

## Orders of Protection

### Presenters:

Judge Robin Kimbrough-Hayes, Davidson County General Sessions  
Judge Sheila D. J. Calloway, Davidson County Juvenile Court

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## Course Plan:

- We will discuss:
- How DV and Order of Protection cases are handled at General Sessions and at Juvenile Court;
- What services are available to children and adults to respond to these issues;
- Any other questions or concerns that you have.

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## IMPACT OF TEEN DATING VIOLENCE

- **Teen dating relationships might involve violence, often involve mutual violence.**
- **Teen dating violence does not tend to occur in single, isolated instances, but rather in the context of a broader pattern of abusive behaviors over time.**

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## IMPACT OF TEEN DATING VIOLENCE

- A range of risk factors is associated with becoming involved in teen dating violence.
- Teen dating violence is associated with both short and long-term negative outcomes, including negative mental and physical health, substance use disorders, and victimization or perpetration.

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## IMPACT OF TEEN DATING VIOLENCE

- Programs to reduce teen dating violence perpetration and victimization have demonstrated effectiveness.

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## Youth Access to Protection Orders A National Overview

- One in three youth in the United States experiences physical, sexual, or emotional abuse from a dating partner, and strong policies can serve prevention, intervention, and response purposes.
- Survivors of dating abuse between the ages of 12-18 often have limited access to legal protections. These legal protections include access to civil protection orders, rights of confidentiality, and legal autonomy, which vary by state and jurisdiction.
- Requiring parental consent and/or notification can pose serious deterrents to reporting dating abuse for youth. TN allows DV/SA programs to file on behalf of the minor.

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## Youth Access to Protection Orders A National Overview

- A study found that out of victims ages 12-17, in 26% of cases the abuser was a dating partner also age 12- 17.
- Courts should provide options for prosecuting minor offenders as well as protecting minor victims in order to provide the most thorough response to dating violence.

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## Orders of Protection

- Orders of protection originate at General Sessions Court.
- Orders of protection can also be filed as part of a divorce action.
- In Davidson County, people needing an OP can be sent to the Family Safety Center to get help with the paperwork and services.
- In your court, you will most likely have a designated person to handle the OP requests.

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## What law controls?

- Tenn. Code Ann. § 36-3-601 *et seq.*
- A Petition filed by a juvenile must be signed by that juvenile's parent or guardian.
- Does that code really translate well to our juvenile system????
- Not really, let's go over the statutory requirements and then we will discuss why not....

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## 36-3-601

- (5) "Domestic abuse victim" means any person who falls within the following categories:
  - (A) Adults or minors who are current or former spouses;
  - (B) Adults or minors who live together or who have lived together;
  - (C) Adults or minors who are dating or who have dated or who have or had a sexual relationship. As used herein, "dating" and "dated" do not include fraternization between two (2) individuals in a business or social context;
  - (D) Adults or minors related by blood or adoption;
  - (E) Adults or minors who are related or were formerly related by marriage; or
  - (F) Adult or minor children of a person in a relationship that is described in subdivisions (5)(A)-(E);

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## Includes Stalking and Sexual Assault

- A stalking victim as defined by the statute.
- A sexual assault victim as defined by the statute.
- No relationship requirement.

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## 36-3-602

- Temporary Order of Protection
- Juvenile's petition must be signed by a parent or guardian.
- Venue – the county where the respondent resides or the county where the abuse occurred, or the county where the petitioner resides if the respondent lives out of state.

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## In General: Orders of Protection

- What can you tell the victim or family to help them prepare for the hearing?
  - The Petitioner/Juvenile will be representing themselves – no provision for an appointed attorney.
  - The parents can only testify if they are sworn in as witnesses. They cannot just advocate for or represent the youth.
  - Reminder to all: The OP order does not change custody. Visitation may be limited if there is a safety issue, but actual custody is not changed by the OP order.

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## Adult v. Adult – at Juv. Ct.

- Parentage OPs follow the pending cases at Juvenile Court.
- (Tenn. Code Ann. § 37-1-104(f) and AG opinion No. 13-98):
  - “Notwithstanding any provision of the law to the contrary, the juvenile court has concurrent jurisdiction with the circuit and chancery court of proceedings to establish paternity of children born out of lawful wedlock and to determine any custody, visitation, support, education or other issues regarding the care and control of children born out of wedlock.”

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## Adult/Juvenile v. Juvenile – at Juv. Ct.

- In Davidson County, all orders of protection against a juvenile will be handled in juvenile court. Others, including petitions filed on behalf of a juvenile are heard in General Sessions or Circuit unless the respondent is a juvenile.
- Examples of these cases include: (Step) Parents vs. Juvenile; Juvenile vs. Juvenile, or an Adult vs. Juvenile. These matters may include allegations of abuse, sexual assault, and stalking.

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### DVs at Court (cont.)

- What is the hearing like?
  - Juv. Ct. is just like in adult court. No major differences. Our Magistrate often will ask questions in order to move the case along and understand the issues.
- What parts of the DV statute translate well for our system?
  - The stay away order.
- Example: the actual order of protection can be issued and enforced.
  - We also utilize "stay away" orders or injunctions.
  - The underlying OP may be dismissed, but the stay away order will be in effect.

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### OPs

- If an OP is granted, and a contempt is alleged, it must be filed at Court.
- Also true with the stay away order or violation of the consent agreement.
- If it started at Juvenile, it stays at Juvenile when juveniles are on both sides.

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### DVs at Juv. Ct. (cont.)

- What parts don't?
- Example: handguns – minors can't have them anyway;
- Bond – our court doesn't issue bonds to minors,
- Other examples: Step-parents filing or Parents filing against the child.
- The standard OP paperwork doesn't really work either and our Magistrate usually has to mark out quite a bit of it.

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### What can be done in lieu of an OP against a juvenile?

- Dismiss the OP and handle the underlining crime.
- Again, stay away orders, 37-1-152.
- File the delinquency petition.
- Referrals.

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### What works?

- Stay away orders – what are they and how do they work?
  - Tenn. Code Ann. § 37-1-152 – Injunctive Relief/Restraining Orders.
- Court ordered services and DCS referrals
- Tenn. Code Ann. § 37-1-131(c)(2) – allows the Juvenile Court to restrict contact between juveniles who attend the same school and also to strongly recommend to the school that the offender change schools.

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### What else works – at Juvenile and Adult Court?

- Prosecuting the underlying case – assault, aggravated assault. Etc.
- Prosecuting the case encourages accountability and victim safety.

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### What else works?

- Monitoring the case while services are completed.
- ADR such as mediation and classes while prosecution is deferred or diverted.

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### What are our biggest challenges?

- A Parent who files against their child – Can't really happen for an order of protection because parents are legally required to care for their children. There are other avenues available, but OP doesn't really work.
- What can the parent file? - Unruly petition, assault, etc. This is called a front desk complaint and we will process their case to a settlement date or some other intervention.
- Step-parents who file. They want the child removed from their home, but you run into the same problem as above with the biological parent. There could be problems with sibling contact too.

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### Headaches! (cont.)

- Young people who don't want an OP or even a stay away order, but their parent does.
- For adults and juveniles:
  - Social media – (revenge porn, bullying, harassment)
- Need I say more!!!!

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### SAME SCHOOL SITUATION

- School has discretion to have the respondent removed from the school.
- If they are in the same school, there may be incidentals of contact, passing through the hallway, this would not amount to a violation.
- Make the school aware.

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### VIOLATIONS

- T.C.A. 39-13-113 doesn't work with juveniles.
- Depending on the seriousness of the violation, there may be an arrest order, the District Attorney would simply prosecute the violation most likely as a Violation of a Court Order or prosecute the underlining crime giving rise to the violation. T.C.A. 39-13-113 doesn't work with juveniles.
- The DA may leave it open to determine future violations.
- 10 days detention.
- Have a hearing on the violation.

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### Specific Impact on Youth

- Co-occurring child abuse with DV has been rated as high as 45-60 % according to the CDC.
- The circumstances of DV leave the caregiver unavailable and emotionally unresponsive.
- Especially with young children, this type of toxic stress diminishes their brain development.
- Children witnessing DV have a far greater incidence of emotional and cognitive issues.
- And, they may well end up as a victim or abuser themselves.

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## DV Issues, Trauma

## Custody Issues

- With DV issues and trauma issues, you very well may end up in a custody battle.
- Parent vs. parent
- DCS/the State vs. parent
- Grandparent vs. parent
- Third party vs. parent.

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## BEST PRACTICES IN JUVENILE ORDERS OF PROTECTION

- Consider a delinquent petition. The statute allows anyone to file a delinquent petition. The delinquent petition would afford similar remedies to the OP, especially in the case of a minor, because firearms and other supports afforded in the OP are not necessarily at issue.
- Make referrals to DCS and other local programs, which may be able to address the underlining issues.
- In cases involving domestic abuse, stalking, or sexual assault make sure that the criminal remedies are explored.

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## BEST PRACTICES IN JUVENILE ORDERS OF PROTECTION

- If the respondent violates the order of protection, make sure that you are using both stay away orders and contempt powers to encourage future compliance.
- Coordinate with your local domestic violence program.
- Collaborate with the General Sessions and Circuit courts to ensure that the orders of protection involving juvenile petitioners and respondents are properly heard.
- Offer up services to both the petitioner and respondent.

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