



# Custody and Visitation in Civil Protection Orders:

Guiding Principles and Suggested Practices for Courts and Communities

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NATIONAL COUNCIL OF  
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# Introduction

Despite the fact that the majority of state civil protection order statutes confer legal authority upon judicial officers to include custody, visitation, and other child-related relief in civil protection orders (CPOs), judges often do not exercise that authority. These guiding principles and suggested practices are intended to assist communities' efforts to address this disparity. They are the product of a collaborative effort involving the National Council of Juvenile and Family Court Judges (NCJFCJ), the Battered Women's Justice Project (BWJP), the Center for Court Innovation (CCI), and a group of national experts, including judges, attorneys, and advocates.

This guide is intended as a resource for professionals from any discipline who seek to enhance the ability of their civil protection order system to address victims' safety and other needs related to their children. The overall focus of the guiding principles and suggested practices described below is on custody and visitation relief provided in CPOs, although some of the guidance necessarily touches upon custody and visitation in long-term family law cases outside of the CPO context, as well as the relationship between CPOs and orders issued in such long-term cases. Professionals seeking guidance on long-term custody decision-making in a variety of contexts should consult the resources developed by NCJFCJ, BWJP, and other organizations (references are provided on p. 20 of this document).

In the last section of this guide, we provide ideas for how to put the principles and practices into action in your community. In addition, to facilitate assessment of current practices and processes and the identification of new strategies, we have developed a Checklist for Judicial Action that summarizes the material in this guide in an easy-to-use format.

If you have any questions or would like to receive technical assistance or training on application of the principles and practices, please contact NCJFCJ at (800) 527-3223.

A few words about the terminology used in this document. Many jurisdictions have replaced the terms "custody" and "visitation" with other terms, including "parental rights and responsibilities," "parenting time," and "legal decision-making authority." Within the context of CPOs, however, "custody" and "visitation" remain in common usage, and this document uses these terms for simplicity's sake. In addition, CPO statutes authorize judicial officers to include other forms of child-related relief in addition to custody and visitation, including child support, provisions to prevent child abduction, and prohibitions against interfering with the victim's relationship with the child. The guiding principles and suggested practices

described in this document do not specifically address these additional forms of child-related relief, though some of the guidance is equally applicable or easily adapted to such relief.

These guiding principles and suggested practices refer in various places to **temporary** and **long-term** custody and visitation relief provided by court orders. As used in this document, **temporary** refers to relief that typically lasts for a short duration—a matter of months, or one to two years. The CPO system is the source of temporary relief in the vast majority of cases. However, in many jurisdictions, such orders may be issued on an interim basis in paternity, dissolution/divorce, or other related cases.<sup>1</sup> Although the guiding principles and suggested practices focus on CPO cases, communities in which temporary relief is also (or is exclusively) available outside of CPOs can readily adapt these practices to those processes.

**Long-term** orders refer to orders that are meant to last until the children reach the age of majority/emancipation, such as those issued by courts after a paternity or dissolution/divorce proceeding. In contrast to CPO and other temporary proceedings, in this category of cases judges typically will have more resources at their disposal to study the individual family and more time to consider the merits of custody and visitation relief. Another important distinction is that in cases in which judges issue long-term orders, the legal standard governing the judge's decision is the best interests of the child. On the other hand, in most CPO cases, the legal standard under which the judge must operate is one of safety: the judge must issue relief that will bring about the cessation of abuse.

*The board of directors of the National Council of Juvenile and Family Court Judges voted to adopt the principles and practices in this guide at their July 2017 meeting.*

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<sup>1</sup> Statutes in a small number of jurisdictions prohibit the inclusion of child-related relief in CPOs; in those jurisdictions, temporary relief is available exclusively through interim orders entered in paternity, dissolution/divorce, or similar long-term cases.



## Purposes of addressing custody and visitation in CPOs and in long-term orders

Providing custody and visitation relief in court orders serves the following purposes:

### **Temporary relief in CPOs:**

Temporary **custody** relief in CPOs, including both physical placement and/or decision-making, serves the following purposes and should be carefully crafted to best fulfill each applicable purpose:

- Provides for child safety and wellbeing; absent assurance that their children will be safe, victims may not seek relief from the court;
- Protects children from the short and long-term effects of exposure to domestic violence;
- Protects victims and children from the increased risks associated with victims separating from abusers;
- Provides a respite for children from the abusive environment, permitting recovery from trauma;
- Protects victims from abusers who use children to maintain contact with and exert power and control over them;



- Sets boundaries for safe contact between children and the abuser, if appropriate;
- Provides an opportunity for early intervention, especially to assist children;
- Confirms the victim’s parental authority and provides support for her parental role;
- Provides safety for the larger community (neighbors, classmates, workplaces, etc.); and
- Provides immediate consequences for abusers.

Addressing **visitation** in CPOs serves the following purposes, and visitation provisions should be carefully crafted to best fulfill each applicable purpose:

- Clarifies whether the abusive parent will have any contact with the children and, if so, sets clear parameters for safe contact;
- Provides clear boundaries regarding communication, if any, between the parents;
- Imposes protective measures, including supervised visitation and/or exchange, to protect victims and children where appropriate; and
- Provides safety for children and victims while being responsive to victims’ requests that abusive parents have access to children.

Addressing **child support and other forms of economic relief** in a CPO that includes a custody and/or visitation provision serves the following purposes, and support/economic relief provisions should be carefully crafted to best fulfill each applicable purpose:

- Contributes to economic security for victims and children, which increases safety by, among other things, making it more likely that the victim will be able to successfully separate from the abuser;
- Enables victims to provide necessities for children such as health care, child care, housing and transportation; and
- Helps prevent debt resulting from direct costs of the abuse.<sup>2</sup>

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<sup>2</sup> Guidance regarding how to address victims’ and children’s economic and related needs is beyond the scope of this document, which focuses on custody and visitation relief. Resources on economic relief in CPOs are provided in the Resources section on p. 20.

## **Long-term relief:**

In addition to the purposes described above, timely access to **long-term relief** in court orders that appropriately account for the effects of the abuse on parenting and on the children also serves the following purposes:

- Provides for the long-term safety and well-being of children by determining the parenting arrangement that serves the best interests of the children;
- Prevents or minimizes the negative effects of the abuse on the victim parent's ability to parent and on the children directly; and
- Eliminates a potentially lengthy period during which abusive parents can use the court system and threats of legal action to manipulate and further abuse victim-parents and children.

In some situations, custody and visitation relief in a CPO establishes a longer-term parenting arrangement, for a variety of possible reasons: the parties cannot afford to pursue a subsequent proceeding to establish long-term custody, the arrangement in the CPO suits the parties' needs, or the parties are unaware of their legal options. This result may not be ideal, because in most cases no court will have had an opportunity to make a decision based upon a full assessment of the children's best interests. Courts are not in a position to compel the parties to initiate a proceeding to determine long-term custody and visitation, but they do have a responsibility to facilitate litigants' ability to seek relief to which they are entitled. To that end, courts should:

- Strive to eliminate financial, procedural, and other impediments for litigants who do desire a long-term order issued after a proceeding that fully addresses the children's best interests;
- Provide custody and visitation relief in CPOs where appropriate, even though long-term custody and visitation relief is available in another forum; and
- Offer the opportunity for parties to seek long-term relief if they desire to do so, but not require them to file for such relief or convert the request for temporary relief into a long-term custody/visitation proceeding.

# Guiding principles for addressing custody and visitation in CPOs

The purposes for providing custody, visitation, and related relief in CPOs described above lead us to the following fundamental principles, upon which the suggested practices described in this document are based.

## **Guiding Principle 1:** **Temporary custody in CPOs**

**Courts should provide victims of domestic violence with immediate access to temporary relief regarding their children, including custody (physical placement and/or decision-making).**

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## **Discussion**

Statutes in states across the country differ in how they address the legal standards<sup>3</sup> for ordering temporary custody in civil protection orders (CPOs):

- Most are silent as to the specific standard for temporary custody;
- Some require that safety and/or risk of harm considerations guide the decision;
- Some direct judges to apply the best interests of the child standard commonly used in long-term custody decisions (others simply refer to the child’s best interests without directing the court to apply this standard); and
- Some provide that granting custody to the abused parent is presumed to be in the child’s best interests.

Given the potential for violence and the need for safety inherent in most civil protection order cases, custody should be available based upon a legal standard that focuses on the safety needs of the abused parent and children rather than a standard that requires an analysis of the best interests of the child commonly employed in long-term custody decisions. Where the governing CPO statute does require application of best interest factors, safety of the child should be part of the analysis under the relevant factor(s).

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<sup>3</sup> As used herein, the term “legal standard” refers to the standard that courts apply when making decisions regarding custody or visitation relief in a court order. In the context of civil protection orders, the applicable legal standards differ from state to state, as described herein.

**Guiding  
Principle 2:**  
Visitation in CPOs

**Courts should address visitation in CPOs when requested, using safety for the victim and children to guide the decision.**

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## **Discussion**

Courts should use a two-step, safety-focused process when considering visitation in a CPO: first, the court should identify the risks and dangers of visitation (to both children and the victim-parent), and second, it should address those risks and dangers in its order, which may allow unrestricted access, deny visitation altogether, or include specific terms and provisions for visitation that account for any identified safety concerns. This analysis is most effective when the judge accounts for the nature and context of the abuse and its effects on victims, on both parents' parenting, and on the children.

**Guiding  
Principle 3:**  
Long-term  
custody and  
visitation orders

**Courts should provide victims of domestic violence with timely access to long-term relief regarding their children, in orders that appropriately account for the effects of the abuse on parenting and on the children.**

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## **Discussion**

Where statutes require application of the best interests standard governing long-term custody decisions, judges should ensure that their analysis accounts for the nature and context of the abuse and its effects on victims, on both parents' parenting, and on the children (both those who are directly abused and those who are exposed to domestic violence against a parent). For information about an analytic framework and comprehensive guides to enhance judges' ability to do so effectively, please contact BWJP by phone at (800) 903-0111, ext. 1 or by email at [technicalassistance@bwjp.org](mailto:technicalassistance@bwjp.org).



### **Note regarding application of Guiding Principles 1 to 3:**

Judges applying the foregoing Guiding Principles in their decision-making regarding custody and/or visitation should consider the two factors set forth in the *Model Code on Domestic and Family Violence* developed by the National Council of Juvenile and Family Court Judges in 1994:

- (a)** The court shall consider as primary the safety and well-being of the child and of the parent who is the victim of domestic or family violence.
- (b)** The court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person.

In addition, judges should take into account the fact that children who are exposed to domestic violence, for example through witnessing the violence or its aftermath, may suffer short- and long-term physiological and emotional effects that may be as severe as those which result from direct physical abuse.

For additional helpful guidance regarding judicial decision-making in this context, judges should consult the following resources:

- *A Judicial Guide to Child Safety in Custody Cases*, National Council of Juvenile and Family Court Judges (2008) (available at [http://www.ncjfcj.org/sites/default/files/judicial%20guide\\_0\\_0.pdf](http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf))
- *Model Code on Domestic and Family Violence*, National Council of Juvenile and Family Court Judges (1994) (available at [http://www.ncjfcj.org/sites/default/files/modocode\\_fin\\_printable.pdf](http://www.ncjfcj.org/sites/default/files/modocode_fin_printable.pdf))
- Battered Women's Justice Project's National Child Custody Project, <http://www.bwjp.org/our-work/projects/national-child-custody-project.html>

**Guiding  
Principle 4:  
Economic and  
other relief  
in CPOs**

**Courts should provide victims of domestic violence with additional relief in CPOs to support the victim-parent’s ability to care for and protect the children, including financial support and relief related to housing, property/assets, health insurance, and other related matters.**

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## **Discussion**

Civil protection orders that include provisions granting temporary custody to the victim may not effectively protect the victim and children unless their economic and related needs are addressed; economic security is tantamount to safety for many victims. CPOs provide courts with an opportunity to help victims meet their economic needs after they separate from abusers, and judges can use both explicit and implicit statutory authority (e.g., “catch-all” provisions) to craft specific, enforceable economic-relief provisions to put victims on the road toward achieving economic security. For specific guidance on this topic, consult the resources listed on p. 20 of this document.





## Suggested Practices

Consistent with the foregoing guiding principles and purposes for providing both temporary and long-term relief related to children, courts and communities should adopt the following suggested practices to the extent possible, in a form that is consistent with governing laws and court and community needs.

### Visitation in civil protection orders

- Courts issuing CPOs should consider requests to include visitation provisions if made by either party (using the legal standards described above).
- Courts should issue CPOs with visitation provisions that are consistent with other orders; if not consistent, orders should indicate the superseding order.
- Visitation terms should be as specific as possible regarding the conditions under which exchange, supervision, and contact/communication should occur, including who must provide supervision.
- Courts should include in their orders specific findings that establish why visitation has been denied or, where it has been granted, why the provisions and terms addressing custody and visitation are necessary to protect the safety of all parties and to bring about a cessation of the violence or abuse.
- Judges should identify and become familiar with the resources available in their communities for supervised visitation and safe exchange. Use of public facilities generally is not a preferred practice, but may be the only viable solution or may best meet victims' needs in particular cases. Judicial

leadership should be exercised to promote the establishment or expansion of supervised visitation centers in the community.<sup>4</sup>

- Courts should explain to litigants the processes for enforcement and modification of visitation provisions, and ensure that the justice system is truly accessible to all litigants.

## Multiple access points

- Victims should be able to obtain temporary custody as part of CPOs or, alternatively, in the form of temporary orders issued as part of long-term custody cases.
- When necessary in an emergency, victims of domestic violence should have immediate access to temporary custody relief, even in cases in which there is a pending proceeding or existing court order addressing custody. Such relief should be made available as part of a civil protection order and/or a temporary order issued by the court hearing the pending matter or that issued the existing order.
- Those jurisdictions whose governing laws do not explicitly authorize such relief in CPOs should consider amending their laws to do so.
- In the absence of explicit authority, courts should use their implicit authority (e.g., “catch-all” provisions such as “other relief deemed necessary to provide for the safety and welfare of the plaintiff or any children”) to include temporary custody provisions in orders.
- Court processes for obtaining temporary relief (CPOs and/or temporary orders in long-term custody cases) should be truly accessible to all community members, including under-served populations.
- Court processes for obtaining long-term relief also should be truly accessible to all community members, including under-served populations.
- Communities should consider developing specialized domestic violence courts or dockets.

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<sup>4</sup> The Safe Havens Supervised Visitation and Safe Exchange Program, a demonstration initiative funded by the Office on Violence Against Women, U.S. Department of Justice, recently published a 10-year retrospective report on lessons learned during the project. The report provides myriad resources for communities who seek to establish or enhance supervised visitation and safe exchange programs to serve families affected by domestic violence and offer guidance regarding the leadership role that judicial officers and others can play in a collaborative approach to the issues. The report may be obtained online at <http://www.ncjfcj.org/Safe-Havens-Retrospective>.

## Relationship between different courts issuing relief

- Courts issuing CPOs and courts issuing long-term custody/visitation orders should develop appropriate mechanisms to communicate with each other about cases involving the same parties and to share relevant information to, among other things, avoid issuance of contradictory orders.
- Information regarding the available access points for obtaining temporary custody should be provided to litigants, as well as information regarding the relationship of the different courts, the processes involved, and the orders issued (including their duration).
- Laws in several (but not all) states specify the relationship between custody and/or visitation provisions within a CPO and such provisions entered in a long-term case applying the best interest standard. These laws address such questions as whether a court may enter a custody provision as part of a CPO if there is a current long-term custody order or a pending long-term case, which order would be the superseding order, and whether CPO and long-term cases are to be consolidated.
- Courts should adhere to these statutory directives and develop standing rules or protocols to ensure consistency for all litigants. In addition, information regarding the laws and their application should be provided to all stakeholders, including clear and understandable explanations for litigants.

## Support for litigants

- Courts should provide litigants with information about relevant community-based resources (e.g., housing, employment, mental health).
- Courts should host on-site self-help centers, navigators, and/or help desks, as well as, to the extent possible, community-based resources for litigants.
- Communities, with support and leadership from the courts, should maximize the availability of legal representation and/or advice for litigants with CPO cases involving custody and visitation relief.



## Petitioner autonomy

- Communities should maximize opportunities for petitioners to make informed decisions regarding whether and how to seek relief from the court, including by:
  - Making advocacy and legal services readily available;
  - Offering accessible safety-planning services on-site when petitioners complete the CPO paperwork;
  - Providing information in the form of written, audiovisual, and internet-based materials; and
  - Implementing litigant-friendly processes that facilitate withdrawal and modification of CPOs where desired.
- To ensure that if relief is not requested it reflects an informed decision, petitioners should be informed about all of the potential relief available in a civil protection order.
- Communities should engage in conversations on how best to balance petitioner autonomy and voice in the process with an appropriate response to health and safety concerns about children.

## Decision-making by judicial officers and others

- Decisions regarding custody and/or visitation in CPOs should effectively address domestic violence by accounting for the nature and context of the abuse and its implications for children and parents.
- Judicial officers should make findings establishing the rationale for all custody and/or visitation decisions.
- The relief granted should be tailored to the unique, particularized safety and economic needs of the parties and children in each case.
- Judicial officers should strive to always use plain language, be fair, consistent, and respectful, and fully comply with legal requirements.
- In light of the emergency and/or summary nature of CPO cases and requests for temporary custody relief, courts should avoid deferring decisions to non-judicial professionals, such as *guardians ad litem* and custody evaluators. Where such professionals are utilized, judicial officers should (1) issue an order clarifying the scope of work, including the facts and/or issues to be

investigated and reported on; and (2) ensure that the judicial officer retains ultimate responsibility for decision-making.

## Jurisdictional issues

- Where appropriate, courts should exercise temporary emergency jurisdiction to include custody and/or visitation provisions in CPOs. Temporary emergency jurisdiction should be exercised even if the court finds that the court is not in the child's home state and does not otherwise have child custody jurisdiction under the governing statute (generally, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)).<sup>4</sup>
- Courts should facilitate inter-jurisdictional enforcement of custody and visitation provisions in CPOs by indicating compliance with the UCCJEA in the order.
- Courts, prosecutors, and law enforcement agencies should enforce custody and visitation provisions issued by courts in other jurisdictions as required by the Violence Against Women Act's Full Faith and Credit provisions and the UCCJEA's enforcement provisions.
- State courts, prosecutors, and law enforcement agencies should comply with the requirement under VAWA's Full Faith and Credit provisions that they honor and enforce custody and visitation provisions in CPOs issued by tribal courts as if they had been issued in the enforcing state.
- When judicial communication is required under the UCCJEA, or is otherwise appropriate, judges should originate or respond to requests to communicate and comply with the statutory standards for judicial communication.
- To the extent possible, courts should facilitate inter-jurisdictional litigation by victims, as contemplated by the UCCJEA, where safety considerations indicate that victims may be jeopardized by having to travel to participate in the litigation.

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<sup>4</sup> The UCCJEA has been enacted by all of the states, the District of Columbia, Guam, and the U.S. Virgin Islands, except for Massachusetts, in which the governing law is the predecessor Uniform Child Custody Jurisdiction Act (UCCJA).

## Military families

- In cases involving active-duty military personnel, judges should comply with all requirements of the Servicemembers Civil Relief Act. If a stay must be entered in the case to protect the rights of a respondent on active military duty, consider steps to protect the victim and children during the stay, including extension of an *ex parte* order that provides temporary custody and protective provisions, where authorized.

## Compliance review and enforcement

- Judicial officers should proactively schedule review hearings as needed, to determine whether the arrangements for custody and visitation relief in the order are working as intended, rather than wait for the parties to file a complaint of a violation.
- When resources permit, courts should employ case docket coordinators to help facilitate oversight and accountability of civil protection order cases and of cases with orders addressing child custody, visitation, and child support.

## Judicial accountability

- Regardless of whether judicial officers grant requested custody and/or visitation relief in CPOs, they should make findings and include a rationale supporting the decision.
- Courts addressing custody relief should be courts of record for all proceedings.

## Training and support for judicial officers

- All judicial officers issuing CPOs, as well as court staff, should receive mandatory, experiential training that includes the following:
  - How to identify the nature and context of abuse in a family, its implications for the children and parenting, and how to account for those implications in CPOs;
  - Child development;
  - Trauma and how it affects children and parents (including their participation in litigation);
  - Courtroom management;
  - Legal framework for decision-making and other legal issues;

- Court and community leadership, and how to engage ethically with stakeholders and the community to improve the system;
  - Overcoming implicit bias and how to view each case as a blank slate;
  - Vicarious trauma and self-care; and
  - Problem-solving approaches for courts.
- Trainings should include opportunities for multi-disciplinary programs.
  - Courts should establish peer mentoring programs pairing newer judicial officers with experienced colleagues for support and guidance.
  - States should consider statewide neutral programs for peer review, training coordination, and other support for judicial officers hearing CPO cases.

## Evaluation

- Courts should evaluate, on an ongoing basis, the extent to which the CPO system effectively addresses requests for child-related relief by accounting for the nature, context, and implications of abuse for children and parenting by both parents.
- Courts and communities should evaluate, on an ongoing basis, whether CPO processes and decision-making are consistent with these guiding principles, as well as the effectiveness of the principles and processes.
- Stakeholders should work collaboratively to address any identified deficiencies and make improvements.

## Resources

- Communities should devote the financial and other resources necessary to ensure that courts issuing CPOs have appropriate levels of staff and other resources, as well as ongoing training.

# Putting the Principles and Practices Into Action

The guiding principles and suggested practices are intended to provide communities with guidance as they assess and improve their CPO system's ability to address the needs of domestic violence victims and their children. Of course, because legal standards, policies, and practices differ significantly in communities around the country, as do demographic, geographic, and other crucial characteristics, a one-size-fits-all approach is impossible: each community must endeavor to adapt and implement the principles and practices in a way that is tailored to their unique needs and characteristics. This document provides a starting point, but does not presume to dictate the process or outcome of each community's assessment and reform activities.

We do want to share some suggestions for how to maximize the success and impact of this process. Specifically, our longstanding work with courts and communities across the country to improve their civil legal system's response to domestic violence has taught us that effective reform involves the following elements, among others:

**Strong leadership:** The impetus for reform efforts may originate from any of a number of stakeholder groups including the bench, the civil bar, victim advocacy, or other community-based service providers. Likewise, the leadership role may be assumed by professionals from any one or more of these groups. Regardless of who spearheads the effort, strong leadership—especially the ability to build, inspire, and sustain effective collaborations amongst stakeholders—is crucial to success.

Because so many of the suggested practices focus on court processes and other activities under the court's exclusive control, judicial leadership in reform efforts is especially important. But shared leadership by judicial officers and partners from other disciplines has proven in many communities to be an ideal strategy for creating effective and enduring change.

**Robust collaboration:** Equally critical is a multi-disciplinary, multi-agency collaborative approach to the work of assessing and improving current processes and practices. As is evident from even a cursory review of the suggested practices, no single professional or agency acting alone is capable of implementing truly effective reforms of the CPO system. At the outset of the effort, a significant effort should be made to identify and recruit all stakeholders who need to be at the



table, asking: who encounters the challenges on regular basis, who has the power to identify and implement genuine change, who has the necessary expertise, and who brings the perspectives of others outside the system (e.g., victims and perpetrators) to the discussion? Mutual respect and the ability to perceive challenges and the potential effects of proposed changes from other stakeholders' perspectives also are essential ingredients for robust collaboration.

**Genuine self-assessment:** Collaborative efforts to improve the CPO system should commence with a focused effort to identify both what is working in the current system and any gaps and areas for improvement that exist. We recommend that communities engage in a multi-disciplinary, multi-agency “mapping” process that describes and analyzes the current processes from the perspective of the litigants who enter the system from a number of entry points or “doors.” Such exercises help collaborative partners to better understand how their colleagues from other disciplines and agencies perceive the system, as well as to discover what a litigant encounters, including potentially hidden or non-obvious impediments to seeking relief and services. Areas of strength and shortcomings in the system can be revealed in a concrete way, and the process of addressing them can be commenced based upon mutual understanding of the problem and a litigant-centered perspective.

The guiding principles and suggested practices may be used as an assessment tool by collaborative teams to identify areas for improvement. Stakeholders can assess whether an existing or proposed process or practice is consistent with the relevant principle described in this document (and whether the purposes served by the CPO system, as described above, are being achieved). They also can ask whether the relevant suggested practice could be adapted to address an identified gap or challenge. In addition, communities can engage in a broader best-practices assessment of their CPO systems using the Best Practice Assessment Guide developed by the National Center on Protection Orders and Full Faith and Credit (available at <http://www.bwjp.org/assets/documents/engaging-in-a-best-practice-assessment-of-the-civilp.pdf>).

**Elevation of victims' voices:** A set of suggested practices described above addresses the idea of “petitioner autonomy”; that is, elevating victims' voices and desires in the CPO process and ensuring that victims make fully informed decisions regarding whether and how to seek custody and visitation relief through the CPO process. Efforts to enhance victim autonomy in the system are a bedrock requirement for reform that truly addresses the needs of victims and their children. Collaborative partners should include victim advocates and others who can bring their perspectives to any discussion of possible strategies for

change, and each such strategy should be assessed for whether it curtails victim autonomy unnecessarily (and whether a less damaging alternative is available).

**Protection of respondents' rights:** Improvements in the CPO system cannot come at the expense of respondents' due process and other rights. Therefore, a necessary component of efforts to implement the principles and practices described above is to ask whether any changes have implications for respondents' rights and, if so, whether they are adequately protected or whether safeguards or alterations in the approach are needed. A commonsense, but too often overlooked, mechanism to ensure protection of respondents' rights—and to enhance the efficacy of many changes, including reforms to improve compliance with orders—is to promote and sustain engaged participation in the collaboration by the defense bar and attorneys who represent perpetrators in CPO cases. We have found that these participants often bring a unique perspective to the work and propose creative and effective solutions to problems related to perpetrators' involvement in the system. It is also important to note that in some cases respondents may in fact be victims, while petitioners may be the actual perpetrators of abuse (which adds to the necessity to ensure due process).

**The National Council of Juvenile and Family Court Judges is available to provide technical assistance and/or training on the activities described above to any community that wishes to improve its CPO system by implementing the guiding principles and suggested practices. Please contact NCJFCJ at (800) 527-3223.**

# Additional Resources

## **CPO issuance and enforcement**

*Civil Protection Orders: A Guide for Improving Practice* (National Council of Juvenile and Family Court Judges, 2010) <[https://www.ncjfcj.org/sites/default/files/cpo\\_guide.pdf](https://www.ncjfcj.org/sites/default/files/cpo_guide.pdf)>

*A Passport to Safety: Full Faith and Credit Bench card* (National Council of Juvenile and Family Court Judges, 2011) <<http://www.ncjfcj.org/sites/default/files/a-passport-to-safety.pdf>>

*Engaging in a Best Practice Assessment of the Civil Protection Order System* (National Center on Protection Orders and Full Faith and Credit, 2012) <<http://www.bwjp.org/assets/documents/engaging-in-a-best-practice-assessment-of-the-civilp.pdf>>

## **Custody and visitation decision-making in long-term cases**

*Guiding Principles for Effectively Addressing Child Custody and Parenting Time in Cases Involving Domestic Violence* (Family Court Enhancement Project 2016) <[https://ta2ta.org/media/com\\_library/resources/235-ncjfcj-fcep-guiding-principles-final.pdf](https://ta2ta.org/media/com_library/resources/235-ncjfcj-fcep-guiding-principles-final.pdf)>

*A Judicial Guide to Child Safety in Custody Cases* (NCJFCJ, 2008) <[http://www.ncjfcj.org/sites/default/files/judicial%20guide\\_0\\_0.pdf](http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf)>

Practice guides, worksheets, and other resources on child custody decision-making (Battered Women's Justice Project) <<http://www.bwjp.org/our-work/projects/national-child-custody-project.html>>

*Model Code on Domestic and Family Violence* (NCJFCJ, 1994) <[http://www.ncjfcj.org/sites/default/files/modocode\\_fin\\_printable.pdf](http://www.ncjfcj.org/sites/default/files/modocode_fin_printable.pdf)>

## **Economic and related relief in CPOs**

*Economic Security for Survivors: Protection Orders* (Wider Opportunities for Women 2012) <<http://www.wowonline.org/wp-content/uploads/2013/05/Economic-Security-for-Survivors-Protection-Orders-Policy-Brief-2012.pdf>>

*The Civil Protection Order as a Tool for Economic Justice* (Erika A. Sussman, Center for Survivor Agency and Justice 2013) <[http://also-chicago.org/wp-content/uploads/2015/12/AC\\_Protection\\_Order\\_Issue\\_2013\\_FINAL.pdf](http://also-chicago.org/wp-content/uploads/2015/12/AC_Protection_Order_Issue_2013_FINAL.pdf)>

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# Custody and Visitation in Civil Protection Orders:

Guiding Principles and Suggested Practices for Courts and Communities

## A Checklist for Judicial Action

### Custody

- In making custody decisions in CPOs, focus on the safety needs of the abused children and parent
- Take into account that children who are exposed to domestic violence may suffer short- and long-term physiological and emotional effects as severe as those who are themselves directly physically abused

### Visitation

- Prioritize safety in making visitation decisions by (1) identifying risks and dangers of visitation and (2) addressing those risks and dangers in the visitation order
- Consider no visitation, if conditions warrant
- Consider visitation if requested by either party
- Include visitation terms consistent with existing orders, or indicate which is the superseding order
- Include visitation terms specific as to conditions for exchange, supervisions, communication/contact between parents, including who must supervise visitation
- Become familiar with community supervised visitation and exchange resources; exercise judicial leadership to promote or expand such services
- Explain to litigants how to obtain enforcement and modification of visitation provisions, and ensure true accessibility to those processes for all litigants

### Multiple access points/Relationship between different courts issuing relief

- Provide temporary custody relief as part of CPOs or, alternatively, in temporary orders issued during long-term custody cases
- Provide victims with immediate access to temporary custody relief in an emergency, even if there is a pending proceeding or existing court order; make such relief available as part of a CPO and/or a temporary order issued by the court hearing the pending matter or that issued the existing order

- In the absence of explicit authority, use implicit (“catch-all”) authority to include temporary custody relief
- Ensure true accessibility of all court processes for obtaining both temporary and long-term relief for all community members, including under-served populations
- Establish inter-court communication mechanisms regarding custody and visitation orders to share information and avoid contradictory orders
- Provide litigants with information regarding available access points for temporary custody relief, as well as the relationship of the different courts/ processes involved and the orders issued
- Consider developing a specialized domestic violence court or docket
- Comply with any statutory directives addressing the relationship between CPO and long-term custody and/or visitation provisions (consider the implementation of corresponding court rules or protocols); provide all stakeholders, including litigants, information regarding these laws and rules/protocols

### **Support for litigants**

- Provide litigants with information about relevant community-based resources (housing, mental health, etc.)
- Host on-site self-help centers, navigators, and/or help desks, as well as community-based resources
- Promote efforts to maximize the availability of legal representation and/or advice for litigants with CPO cases involving child-related relief
- Consider hosting community round tables to educate the community about the court process and remedies available

### **Petitioner autonomy**

- Increase opportunities for petitioners to make informed decisions regarding whether and how to seek relief from the court, including through readily accessible advocacy and legal services, on-site safety-planning services, written, audiovisual, and internet-based information, and litigant-friendly processes that facilitate withdrawal and modification of CPOs where desired
- Enhance informed decision-making by litigants by providing information about all relief available in CPOs

- Engage in community conversations on how best to balance petitioner autonomy with an appropriate response to health and safety concerns about children

### **Decision-making by judicial officers and others**

- Account for the nature and context of domestic violence and its implications for children and parenting in all custody and visitation decision-making
- Make findings establishing the rationale for all custody and/or visitation decisions
- Tailor relief granted to the unique, particularized safety and economic needs of the families in each case
- Always use plain language, be fair, consistent, and respectful, and fully comply with legal requirements
- Avoid deferring decisions to guardians ad litem, custody evaluators, or other non-court actors; if they are used, clarify the scope of their work and retain ultimate decision-making authority
- Ensure courts addressing custody relief are courts of record for all proceedings

### **Jurisdictional issues**

- Exercise temporary emergency jurisdiction under the applicable child custody jurisdictional statute to include custody and/or visitation provisions in CPOs where appropriate
- Indicate compliance with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) in CPOs to facilitate inter-jurisdictional enforcement of custody and visitation provisions
- Enforce custody and visitation provisions issued by courts in other jurisdictions—including tribal courts--as required by the Violence Against Women Act's Full Faith and Credit provisions and the UCCJEA
- Communicate with courts in other jurisdictions in accordance with the UCCJEA
- Facilitate inter-jurisdictional litigation by victims to protect their and their children's safety

## **Military families**

- In cases involving active-duty military personnel, comply with the Servicemembers Civil Relief Act; if a stay must be entered, consider steps to protect the victim and children during the stay

## **Compliance review and enforcement**

- Proactively schedule review hearings to determine whether child-related relief is effective and respondents are in compliance
- Employ case docket coordinators to help facilitate oversight and accountability in CPO cases

## **Training and support for judicial officers**

- Provide mandatory, experiential training for judicial officers and court staff addressing topics including: how to identify the nature and context of abuse in a family, its implications for the children and parenting, and how to account for those implications in CPOs; child development and trauma; courtroom management; legal issues; judicial leadership and collaboration with community partners; overcoming bias; vicarious trauma and self-care; and problem-solving approaches for courts
- Convene multi-disciplinary training programs
- Establish peer mentoring programs pairing newer judicial officers with experienced colleagues
- Consider developing statewide neutral programs for peer review, training coordination, and other support for judicial officers hearing CPO cases

## **Evaluation**

- Evaluate, on an ongoing basis, the extent to which custody decision-making in the CPO system accounts for the nature, context, and implications of abuse
- Evaluate, on an ongoing basis, whether CPO processes and decision-making are consistent with these guiding principles and work collaboratively to address any deficiencies

## **Resources**

- Advocate for the financial and other resources necessary to ensure that courts issuing CPOs have appropriate levels of staff and other resources, as well as ongoing training