

ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS

POLICY GOAL: Civil orders of protection are specifically available to trafficking victims.

The Violence Against Women Act (VAWA) defined protective orders in broad terms to allow the definition to encompass a variety of injunctions and restraining orders.¹ Both civil and criminal orders of protection can be available for survivors depending on the state where the trafficking took place.² This is an important resource for survivors because, in some circumstances, civil orders of protection (CPOs) can provide more comprehensive relief than the criminal justice system.³ Some survivors are able to petition for custody, child support, counseling, and eviction of the abuser within the context of a CPO. Additionally, there is no fee for obtaining protective orders, which makes them an incredibly valuable resource to the survivor community.⁴ CPOs require a lower burden of proof than a criminal order, which require a criminal conviction. However, laws that allow civil emergency protection orders to be issued *ex parte* are incredibly beneficial for survivors as they solely require the sworn statement of the victim. This allows for immediate relief in a way that considers safety for survivors.

Presently, most states provide opportunities for victims of intimate partner violence and sexual assault to seek CPOs against their offenders. However, this form of relief may not be specifically available to sex trafficking or commercial sexual exploitation (CSE) survivors and may include restrictions or parameters that would exclude protections for some survivors. Many states require petitioners filing for a CPO due to sexual violence to have a “qualifying relationship” with the perpetrator, which is usually limited to a romantic partner, current or former spouse, someone

with whom the victim has a child in common, a parent, or past or present household member.⁵ While some states provide CPOs specifically for sexual assault victims that do not require a “qualifying relationship” with the perpetrator, states vary on what conduct is included in the definition of “sexual assault” and on what standard of proof the petitioner must meet.⁶ To ensure the same opportunity for justice and protection, states should expand their CPO laws to specifically include victims of sex trafficking or CSEC and, where applicable, to include traffickers within “qualifying relationships.”

Additionally, states require minors to meet various criteria to apply for a CPO without an adult filing for one on their behalf. For example, in Washington, DC, a minor 16 years or older can file for any CPO on his or her own; for a minor between 12 and 16 years old, that minor can only file for a CPO on their own if their abuser is a former or current significant other, spouse, or domestic partner. No minor under age 12 can file for a CPO on his or her own behalf.⁷ Alternatively, in some states, there are no age limits on who can file for a CPO, but a minor filing on their own behalf must be filing against her parent/legal guardian or the parent/legal guardian must be unavailable.⁸ Limiting the ability of minors to seek a CPO on their own behalf restricts the feasibility of obtaining such protections as requiring parental involvement can be a significant deterrent for reporting abuse and victimization.⁹ State law also needs to explicitly provide CPOs to minor sex trafficking and CSEC victims, regardless of age, so that they are entitled to the same relief as other victims of sexual violence.

Orders of protection are one of the first lines of defense that a survivor may try to seek and offer a vital resource for survivors, especially those fearing for the safety of themselves or their families. These protections are imperative for exposing offenders and protecting victims from future harm, and it is crucial to include measures to enhance safety in pursuing these protections. In addition to the

previous recommendations, state law should also allow victims of sex trafficking to receive an *ex parte* CPO. An *ex parte* order allows the court to make a ruling with only one party—in this case, the survivor—present, meaning the court can order a CPO, most typically on a temporary basis, without the offender having a chance to appear or be heard.

DRAFTING CONSIDERATIONS: *To accomplish this policy goal, state law should...*

- ▶ Ensure civil orders of protection are available specifically for trafficking victims.
- ▶ Remove age limitations on orders of protection so that minors can file for an order of protection on their own behalf.
- ▶ Provide for *ex parte* orders of protection specific to trafficking victims.

RELATED ISSUES:

- 5.1** State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.
- 5.2** State law allows child sex trafficking victims to testify by closed circuit television regardless of the prosecuted offense.

SUPPORTING RESOURCES:

- ▶ [Responding to Sex Trafficking Victim-Offender Intersectionality: A Guide for Criminal Justice Stakeholders](#)

- 1 BATTERED WOMEN'S JUSTICE PROJECT, NATIONAL CENTER ON PROTECTION ORDERS AND FULL FAITH & CREDIT, FULL FAITH AND CREDIT FOR PROTECTION ORDERS 3 (n.d.).
- 2 BATTERED WOMEN'S JUSTICE PROJECT, *supra* note 1 at 5-6.
- 3 MAURER SCHOOL OF LAW, PROTECTIVE ORDERS, IND. UNIV. BLOOMINGTON, <https://law.indiana.edu/academics/experiential-education/projects/pop/protective-orders.html> (last visited Nov. 15, 2020).
- 4 *Id.*
- 5 SHAWN E. FIELDS, *Debunking the Stranger-in-the-Bushes Myth: The Case for Sexual Assault Protection Orders*, 2017 WIS. L. REV. 429, 450-51 (2017); COMMISSION ON DOMESTIC & SEXUAL VIOLENCE, AMERICAN BAR ASSOCIATION, DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS (CPOs) (2016).
- 6 COMMISSION ON DOMESTIC & SEXUAL VIOLENCE, *supra* note 5.
- 7 *Restraining Orders: Civil Protection Orders*, WOMENSLAW.ORG, <https://www.womenslaw.org/laws/dc/restraining-orders/civil-protection-orders-domestic-violence-victims/who-can-get-civil-1> (updated as of November 1, 2019).
- 8 *Restraining Orders: Civil Protection Orders*, WOMENSLAW.ORG, <https://www.womenslaw.org/laws/az/restraining-orders/domestic-violence-orders-protection/who-can-get-order-protection#node-28507> (updated January 10, 2020).
- 9 YOUTH ACCESS TO PROTECTION ORDERS: A NATIONAL OVERVIEW, BREAK THE CYCLE 2 (2014).