and the respondent. If a preponderance of the evidence shows that domestic violence and abuse (1) has occurred, and (2) may again occur, the judge acts to correct the situation by issuing a domestic violence order (DVO).

Issuance of a Domestic Violence Order

The DVO may contain some or all of the following restrictions upon the respondent:

1. Committing further acts of domestic violence and abuse.
2. Limiting the contact and scope of contact between the parties.

3. Setting a distance limit to which the Respondent may come around in the proximity of the Petitioner (not to exceed 500 feet).

4. Going to or within a specified distance of a specifically described residence, school, place of employment, or other area.

The judge may also invoke other alternatives. These included any or all of the following:

- Directing or prohibiting any actions to which the Court believes will be of assistance in eliminating future acts of domestic violence or abuse. The court cannot, however, require the petitioner (victim) to any affirmative duty.

- Directing one or both of the parties to counseling.

- Additional remedies (if applicable) including:

    - Directing the respondent to vacate the residence.

    - Granting temporary child custody and child support.

DVOs are in effect for up to three years and may be reissued. Either party may seek to amend a DVO.

Note: KRS 403.745 (6) specifically provides that any testimony shall not be admissible in any criminal proceeding involving the same parties, except for purposes of impeachment.

Note: It is against best practice to order the petitioner and respondent to couples counseling.

Expungement of a Petition (KRS 403.745(10))

The court in which the petition was heard may for good cause shown order the expungement of the records of the case if:

1. Six (6) months have elapsed since the case was dismissed; and

2. During the six (6) months preceding the expungement request, the respondent has not been bound by an order of protection issued for the protection of any person, including an order of protection as defined in KRS 456.010.

Amendment of Domestic Violence Order to Require Participation in Global Positioning Monitoring System (KRS 403.761)

- Gathering Records

A Court must review an updated history of the Respondent's Kentucky criminal and protective history before it can amend an order of protection to require respondent's participation in a GPS monitoring system. KRS 403.761 (1) (b).

- Amending the Order
    1. Upon proper filing of a motion, either party may seek to amend an Order of protection. KRS 403.745(5).
    2. Upon a petitioner's request and after an evidentiary hearing, a court may amend a domestic violence order to require a respondent to participate in a global positioning monitoring system if:
        - The respondent has committed a substantial violation of a previously entered domestic violence order;
        - The court has reviewed an updated history of the respondent's Kentucky criminal and protective order history; and
        - The court makes a factual determination that the use of a global positioning monitoring system would increase the petitioner's safety. KRS 403.761 (1).
- GPS Monitoring System Order (KRS 403.761(2))

An order requiring participation in a global positioning monitoring system shall:

- Require the respondent to pay cost of participation up to their ability to pay, state the locations/ areas where the respondent is prohibited from being located or persons whom the respondent shall have no contact, include the date the order expires, require the entity that operates the monitoring system to notify petitioner, law enforcement agency, and court if a respondent violates the order.

2. Duties of the Court Clerk

Deleting Petitioner's Address from Documents to be Served on the Respondent (KRS 403.745(9))

The court clerk upon order of the Court, shall delete the address of the petitioner and of any minor children from any documents or orders, to be made available to the public or to any person who engaged in the acts complained of in the petition. This protects them from a dangerous respondent who doesn't know their current address.

Providing and Verifying (KRS 403.725(4))

Petitions shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the **circuit clerk** or by another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers and Commonwealth's or county attorneys.

Forwarding Documents to Law Enforcement (KRS 403.751(2))

The circuit clerk sends a copy of each summons, EPO, DVO or foreign (out-of-state) protective order, within 24 hours of its being filed, to the appropriate law enforcement agency designated to enter domestic violence records into the Law Information Network of Kentucky (LINK) and the agency assigned service. Generally speaking, the "entering agency" is a local law enforcement agency with a LINK terminal; if there is no such agency in the county, the State Police is the entering agency.

3. Duties of the County Attorney Providing and Verifying (KRS 403.725(4))

The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers and Commonwealth's or County Attorneys.

D. Duties of Law Enforcement Officers

1. Providing and Verifying (KRS 403.725 (4))

The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers and Commonwealth's or County Attorneys.

2. Preventing Further Abuse at the Scene (KRS 403.785(2))

Whether or not an arrest has been made, if the officer has reason to suspect that a family member, member of an unmarried couple, or household member has been the victim of domestic violence, the officer shall use all reasonable means necessary to prevent further domestic violence, including but not limited to:

- Remaining at the scene as long as the officer reasonably suspects there is danger to the physical safety of the individuals present without the presence of a law enforcement officer;
- Assisting the victim to obtain medical treatment, including offering to transport, or arranging for the transportation of the victim to the nearest medical treatment facility capable of providing the necessary treatment; and
- Advising the victim immediately of rights and services available including those provided in KRS 421.500 and Chapter 403.

Note: These "rights and services" include information about criminal complaint procedures, availability and enforcement of civil protective orders, availability of emergency shelter services, protective services of DCBS, and other community resources.

Many of these rights and services are printed on “Victim Rights Information” tear-off portion of the JC-3 form.

Note: Tearing off the victim rights information portion of the JC-3 form and giving it to a victim may not fully satisfy this duty. The responding officer should also ensure that the victim can read and understand the printed form.

Note: Death of an adult or child does not relieve the officer of the responsibility to report the circumstances surrounding the death related to abuse or neglect.

3. Safe Environment

In order to protect the victim and provide access to a safe environment the officer should:

- Provide a copy of a safety plan, if available;
- Inform the person of local procedures for victim notification. KRS 421.500(3).

4. Crime Victims Bill of Rights (KRS 421.500(3))

As soon as possible, law enforcement personnel, pursuant to KRS 421.500(3), shall ensure that victims receive information on available emergency, social, and medical services upon initial contact with the victim and are given information on the following:

- Availability of crime victim compensation where applicable;
- Community-based treatment programs;
- The criminal justice process as it involves the participation of the victim or witness;
- The arrest of the accused; and
- How to find out if a person has been released from jail or a juvenile detention facility.

5. Reporting Actual or Suspected Domestic Violence and Abuse

A law enforcement officer who has reason to suspect that a person has been the victim of domestic violence and abuse must complete a JC-3 form, or its equivalent replacement, and provide the information to the Criminal Justice Statistical Analysis Center pursuant to KRS 209A.110). KRS 403.785(2)(d).

6. Giving Notice of Orders to Respondents (KRS 403.745(1))

A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order’s personal service upon the respondent. Once effective, a peace officer or the court may enforce the order’s terms and act immediately upon their violation.

7. Arresting Respondents Who Violate Orders (KRS 431.015(c))

A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785 or an order of protection as defined in KRS Chapter 456.010.

The officer should not arrest unless the officer first knows:

- The restrictions imposed on the respondent by the order (the judge does not always check all blocks on standard form, and the officer may arrest only for violation of an indicated restriction);
- If the order is still in effect (the order is in effect only until the expiration date stated on the face of the order); and
- (The respondent is not bound by the order unless there has been service made or notice given). While "notice" can be given verbally by a law enforcement officer, it is best practice to conduct physical service of process.

Other charges, in addition to "Violation of a protective order," may also be in order.

In the case of a foreign protective order, if the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law. KRS 403.7521(4).

8. Good Faith Immunity from Liability

Officers who reasonably perform their duties in good faith have immunity from civil and criminal liability under the following situations:

- Enforcing Emergency Protective Orders or Domestic Violence Orders. KRS 403.785(4).
- Enforcing foreign protective orders. KRS 403.7521(3).
- Making a report or investigation for adult abuse or neglect. KRS 209.050; KRS 403.715(5).
- Making a report or investigation for child dependency, abuse or neglect. KRS 620.050(1); KRS 403.715(5).

E. Duties of Law Enforcement Agencies

1. Reporting Domestic Violence to CHFS (KRS 403.785(5))

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2. Entering Records into LINK (KRS 403.751(3))

Designated agencies are responsible for entering domestic violence records (EPOs, DVOs and foreign protective orders) into LINK (Law Information Network of Kentucky). These records are sent to the agencies by the circuit clerk's office; they are to be entered immediately upon receipt.

Forwarding JC-3 forms to the Cabinet (KRS 209A.120)

If a JC-3 form, or its equivalent replacement includes information on known suspected child abuse or neglect or the abuse or neglect of an elderly or disabled adult, the form shall be forwarded to the cabinet.

F. Duties of the Administrative Office of the Courts

The Administrative Office of the Courts shall prepare a publicly available information pamphlet containing information on the method of applying for, hearing, amending, and terminating an order requiring participation in a global position monitoring system. KRS 403.761(3).

G. Making Foreign (Out-of-State) Protective Orders Effective in Kentucky (KRS 403.751 – 7539)

Federal law (18 U.S.C. sec. 2265) requires all states to recognize foreign (out-of-state) protective orders, and Kentucky law implements this requirement. A foreign protective order can be enforced in Kentucky by either presenting it to a peace officer or filing it at a circuit clerk's office.

The Violence Against Women Act provides that a civil protection order issued by the court of one state or tribe shall be recognized by the court of another state or Indian Tribe, and shall be enforced as if it were the order of the court of the second state or tribe. To be recognized in another state, the issuing court must have had jurisdiction and the respondent must have received due process. If the issuing state fails to comply with due process requirements in issuance, the order is not recognized. Mutual protection orders are not entitled to full faith and credit unless a cross or counter petition, complaint or other written pleading has been filed and the order was issued upon a showing of mutual abuse.

All foreign protective orders shall have the rebuttable presumption of validity. KRS 403.7521. The validity shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared to be invalid, it shall be given full faith and credit by all peace officers and courts in the Commonwealth.

1. Peace Officer Treatment of a Foreign Protective Order (KRS 403.7521)

All peace officers shall treat a foreign protective order as a legal document valid in Kentucky, and shall make arrests for violation thereof in the same manner as for a violation of an order of protection issued in Kentucky.

The fact that a foreign protective order has not been entered into LINK shall not be grounds for a peace officer not to enforce the provisions of the order unless it is readily apparent to the peace officer to whom the order is presented that the order has either expired according to a date shown on the order, or that the order's provisions clearly do not prohibit the conduct being complained of. Officers acting in good faith shall be immune from criminal and civil liability.

If the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take action as required by Kentucky law.

2. Filing and Enforcement of a Foreign Protective Order (KRS 403.7527)

A copy of a foreign protective order may be filed in the office of the clerk of any court of competent jurisdiction of this state. A foreign protective order so filed shall have the same effect and shall be enforced in the same manner as an order of protection issued by a court of this state.

H. Effect of Domestic Violence on the Right to Carry a Concealed Weapon

The Department of Kentucky State Police may *not* issue or renew a license to carry concealed firearms or other deadly weapons if an applicant is prohibited from the purchase, receipt or possession of firearms, ammunition or both pursuant to 18 U.S.C.922(g), 18 U.S.C. 922(n) or applicable state law. Additionally, a license may *not* be issued or renewed if the applicant has been convicted of a violation of KRS 508.030 or 508.080 within three (3) years immediately preceding the date on which the application is submitted. However, the commissioner of the Department of Kentucky State Police *may* waive this requirement upon good cause shown and a determination that the applicant is not a danger and that a waiver would not violate federal law. See KRS 237.110.

CHAPTER 3: *Interpersonal Protective Orders*

A. Statutory Provisions

KRS 456.020 sets forth the law as related to interpersonal violence and abuse.

1. Legislative Intent of the Act

KRS 456.010 to KRS 456.180 shall be interpreted by the courts of the Commonwealth to effectuate the following express legislative purposes:

- Allow victims to obtain effective short-term protection against further wrongful conduct in order that their lives may be as secure and as uninterrupted as possible;
- To expand the ability of law enforcement officers to effectively respond to further wrongful conduct so as to prevent future incidents and to provide assistance to the victims;
- To provide peace officers with the authority to immediately apprehend and charge for violation of an order of protection any person whom the officer has probable cause to believe has violated an order of protection and to provide courts with the authority to conduct contempt of court proceedings for these violations;
- To provide for the collection of data concerning incidents of dating violence and abuse, sexual assault, strangulation, and stalking in order to develop a comprehensive analysis of the numbers and causes of such incidents; and
- Supplement and not repeal or supplant any duties, responsibilities, services, or penalties under KRS Chapters 209, 209A, and 620.

2. Definitions for the Act (KRS 456.010)

- *"Dating relationship"* means a relationship between individuals who have or have had a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context. Factors that may be considered (in addition to any other relevant factors) in determining whether the relationship is or was of a romantic or intimate nature include:
    - Declarations of romantic interest
    - The relationship was characterized by the expectation of affection
    - Attendance at social outings together as a couple
    - The frequency and type of interaction between the persons
    - Length and recency of the relationship
    - Indicia that would lead a reasonable person to understand that a dating relationship existed;
- *"Dating violence and abuse"* means physical injury, serious physical injury, stalking, sexual assault, strangulation, or the infliction of fear of imminent physical injury,

serious physical injury, sexual abuse, strangulation or assault occurring between persons who are or have been in a dating relationship;

- *"Foreign protective order"* means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 which was ***not*** issued on the basis of domestic violence and abuse;
- *"Global positioning monitoring system"* means a system that electronically determines a person's location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person's latitude and longitude data to a monitoring entity;
- *"Order of protection"* means any interpersonal order including those issued on a temporary basis and includes foreign protective order;
- *"Sexual assault"* refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or a criminal attempt, conspiracy, facilitation or solicitation to commit any degree of rape, sodomy, or sexual abuse, or incest under KRS 530.020;
- *"Stalking"* refers to conduct prohibited as stalking under KRS 508.130, or a criminal attempt, conspiracy, facilitation, or solicitation to commit the crime of stalking;
- *"Strangulation"* refers to conduct prohibited by KRS 508.170 and 508.175, or a criminal attempt, conspiracy, facilitation, or solicitation to commit the crime of strangulation;
- *"Substantial violation"* means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

B. Filing for an Interpersonal Protective Order

1. Who may petition for an interpersonal protective order?

KRS 456.030(1). A petition for an interpersonal protective order may be filed by:

- A victim of dating violence and abuse;
- A victim of stalking;
- A victim of sexual assault;
- An adult on behalf of a victim who is a minor who otherwise qualifies for relief under this subsection.

If the petitioner or respondent to an interpersonal protective order initiates an action under KRS Chapter 403, the party initiating the action shall make known to the court the existence and status of any interpersonal protective orders, which shall remain effective and enforceable until superseded by order of the court in which the KRS Chapter 403 case is filed. KRS 456.080.

Note: All petitions requested, completed, and signed by persons seeking protection under KRS Chapter 456 shall be accepted and filed with the court. KRS 456.030(5).

Note: A person's right to apply for relief under KRS Chapter 456 shall not be affected by that person leaving his or her residence to avoid dating violence and abuse, sexual assault, or stalking. KRS 456.070(8).

2. Where, when and how is a petition for an interpersonal protective order filed?

Where is the petition filed?

- The petition may be filed in the victim's county of residence or a county where the victim has fled to escape dating violence and abuse, stalking, or sexual assault. KRS 456.030(2).
- Jurisdiction over petitions filed under Chapter 456 shall be concurrent between the District Court and Circuit Court. KRS 456.030(6) (a).

When may a petition be filed?

- All Kentucky courts are required to provide twenty-four (24) hour access to interpersonal protective orders in each county with any protocol, whether statewide or local, being subject to Supreme Court review and approval of the initial protocol and any subsequent amendments. This protocol may allow for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection. KRS 456.030(6) (b).
- The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified in 456.030(6) (a). KRS 456.030(6) (c).

How is the petition filed?

- The petition shall be verified and contain:
    - The name, age, address, occupation, residence, and school or postsecondary institution of the petitioner
    - The name, age, address, occupation, residence, and school or postsecondary institution of the person or persons who have engaged in the alleged act or acts complained of in the petition

- The facts and circumstances which constitute the basis for the petition
- The names, ages, and addresses of the petitioner's minor children, if applicable. KRS 456.030(3).

- The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers and Commonwealth's or county attorneys. KRS 456.030(4).
- If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules. KRS 456.030(8).

Note: No costs, fees, or bond shall be assessed against or required of a petitioner for any filing, hearing, service, or order authorized by or required to implement KRS Chapter 456. KRS 456.070(2).

When does the protective order become effective and for how long will the order be in effect?

1. A temporary or ordinary interpersonal protective order shall *become effective and binding on the respondent when the respondent is given notice* of the existence and terms of the order by a peace officer or the court or upon personal service of the order, whichever is earlier. A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order's personal service upon the respondent. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation. KRS 456.070(1).
2. Prior to or at a hearing on the petition, if review of a petition for an interpersonal order indicates the presence of an immediate and present danger of dating violence and abuse, sexual assault, or stalking, the court shall, upon proper motion, issue ex parte a temporary interpersonal order

which shall be effective for up to fourteen (14) days from the day of issuance and may be reissued if the respondent is not present at the hearing and has not served. If the respondent is not served with the summons within 72 hours of the hearing the court shall direct the issuance of a new summons for a hearing not more than fourteen (14) days in the future. The court may continue to issue a new summons with a new hearing date every fourteen days for up to six (6) months if not served upon the perpetrator/respondent. At the end of six (6) months without service the order will be rescinded without prejudice. The petitioner may, before the expiration of the order, file a petition for a new order. A new six

(6) month process will begin at this time. KRS 456.040-050.

3. Following a hearing, ordered under KRS 456.040, if a court finds by a preponderance of the evidence that dating violence and abuse, sexual assault, or stalking has occurred and may again occur, the court may issue an interpersonal protective order which shall be effective for a period of time fixed by the court, not to exceed three (3) years, and may be reissued upon expiration for subsequent periods of up to three (3) years each. KRS 456.060(1) & (3).

What behavior may be prohibited / What relief may be ordered?

If, upon review of the petition as provided for in KRS 456.050, the court determines that the allegations contained therein indicate the presence of an immediate and present danger of dating violence and abuse, sexual assault, or stalking, the court shall issue, upon proper motion, ex parte, a temporary interpersonal protective order which authorizes the use of relief options set out in KRS 456.060. Following the hearing provided for under KRS 456. 040, the court, if it finds from a preponderance of the evidence that an act or acts of dating violence and abuse, sexual assault, or stalking, have occurred and may again occur, may:

1. Restrain the adverse party from:
    1. Committing further acts of dating violence and abuse, stalking, or sexual assault;
    2. Any unauthorized contact or communication with the petitioner or other person specified by the court;
    3. Approaching the petitioner or person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;
    4. Going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located; and
    5. Disposing of or damaging any of the property of the parties;
2. Directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of dating violence and abuse, stalking, or sexual assault, except that the court shall not order the petitioner to take any affirmative action; and
3. Directing that either or both of the parties receive counseling services available in the community in dating violence and abuse cases.

3. Consequences of Violating an Interpersonal Protection Order (KRS 456.180)

If a respondent violates the terms of an interpersonal protection order either one of two proceedings may be brought against him: a criminal charge ("violation of a protective order") or a proceeding for contempt of court.

It is a Class D felony if the third or subsequent violation involves the use or attempted use of physical force; or threat of physical harm.

Court proceedings for contempt of court for violation of an order of protection shall be held in the county where the order was issued or filed.

Court proceedings for a criminal violation of an order of protection shall follow the rules of venue applicable to criminal cases generally.

Note: Nothing in this section shall preclude the Commonwealth from prosecuting and convicting the respondent of criminal offenses other than violation of an order of protection.

A person is guilty of a violation of an order of protection when he or she intentionally violates the provisions of an interpersonal protective order after the person has been served or given notice of the order. Violation of an order of protection is a Class A misdemeanor.

C. Processing of Interpersonal Protective Orders

1. Interpersonal Protective Order Intake Centers

The Court of Justice, County and Commonwealth's Attorneys, law enforcement agencies, and victim services organizations may jointly operate an interpersonal protective order intake center to assist persons who apply for relief under KRS 456. KRS 456.070(7) (a).

2. Duties of the Judge

The judge reviews the petition and, if the petition does describe a situation of dating violence and abuse, stalking, or sexual assault, the judge proceeds as follows.

Reviewing the Petition (KRS 456.040 (1) (a))

Any judge to whom a petition is referred under KRS 456.030(6) shall have full authority to review and hear a petition and subsequently grant and enforce an interpersonal protective order. KRS 456.030(7).

Acting on the Petition

- Petitioner not in danger (KRS 456.040(1))

If the judge decides the petition does not show the petitioner to be in immediate danger, the judge fixes a date, time and place for a hearing, to be held within fourteen (14) days of the issuing of a summons for the respondent.

The judge issues a summons. The summons, a copy of the order fixing the date of the hearing, and a copy of the petition are served on the respondent personally. A summons may be reissued if service has not been made on the respondent by the fixed court date and time.

- Petitioner in danger (KRS 456.040(2))

If the judge decides the petition does show an immediate danger not only are a date, time and place for a hearing set, but the judge also issues ex parte a temporary interpersonal protective order that authorizes relief appropriate to the situation, expires upon the conclusion of the evidentiary hearing unless extended or withdrawn by subsequent order, and does not order or refer the parties to mediation unless requested by the petitioner and the court finds that the request is voluntary and that mediation is a realistic and viable alternative to or adjunct to the issuance of an order sought by the petitioner.

If an order is not issued under KRS 456.040(2), the court shall note on the petition, for the record, any action taken or denied and the reason for it. KRS 456.040(2) (b).

The Court of Justice shall provide a protocol for twenty-four (24) hour access to interpersonal protective orders in each county, and any protocol, whether statewide or local, is subject to Supreme Court review and approval of the initial protocol and any subsequent amendments. This protocol may allow for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection. KRS 456.030(6) (b).

The law provides the judge with seven alternatives to use in a temporary interpersonal order to deal with the emergency. Any one, or any combination of which, may be used. KRS 456.060(1).

1. Restraining the adverse party from committing further acts of dating violence and abuse, stalking, or sexual assault;

2. Restrain the adverse party from making any unauthorized contact or communication with the petitioner or other person specified by the court;

3. Restrain the adverse party from approaching the petitioner or other person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;

4. Restrain the adverse party from going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located;

5. Restrain the adverse party from disposing of or damaging any of the property of the parties;

6. Enter other orders the court believes will be of assistance in eliminating future actions of dating violence and abuse, stalking or sexual assault, except that the court shall not order the petitioner to take any affirmative action; or

7. Direct that either or both of the parties receive counseling services available in the community in dating violence and abuse cases.

A court ***shall not*** require mediation, conciliation, or counseling prior to or as a condition of issuing an interpersonal protective order**.**

KRS 456.070(3).

A temporary interpersonal order is valid for up to 14 days (the date of the expiration should appear on the order). It should set the date within the 14-day period for a full hearing in open court. If the respondent is not served with the summons within 72 hours of the hearing the court shall direct the issuance of a new summons for a hearing not more than fourteen (14) days in the future. The court may continue to issue a new summons with a new hearing date every fourteen (14) days for up to six

(6) months if not served upon the perpetrator/respondent. At the end of the six (6) months without service the order will be rescinded without prejudice. The petitioner may, before the expiration of the order, file a petition for a new order. A new six (6) month process will begin at this time. KRS 456.050(2).

Service of the summons and hearing order are served personally on the respondent. (KRS 456.040(1) (b)).

A court may issue mutual protective orders **only** if separate petitions have been filed by both parties and the orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order. KRS 456.070(4).

Note: In imposing a location restriction described in KRS 456.060(1)(a)(4), the court shall afford the petitioner and respondent, if present, an opportunity to testify on the issue of the locations and areas from which the respondent should or should not be excluded; only impose a location restriction where there is a specific, demonstrable danger to the petitioner or other person protected by the order; specifically describe in the order the locations or areas prohibited to the respondent; and consider structuring a restriction so as to allow the respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm, or attempt to harass or harm the petitioner.

KRS 456.060(2) (a-d).

Obtaining Information and Review of Documents (KRS 456.050(1))

Prior to a hearing on a petition for an interpersonal protective order, the court may obtain the respondent's Kentucky criminal and protective order history.

The court shall review the documents and consider respondent's criminal history, consider the record of any past orders of protection relating to respondent and the record of compliance or non-compliance, and utilize the information at any hearing to assess which sanctions may protect against danger to the petitioner or other person for whom protection is being sought, with the information so obtained being provided to the parties in accordance with the Rules of Civil Procedure.

The court shall provide a copy of the information to the petitioner and respondent or to their counsel.

If the respondent is a minor, the court may also inquire whether the parties attend school in the same school system to assist the court in imposing conditions in the order that have the least disruption in the administration of education to the parties while providing appropriate protection to the petitioner.

Referral to County Attorney (KRS 456.070(7) (b))

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

Conducting the Hearing (KRS 456.060)

At the hearing, the judge hears evidence from both the petitioner and the respondent. If a preponderance of the evidence shows that dating violence and abuse, sexual assault, or stalking has occurred and may again occur, the court may issue an interpersonal protective order.

The judge may also include other alternatives available in a temporary interpersonal protective order.

Interpersonal protective orders are in effect for up to three years and may be reissued. Either party may seek to amend the order.

Note: KRS 456.070(6) specifically provides that any testimony shall not be admissible in any criminal proceeding involving the same parties except for purposes of impeachment.

If No Order is Issued (KRS 456.070(10) (a))

The court in which the petition was heard may for good cause shown order the expungement of the records of the case if:

1. Six (6) months have elapsed since the case was dismissed; and
2. During the six (6) months preceding the expungement request, the respondent has not been bound by an order of protection issued for the protection of any person, including an order of protection as defined in KRS 456.010.

Note: Denial of Protective Order. If an order is not issued, the court shall note on the petition, for the record, any action taken or denied and the reason for it. KRS 456.040(2) (b).

Note: As used in KRS 456.070(10), “expungement” has the same meaning as in KRS 431.079.

Amendment of Interpersonal Protective Order to Require Participation in Global Positioning Monitoring System. (KRS 456.100)

- Gathering Records

A court must review an updated history of the respondent’s Kentucky criminal and protective order history before it can amend an order of protection to require respondent’s participation in a GPS monitoring system. KRS 456.100(1) (b).

- Amending the Order

    1. Upon proper filing of a motion, either party may seek to amend an interpersonal protective order. KRS 456.070(5).

    2. Upon a petitioner’s request and after an evidentiary hearing, a court may amend a protective order to require the respondent to participate in a GPS monitoring system if:

        - The respondent has committed a substantial violation of a previously entered domestic violence order;

        - The court has reviewed an updated history of the respondent’s

Kentucky criminal and protective order history; and

- The court makes a factual determination that the use of a GPS

monitoring system would increase the petitioner’s safety.

“Substantial violation” means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protections. KRS 456.010(8).

3. If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules. KRS 456.030(8).

- GPS Monitoring System Order (KRS 456.100(2))

An order requiring participation in a GPS monitoring system shall:

- require the respondent to pay the cost of participation up to the respondent’s ability to pay, with the system operator bearing any uncovered costs for indigent respondents;

- state with specificity the locations or areas where the respondent is prohibited from being located or persons with whom the respondent shall have no contact;
- include the date the order expires, which shall be no longer than the expiration date of the underlying interpersonal protection order, although participation may be extended if the underlying protection order is extended;
- require the entity that operates the monitoring system to immediately notify the petitioner, the local law enforcement agency named in the order, and the court if a respondent violates the order; and
- Include any other information as the court deems appropriate.
- Payment for Monitoring Program

The Supreme Court may establish by rule a sliding scale of payment responsibility for indigent defendants for use in establishing required payments under KRS 456.100(4).

A person, county, or other organization may voluntarily agree to pay all or a portion of a respondent's monitoring costs.

- Violations and Penalties

A respondent who fails to wear, removes, tampers with, or destroys a GPS monitoring system device in contravention of an order entered under this section shall be guilty of a Class D felony. KRS 456.100(6).

- Termination of the Monitoring Program

An order requiring participation shall include the date that the order expires, which shall be no longer than the underlying protective order, although participation may be extended if the underlying order is extended. KRS 456.100(2).

An order requiring participation may be shortened or vacated by the court whether upon the request of the petitioner or the request of the respondent after an evidentiary hearing if the respondent has not violated the order and three (3) months have elapsed since the entry of the order and no previous request has been made by the respondent in the previous six (6) months. KRS 456.100(5).

Written Protocols Required by Each Court (KRS 456.030(6) (a-c))

- All courts shall provide 24-hour access to interpersonal protective orders.
- The Court of Justice shall provide a protocol for twenty-four (24) hour accessibility to be reviewed and approved by the Kentucky Supreme Court.
- There shall be concurrent jurisdiction between District and Circuit Court and a petition may be filed by a petitioner in either court, except that a petition shall be

filed in a family court if one has been established in the county where the petition is filed.

- The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified in KRS 456.030(6) (a).

3. Duties of the Court Clerk

Deleting Petitioner's Address from Documents to be Served on the Respondent

Note: A court shall order the omission or deletion of the petitioner's address and the address of any minor children from any orders or documents to be made available to the public or to any person who engaged in the acts complained of in the petition. KRS 456.070(9).

Forward Documents to Law Enforcement (KRS 456.110(2))

The circuit clerk, in cooperation with the court, shall cause a copy of each summons or order issued pursuant to KRS chapter 456, or foreign protective order, fully completed and authenticated pursuant to KRS Chapter 456, to be forwarded, by the most expedient means reasonably available and within twenty-four (24) hours following its filing with the clerk, to the appropriate agency designated for entry of interpersonal protective order records into LINK and to the agency assigned service. Any order or court record superseding, modifying, or otherwise affecting the status of an earlier summons or order shall likewise be forwarded by the circuit clerk to the appropriate LINK entering agency and to the agency assigned service, if service is required. The clerk and the court shall comply with all provisions and guidelines of LINK for entry of the records. KRS 456.110(2).

Provide Forms for Petitioner (KRS 456.030(4))

The circuit court clerk (or another individual authorized by the court) shall provide the petitioner with the forms on which to file the petition.

4. Duties of the County Attorney

Providing and Verifying (KRS 456.030(4))

If authorized by the court to do this, the Commonwealth's or County Attorney, in emergencies, is to provide and verify petitions for interpersonal protection orders. Such petitions are then filed in court.

The Court of Justice, County and Commonwealth's Attorneys, law enforcement agencies, and victim services organizations may jointly operate an interpersonal protective order intake center to assist persons who apply for relief under KRS Chapter 456. KRS 456.070(7) (a).

In cases where criminal conduct is alleged, a court may suggest that a petitioner voluntarily contact the County Attorney. A court may not withhold or delay relief if the petitioner elects to not contact the county attorney. KRS 456.070(7) (b).

D. Duties of Law Enforcement Officers

1. Providing and Verifying (KRS 456.030(4))

If authorized by the court to do this, an officer, in emergencies, is to provide domestic violence and abuse petitions to victims and to verify (administer an oath on) the petitions. Such petitions are then filed by the officer with the court.

2. Preventing Further Abuse at the Scene (KRS 456.090(2))

When a law enforcement officer has reason to suspect that a person has been the victim of dating violence and abuse, sexual assault, or stalking, the officer shall use all reasonable means to aid the victim, including but not limited to:

- Remaining at the scene as long as the officer reasonably suspects there is danger to the physical safety of individuals there without the presence of a law enforcement officer;
- Assisting the victim to obtain medical treatment, including offering to transport, or arranging for the transportation of the victim to the nearest medical treatment facility capable of providing the necessary treatment; and
- Advising the victim immediately of the rights and services available including the provisions of this chapter.

3. Assisting in Compliance with Protective Order provisions (KRS 456.090)

- A court shall direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with.
- Orders of protection shall be enforced in any county of the Commonwealth.
- Officers acting in good faith in enforcing these orders are immune from criminal and civil liability.

4. Giving Notice of Order to Respondents (KRS 456.070(1))

A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order’s personal service upon the respondent. Once effective, a peace officer or the court may enforce the order’s terms and act immediately upon their violation.

5. Arresting Respondents who Violate Orders

The officer should not arrest unless the officer first knows:

- The restrictions imposed on the respondent by the order (the judge does not always check all blocks on standard form, and the officer may arrest only for violation of an indicated restriction);
- If the order is still in effect (the order is in effect only until the expiration date stated on the face of the order); and
- If the respondent has been served with, or given notice of, the order (the respondent is not bound by the order unless there has been service made or notice given).

Other charges, in addition to “Violation of a protective order,” may also be in order.

In the case of a foreign protective order, if the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law. KRS 403.7521(4).

6. Special Warrantless Arrest Power– Violation of a Domestic Violence, Protective Order, Interpersonal Protective Order or a Foreign Protective Order (KRS 431.015 and 403.7521)

A peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member, member of unmarried couple, or another person with whom the person was or is in a dating relationship. KRS 431.005(2).

- A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785 or an order of protection as defined in KRS 456.010. (KRS 431.015).
- All peace officers shall treat a foreign protective order as a legal document valid in Kentucky and shall make arrests for a violation thereof in the same manner as for a violation of an order of protection issued in Kentucky. (KRS 403.7521)

7. Good Faith Immunity from Liability

Officers who reasonably perform their duties under KRS Chapter 456 in good faith have immunity from civil and criminal liability. (KRS 456.090(4))

E. Duties of Law Enforcement Agencies

Each agency designated for entry of summonses and orders issued pursuant to this chapter, or foreign protective orders authenticated pursuant to this chapter, into the Law

Information Network of Kentucky shall, enter the records immediately upon receipt of copies forwarded to the agency under KRS 456.110(2). KRS 456.110(3).

F. Duties of the Administrative Office of the Courts

1. The Administrative Office of the Courts shall prepare a publicly available information pamphlet containing information on the method of applying for, hearing, amending, and terminating an order requiring participation in a global position monitoring system. KRS 456.100(3).

2. The AOC shall prescribe the forms on which petitions for interpersonal protective orders are filed. KRS 456.030(4).

3. After consultation with the Justice and Public Safety Cabinet, the AOC shall prescribe forms on which all forms, affidavits, and orders of protection issued or filed pursuant to KRS Chapter 456. KRS 456.110(1).

G. Making Foreign (Out-of-State) Protective Orders Effective in Kentucky (KRS 456.120 – 170)

1. Presumption of Validity (KRS 456.120(1))

All foreign protective orders shall have the rebuttable presumption of validity. The validity of a foreign protective order shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared to be invalid by a court of competent jurisdiction, it shall be given full faith and credit by all peace officers and courts in the Commonwealth.

2. Peace Officer Treatment of a Foreign Protective Order (KRS 456.120(2))

All peace officers shall treat a foreign protective order as a legal document valid in Kentucky and shall make arrests for violation thereof in the same manner as for a violation of an order of protection issued in Kentucky.

The fact that a foreign protective order has not been entered into the Law information Network of Kentucky shall not be grounds for a peace officer not to enforce the provisions of the order unless it is readily apparent to the peace officer to whom the order is presented that the order has either expired according to a date shown on the order, or that the order's provisions clearly do not prohibit the conduct being complained of. Officers acting in good faith shall be immune from criminal and civil liability. KRS 456.120(3).

If the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law. KRS 456.120 (4)

3. Legal Proceedings for Violation of a Foreign Protective Order (KRS 456.120(5))

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

4. Filing a Foreign Protective Order (KRS 456.140)

A copy of a foreign protective order may be filed in the officer of the clerk of any court of competent jurisdiction of this state. A foreign protective order so filed shall have the same effect and shall be enforced in the same manner as an interpersonal protective order issued by a court of this state.

At the time of filing, the person filing the order shall file with the clerk of the court an affidavit on a form prescribed by the Administrative Office of the Courts.

a. The affidavit shall set forth the name, city, county, and state or other jurisdiction of the issuing court.

b. The person shall certify in the affidavit the validity and status of the foreign protective order, and attest to the person's belief that the order has not been amended, rescinded, or superseded by any orders from a court of competent jurisdiction.

c. All foreign protective orders presented with a completed and signed affidavit shall be accepted and filed.

d. The affidavit signed by the applicant shall have space where the reviewing judge shall place information necessary to allow the order's entry into LINK in the same manner as a Kentucky order.

5. Duties of Court Clerk (KRS 456.140(3))

a. If the person seeking to file the order presents a copy of the foreign protective order which is current by the terms of the order and has been certified by the clerk, the court clerk shall present it to the District Judge or Circuit Judge, who shall read the order and enter on the affidavit the information necessary to allow the order's entry into LINK. The order shall not be subject to further verification and shall be accepted as authentic, current, and subject to full faith and credit.

    a. If the order presented is current, but not certified in the manner specified above, the circuit clerk shall present the order and the affidavit to the District or Circuit Judge, who shall read the order and enter on the affidavit the information necessary to allow the order's entry into LINK.

A. The order shall be subject to full faith and credit in the same manner as a Kentucky interpersonal protective order, but shall be subject to verification by the circuit clerk.

B. The order shall be valid for a period of fourteen (14) days and may be renewed once for a period of fourteen (14) days if the circuit clerk has not received a certified copy of the order from the issuing jurisdiction.

C. The clerk shall treat the foreign protective order in the same manner as an interpersonal protective order of this state, except that no service on the adverse party shall be required pursuant to 18 U.S.C. sec. 2265.

b. Upon the filing of an uncertified protective order, the circuit clerk shall, within two (2) business days, contact the issuing court to request a certified copy of the order. If the certified copy of the order is received by the circuit clerk within the initial fourteen (14) day period, the clerk shall cause the information that certification has been received to be entered into LINK and shall notify the applicant for the order of the fact of its certification. A facsimile copy of a certified foreign protective order shall be grounds for the issuance of an interpersonal protective order.

c. If the clerk has not received a certified copy of the foreign protective order within ten (10) days, the clerk shall notify the court and the applicant that the order has not been received.

    a. The notice to the applicant, on a form prepared by AOC, shall state that the foreign protective order will be extended another fourteen (14) days, but will be dismissed at the expiration of that time.

    b. If the clerk informs the judge in writing that the certified foreign protective order has been requested but has not yet been received, the judge shall extend the foreign protective order for a period of fourteen (14) days.

    c. If certification of the foreign protective order has not been received within twenty-eight (28) days, the foreign protective order shall expire and shall be not reissued.

    d. If the applicant meets the qualifications for the issuance of a Kentucky interpersonal protective order, the court may, upon proper application and showing of evidence, issue a Kentucky order in accordance with KRS Chapter 456.

d. When the court declares an order to be authenticated, pursuant to KRS 456.150(1), the clerk shall notify the person who filed the foreign protective order of the decision of the court and provide the person a certified copy of the affidavit declaring the authentication of the order. KRS 456.150(3).

Note: The right of a person filing a foreign protective order to bring an action to enforce the order instead of proceeding under KRS Chapter 456 remains unimpaired. KRS 456.140(4).

6. Duty of the Court (KRS 456.150)

1. Upon ex parte review of the foreign protective order and the affidavit filed pursuant to KRS 456.140, and after determining the order is entitled to full faith and credit in this Commonwealth pursuant to 18 U.S.C sec. 2265, the court shall declare the order to be authenticated and record the finding on the affidavit.

2. If the court declares the order to be authenticated, the court shall:

    - Direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with, if applicable; and

    - Order its enforcement in any county of the Commonwealth in the same manner as an interpersonal protective order of this state issued pursuant to KRS 456.060.

7. Clearing a Foreign Protective Order (KRS 456.160)

1. A foreign protective order which has been entered into LINK shall be immediately cleared as an active record from the computer system when:

    a. The order expires according to the terms contained therein;

    b. A Kentucky court notifies LINK that a foreign protective order has been dismissed, either by a court order or entry of notification by a circuit clerk; or

    c. A circuit clerk notifies LINK that a foreign protective order tendered to the clerk has not been authenticated in the time period specified in KRS 456.140.

2. For validation purposes, LINK shall provide the circuit clerk with a printout of foreign protective orders. The clerk shall validate each order annually by contacting the original issuing court of jurisdiction. If the clerk has not received information from the foreign jurisdiction within thirty-one (31) days, the clerk shall cause those orders to be cleared from LINK.

8. Obligations of Person Filing a Foreign Protective Order (KRS 456.170)

A person who has filed a foreign protective order in a court in Kentucky is under a continuing obligation to inform the court of any expiration, vacation, modification, or other change in the order which the person filing the order has received from the issuing foreign court. KRS 456.170 (1).

A person who has filed a foreign protective order in a court in Kentucky shall, within two (2) working days of the occurrence of any event specified above, notify the clerk of the court in which the foreign protective order was filed of the fact of the changed order and present the clerk with a copy of the order for authentication as provided in this chapter. The clerk shall immediately notify the LINK entering agency of the modification. KRS 456.170(2).

Note: No court in Kentucky and no peace officer in Kentucky shall be expected to enforce a provision of a foreign protective order which has been the subject of any action specified in KRS 456.160(1), unless proper notice has been given. KRS 456.170 (3). Meaning, no order has to be enforced unless it has been updated by LINK pursuant to sections (1) and (2).

Note: Intentional failure of a person who has filed a foreign protective order to make the notifications required by KRS 456.160 in the manner required shall constitute contempt of court and may be grounds for an appropriate civil action brought by any person damaged by the intentional act of omission by the person failing to act. KRS 456.170(4).

9. Assisting a Court of Another State in Determining Whether an Order is Entitled to Full Faith and Credit Pursuant to 18 U.S.C. Sec. 2265. (KRS 456.130)

1. All interpersonal protective orders shall include a statement certifying that the issuing court had jurisdiction over the parties and the matter, and that reasonable notice and opportunity to be heard was given to the person against whom the order is sought sufficient to protect that person's right to due process; and
2. All temporary interpersonal protective orders shall include a statement certifying that notice and opportunity to be heard was provided within the time required by state law, and in any event within a reasonable time after the order was issued, sufficient to protect the respondent's due process rights.

CHAPTER 4: *Preliminary/Pretrial Issues*

A. Laws of Arrest

1. General Arrest Powers

An officer has all the arrest authority given to him by KRS 431.005(1) with a warrant and without a warrant, for felonies, misdemeanors, and violations.

An officer can use an arrest as a means of stabilizing a domestic situation and should have in mind offenses most likely to be involved in such a situation: burglary, criminal trespass, assault, stalking, menacing, terroristic threatening, criminal mischief, etc.

Sometimes an arrest becomes possible because of:

- a domestic violence protective order (emergency protective order or order following a hearing) has been served on, or notice of the order has been given;

- criminal trespass (order requires respondent to vacate residence shared by the parties);
- theft or criminal mischief (order restrains respondent from disposing of or damaging any property of the parties); and/or
- custodial interference (order awards temporary child custody to other party), etc.

2. Special Warrantless Arrest Power – Misdemeanor (Fourth Degree) Assault in a Domestic Situation (KRS 431.005(2))

- Any peace officer may arrest a person without a warrant when the peace officer has probable cause to believe the person has intentionally or wantonly caused physical injury to a family member, member of an unmarried couple, or another person with whom the person was or is in a dating relationship.
- Under KRS 431.005(2), "dating relationship," "family member," and "member of an unmarried couple" have the same meanings as defined in KRS 403.720 and 456.010.
- Under KRS 431.005(2), the term "member of an unmarried couple"

has the same meaning as set out in KRS 403.720.

- Under KRS 431.005(2), a "peace officer" is an officer certified

pursuant to KRS 15.380. Only officers certified pursuant to KRS

15.380 have the authority to make the arrest authorized by KRS 431.005(2). KRS 431.005(4)

3. Special Warrantless Arrest Power – Violation of Pretrial Release Order (KRS 431.005(5))

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

4. Special Warrantless Arrest Power – Violation of a Stalking Restraining Order (KRS 431.005(7))

A law enforcement officer that has probable cause to believe that a person has violated a restraining order issued under KRS 508.155 shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

5. Special Warrantless Arrest Power – Violation of a Domestic Violence Protective Order, Interpersonal Protective Order or a Foreign Protective Order (KRS 431.015 and 403.7521)

- A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785 or an order of protection as defined in KRS 456.010.
- All peace officers shall treat a foreign protective order as a legal document valid in Kentucky, and shall make arrests for a violation thereof in the same manner as for a violation of an order of protection issued in Kentucky.

B. Prosecution Case Preparation

1. Establishment of Prosecution Policy

Each prosecutor office should develop a domestic violence policy. The preference of this Manual is a pro-prosecution model where prosecution is favored, preferably without requiring the participation of the victim. The purpose of the policy is to provide prosecutors and support personnel with clear definitions, direction and guidelines for providing and promoting a consistent, effective response to domestic violence crimes. The policy will serve as a guide and structure rather than establish a rigid formula.

2. Pre-charging Considerations

A domestic violence case should not be dismissed solely because the victim requests that charges be dismissed or fails to cooperate with the prosecutor.

The following *Domestic Violence Checklist* may be of assistance during the initial case assessment and charging decision for law enforcement and prosecutors, as well as later in the case progression.

Domestic Violence Checklist[43]

I. VICTIM

- Described the victim's location upon arrival.
- Administered first aid to the victim.
- Recorded any spontaneous statement made by the victim.
- Described the victim's physical condition.
- Documented the victim's injuries in detail, including photos.
- Made note of the victim's relationship to the suspect.

[43] Adapted from the San Diego, CA Police Department, Domestic Violence Unit.

- Recorded history of abuse.
- Noted any temporary restraining/court orders.
- Gave victim required written information on social agencies, legal steps, etc.
- Recorded any temporary address/telephone of victim.

II. SUSPECT

- Described the suspect's location upon arrival.
- Administered first aid to the suspect.
- Recorded any spontaneous statements made by the suspect.
- Described the suspect's emotional condition.
- Described the suspect's physical condition.
- Documented the suspect's injuries in detail.
- Documented evidence of substance/chemical abuse by suspect.
- Interviewed the suspect.

III. WITNESS

- Interviewed the reporting party.
- Identified all witnesses and interviewed separately. Listed names and ages of children present.
- Interviewed the children, and recorded statements in report. Recorded names and addresses of emergency personnel.
- Identified treating physician.
- Recorded the "911" # and incident #.

IV. EVIDENCE

- Photographed the crime scene.
- Took "full body" photograph of the suspect.
- Photographed the suspect's injuries.
- Impounded all weapons used.
- Impounded weapons for safekeeping.
- Attached related reports, photographs, and impound tags to investigator's copy.

* If not applicable mark "NA".

3. Potential State Charges

a. Assault and related offenses

- 508.010 Assault in the first degree
- 508.020 Assault in the second degree
- 508.030 Assault in the fourth degree

- 508.032 Assault of a family member or member of an unmarried couple (enhancement of penalty to Class D felony)
- 508.050 Menacing
- 508.060 Wanton endangerment in the first degree
- 508.070 Wanton Endangerment in the second degree
- 508.080 Terroristic Threatening (Third Degree)
- 508.100 Criminal abuse in the first degree
- 508.110 Criminal abuse in the second degree
- 508.120 Criminal abuse in the third degree
- 508.130 Stalking
- 508.155 Protection Order upon violation of KRS 508.130
- 508.155 Protection Order to be issued upon violation of 508.130
- 508.022 Protection Order to be issued upon conviction of KRS 508.010 or 508.020
- 508.170 Strangulation in the first degree
- 508.175 Strangulation in the second degree

b. Kidnapping and related offenses

- 509.020 Unlawful imprisonment in the first degree
- 509.030 Unlawful imprisonment in the second degree
- 509.040 Kidnapping
- 509.070 Custodial interference

c. Homicide

- 507.020 Murder
- 507.030 Manslaughter in the first degree
- 507.040 Manslaughter in the second degree
- 507.050 Reckless homicide

d. Sexual Offenses

- 510.040 Rape in the first degree
- 510.050 Rape in the second degree
- 510.060 Rape in the third degree*[44]
- 510.070 Sodomy in the first degree
- 510.080 Sodomy in the second degree
- 510.090 Sodomy in the third degree*
- 510.110 Sexual abuse in the first degree
- 510.120 Sexual abuse in the second degree

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[44] * Denotes a new statute or an amendment to an existing statute by the 2018 General Assembly.

e. Burglary and related offenses

- 511.020 Burglary in the first degree
- 511.030 Burglary in the second degree
- 511.040 Burglary in the third degree
- 511.060 Criminal trespass in the first degree
- 511.070 Criminal trespass in the second degree
- 511.080 Criminal trespass in the third degree
- 511.085 Domestic violence shelter trespass

f. Criminal damage to property

- 512.020 Criminal mischief in the first degree
- 512.030 Criminal mischief in the second degree
- 512.040 Criminal mischief in the third degree

g. Robbery

- 515.020 Robbery in the first degree
- 515.030 Robbery in the second degree

h. Disorderly conduct and related offenses

- 525.060 Disorderly conduct
- 525.070 Harassment
- 525.080 Harassing Communications

i. Violation of a protective order

- 403.763 Criminal penalty for violation of a protective order
- 403.7539 Criminal penalty for violation of a foreign protective order
- 403.761(11)(b) Criminal penalty for failing to wear, removing or tampering with or destroying a GPS device.
- 456.180 Violation of an Order of Protection (includes interpersonal protective order and foreign protective orders)

j. Other potential charges

- 529.100 Human Trafficking
- 529.110 Promoting Human Trafficking
- 531.090 Voyeurism
- 531.100 Video Voyeurism
- 531.120 Distribution of Sexually Explicit Images Without Consent
- 520.095 Fleeing or evading police in the first degree
- 508.152 Unlawful use of a tracking device

- 209.030 Duty to report suspected adult abuse; neglect or exploitation; 209.990 Penalties
- 209A.030 Penalty for violating provisions of KRS Chapter 209A—Spousal Abuse or Neglect
- 620.030 Duty to report dependency, neglect or abuse of a child; 620.990 Penalty
- 431.064(10) Penalty for violation of a condition of release
- 530.060 Endangering the welfare of a minor
- 524.055 Retaliating against a participant in the legal process
- 524.040 Intimidating a Participant in the Legal Process
- 532.025(2)(a)(8) Aggravating circumstance in death penalty case

Note: KRS 421.350 which permits videotaped or closed-circuit testimony by victims and witnesses who are 12 years of age and younger, in limited circumstances, may be used in prosecutions for endangering the welfare of a minor and other crimes.[45]

4. Potential Federal Charges

1. 18 U.S.C. sec. 2261 Interstate Domestic Violence
2. 18 U.S.C. sec. 2262 Interstate Violation of Protection Order
3. 18 U.S.C. sec. 2261A(1) Interstate Stalking
4. 18 U.S.C. sec. 2261A(2) Cyber Stalking
5. 18 U.S.C. sec. 922(g) Prohibition Against Disposal of Firearms to, or Receipt of Firearms by, Persons Who Have Committed Domestic Abuse or Who Have Been Convicted of a Misdemeanor Domestic Violence Crime

Best Practices for Prosecutors: Protection Orders

Kentucky law provides three avenues for protection orders in cases involving domestic violence, dating violence, sexual assault, stalking, and other interpersonal crimes: civil Domestic Violence Orders under KRS Chapter 403, civil Interpersonal Protective Orders under KRS Chapter 456, and protective orders entered upon conviction of qualifying criminal offenses pursuant to KRS 508.022, KRS 508.155, and KRS 510.037. While all three play an important role in victim safety, protective orders upon conviction are part of the criminal case. These statutes are intended to make protective orders more accessible to victims, eliminate the need for separate civil proceedings, authorize long-term protection of up to ten years with streamlined renewal procedures, and enhance victim safety through the prompt entry of enforceable court orders. Prosecutors should ensure that victims are advised of this remedy and that qualifying protective orders are consistently requested and entered whenever appropriate.

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[45] KRS 421.350 applies to offenses under "KRS 510.040 to 510.155, 529.030 to 529.050, 529.070, 529.100, 529.110, 530.020, 530.060, 530.064(1)(a), 531.310, 531.320, 531.370, or any specified in KRS 439.3401 and all dependency proceedings pursuant to KRS Chapter 620, when the act is alleged to have been committed against a child twelve (12) years of age and younger, and applies to the statements or testimony of that child or another child who is twelve (12) years of age and younger who witnesses one of the offenses included in this subsection."

Recommended Prosecutor Protocol

- Determine whether the victim currently has an EPO, DVO, TIPO, or IPO.
- Advise the victim of all available protection order options, including civil remedies and protective orders available upon conviction.
- Explain the differences between civil and criminal protection orders, including duration, available relief, enforcement, and renewal procedures.
- After discussing the available options, determine whether the victim wishes to request a protective order.
- When appropriate, address entry of a protective order during plea negotiations and include the protection order as part of the guilty plea recommendation.
- Prepare the appropriate AOC protective order before the plea, verdict, or sentencing hearing.
- Tender the completed protective order to the court at the plea, verdict, or sentencing hearing, advising the court that the guilty plea or conviction operates as an application for the protection order and that the judgment of conviction constitutes sufficient cause for entry of the order without the necessity of additional proof, as authorized by the applicable statute.
- Ensure the order:
    - contains all required statutory provisions;
    - protects confidential victim information whenever possible;
    - is consistent with any existing protection orders;
    - specifies the duration of the order; and
    - is promptly entered into LINK.
- Advise the victim regarding enforcement, renewal, and any available procedures for modification or termination of the order.

5. Role of the Victim Advocate

Effective prosecutors are increasingly turning to victim advocates in order to assist and support victims as they navigate the criminal justice system.

Two of the most common kinds of advocacy programs are internal (“system-based”) programs and external (to the prosecutor) community advocacy programs (“community-based”). Each may serve a different purpose and may have different strengths and limitations. Scarce resources for advocacy mean it is necessary to take a broad view and close look at ways to divide resources and victim advocacy functions between prosecution-based victim advocacy programs and external community-based domestic violence programs.

Types of Programs

a. Internal to the Legal System

Roles include:

- Assisting prosecutors in handling and proving cases.
- Assisting law enforcement in interacting with crime victims, especially in gathering evidence that a crime was committed.
- Compliance with Kentucky's Constitutional Victim Rights and crime victim bill of rights.

Location or Site of Program:

- Prosecutors' offices (to improve system response to victims and assist in case development).
- Law enforcement agencies (to improve ability of law enforcement to stop crime).
- Courthouse (to assist with Civil Protection Order applications).

b. External to the Legal System

Roles include:

- Working with individual victims-survivors to provide information, resources, assistance in meeting their needs; and
- Working to advocate on behalf of the interests of victim-survivors in general with systems such as legal, welfare, and housing.

Location or Site of Program:

- Shelters (provide many varieties of advocacy and other services).
- Community advocacy programs (often attempt to assist victims with any need).
- Intervention projects (monitoring, tracking, and coordinating of cases).

The Primary Issues in prosecution-based versus community-based advocacy:

a. Confidentiality

- Confidentiality of the advocate and victim-survivor relationship is a central feature for many reasons: safety concerns, need for time to plan escape before the abuser knows the intention to do so, etc.
- Kentucky Rule of Evidence 506(a)(1)(G) includes victim advocates in the counselor-client privilege, except those advocates who work in prosecutors' offices. This means that if a prosecutor needs testimony from an advocate in a non-prosecutor based program, that advocate will need to get a release from the victim/witness.
- Defense counsel have attempted on many occasions to subpoena advocates and records. The prosecutor can and should file motions to quash such attempts to protect local advocacy programs as a resource for victims.
- Prosecutor and Law Enforcement Based Advocates should communicate to the victim clearly upon initiation of services that their communication is not

confidential and they are required to disclose information to the prosecutor who may disclose certain information to the defense.

Note: In some jurisdictions prosecutors have successfully prevented disclosure of a victim's privileged mental health records where the victim and/or the psychotherapist have asserted the KRE 507 privilege. In these cases, the trial courts have relied on the decision of the United States Supreme Court in *Jaffee v. Redmond*, 116 S.Ct. 1923, 518 U.S. 1 (1996) which was decided subsequent to *Eldred v. Commonwealth*, 906 S.W.2d 694 (Ky. 1994) where the court held that mental health records were discoverable by the defense. See also, *Commonwealth v. Barroso* 122 S.W.3d 554 (Ky. 2003), which abrogated *Eldred v. Commonwealth* to the extent that the Court ruled that in camera review of a witness's psychotherapy records is authorized only upon receipt of evidence sufficient to establish a reasonable belief that the records contain exculpatory evidence; see also *Peak v. Commonwealth*, 197 S.W.3d 536 (Ky. 2006).

b. Comprehensiveness of services provided

6. Marsy's Law

- The internal, prosecutor-based advocate shall perform those duties necessary to insure compliance with the crime victim's bill of rights contained in KRS 421.500 to 421.530. KRS 69.350, KRS 15.757.
- In all court proceedings, a victim advocate, upon request of the victim, shall be allowed to accompany the victim during the proceeding to provide moral and emotional support. KRS 421.760. When read in conjunction with KRS 610.060, this also provides the right to accompany victims to juvenile proceedings.
- Because victims of domestic violence often present with comprehensive needs, prosecution-based advocates should collaborate with community-based advocates who are in the best position to directly support victims' immediate safety, housing, medical, child custody and other family court needs.

In the 2020 General Election, Kentuckians voted to add an amendment to the Constitution of Kentucky called Marsy's Law. This decision made Senate Bill 15 and Senate Bill 80 law. Senate Bill 15's amendments are reflected in Section 26A of the Constitution of Kentucky and Senate Bill 80 works in conjunction with KRS 421.500 - 421.575.

Section 26A of the Constitution of Kentucky ensures crime victims' rights are "respected and protected by law in a manner no less vigorous than the protections afforded to the accused." Marsy's Law does not give crime victims the same rights as the accused. However, the rights given to crime victims have equal protection under the law.

Under Marsy's Law, crime victims have the constitutional right to:

- Timely notice of all proceedings.

- Be heard in any proceeding involving release, plea, sentencing, or consideration of pardon, commutation, granting of reprieve, or other matter involving the right of a victim.
- Be present at all proceedings, other than Grand Jury proceedings.
- Proceedings free from unreasonable delay.
- Consult with the attorney for the Commonwealth or designee.
- Reasonable protection from the accused.
- Timely notice of release or escape of the accused.
- Have their safety and their family's safety considered in setting bail, the defendant's release and conditions of release.
- Full restitution to be paid by the convicted defendant.
- Fairness and consideration of the victims' safety, dignity, and privacy.
- Be informed of these rights and standing to assert these rights.

Prosecutors Must Promote Victim Participation by:

- Making reasonable efforts to ensure victims and witnesses who are required to attend criminal justice proceedings are notified of any scheduling changes;
- Returning the victims' property which was held for evidentiary purposes (unless there is a compelling reason to retain);
- If requested by the victim or witness, assist in explaining absences from work due to participation in the prosecution.

Prosecutors Must Notify Victims Regarding:

- Their right, upon conviction, to submit a written victim impact statement;
- The defendant's release on bond or any special conditions of release.
- The defendant's charges;
- Any changes in custody of the defendant;
- The trial date, the trial verdict, the sentencing date, and any Parole Board hearing date;
- The right of the defendant to appeal the conviction and any scheduled hearings for shock probation or bail pending appeal and the results of those hearings.

Prosecutors Must Inform Victims regarding:

- The assistance of a victim advocate;
- Protective, emergency, social and medical services;
- Community-based treatment programs;
- Where applicable, restitution and crime victim compensation;
- Registration/notification when a person has been released from prison, jail, juvenile detention facility, psychiatric facility, or under limited circumstances, a forensic psychiatric facility;

- Protection from intimidation, harassment or retaliation;
- The Victim, Witness, and Family Protection Program.

Prosecutors Must Consult with Victims regarding:

- Case dismissal;
- Release of the defendant, pending judicial proceedings;
- Conditions of the defendant's release;
- Negotiated plea;
- Defendant's entry into a Pre-trial Diversion Program.

Kentucky united against violence.

ZEROV.org | PHONE 502-209-5382
111 Darby Shire Circle | Frankfort, KY 40601
Domestic Violence Hotline **800-799-SAFE (7233)**

Kentucky's Domestic Violence Shelter Programs

The Ion Center
Northern Kentucky
859-491-3335
(text enabled)

The Ion Center
Buffalo Trace
606-564-6708
(text enabled)

DOVES of Gateway
Morehead
800-221-4361

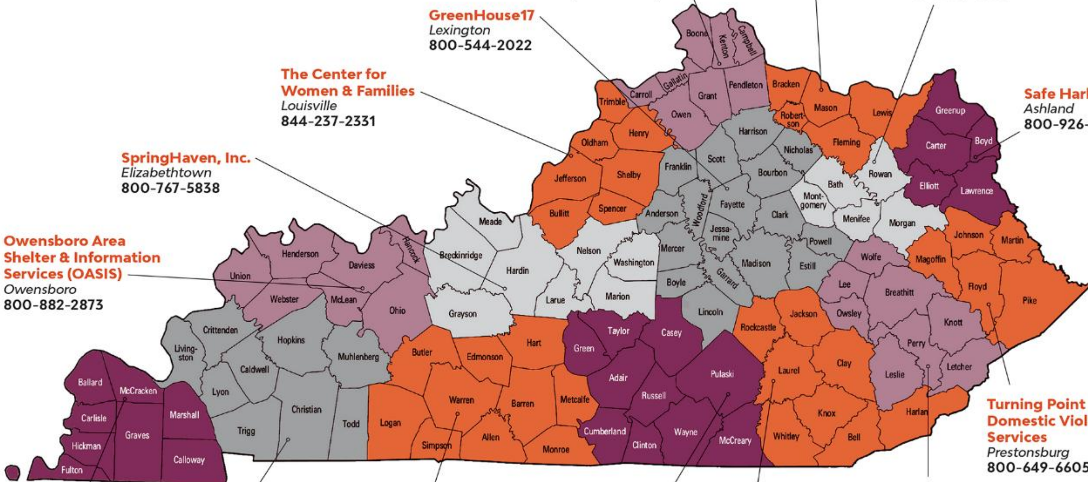
GreenHouse17
Lexington
800-544-2022

The Center for Women & Families
Louisville
844-237-2331

Safe Harbor
Ashland
800-926-2150

SpringHaven, Inc.
Elizabethtown
800-767-5838

Owensboro Area Shelter & Information Services (OASIS)
Owensboro
800-882-2873



Turning Point Domestic Violence Services
Prestonsburg
800-649-6605

LKLP Safehouse
Hazard
800-928-3131

Merryman House
Paducah
800-585-2686

Sanctuary, Inc.
Hopkinsville
800-766-0000

Barren River Area Safe Space, Inc. (BRASS)
Bowling Green
800-928-1183

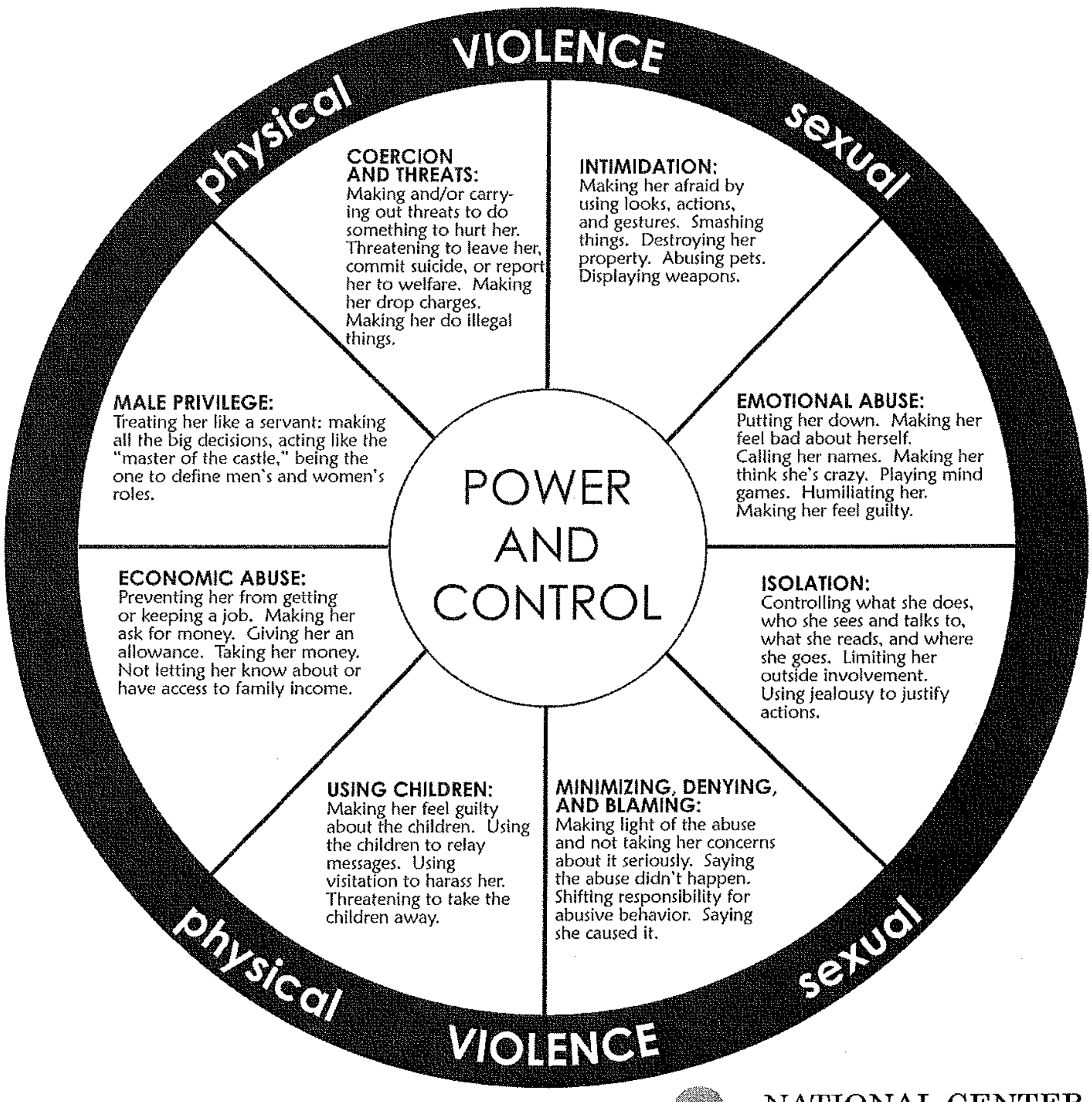
Bethany House Abuse Shelter, Inc.
Somerset
800-755-2017

Cumberland Valley Domestic Violence Services
London
800-755-5348

POWER AND CONTROL WHEEL

Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviors by the batterer, when reinforced by one or more acts of physical violence, make up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instill threat of future violent attacks and allow the abuser to take control of the woman's life and circumstances.

The Power & Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by a batterer to establish and maintain control over his partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.



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Produced and distributed by:

NATIONAL CENTER
on Domestic and Sexual Violence
training · consulting · advocacy
4612 Shoal Creek Blvd. · Austin, Texas 78756
512.407.9020 (phone and fax) · www.ncdsv.org

Resource List

1. **Aequitas: The Prosecutor's Resource on Violence Against Women.** Aequitasresource.org. AEquitas' mission is to improve the quality of justice in sexual violence, intimate partner violence, stalking and human trafficking cases by developing, evaluating, and refining prosecution practices that increase victim safety and offender accountability. AEquitas' staff is comprised of former prosecutors, with decades of experience, who conduct legal research; provide 24/7 case consultation; serve as mentors and trainers; and publish resources. The individualized assistance AEquitas provides is data driven and incorporates customized strategies that are easy to implement, resulting in prosecutors' ability to sustain effective practices and promote systemic change.

2. **National District Attorney's Association (NDAA).** Ndaa.org. The NDAA exists to serve prosecutors, members of the prosecution team and other allied professionals as they strive to deliver justice to all survivors of domestic violence/dating violence, sexual violence, and stalking and to hold criminals accountable. Services provided include the following:
    a. Hosting national training events.
    b. Designing and providing hands-on trial advocacy training geared towards developing and fine-tuning litigation skills for prosecutors who handle sex crimes and domestic violence / dating violence and stalking cases.
    c. Providing training at state and local conferences on subjects that are relevant to the jurisdictions, expertly delivered by experienced and tested trial and appellate prosecutors as well as scientific and medical experts.
    d. Designing and conducting multi-day state and local trainings, in consultation with our hosts, to address the needs expressed by the jurisdiction and audience type.
    e. Providing resources on topics relevant to the prosecution of sexual assault, domestic violence, and domestic violence in late life, dating violence, stalking and cyber stalking.
    f. Providing case consultation for prosecutors, advocates and law enforcement, including consultations on jury selection (and the writing of jury selection questions), theme development, trial visuals, cross-examination of defense witnesses, assisting with expert witness identification and location and witness preparation.

3. **American Bar Association Commission and Domestic and Sexual Violence.** http://www.americanbar.org/groups/domestic_violence.html. The mission of the Commission is to increase access to justice for victims of domestic violence, sexual assault and stalking by mobilizing the legal profession. For two decades, the Commission has focused on policy initiatives and training for lawyers who represent victims of domestic and sexual violence.
4. **ZeroV.** www.zerov.org. ZeroV is a coalition of Kentucky's fifteen regional domestic violence programs (shelters) providing services to victims of domestic violence and their children. In addition to advocating on behalf of victims of domestic violence, ZeroV assists the fifteen domestic violence programs by providing resources, training, and technical assistance. ZeroV's mission is to mobilize and support member programs and allies to end intimate partner violence.
5. **Mary Byron Center.** The Mary Byron Endowed Chair will not only lead IPV law and policy education, but also engage in unprecedented transdisciplinary collaboration. The center will work across multiple areas of the university – including social work, medicine, education, and business – to strengthen prevention efforts and expand support for survivors. It also builds on existing resources at the law school, including a clinic that serves survivors in Jefferson County.
6. **National Domestic Violence Hotline.** Thehotline.org. Operating around the clock, seven days a week, confidential and few od cost. It provides lifesaving tools and immediate support to enable victms to find safety and live a life that is free of abuse. Hotline number 1-800-799-SAFE.
7. **Kentucky Association of Sexual Assault Programs.** Kasap.org. The Kentucky Association of Sexual Assault Programs (KASAP) is the coalition of Kentucky's 13 Regional Rape Crisis Centers. Since it was established in 1990, KASAP has served as a central point of contact on sexual violence issues in Kentucky. KASAP provides technical assistance to member programs and other professionals, advocates for improvements in public policy, fosters coalition building among members and those with common concerns, and promotes prevention and public awareness regarding sexual violence and related issues.
8. **OutrageUs.** outrageus.org. OutrageUs was established as a non-profit organization in 2009 by a small group of concerned citizens to bridge the divide between the experiences of partner violence victims and how others view, understand, and respond to those experiences. Through unique collaborations with institutions, communities, and survivors, OutrageUs has and is continuing to develop multimedia resources, services, tools and research informed strategies to help communities build on their strengths and effectively address partner violence. A variety of media, including original personal narrative pieces and short documentary films, have been created to attract and engage a wide and diverse audience.
9. **Children's Law Center, Inc.** (CLC) childrenslawky.org. CLC is a non-profit law center that provides free legal services to children and youth, including representation in

protective orders.

10. **The Training Institute on Strangulation Prevention.** strangulationtraininginstitute.com. The Institute was developed in response to the increasing demand for Intimate Partner Violence Strangulation Crimes training and technical assistance (consulting, planning and support services) from communities across the world. It provides training, technical assistance, web-based education programs, a directory of national trainers and experts, and a clearinghouse of all research related to domestic violence and sexual assault strangulation crimes. The goals of the Institute are to: enhance the knowledge and understanding of professionals working with victims of domestic violence and sexual assault who are strangled.

RESPONSIBILITIES OF PROSECUTORS

CRIME VICTIMS' BILL OF RIGHTS CHECKLIST

Case Name:	Victim Name:	Case #:

INFORMATION

The attorney for the Commonwealth shall make a reasonable effort to insure that the **victim** *receives available information on:*

DATE PROVIDED

_______ ☐ Protective services
_______ ☐ Emergency services
_______ ☐ Social services
_______ ☐ Medical services
_______ ☐ Crime victim compensation (where applicable)
_______ ☐ Restitution (where applicable)
_______ ☐ Obtaining assistance from a victim advocate
_______ ☐ Community-based treatment programs
_______ ☐ Submitting a written victim impact statement

_______ ☐ How to register with VINE to be notified when a person has been released from a prison, jail, juvenile detention facility, (or psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized)
_______ ☐ How to receive information on being protected from intimidation, harassment, and retaliation
_______ ☐ The Victim-Witness Protection Program

NOTIFICATION

If **victims** *so desire and if they provide a current address and telephone number, the attorney for the Commonwealth* **shall** *provide prompt notification,* **if possible**, *of judicial proceedings relating to the case, including but not limited to the following:*

DATE PROVIDED

_______ ☐ Defendant's release on bond and any special conditions of release
_______ ☐ Charges filed against the defendant
_______ ☐ The defendant's pleading to the charges
_______ ☐ Trial date
_______ ☐ Changes in custody of the defendant
_______ ☐ Changes in trial dates
_______ ☐ Trial verdict
_______ ☐ Right to submit a victim impact statement to the court at the time of sentencing
_______ ☐ Sentencing date
_______ ☐ Dates of Parole Board hearings held for the defendant
_______ ☐ Scheduled hearing for shock probation _______ ☐ resulting order
_______ ☐ Scheduled hearing for bail pending appeal _______ ☐ resulting order

The attorney for the Commonwealth shall make a reasonable effort to insure that

_______ ☐ Victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduling changes that affect their appearances

AGENCY NAME

Domestic Violence Lethality Screen for First Responders

Officer: ____________ Date: ____________ Case #: ____________

Victim: ____________ Offender: ____________

☐ Check here if victim did not answer any of the questions.

A "Yes" response to any of Questions # 1 – 3 automatically triggers the protocol referral.				
1.	Has he/she ever used a weapon against you or threatened you with a weapon?	☐ Yes	☐ No	☐ Not Ans.
2.	Has he/she threatened to kill you or your children?	☐ Yes	☐ No	☐ Not Ans.
3.	Do you think he/she might try to kill you?	☐ Yes	☐ No	☐ Not Ans.

Negative responses to Questions # 1 – 3, but positive responses to at least four (4) of Questions # 4 -11 trigger the protocol referral.				
4.	Does he/she have a gun or can he/she get one easily?	☐ Yes	☐ No	☐ Not Ans.
5.	Has he/she ever tried to choke you?	☐ Yes	☐ No	☐ Not Ans.
6.	Is he/she violently or constantly jealous or does he/she control most of your daily activities?	☐ Yes	☐ No	☐ Not Ans.
7.	Have you left him/her or separated after living together or being married?	☐ Yes	☐ No	☐ Not Ans.
8.	Is he/she unemployed?	☐ Yes	☐ No	☐ Not Ans.
9.	Has he/she ever tried to kill himself/herself?	☐ Yes	☐ No	☐ Not Ans.
10.	Do you have a child that he/she knows is not his/hers?	☐ Yes	☐ No	☐ Not Ans.
11.	Does he/she follow or spy on you or leave threatening messages?	☐ Yes	☐ No	☐ Not Ans.

An officer may trigger the protocol referral, if not already triggered above, as a result of the victim's response to the below question, or whenever the officer believes the victim is in a potentially lethal situation.

Is there anything else that worries you about your safety? (If "yes", what worries you?)

____

____

____

____

____

____

Check one: ☐ Victim screened in according to the protocol *** Officer required to make call*

☐ Victim screened in based on the belief of officer *** Officer required to make call*

☐ Victim did not screen in

If victim screened in: After advising him/her of a high danger assessment, did victim speak with the hotline counselor? ☐ Yes ☐ No

Note: *The questions above and the criteria for determining the level of risk a person faces is based on the best available research on factors associated with lethal violence by a current or former intimate partner. However, each situation may present unique factors that influence risk for lethal violence that are not captured by this screen. Although most victims who screen "positive" or "high danger" would not be expected to be killed, these victims face much higher risk than that of other victims of intimate partner violence.*

Office of the Attorney General
Office of Victims Advocacy – 800-372-2551 or 502-696-5312
Adapted from and used with permission of Louisville Metro Police Department

AGENCY NAME

Domestic Violence Strangulation Worksheet

Submit this form with your Incident JC-3 Report

Date: ______________________ Report #: ______________________

Victim's Name: ______________________ Suspect's Name: ______________________

Officer's Name: ______________________ Code #: ______________________

Ask EVERY victim that reports being choked/strangled the following questions:

1.	Did the victim lose bladder control (urinate or defecate on self)?	☐ Yes	☐ No
2.	Does the victim describe or say "I couldn't breathe"?	☐ Yes	☐ No
3.	Does the victim describe "everything was going dark"?	☐ Yes	☐ No
4.	Did the victim lose consciousness/pass out?	☐ Yes	☐ No
5.	Did the suspect place his/her hands around your neck? ☐ Right ☐ Left ☐ Both	☐ Yes	☐ No
6.	Did the suspect apply pressure to your neck by some other method? Forearm: ☐ Right ☐ Left ☐ Both Knee: ☐ Right ☐ Left ☐ Both Foot: ☐ Right ☐ Left ☐ Both Other: Ligature ☐ Belt ☐ Cord ☐ Rope ☐ Other	☐ Yes	☐ No
7.	How long did the strangulation occur? seconds minutes ☐ Unknown		
8.	Was the victim smothered? If yes, with what?	☐ Yes	☐ No
9.	Were there multiple strangulation attempts? If yes, how many attempts?	☐ Yes	☐ No
10.	Was the victim shaken during strangulation?	☐ Yes	☐ No
11.	Was the victim's head pounded against the wall, floor ground or other object? If yes, on what?	☐ Yes	☐ No

Ask the following questions about the suspect:

1.	Was the suspect consuming alcohol/drugs before or during this incident?		☐ Yes	☐ No
2.	Is the suspect on probation or parole? Officer name/phone #:		☐ Yes	☐ No
3.	What is the suspect's dominant hand?	☐ Left	☐ Right	☐ Both
4.	What did the suspect say while strangling the victim?			
5.	What was the suspect's demeanor during strangulation (appearance, behavior, etc.)?			
6.	Are there any prior incidents of strangulation? If yes, how many?		☐ Yes	☐ No

Look for, and ask about, the following symptoms of injury in strangulation, mark all that apply:

Breathing:	☐ Difficulty breathing	☐ Hyperventilating	☐ Unable to breathe	☐ Other:	
Voice:	☐ Raspy	☐ Hoarse	☐ Coughing	☐ Difficulty speaking	☐ Unable to speak
Throat/Neck:	☐ Trouble swallowing	☐ Painful swallowing	☐ Neck pain	☐ Nauseous	☐ Vomiting
Behavior:	☐ Amnesia/Unable to remember	☐ Agitated	☐ Stressed	☐ Hallucinating	☐ Combativeness
Other:	☐ Dizzy	☐ Headache	☐ Fainting	☐ Urination	☐ Defecation

Look for visible signs of injury on the face, eyes, eyelids, nose, ears, mouth, under chin, chest, shoulders, neck and head. Look for redness, abrasions, scratches, bruises, swelling, bumps, impressions and pulled hair. Document in the narrative!

Office of the Attorney General
Office of Victims Advocacy – 800-372-2551 or 502-696-5312
Adapted from and used with permission of Louisville Metro Police Department

AOC-275.3
Rev. 6-23
Doc. Code: ODV; IPO
Page 1 of 3 www.kycourts.gov KRS Chapter 403; KRS Chapter 456; FCRPP Part IV

ORDER OF PROTECTION

❑ DOMESTIC VIOLENCE ORDER
❑ AMENDED DOMESTIC VIOLENCE ORDER
❑ INTERPERSONAL PROTECTIVE ORDER
❑ AMENDED INTERPERSONAL PROTECTIVE ORDER

Case No. ____________

Court ____________

County ____________ State ____

Division ____________

PETITIONER/PLAINTIFF

____
First Middle Last

❑ Petitioner filing on his/her own behalf; and/or

❑ Petitioner filing on behalf of minor identified herein.

Persons Protected by this Order:

❑ Petitioner: ____________ DOB: ________

❑ Minor on whose behalf Petition was filed:

Name: ____________ DOB: ________

❑ Other protected person(s) or protected minor(s):

Name: ____________ DOB: ________

Name: ____________ DOB: ________

Name: ____________ DOB: ________

Name: ____________ DOB: ________

V.

RESPONDENT/DEFENDANT

____
First Middle Last

Relationship to Petitioner: ❑ spouse ❑ former spouse ❑ unmarried, child in common ❑ unmarried, currently or formerly living together ❑ parent ❑ child ❑ stepparent ❑ grandparent ❑ grandchild ❑ adult sibling ❑ person who lives in the same household as a child(ren) if the child(ren) is the alleged victim ❑ currently or previously in a dating relationship

❑ none of the above relationships apply, but Respondent is alleged to have committed ❑ stalking or ❑ sexual assault

Respondent Address: ____________

____

RESPONDENT/DEFENDANT IDENTIFIERS

SEX	RACE	DOB	HT	WT

EYES	HAIR	Social Security #

DRIVERS LICENSE #	STATE	EXP. DATE

Distinguishing Features: ____________

____

____

____

CAUTION: ☐ Weapon involved ☐ Armed and Dangerous ☐ Divorce/Custody/Visitation case pending

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and Respondent has been provided with reasonable notice and opportunity to be heard.

❑ Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:

❑ That Respondent be restrained from committing further acts of abuse or threats of abuse, stalking, or sexual assault.

❑ That Respondent be restrained from any unauthorized contact with Petitioner/Plaintiff or other protected person(s) named in this Order.

❑ Additional terms of this order are as set forth below.

The terms of this order shall be effective until ____________, ____________.

WARNING TO RESPONDENT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)).

Only the Court can change this Order of Protection.