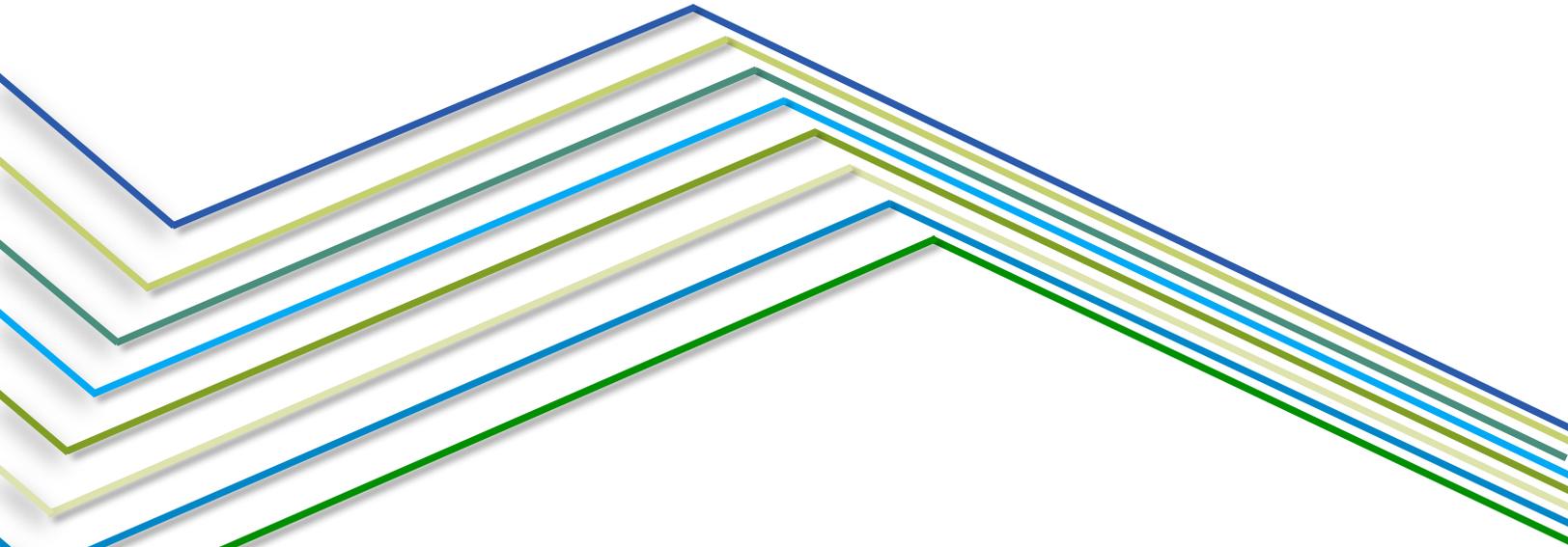


# GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR  
DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES



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DOMESTIC VIOLENCE ATTORNEYS & LEGAL ADVOCATES

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**The Center for Survivor Agency and Justice** is a national organization dedicated to enhancing advocacy for survivors of intimate partner violence. CSAJ envisions a world where all people have equal access to physical safety, economic security, and human dignity. CSAJ develops and promotes advocacy approaches that remove systemic barriers, enhance organizational responses, and improve professional practices to meet the self-defined needs of domestic and sexual violence survivors.

**The Consumer Rights for Domestic and Sexual Violence Survivors Initiative** (Consumer Rights Initiative) is a national project of CSAJ that seeks to enhance consumer rights for domestic and sexual violence survivors by enhancing the capacity of and partnerships between domestic/sexual violence and consumer law and advocacy. Consumer and other economic civil legal remedies have the potential to provide survivors with the legal tools to address issues such as debt collection, credit discrimination, bankruptcy, damaged credit, tax liability, and foreclosure. To achieve survivors' joint goals of physical and economic safety also requires purposeful cross-training, networking, and sustained partnership building on the local and national levels. Therefore, CSAJ's Consumer Rights Initiative offers technical assistance to lawyers, advocates, programs, and communities across the nation through: advocacy tools and resources, webinar trainings, national conferences, individual technical assistance, and Building Partnerships Demonstration Sites.

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# Eleven



## The Civil Protection Order as a Tool for Economic Justice

By Erika Sussman

### Introduction

Civil protection orders provide survivors of domestic violence with a tool for accessing safety and economic justice. Unlike *criminal justice remedies*, for which the state wields control over initiation and pursuit of the case, civil protection orders were intended to provide survivors with control over whether and how to initiate the case, the specific relief requested, and enforcement of the relief. **Civil protection orders** are injunctive in nature, and include provisions that order perpetrators of domestic violence to refrain from or engage in certain proscribed acts for a period of time. Though greatly underutilized, civil protection order codes include provisions that enable survivors to pursue economic relief, including access to material resources. The statutory intent of civil protection order statutes is, simply put, safety. Virtually every state protection order statute emerged from legislative history or contains comments that indicate a legislative purpose to promote future safety or prevent violence.

To access and wield the economic relief available in civil protection orders, this chapter reviews the types of economic relief available in protection order statutes and offers practical strategies for advocates and attorneys, from assessment through enforcement.

## Sally's Story

Sally met her husband, Rob, in her homeland, Sierra Leone. He was a US citizen, visiting for the summer. She enjoyed introducing him to local food and customs and he told her all about his life in the US and how she would make his life complete. They fell in love, got married, and Sally left with Rob to make a new life in the United States. When they moved to the US, Rob tightly controlled who Sally interacted with and when she could leave their home. He didn't want her to connect with new neighbors or attend any community events. Sally was feeling restless and begged Rob to allow her to get a job, and she started working at the local supermarket. Sally liked her job and co-workers, but it seemed that the more comfortable Sally felt in her new home, the angrier Rob became. His control grew and Rob physically, sexually and financially abused Sally.

About six months ago, after coming home late from work, Rob pushed Sally into their bedroom, and locked the door. With a knife, he slashed all of her clothes hanging in her closet, and then, holding the knife to her face, demanded that she have sex with him.

Last week, jealous of a friendship that she developed with a neighbor, Rob called Sally a whore and punched her repeatedly in the face, with one punch landing on her eye. The following morning, she went to the hospital and had to have surgery. She will require follow-up treatment and she currently has cloudy vision out of one eye, which may or may not improve. She is terrified of Rob and doesn't know what he will do next, but she is also worried that an order of protection may make things worse. She is coming to see you to find out what safety measures are included in an order of protection and if that getting an order is the safest way forward for her.

*With Sally sitting across from you, what questions do you have for her?*

## Civil Protection Orders: Physical and Economic Security

Safety for survivors of domestic violence requires economic security. Domestic violence impoverishes survivors and exposes them to increased risk of violence.<sup>1</sup> Survivors may incur direct economic harms resulting from the abuse, including medical damages, property destruction, theft, and lost wages.<sup>2</sup> Survivors may also incur enormous preventive costs in an attempt to minimize the abusive partner's access to them and to establish a

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<sup>1</sup> See Dana Harrington Conner, *Financial Freedom: Women, Money, and Domestic Abuse*, 20 WM. & MARY J. OF WOMEN AND THE L. 2, 339-97, 340 (2014), (finding that, "financial instability is one of the greatest reasons why, after gaining freedom, a woman who experiences battering has limited choices and may ultimately acquiesce to her partner's attempts to reconcile."); Lauren B. Cattaneo & Lisa A. Goodman, *Risk factors for reabuse in intimate partner violence: A cross-disciplinary critical review*, *Trauma, Violence, & Abuse*, 6(2), 141-175 (2005), (finding that research has long substantiated the link between domestic violence and economic insecurity); New Destiny Housing, *Out in the cold: Housing cuts leave domestic violence survivors with no place to go (A HousingLink Report)*. New York, NY, 1-29 (2012), (finding that, 31% of families entering homeless shelters cite domestic violence as the main reason, and 80% exit emergency shelter without a safe, affordable, and permanent place to go.)

<sup>2</sup> See Maureen Sheeran & Emilie Meyer, *Civil Protection Orders: A Guide for Improving Practice*, 1, (2010) (Finding that "[d]omestic violence costs the nation an estimated \$5 to \$10 billion annually in direct medical and mental health care services and lost productivity.) Centers for Disease Control and Prevention. (2015). Intimate partner violence: Consequences. Retrieved January 12, 2016, from <http://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html> (Finding that recent estimates on the national economic cost of domestic violence exceeds \$6.2 billion annually, increased healthcare costs can persist for 15 years, and survivors lose the equivalent of 32,000 full-time jobs.)

free and independent life. Such costs of future safety may include housing, health insurance, childcare, transportation, clothing, utilities, and tuition.<sup>3</sup> Indeed, access to economic resources is the most likely predictor of whether a survivor will be able to permanently separate from their abusive partner.<sup>4</sup>

Thus, in order for civil protection order statutes to achieve their legislative mandate, courts must honor requests for economic justice.<sup>5</sup> Specific statutory provisions offer direct authority for obtaining economic relief, while “catch all” provisions offer expansive, creative mechanisms for obtaining monetary payments or access to resources required for short- and long-term economic security.

### **Short-term relief with long-term impact**

Civil protection orders are the “most commonly used legal remedy for survivors,”<sup>6</sup> and are, by design, survivor initiated and driven.<sup>7</sup> If guided by strategies that balance both physical and economic safety risks (see the Introductory chapter of this Guidebook), civil protection orders may offer tools that restore survivors for past economic damages and provide prospective relief necessary for future safety and independence. For example, in program evaluations, survivors who were satisfied with the civil protection order process and talked with someone about additional safety planning, reported better living situations.<sup>8</sup> The potential long-term impacts of engaging in a survivor-centered protection order process include: offering survivors an avenue to initiate engagement with the legal system, providing access to expertise largely unavailable without cost, and increasing the likelihood of future engagement with the legal system characterized by increased satisfaction and perceptions of safety.

## The Landscape of Economic Relief in Protective Order Statutes

Advocates for survivors should be aware of their state’s civil protection order statute’s economic relief provisions. There are several common categories of relief that are specifically provided for by state civil protection order statutes. At the same time, general

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<sup>3</sup> See Barbara J. Hart & Erika A. Sussman, *Civil Tort Suits and Economic Justice for Battered Women*, 4(3) THE VICTIM ADVOCATE, at 3-4 (Spring 2004).

<sup>4</sup> See Judy L. Postmus, Sara-Beth Plummer & Amanda M. Stylianous, *Measuring Economic Abuse in the Lives of Survivors: Revising the Scale of Economic Abuse*, 22 VIOLENCE AGAINST WOMEN 6, 692-703, 693 (2016) (finding that, “women who are forced to become economically dependent on their partner are at greater risk of being further abused and are less likely to leave the relationship.”). See also, Adrienne E. Adams, Cris M. Sullivan, Deborah Bybee and Megan R. Greeson, *Development of the scale of economic abuse*, Violence Against Women, 14(5), 563–588 (2008) (finding that survivors who report experiencing some form of economic abuse also report restricted access to needed resources. For example, 81% of survivors who experienced economic abuse reported “having trouble with [their] credit rating,” and 51% also reported more trouble accessing needed resources, like getting a phone); Center for Survivor Agency and Justice, *Debt in the Context of Safety, Coerced Debt & Debt Defense for Survivors*, Youtube (April 29, 2016)—<https://youtu.be/gb1Vc5B-aCU> (finding from a survey of 1717 women accessing the National Domestic Violence Hotline that women who experienced coerced debt were 2.3 time more likely to “stay longer than they wanted in a relationship...because of financial concerns.”).

<sup>5</sup> See Melanie M. Hughes & Lisa D. Brush, *The price of protection: A trajectory analysis of civil remedies for abuse and women’s earnings*, American Sociological Review, 80(1), 140–165, (2015) (finding that low-income survivors seeking an order of protection lose \$1018 in the year after petitioning, and they never recoup these losses.)

<sup>6</sup> Jane C. Murphy, *Engaging With the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, Journal of Gender, Social Policy & the Law, 11(2), 499-521 (2003).

<sup>7</sup> Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?* Cardozo Law Review, 29(4), 1487-1551 (2008).

<sup>8</sup> See Institute for Law and Justice, *National Evaluation of the Legal Assistance for Victims Program*. No. 208612 (2005). *But see*, Civil Court Barriers chapter in this Guidebook (finding that individual characteristics of courts, judges, and application of the process can limit the survivor-driven process as well as impact outcomes for survivors).

“catch all” provisions offer a mechanism for accessing economic relief that is not specifically prescribed.

## Specific types of economic relief

Most civil protection order statutes include specific provisions that provide direct authority for orders of monetary payment, access to material resources, or injunctive relief designed to facilitate the survivors’ economic well being. Some common examples of specific provisions include housing access and payments, compensatory losses, punitive damages, support payments and more.

### Restitution for medical expenses, property damages, and other compensatory losses

Many state civil protection order statutes enable courts to grant restitution for costs stemming directly from the respondent’s abuse of the survivor. Many state civil protection order statutes specifically authorize payment and/or reimbursement for medical costs resulting from the abuse. Medical expenses may be physical or psychological in nature, and they may include an emergency hospital visit as well as follow-up medical visits related to the abuse. Similarly, courts in many states are authorized to award reimbursement and/or payment for property damages resulting from the respondent’s abuse. Frequently, statutes authorize a list of compensatory losses, including attorney’s fees, shelter, and lost wages.<sup>9</sup>

**Case Scenario:** *Over the course of their marriage, Rob routinely stole Sally’s paychecks and deposited them in a checking account, which was solely in his name. Two weeks ago, Sally discovered a bill from a credit card company on the kitchen counter. She never applied for a credit card, but the bill was addressed to her and it had her social security number on it. When she contacted the credit card company, she learned that the card was in her name, Rob was an authorized user on the account, and more than \$2,000 had been charged to the account. Sally’s employment authorization expired two months ago; she’d been relying upon Rob to renew it and she has no idea if he has or not. He will not show her any of the documentation.*

### Housing access and payments

Survivors of domestic violence cite the need for housing as a substantial obstacle to their safety.<sup>10</sup> Civil protection order statutes provide housing

<sup>9</sup> See, e.g., 10 DEL. C., §1045(a)(7) (“compensation for losses suffered as a direct result of domestic violence committed by the respondent, including medical, dental, and counseling expenses, loss of earnings or other support, cost of repair or replacement of real or personal property damaged or taken, moving or other travel expenses and litigation costs, including attorney’s fees”).

<sup>10</sup> See Violence Against Women Act of 2005, sec. 601; U.S. Conference of Mayors/Sodexo Survey on Hunger and Homelessness, 2005. See also Lisa Olsen, Chiquita Rollins & Kris Billhardt, *The Intersection of Domestic Violence and Homelessness*, (2013) 1-12, 7 (finding that “since emergency shelter stays were time-limited, many survivors returned to an abusive home, traveled from shelter to shelter, or relied on unstable housing with friends or relatives.”).

## Key Terms

**Civil protection order:** A civil legal remedy that is injunctive in nature and that includes provisions that order perpetrators of domestic violence to refrain from or engage in certain proscribed acts for a period of time. The statutory purpose of a civil protection order is to promote future safety or prevent violence.

**Relief provisions:** Categories of relief that are specifically (or sometimes generally) provided for by state civil protection order legal statutes. These can include restitution, vacating residences or property, debt burdens, support payments, stay-away or no-contact orders. Other state statutes describe relief in more general “catch-all” provisions.

**Bifurcation:** Separating the liability phase from the damages phase of the civil protector order case.

**Litigate liability:** Request the court to determine whether the abusive partner is liable for economic and other specific damages.

**Status hearing:** A meeting mandated by the court that takes place after the case where the survivor can present the proper evidence and the court can order the amount and specific method of payment at that time.

**Evidence of liability:** Physical evidence of economic harms generated by abuse that are presented to the court (i.e. photos of physical injuries or property damage, destroyed clothing, broken furniture, and medical records).

**Evidence of damages amount:** Evidence or proof presented to the Court for the amount of damages for which the abusive partner is liable (i.e. medical bills, receipts for property purchases, or repair receipts).

**Testimonial evidence:** When the survivor presents narratives or experiences to the court to illustrate the nexus between the violence and the need for economic relief.

**Civil contempt action:** When an abusive partner fails to comply with the economic relief provisions of a civil protection order, a survivor may choose to report this to the court with intent of encouraging compliance with the order.

access in a variety of different ways.<sup>11</sup> Many protection order statutes specifically authorize orders to vacate a previously shared residence. Several states enable courts to issue vacate orders regardless of ownership of the residence. For example, the Alaska statute authorizes the court to “remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence.”<sup>12</sup> Other statutes limit the scope of “vacate provisions” to circumstances in which the property is jointly owned, leased or rented. For example, the District of Columbia statute authorizes the court to order the abusive partner to vacate the residence if the residence is “marital property, jointly owned, leased, or rented” or the petitioner individually owns, leases or rents<sup>13</sup> Still other statutes limit “vacate orders” to circumstances in which the survivor individually owns, leases, or rents the previously shared residence.<sup>14</sup>

An order to vacate a residence may not offer adequate assistance if a survivor lacks the monetary resources to pay for the rent or mortgage. Therefore, many state statutes explicitly direct the abusive partner to make rent or mortgage payments.<sup>15</sup> Other statutory provisions order the abusive partner to provide “suitable alternative housing” to the victim and their children.<sup>16</sup> Protection order statutes may condition these types of relief upon marital status or having a child-in-common (i.e., a duty to support). For example, Missouri’s protection order statute provides explicit authority for the court to order the respondent to “pay the petitioner’s rent at a residence other than the one previously shared by the parties if the respondent is found to have a duty to support . . . and the petitioner requests alternative housing.”<sup>17</sup> However, many statutes do not require a “duty to support,” other than that stemming from the economic justice needs related to the abuse.

**Case Scenario:** *Sally wants to move out of the apartment she shares with Rob. Instead of having Rob move out, Sally wants to start fresh with a new place to stay, because Rob is friends with the building manager. She also wants to leave behind the terrible memories of abuse associated with the apartment. However, Sally feels stuck because she doesn’t want to break the lease, and she is worried that she won’t be able to afford an apartment on her own. Rob’s salary as a government employee is four times her salary. Sally knows it would just be easier to ask Rob to leave, but she doesn’t think she can stand living in the apartment any longer.*

### Property use, transfer, and protection

Civil protection orders in many states contain specific provisions that grant the survivor the temporary use of a vehicle or other personal property. For example, Georgia’s civil protection order statute enables the court to “provide for possession of personal property of the parties.”<sup>18</sup> Statutes may condition temporary possession of a vehicle upon ownership or alternative means of transportation. For example, the Alabama protection order statute allows the court to grant temporary possession of a vehicle “if the plaintiff

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<sup>11</sup> Indeed, the District of Columbia Court of Appeals affirmed the courts’ power to order abusive partners to vacate their home in *Robinson v. Robinson*, 886 A.2d 78 (DC Ct. App. 2005). Finding it inadequate for the respondent to vacate the marital home but live right next door, the court held that the broad remedial purposes of the civil protection order act allowed “safety concerns to trump property rights.” *Id.* at 86.

<sup>12</sup> ALASKA STAT. § 18.66.100(c)(3).

<sup>13</sup> D.C. CODE ANN. §16-1005(c)(4).

<sup>14</sup> See, e.g. KAN. STAT. ANN. § 60-3107(d) ; MD. CODE ANN., FAM. LAW § 4- 506(d)(4) ; N.H. REV. STAT. ANN. § 173-B:5 ; OHIO REV. CODE ANN. § 3113.31(E)(1)(b).

<sup>15</sup> See, e.g., IND. CODE § 34-26-5-9(c)(3)(b); NEV. REV. STAT. § 33.030(2)(b)(2).

<sup>16</sup> See, e.g., 23 PA. CONS. STAT. § 6108(a)(2).

<sup>17</sup> MO. REV. STAT. § 455.050(3)(6).

<sup>18</sup> GA. CODE ANN. § 19-13-4(a)(8).

has no other means of transportation of his or her own and the defendant either has control of more than one vehicle or has alternate means of transportation.”<sup>19</sup> In contrast, Alaska specifically authorizes a protection order that grants survivors “possession and use of a vehicle and other essential personal items, regardless of ownership of the items.”<sup>20</sup>

Some statutory provisions aim to protect property from damage or misappropriation by the abusive partner. For example, the Illinois statute authorizes an order that “forbids the respondent from taking, transferring, encumbering, concealing, damaging, or otherwise disposing of any real or personal property.”<sup>21</sup>

Many state statutes provide for the exchange of personal property between the parties. Several include provisions that order the police to accompany the victim or the abusive partner to retrieve his or her belongings from a shared residence.<sup>22</sup> By explicitly addressing the details of the exchange in the order—identifying specific items, the date, time, and method of transfer—courts are able to assist battered women in ensuring that the property transfer actually takes place and that it occurs without further incident.

### Liens, debts due, and other economic burdens

Many statutes offer an opportunity to address routine financial obligations that continue through the duration of the protection order. For example, California authorizes “the payment of any liens or encumbrances coming due during the period the order is in effect.”<sup>23</sup> Minnesota specifically grants “the continuance of all currently available insurance coverage without change in coverage or beneficiary designation.”<sup>24</sup>

### Support payments

The majority of state protection order statutes offer specific authority for ordering the abusive partner to pay temporary child support for children-in-common or to pay temporary spousal support where the parties are married. For example, the Pennsylvania statute allows an order “directing the defendant to pay financial support to those persons the defendant has a duty to support.”<sup>25</sup> The New Jersey statute provides that “compensatory losses shall include, but not be limited to, loss of earnings or other support, including child or spousal support.”<sup>26</sup> A New Jersey court recognized the connection between domestic violence and the need for support in *Mugan v. Mugan* where it held “when a defendant’s violent acts result in his removal from the marital residence and bar contact with his wife, this may well cause the loss of the funds necessary to maintain themselves and the house. Such consequences are as direct as removal.”<sup>27</sup> The *Mugan* court added a policy justification for the provision of support, stating that survivors of domestic violence should not be discouraged from attempting to separate from their abusive partners by a threat of financial distress.<sup>28</sup>

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<sup>19</sup> ALA. CODE § 30-5-7(c)(6).

<sup>20</sup> ALASKA STAT §18.66.100 (c)(10).

<sup>21</sup> ILL. COMP. STAT. § 5/112A-14(b)(11).

<sup>22</sup> See, e.g., KAN. STAT. ANN. § 60-3107(a)(8) (“making provision for the possession of personal property of the parties and ordering a law enforcement officer to assist in securing possession of that property, if necessary”); OR. REV. STAT. §107.718 (1)(d) (“That a peace officer accompany the party who is leaving or has left the parties’ residence to remove essential personal effects of the party”).

<sup>23</sup> CAL. FAMILY CODE § 6324.

<sup>24</sup> MINN. STAT. § 518B.01(6)(a)(12).

<sup>25</sup> 23 PA. CONS. STAT. § 6108(a)(5).

<sup>26</sup> N.J. STAT. ANN. §2C:25-29(b)(4).

<sup>27</sup> 555 A.2d 2, 3 (N.J. Super Ct. App. Div. 1989).

<sup>28</sup> *Id.*; See also, *Powell v. Powell*, 547 A.2d 973 (1988) (holding that the catch-all provision of the District of Columbia civil protection order statute authorized an award of child support).

## Stay away and no contact provisions

Virtually every state civil protection order statute contains “stay away” and “no contact” provisions. Though typically associated with physical protection from abuse, “stay away” and “no contact” orders also can have a direct impact on a survivor’s economic security. For example, an order to stay away from a survivor’s place of employment may mean the difference between employment and unemployment.<sup>29</sup> An abusive partner who stalks a survivor at work may cause them to lose their job—due to an employer’s unlawful decision to fire them or due to the survivor’s fear of abuse and resulting inability to go to their workplace. Similarly, stay away orders restricting the abusive partner from the survivor’s home may enable them to remain in their home, and thus avoid the costs of relocation, or may prevent eviction based upon the abusive partner’s conduct, which, though generally unlawful, is commonly faced by survivors of domestic violence.<sup>30</sup> Simply put, stay away and no contact provisions offer a means of restricting the abusive partner’s ability to inflict substantial economic costs in the future.

## Punitive damages and compensation for pain and suffering

The New Jersey protection order statute offers extraordinarily comprehensive economic relief for survivors of domestic violence. In addition to a wide array of financial measures found in various other state civil protection order statutes, the New Jersey statute specifically authorizes “compensation for pain and suffering” and “[w]here appropriate, punitive damages.”<sup>31</sup> In *Sielski v. Sielski*, the court awarded \$6,000 in punitive damages to the survivor, after the court found that the abusive partner had acted viciously and sadistically when he yanked her out of bed by her hair, slapped her about the face and neck, attempted to push her face in the toilet, yanked at her pubic hair, threw cold water at her, violently broke a lamp and cut the phone connection so that the plaintiff could not summon assistance.<sup>32</sup>

The court held “it cannot be argued that torture such as reported here is not an evil-minded act warranting both the protection of the Prevention of Domestic Violence Act of 1990 and punitive damages.”<sup>33</sup> Thus, the New Jersey court held that punitive damages were warranted where the respondent perpetrated cruel acts of domestic violence.

## **Catch-all relief provisions**

Catch-all provisions enable survivors to recoup economic damages that resulted from the abusive partner’s violence and/or that cover the costs of future safety and independent living. The specific language of catch-all provisions varies from state to state, but is consistently equitable in nature.<sup>34</sup> Courts have interpreted statutory catch-all provisions to authorize creative and particularized remedies that are needed to prevent future abuse. In

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<sup>29</sup> See generally, Wendy R. Weiser and Deborah A. Widiss, *Employment Protection for Domestic Violence Victims*, CLEARINGHOUSE REV., 3-11 (May–June 2004).

<sup>30</sup> See generally, Wendy R. Wiesel and Geoff Boehm, *Housing Discrimination Against Victims of Domestic Violence*, CLEARINGHOUSE REV., 708-718 (March-April 2002).

<sup>31</sup> N.J. STAT. ANN. § 2C:25-29(b)(4).

<sup>32</sup> *Sielski v. Sielski*, 604 A.2d 206, 207 (N.J. Super. Ct. Ch. Div. 1992).

<sup>33</sup> *Id.* at 210.

<sup>34</sup> See, e.g., D.C. CODE ANN. §16-1005(c)(11) (“Directs the respondent to perform or refrain from other actions as may be appropriate to the effective resolution of the matter”); N.C. CODE § 50B-3(a)(13) (“Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child”); 23 PA. CONS. STAT. § 6108(a)(10) (“granting any other appropriate relief sought by the plaintiff”).

its Civil Protection Order Study, the National Institute of Justice found that the majority of jurisdictions “explicitly grant judges the latitude to grant any constitutionally defensible relief that is warranted.”<sup>35</sup>

Moreover, appellate case law supports the use of catch-all provisions for awards of monetary relief. In *Powell v. Powell*, the District of Columbia Court of Appeals held that the court had the authority to grant monetary relief in a civil protection order proceeding, even though such relief was not specifically provided for in the civil protection order statute.<sup>36</sup> The DC statute’s catchall provision enabled the court to award relief “appropriate to the effective resolution of the matter.”<sup>37</sup> The survivor argued that, because their financial dependency on their husband was a major factor in the perpetuation of violence in the family, the only effective means of stopping the abuse and protecting them in the future was for the abusive partner to vacate the home and make it financially and physically secure. The court looked to the legislative history of the domestic violence statute and

concluded that the statute was to be read expansively.<sup>38</sup> In light of that expansive reading and remedial purpose, the court held that the intent of the catch-all provision was to enable courts to grant individualized solutions, tailored to meet the safety needs of each case.<sup>39</sup>

### Practice Tip

Advocates for survivors should use catch-all provisions creatively and opportunistically in order to access monetary payments and resources specifically tailored to meet the individual safety and restoration needs of survivors. For example, in the scenario here, an advocate can use the catch-all provision to ask that the court order Rob to furnish Sally with the required paperwork to reapply for her employment authorization.

**Case Scenario:** Now that you are familiar with the remedies available to survivors by way of a civil protection order, how might you use this information to help Sally? What else do you need to know from Sally?

## Practical Strategies for Accessing Economic Relief

### Using Survivor Centered Advocacy In Civil Protective Orders: Wearing Our “Economic Justice Glasses”

- Client interview
- Client counseling
- Drafting petitions
- Court testimony and evidence
- Arguments before the court
- Modification hearings
- Enforcement

Despite the clear link between economic security and safety, judges are often reluctant to grant economic relief in civil protection orders.

Therefore, advocates for survivors must carefully assess, advocate, and fully litigate the economic issues before the court from start to finish.

### Intake and assessment

Advocates for survivors should consider economic security at the initial stages of the civil protection

order process. They can explore the universe of potential economic relief in two steps:

- **First, identify the prior economic harms.** Consider each individual instance of

<sup>35</sup> Peter Finn and Sarah Colson, National Inst. of Justice, Civil Protection Orders: Legislation, Current Court Practice, and Enforcement 33 (1990).

<sup>36</sup> See *Powell*, 547 A.2d 973.

<sup>37</sup> D.C. CODE ANN. §16-1005(c)(11).

<sup>38</sup> See *Powell*, 547 A.2d at 974-75.

<sup>39</sup> See *id.*

physical and sexual violence in order to identify the direct economic damages including property damage, medical damages, lost wages, etc. Also consider the economic abuses perpetrated against the survivor, including identity theft, stolen money, credit card fraud, etc.

- **Second, consider the costs of future safety.** Brainstorm relief tailored to meet the cost of safe and independent living, including things like housing, transportation, child care, health care, food, clothing, tuition, etc. Advocates will need to demonstrate that these future costs are critical to the survivor’s safety, and are therefore required to meet the statutory purpose of the civil protection order.

The following chart is meant to help attorneys and advocates craft intake and assessment questions and facilitate conversations that capture survivors’ holistic needs.

Questions for Survivor Interviewing & Counseling when Considering Civil Protection Orders		
Activity	Task	Sources & Questions to Guide Discussion
<b>Identify Potential Economic Relief</b>	Identify Prior Economic Harms	<ul style="list-style-type: none"> <li>Physical and sexual violence (and their economic impact, such as medical expenses)</li> <li>Economic abuse (for example, identity theft)</li> </ul>
	Identify Costs of Future Safety	<ul style="list-style-type: none"> <li>Housing, transportation, child care, health care/insurance, food, clothing, credit, tuition</li> </ul>
<b>Tailoring Solutions</b>	Identify strategies to increase likelihood that the abuser will pay	<ul style="list-style-type: none"> <li>How would this request for money and access to resources impact the survivor’s own risk assessment?</li> <li>How might we structure the provision to increase safety?</li> </ul>
	Consider how economic relief in POs might impact eligibility for other economic resources and/or future cases	<ul style="list-style-type: none"> <li>Is it worth it at all?</li> <li>How might we structure the timing, amount and method of payment to increase the likelihood of payment?</li> </ul>

**Think About It**

What is the universe of possible forms of economic civil protection order relief available to Sally?

Previous economic harms include: damage to her work clothes, stolen paychecks, lost wages resulting from his abuse, fraudulently accrued credit card debt, and medical costs for treatment of her eye injury resulting from Rob’s physical abuse.

The costs future cost of safety for Sally might include: relocation costs associated with moving out of the apartment she shares with Rob, monthly rent, transportation costs, food costs, as well as access to the immigration documents needed to renew her employment authorization so that she can have a source of income.

## Deciding whether to pursue a civil protection order

In light of the potential economic protection order relief, advocates and survivors should consider additional economic impacts: likelihood of the partner to pay, implications for other economic resources (like public benefits), and safety risks and priorities as defined by the survivor.

Consider the actual benefits of economic relief in protection orders. How likely is the abusive partner to pay monetary relief or provide the material resources ordered by the court? Does the abusive partner have the income, assets, or other resources to pay or satisfy the sought after relief?<sup>40</sup> How can the economic wherewithal of the abusive partner be most quickly and fully accessed? Given those possibilities and constraints, what

### Practice Tip

At the same time advocates consider the abusive partner's ability and likelihood to pay, they should also work with survivors to consider how receipt of economic relief in protection order proceedings might impact eligibility for other economic resources including public benefits and victims' compensation funds. Lawyers should examine the *res judicata* impact that civil protection order litigation may have on subsequent cases (e.g., family law, tort, personal injury) to determine which legal course of action is most advantageous.

specific terms are most likely to result in payment in this case?

The decision to pursue economic relief must be grounded in the survivor's own risk assessment.<sup>41</sup>

Advocates should work with survivors to explore various economic options that

might address prior harms and future economic costs. While the civil protection order may provide powerful tools for economic justice, such requests have the potential to trigger retaliatory violence by the abusive partner against the survivor.<sup>42</sup> Therefore, assessment must engage the survivor in carefully considering how economic orders are likely to impact their safety.

### Think About It

How is Sally assessing her own risk? What is the universe of options available for her protection beyond civil protection order remedies? What are the benefits and tradeoffs of economic relief available through a civil protection order?

Both economic risks and physical safety risks must be analyzed, with an eye toward crafting solutions that provide access to economic security while minimizing safety risks.

<sup>40</sup> Note that "inability to perform" is a defense to a civil contempt action. See *Smith v. Smith*, 427 A.2d 928, 932 (D.C. 1981). This is discussed below in the section related to Civil Contempt Actions.

<sup>41</sup> See generally, JILL DAVIES, *SAFETY PLANNING WITH BATTERED WOMEN: COMPLEX LIVES/DIFFICULT CHOICES* (1998); Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 *CARDOZO L. REV.* 1487, note 12, 1537-38 (2008) (noting that seeking a protection order can increase a woman's danger when the batterer perceives the action as a loss of power and escalates the violence, and identifying the importance of case evaluation, risk assessment, and safety planning).

<sup>42</sup> See Desmond Ellis & Walter S. DeKeseredy, *Marital Status and Woman Abuse: The DAD Model*, 19 *INT'L J. OF SOCIOLOGY OF THE FAMILY* 67-87 (1989) (finding that "post separation abuse" correlates with women's assertion of independence); JAMES PTACEK, *BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES* 80-81 (Claire Renzetti, ed., Northeastern University Press 1999) (finding that eighty percent of women interviewed indicated that their partners made threats or attempts at physically forcing them to return to the relationship); See generally Jane K. Stoeber, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection orders*, 72 *OHIO STATE L. J.* 303-77, 335 (2011) (finding that a woman's "decision to stay in a relationship is often a rational choice to prevent her abuser from carrying out his threats against her and her children if she attempts to leave."

In some instances, survivors may decide that the risk of physical abuse or retaliation (or the risk of accessing the justice system) outweighs the potential economic benefit, or that other options outside of the protection order system involve a lower risk of retaliatory abuse. Only the survivor can determine whether and what type of economic relief is desirable in their particular circumstance.

## Strategies to promote safety

The desirability of a request for economic relief will depend entirely upon a survivor's own assessment. That said, the following are strategies that may (or may not) minimize the risks of physical harm:

Survivors may feel that bifurcating the civil protection order proceeding – separating the liability phase from the damages phase of the case – will minimize risk, keeping the court's order of a particular payment plan for a later date.

A survivor may wish to include payment methods that minimize contact with them and their children or other family members. They might consider requesting that the court order the abusive partner to send his payments to the court, or that the court withhold monetary payments from his wages as is often done with child support awards.

Survivors may wish to request that the court order monetary payments in installments, as opposed to one lump sum. Such smaller amounts may seem less threatening to an abusive partner and may therefore be less likely to spur retaliation.

A survivor may decide to pursue some types of economic relief, based upon their knowledge of the abusive partner, while refraining from seeking others. Advocates can assist survivors in this complex strategizing by offering alternative sources of economic relief to compliment those forms of economic relief that they obtain through the civil protection order process (e.g. victims compensation funds).

## Strategies to promote enforceability

As with all civil protection order provisions, economic relief provisions should be crafted with specificity with regard to the method and amount of payment in order to maximize the likelihood of enforceability. Advocates should request that the court include specific details about the property to be exchanged, the prohibited or required actions of the abusive partner and/or the monetary amounts, the dates on which monetary payments are to be paid or actions to be carried out, and the specific methods for doing so. Smaller installments (as opposed to one lump sum) should be requested where the amount is more than the abusive partner's income and assets can bear. For items that are

### Practice Tips Summary: Promoting Safety

- Bifurcate court proceedings
- Build-in payment provisions that minimize contact with Petitioner and children
- Request smaller installments

### Practice Tips Summary: Enforceability

Request courts to specify:

- Property to be exchanged
- Actions of/prohibitions on abusive partner
- Monetary amounts
- Dates of payment/action
- Other specifics

### Think About It

Going back to the scenario, what types of measures could Sally request to promote her safety? She could ask that the court order Rob to pay restitution for her hospital bills in monthly installments. She could also ask that the court order Rob to make payments directly to the court in order to minimize contact and the opportunity for him to commit acts of violence in the future.

non-monetary in nature, such as property, advocates should ask the court to include in its order a list and description of the various items to avoid future dispute.

### Practice Tips Summary: Damages Amount Unknown

- Litigate liability and specific damages separately
- Request a status hearing
- Request court order to pay bills as available
- File a motion to modify the civil protection order

### Strategies to access relief when the damages amount is unknown

Because civil protection order hearings are expedited proceedings, survivors often do not know the cost of economic damages at the time of the hearing. For example, a survivor who sought medical treatment may not have received the bill specifying the amount at the time of the hearing. Such timing issues need not preclude survivors

from pursuing economic justice for their losses. Under these circumstances, the survivor can ask the court to **litigate liability** (i.e., whether the abusive partner is liable), but leave the amount of damages for a status hearing at a later date. The survivor may request that the court order the respondent to appear at a **status hearing** specifying the date and time within the civil protection order itself. Then, at the status hearing, the survivor can present the proper evidence and the court can order the amount and specific method of payment at that time.

Alternatively, if the court is unwilling to set a status hearing date or if the survivor wishes to avoid having to appear for future hearing dates, an advocate may request that the court order the abusive partner to pay the medical bills once they become available. Typically,

the survivor or their advocate will need to forward the bills to the abusive partner. Note that such a strategy, though necessary under certain circumstances, is open to manipulation by the abusive partner and is more difficult to enforce than a specific amount of damages ordered by the court.

**Case Scenario:** *You will recall that Sally's eye injury was extensive and she was told that she would require follow-up treatment. To access the relief needed to cover the future medical costs of follow-up treatment, Sally could request that the court order Rob to appear at a status hearing several months from the date of the initial proceeding. If the court is unwilling to do that, Sally can ask that the court order Rob to pay future bills as they become available (requiring that Sally forward the bills to Rob's address). If, at the time of the initial hearing, Sally did not know that she would require follow-up, but discovered that she did after the hearing date, then she could file a motion to modify the original order.*

If the survivor discovers an economic injury that was unknown at the time of the initial hearing (e.g., medical conditions subsequently discovered), or if the damages are more extensive than prescribed by the original order (e.g., follow-up medical visits are required), the survivor may file a motion to modify the civil protection order, arguing that the newly discovered damages constitute "good cause" or a "change in circumstances" that justify a modification.<sup>43</sup>

<sup>43</sup> Most jurisdictions require that one of these two standards be met prior to issuing a modification or extension of a civil protection order. See e.g., D.C. CODE ANN. § 16-1005(d) ("modify the order for good cause shown"); MO. REV. STAT. § 455.060(1) ("showing a change in circumstances sufficient to warrant the modification").

## Proving up the case

Even sympathetic judges who wish to read their protection order statutes broadly and award remedial economic relief cannot do so unless advocates present the courts with the evidence and legal arguments to do so.

### Physical evidence

Evidence of Liability: Advocates should, where possible, present the court with physical evidence of economic harms, or **evidence of liability**. Evidence of economic harms resulting from physical abuse might include photos of physical injuries or property damage, destroyed clothing, broken furniture, and medical records. Evidence of harms resulting from economic abuse might include forged checks, credit card bills, or credit reports.

Evidence of Damages Amount: After proving liability, advocates for survivors need to offer evidence to prove the amount of damages for which the abusive partner is liable, or **evidence of the damages amount**. Evidence of the costs of prior economic harms might include medical bills, receipts for property purchases, or repair receipts. Evidence of the costs of future safety might include a residential lease, a childcare bill, an automobile lease or monthly bus pass, or a utility bill.

### Testimonial evidence

Survivors must present testimony in court to illustrate the nexus between the violence and the need for economic relief. While judges may readily see the need for a stay away or no contact order, they may need some assistance in understanding how economic relief is critical to this survivor's short and long-term safety. The survivor may be best positioned to articulate the need for economic relief in their life, through their **testimony**. For example, a survivor might testify, "My boyfriend has terrorized me and my daughter with his abuse for the past five years. I need the court to order financial relief to provide us with the resources to remain separate from him and to live free of his violence." Testimony should be specific, not only about the need for the relief, but also about how the particular requests—amount, timing, method of payment or access—are tailored to meet this survivor's individual economic and physical safety needs.

#### **Practice Tip: Testimonial Evidence** Illustrating the Link between the Violence & the Economic Costs

- Direct Example: "His attack caused me to incur \$500 worth of medical treatment."
- Indirect harms: "Without replacement of my suit, I cannot go on a job interview."
- Future harms: "The damage to my door leaves me open to future attacks by the Respondent."

## Arguments

As stated above, the overarching aim in arguing for economic relief is to articulate the nexus between the economic relief requested and the legislative purpose of the civil protection order statute—safety. Articulate the nexus between economic relief and safety by using social science, for example, to educate judges on the importance of economic independence for survivors in general and demonstrate how economic relief will impact this survivor’s life in particular. Below are some pointers for advocates arguing for economic relief in civil protection orders:

Legal and Factual Circumstances	Strategy
<b>If your state civil protection order statute</b> does contain <b>explicit provisions that specifically authorize the type of economic relief sought:</b>	Rely upon that statutory provision
<b>If your state civil protection order statute</b> does not <b>specifically provide for the relief requested:</b>	Use catch-all provisions ( <i>See Powell</i> )
<b>Use the legislative history and purpose of the statute to support requests for liberal relief individually tailored to prevent future violence and achieve safe:</b>	Draw upon state’s legislative history and case law interpreting that history to support arguments for economic relief <sup>1</sup>
<b>If the court is reluctant to offer economic relief, because they believe that such relief can more properly be obtained in family law proceedings or through tort actions:</b>	Explain how short-term economic relief is essential to the survivor’s short-term safety; without it, the survivor may not be able to separate or to remain separated from the abusive partner. Such a result would be at odds with the goal of the civil protection order statute. Moreover, in instances where the survivor and the abusive partner are not married, the civil protection order case may be the only venue for economic justice.
<b>To enhance enforcement:</b>	Request that the court include specificity in its award of economic relief.
<b>Emphasize how the requests make sense by:</b>	Explaining how the particular requests—amounts, items, timing, and method—make sense in light of the survivor’s larger safety plan.
<b>Submit a trial memo that:</b>	Outlines the above and that provides the court with authority – statutory law, case law, and social science related to economic requirements for survivor safety—to support the court’s award.
<b>To make the record, for use in the event of an appeal:</b>	Request that the court make written findings of economic harm and articulate the legal basis for awarding economic relief.

## Enforcement advocacy

Civil protection orders are not self-implementing. Obtaining the court's order is only part of the process. For civil protection orders (or any order) to be effective following their issuance, advocates and survivors must take various steps to facilitate the abusive partner's compliance.

### Third parties

Survivors should consider whether to enlist third parties as allies in the enforcement of the economic terms of a protection order.

**Example 1:** *Rob used Sally's personal information to open a credit card in her name, listed himself as an authorized user, and accrued more than \$2,000 in debt.. As her advocate, you might consider drafting a protection order that directs Rob to pay Sally for the \$2,000 worth of credit card debt. You might then use the civil protection order as a tool for advocating with the credit card company to either waive the debt or to develop a lenient payment plan that coincides with the terms of the protection order.*

**Example 2:** *Rob's abuse has caused trouble for Sally at her job. Consider drafting a provision in the protection order that directs Rob to stay away from Sally's place of employment. Provided that she feels safe in doing so, Sally might share a copy of her protection order with her employer so that she can aid in enforcing that stay*

### The abusive partner

Advocates for survivors should consider taking various steps to enforce the economic terms of protection orders. If the abusive partner fails to make a payment, the survivor's attorney might write a letter to the abusive partner or (if he is represented) to his or her attorney to remind him or her of the specific terms of the court order and to document non-compliance.

### Civil contempt proceedings

When an abusive partner fails to comply with the economic relief provisions of a civil protection order, a survivor may choose to file a civil contempt action against him.<sup>44</sup> While **criminal contempt actions** punish the violator for past disobedience, **civil contempt actions** are intended to encourage compliance with the order and will generally be more efficacious where economic relief is needed.<sup>45</sup> Survivors will need to present evidence of the abusive partner's knowledge of the order as well as evidence of the abusive partner's non-compliance.<sup>46</sup> In instances where monetary payments were to be directed to the courthouse, the survivor might provide official copies from the court financial office to prove his failure to pay. Similarly, where payments were to be made directly to a creditor, the survivor might offer an official business record from that institution to prove non-

<sup>44</sup> See, Domestic Violence Practice and Procedure, at § 4:35.

<sup>45</sup> See, e.g., D.C. CODE ANN. § 11-944(a).

<sup>46</sup> See, e.g., *D.D. v. M.T.*, 550 A.2d 37, 43 (D.C. App. 1988); Unlike criminal contempt actions, evidence of the contemnor's intent is irrelevant to a finding of civil contempt. See *Bolden v. Bolden*, 376 A.2d 430, 432-33 (D.C. App. 1977) (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187 (1949)).

payment. Also, advocates should be prepared to respond to the abusive partner's justifications or defenses for non-compliance, based upon an "inability to pay."<sup>47</sup> Employer statements, tax returns, and other documentary evidence of the abusive partner's income and assets can be used to rebut such arguments.

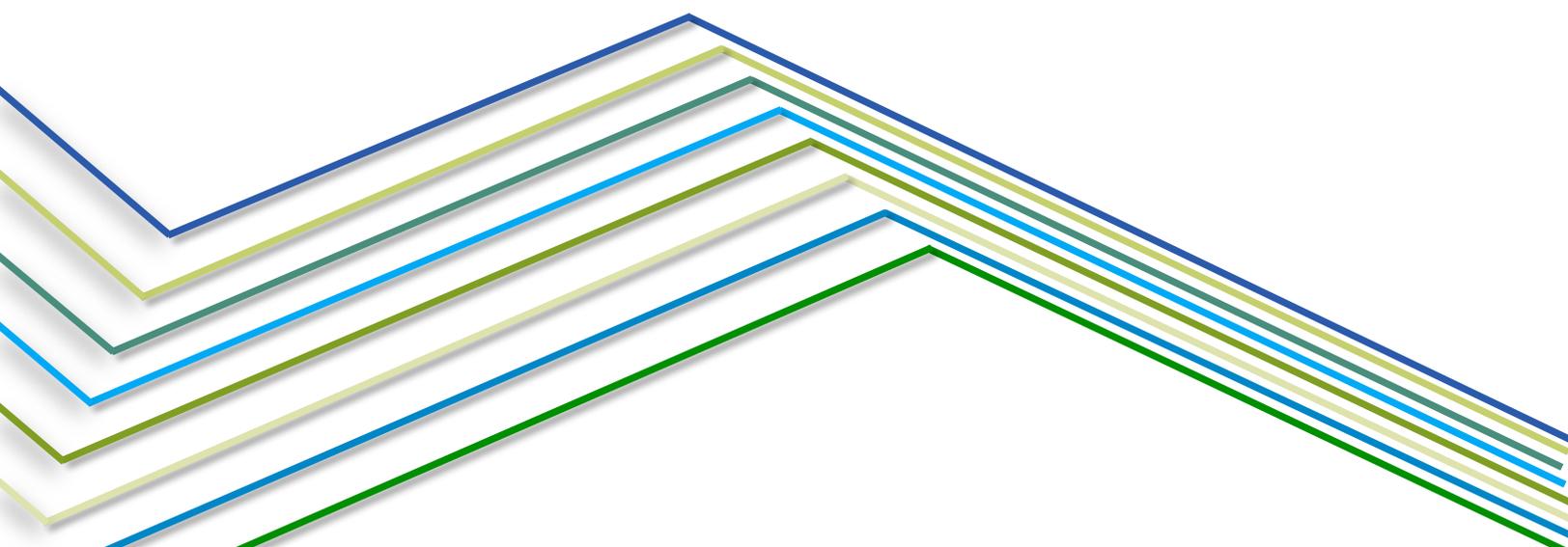
## Conclusion

There is no safety without economic justice. Economic security is vital to the short and long term safety of survivors. If advocates are to address the needs of survivors, we must expand our definitions of safety to include economic security. Civil protection order statutes are intended to provide survivors with a mechanism that meets their particular safety needs. As our definitions of safety expand to include economic justice, so too must our vision of civil protection orders. We must engage survivors in creatively brainstorming and assessing the economic protection order possibilities. By employing expansive thinking and integrating physical and economic risks, advocates can assist survivors in accessing economic relief in civil protection orders in a manner that more fully achieves the statutory purpose and more comprehensively meets survivors' needs.

## Additional Resources

- Reducing Barriers to Safety: Securing Economic Relief Through Protection Orders,
  - webinar recording: <https://vimeo.com/172470997>
  - webinar training slides: <http://www.bwjp.org/assets/documents/pdfs/webinars/ncpoffc-5-5-16-ppt-pdf.pdf>
- Representing Survivors Experience Trauma and Other Mental Health Challenges, by Mary Malefyt Seighman, Erika Sussman & Olga Trujillo (2012): <https://csaj.org/library/view/representing-survivors-experiencing-trauma-and-other-mental-health-challeng>
- Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault, and Stalking in Civil Protection Order Cases, The American Bar Association (with contributions by Erika Sussman) (2007): [http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/0908/Standards\\_of\\_Practice\\_for\\_Lawyers\\_Representing\\_Victims\\_of\\_DV\\_SA\\_Stalking.authckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/0908/Standards_of_Practice_for_Lawyers_Representing_Victims_of_DV_SA_Stalking.authckdam.pdf)
- The Civil Protection Order as a Tool for Economic Justice, by Erika Sussman (2006): <https://csaj.org/library/view/the-civil-protection-order-as-a-tool-for-economic-justice>
- Civil Tort Suits & Economic Justice for Battered Women, by Barbara Hart & Erika Sussman (2004): <https://csaj.org/library/view/civil-tort-suits-and-economic-justice-for-battered-women>

<sup>47</sup> Defenses to civil contempt include: inability to pay and substantial compliance. See D.D., 550 A.2d at 43; *Smith v. Smith*, 427 A.2d 928, 932 (D.C. 1989). Anne M. Coughlin, Excusing Women, 82 CAL. L. REV. 1, 52 (1994) (explaining monetary dependence as external factor in preventing woman from leaving abusive relationship); See *State v. Felton*, 329 N.W.2d 161, 163 (Wis. 1983) (recounting that the defendant testified that she returned to her abusive husband because she was experiencing financial problems); Lisae C. Jordan, Secure Safety First, 27 FAM. ADVOC. 10, Spring 2005.



# GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR  
DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES



**CENTER FOR SURVIVOR  
AGENCY & JUSTICE**

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