

## **CRIMINAL ORDERS OF PROTECTION IN NEW YORK CITY**

### **A Report by the New York City Bar Association's Committee on Domestic Violence**

#### **INTRODUCTION**

When police arrest perpetrators of intimate partner violence, Criminal Court judges often issue orders of protection to the complaining witness/victim (also referred to herein as the “complainant” or “protected party”). These orders typically direct the defendant to stay away from the protected party, refrain from communicating with them, and forbid the defendant from making threats. These powerful law enforcement tools have the potential to stop violence before it happens again. Violating an order of protection against a “family or household member” is itself a serious crime triggering the mandatory arrest provisions of New York’s Criminal Procedure Law. With a valid order of protection victims of domestic violence can call the police when their abusers appear in the lobby of their apartment buildings, email them at work, or text message their cell phones.

Orders of protection, however, have little value unless protected parties know about their existence and the terms of the order, and in New York City protected parties are often unaware of current Criminal Court orders. Orders of protection are issued and extended from court date to court date and often expire quickly. Protected parties rarely attend the Criminal Court proceedings at which judges issue, modify, and renew orders of protection and are rarely notified when the case is next on court calendar. The current law requires clerks of courts to provide protected parties with orders of protection but does not include a procedure to do so and each county has crafted a different way to attempt to get current orders to protected parties. Existing mechanisms for communicating with protected parties about orders of protection vary

from county to county, and can include the District Attorneys' Offices and/or Safe Horizon or another advocacy organization, within New York, but none of them is a wholly effective means of delivering current information or court orders to protected parties.

If police responding to calls for help have current, accurate information about orders of protection that have been issued, protected parties without copies of their orders of protection can benefit from the order. Even if a protected party knows that an order of protection has been issued, the police may not be able to enforce the order without an actual copy. However, in New York City, the police as well as the protected parties have difficulty tracking down orders of protection. Information about orders of protection must be entered manually and is not immediately available to the NYPD after the defendant is arraigned. There are frequent delays or backlogs that prevent the orders from being entered in a timely manner. Yet the period immediately after arrest and arraignment is critical to protected parties' safety. Arrests often enrage abusers and once arraigned and released, abusers often seek out their victims intent on punishing them. During these risky post-arraignment hours, while orders of protection are waiting to be entered into the databases that would make the orders available to the police, the police and protected parties may not know an order of protection exists. At times, when a protected party does know an order has been issued, but the order has not been entered into the database, the police may not arrest the perpetrator for violating the order unless the order is in the database. Even after the orders are entered, critical information about orders eludes police officers in patrol cars answering calls for help simply because police often do not know how to retrieve information from the central database.

This report describes the current systems - and the shortcomings - of getting orders of protection, or at least information about them, into the hands of protected parties and police in

New York City. The report concludes with recommendations for improving ways information is disseminated, so that Criminal Court orders of protection can be used as they are intended: to help victims of domestic violence avoid further violence.

### **SUMMARY OF RECOMMENDATIONS**

Increased coordination by state and city agencies, and a greater use of available technology, would ensure that protected parties obtain their orders of protection in a consistent and timely manner, and that safeguards are set up to allow police to protect protected parties who do not have an order of protection at hand.

After surveying this issue, the New York City Bar Association's Domestic Violence Committee makes the following recommendations:

#### **Protected parties Should be Provided with Timely and Easily Accessible Information on How to Access Orders of Protection through the Courts**

The clerks of courts in Criminal Court should consider creating uniform policies for distributing orders of protection in all five boroughs to the protected party, the District Attorney, the defendant and defendant's counsel.

The Office of Court Administration (OCA) should add to the Unified Court System's public website clear, prominent information about how protected parties can get orders of protection from courthouses and police precincts.

OCA, in coordination with county District Attorney's Offices, should train court personnel to help protected parties find the office that can provide the orders and get the copies they need, and provide written instructions to be distributed to protected parties. OCA should advertise to the public that orders of protection are available at the clerk's office in each courthouse.

The New York Police Department (NYPD) and the District Attorney's Offices should provide information to complaining witnesses with whom they come into contact about obtaining orders of protection for protected parties through the court website and at the courthouse.

Agencies should consider using updated technology, texts, scans and email to deliver orders of protection to protected parties.

#### **Protected parties Should Have Ready Access to Information about Orders of Protection Through 311**

The Mayor's Office should develop scripts for 311 operators so they can tell callers how to get copies of orders of protection from criminal courts and police precincts.

The Mayor's Office should update the automated 311 system response regarding information about orders of protection to make information about orders of protection easily accessible through the 311 menu.

### **On Scene Distribution and Enforcement of Orders of Protection to Protected Parties Should Be Uniformly Available**

The NYPD should train all patrol police to inform victims of intimate violence crime at the initial arrest scene that an order of protection will likely issue on behalf of the victim and ask the victim the best way to deliver that order to them (e.g., mail, fax, email).

The NYPD should train all patrol police on ways of getting order of protection information from NYPD's database, from IDENT, and from precincts, when responding to domestic violence calls.

### **Available Technology Should Be Coordinated to Ensure Access to Orders of Protection**

ECourts should add information to its website regarding obtaining orders of protection and consider adding details about the orders (such as terms and expiration dates) to allow civil attorneys assisting protected parties with Family and Supreme Court cases access to this information.

District Attorney's Offices, in coordination with OCA and the NYPD, should coordinate current technology, including orders of protection registries and NYPD databases, to make information about orders of protection instantly available in these databases.

The NYPD should coordinate with the State Registry through updated technology to cease duplication of efforts in obtaining, distributing and enforcing orders of protection. The NYPD should train all police officers in precincts to get information from both the NYPD database and the NYS registry.

The NYPD should ensure that an officer with passwords to the NYPD database and the NYS registry is available around the clock at all precincts.

The NYPD should train police officers on how to access the DIR database.

The NYPD should arrange police personnel schedule to insure that an officer with access to the domestic incident report (DIR) database is available round the clock

### **Information Should Be Made Available to the Public About Obtaining Copies of Orders of Protection**

The NYPD, with OCA and the Mayor's Office, should advertise to the public in precincts, at the courts, on relevant agencies' websites and through 311, that orders of protection are available at their local precinct and courthouse.

### **Increased Funding Should Be Available For Community-Based Organizations to Assist with Timely Distribution of Orders of Protection to Protected parties**

If the Clerk of Court is unable to manage the dissemination of orders of protection in accordance with the penal code, and this work falls to community-based organizations, these organizations need funding to develop the capacity to monitor court hearings and report on the status of orders of protection to protected parties so that projects, such as Project Early Victim Engagement (EVE) at the Brooklyn Family Justice Center which connects protected parties and counselors at arraignments enabling the protected parties to access order of protection information, can be replicated.

### **Other Considerations**

The NYPD, OCA, the Mayor's Office and the District Attorney's Offices could collaborate on refining these recommendations as is appropriate given the technology available and the protocols and policies in each organization.

The New York State Office for the Prevention of Domestic Violence should review this report and evaluate this problem throughout the State and share other possible recommendations.

The City and the State agencies involved with distribution of orders of protection should evaluate the use of collaborative implementation of these recommendations where possible.

The City and the State agencies should explore expanding the Victim Information & Notification Everyday (VINE) system to include notification to protected parties of order of protection status.

The Legislature should clarify the current Penal Law §530.12(8) mandate that the clerks of court distribute orders of protection to complaining witnesses and explain exactly how this will be done and what funding will be used to do it.

## **CURRENT PRACTICES IN NEW YORK CITY**<sup>1</sup>

### **Drafting, Signing and Distributing Criminal Court Orders of Protection**

The process of producing criminal orders of protection begins in the offices of the city's five District Attorneys. Before defendants are arraigned, Assistant District Attorneys or paralegals, using a printed court form, draft the orders. Physically, the orders are an original with five carbon copies attached.

At arraignment, a judge completes the form by hand, filling in the terms for the order and the adjourned date of the case, and signs the order. In misdemeanor cases, the adjourned

---

<sup>1</sup> The information on current practices in this report was gathered from interviews conducted by members of the New York City Bar Association's Domestic Violence Committee.

date is the order's expiration date; orders of protection must be renewed at each court appearance. Orders of protection in felony cases are issued for six months, and they are reissued, if necessary, when they expire.

The judge explains the terms and conditions of the order to the defendant and spells out the consequences for disobeying it. The defendant then signs the order of protection, acknowledging service and rendering the order immediately effective. The five copies of the order are designated for and distributed to the Court, the defendant, the complainant/victim, the defense attorney and the police. Notably, the Assistant District Attorney is not designated to receive a copy. The original stays in the court file, one copy is given to the defendant, one to the defense attorney, one is sent to the police, and the remaining two copies are sent to the District Attorney's office for distribution to the complainant/victim.

### **Providing Protected parties with Copies of Orders of Protection**

Once the criminal orders of protection are issued, it is vital to get copies to protected parties quickly. Protected parties are often not present at Criminal Court dates and may not know an order of protection has been issued. Since the defendant's signature acknowledging receipt of the order of protection makes the order immediately effective, protected parties must have a copy as soon as possible so that enforcement is possible should a violation of the order occur. This is particularly important after arraignment, when the protected party may not know that the defendant is out of custody and the defendant may be enraged at having been arrested and arraigned. With an order of protection in hand, the protected party has a clear idea of what behavior is forbidden and, if the order is breached, a quick way to communicate to the police the seriousness of the case and the need for an arrest. Currently, however, the path from the court to the protected party is often slow and uncertain.

Penal Law section 530.12(8) addresses the process for ensuring that protected parties receive copies of their orders of protection:

In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the complainant and defendant and defense counsel and to any other person affected by the order a copy of the order of protection or temporary order of protection.

This mandate is difficult for the Court, given that the party to whom the clerk is directed to send an order of protection is a complaining witness and not the defendant. Courts generally do not have witness information in its files until a trial has been commenced. Maintaining this information may raise evidentiary concerns, such as the court's access to information about a witness prior to the witness formally testifying, and create logistical problems for courts distributing orders of protection.

In New York and Bronx Counties, the District Attorney's offices take charge of the process. In Kings, Queens, and Richmond Counties, Safe Horizon, a victim services agency, has this responsibility.<sup>2</sup> All counties rely primarily on the United States Postal Service (USPS) mail to deliver copies of orders of protection to protected parties. Under the best of circumstances, however, mail is a poor means of actually getting orders to domestic violence victims. First, once mailed, the order takes a few days to reach recipients, leaving protected parties vulnerable during the crucial period immediately following the arraignment. If mail takes longer, short term orders may expire before they even reach the protected party. Second, receiving mail is often difficult for domestic violence victims. They may have left their homes in an effort to escape their abusers and temporarily have no residence of their own. They may

---

<sup>2</sup> We are unaware, given the clear obligation under CPL§530.12(8) of the court of clerk to distribute orders of protection, how the DA's office and Safe Horizon took on this responsibility and the Committee would welcome any information about policies that may have been promulgated that resulted in shifting the responsibility from the Clerk of Court to the District Attorney's Office or advocacy organizations.

move several times in quick succession as they try to find safety and stability. If they remain in the place where they have lived with their abuser, the abuser may intercept the mail.

Queens County relies on email and fax as well as the USPS, but transmittal of orders of protection by email and fax is also problematic. Often contact information for the protected party in the court's or District Attorney's files is quickly out of date – protected parties may immediately relocate for their safety and to avoid detection by the batterer. Many protected parties have no access to either form of communication, and, like USPS mail, email and faxes can be intercepted by abusers.<sup>3</sup>

### **Victim Access to Orders of Protection through NYPD**

Even when protected parties have not yet received their order of protection, the order can be enforced if the police have a copy of the order. Providing police officers access to information about orders of protection, or the orders themselves, can, to some extent, make up for the failure to get the order directly to protected parties. In the event that a protected party contacts the police and tells the officer who responds to the call that the abuser has been arrested, police may be able to track down the order of protection. This provides the police with an independent, parallel source of information about the protected party, the perpetrator and the orders of protection. Even if the protected party does not have a copy of the order, the police can get the relevant information to make an arrest. In New York City, however, police officers may be as much in the dark about orders of protection as protected parties.

Police have two sources of information about criminal orders of protection in Criminal Court cases involving ‘family or household members’<sup>4</sup>: the NYPD order of protection database

---

<sup>3</sup> Appendix A is a detailed description of the methods each county in New York City uses to transmit orders of protection to complaining witnesses in criminal cases.

<sup>4</sup> “Family or household member” cases include those in which the defendant and the victim are married or were married, are related by blood, or have a child in common, pursuant to Criminal Procedure Law § 530.12, and



and the NYS order of protection Registry. However, officers must be trained to know how to access these orders and the information about them.

**NYPD Order of Protection Database.** The New York Police Department keeps its own database of orders of protection housed at police headquarters. Each day, orders of protection issued throughout the five boroughs are hand-delivered by NYPD employees to Police Plaza, where clerks scan the orders and make manual entries into the database. This process may take as long as forty-eight hours or longer to complete, so police may have no information about orders of protection during the crucial post-arraignment time period.

**The New York State Order of Protection Registry.** Developed pursuant to a legislative mandate and managed jointly by the NYS Police and the Office of Court Administration, the NYS Order of Protection Registry has information on current orders of protection in cases involving “family or household members,” including expired orders, and violations.

In New York City, Assistant District Attorneys complete forms for the registry at the same time they prepare orders of protection for arraignment. Once an order is signed, court personnel are directed to enter information within 24 hours about the orders. This information is available to clerks directly from the computers in the courthouse and entered into the New York State order of protection Registry, a database maintained by the Office of Court Administration (OCA). OCA and the police do not share the same databases.

---

cases in which the victim are living together or did live together, pursuant to Social Services Law § 459 (a). These are different from orders of protection between “strangers” which are not entered into the Registry.

## **NYPD PROCEDURES FOR ACCESSING INFORMATION ON ORDERS OF PROTECTION**

**At the Precinct.** Information on orders of protection is available in precinct houses to all police officers. NYS Registry information, which is the most complete source on orders of protection in family cases, is available through New York State Police Information Network (NYSPIN), and includes information about the source of official criminal histories (e.g., “rap sheets”) and driver’s licenses, among other information helpful to the police. NYSPIN access is restricted to those who been specially trained and most officers have access to appropriate passwords. Access to NYPD’s intranet order of protection database is not password-protected, and it is available to all officers. Information may also be available in the domestic incident report (“DIR”) database, which records information about police reports filed by “family and household members” in domestic violence-related calls. The DIR database is password protected and only Domestic Violence Police Officers (DVPO) have access to it. Each precinct has at least one DVPO, but most precincts do not have more than two, and DVPOs’ schedules vary so that they may be available for protected parties twenty-four hours a day. Therefore, if the individual officers are seeking DIR database information, those specially-designated DVPOs may be unavailable at the critical time when information is sought. This system often means that there is a period of time during which order of protection information is unavailable to non-DVPO officers, although with proper training and access to databases, all police officers can have the ability to access this information.

**In Patrol Cars.** Patrol cars are equipped with computers that should provide access to the NYPD database. NYPD procedures instruct police in patrol cars to use NYPD’s internal database to search for orders of protection. This database, however, does not include orders issued by judges outside of New York City, and it is subject to time lags because of the time it

takes to manually enter this information into relevant databases. Also, and more importantly perhaps, although access to the NYPD intranet with the database is available to all officers and is not restricted by password or limited to specially-designated officers within precincts, most officers call in to the precinct for this information. Therefore when police officers need to verify a protected party's claim that an order exists, police officers in the field often communicate with the precinct complaint room, or their precinct's DVPO, or some other officer at the precinct with access to the precinct database. If the computer system is not available, police officers can telephone the IDENT unit (IDENT) at NYPD headquarters. IDENT handles orders of protection directly and may have information for the officers. If the IDENT unit does not have any information, the Radio Motor Patrol officer can contact the precinct and request that a fellow officer conduct a search of the NYS Registry. Even after engaging these time-consuming database searches, relevant information may still not be uncovered: not only are these computer systems incapable of finding all information, particularly if errors at data entry occurred, but also police officers may not have received adequate training on these procedures. It is critical that officers have information about current orders of protection when responding to domestic violence calls not only to protect the victim but also to protect themselves and have as much information as possible when responding to these potentially dangerous calls.

**RECOMMENDATIONS FOR DISSEMINATING INFORMATION TO PROTECTED PARTIES ABOUT CURRENTLY ENFORCEABLE ORDERS OF PROTECTION**

No single method for conveying information about Criminal Court orders of protection will work for all protected parties or for the police in all circumstances, so construction of a system of alternative methods is necessary. Attempts should be made to deliver orders of protection directly to protected parties, but since these efforts are bound to fail for a significant

number of protected parties, courthouses and police precincts should make copies readily available.

Police officer knowledge about orders of protection is a necessary supplement to protected parties themselves having copies, and the NYPD should find ways to make sure police officers have access to the databases they need. Databases between OCA, the DA's office and the NYPD should be coordinated and easily accessible to insure the safety of both the protected parties and the responding officers.

### **Improving Victim Access to Orders of Protection**

**Mailing Orders of Protection to Protected Parties.** Currently, court clerks are designated by statute to distribute orders of protection to protected parties. The court does this by giving the order of protection to the District Attorney's Office. This system is not uniform, nor always effective, but many orders do reach protected parties by mail so this system should be improved and continued. The current policy under the penal law should be examined and perhaps amended to clarify a court's duties and how to avoid any evidentiary problems with having witness information in the file. In the meantime, OCA and the District Attorney's Offices should create a uniform system for the five boroughs to replace the patchwork of District Attorney support staff and Safe Horizon employees currently responsible for sending orders of protection to protected parties.

**Calling Protected Parties.** Not-for-profit community-based organizations could be encouraged to, and provided with funding so that they may, take responsibility for calling protected parties, telling them about the orders of protection, and finding email addresses or fax numbers where orders can be sent. Safe Horizon does this in Queens. In Kings County a newly funded initiative called Project Early Victim Engagement (EVE) plans to staff

arraignment parts with counselors who will call protected parties directly from the courtrooms post-arraignment to tell them about orders of protection. These counselors also ask about email addresses where copies may be sent safely. However, this responsibility should not be put on community-based organizations without proper funding, as this obligation is time-consuming and resource intensive in terms of staff time, mailing costs and other technological needs.

**Making Orders of Protection Readily Available in Courthouses.** Currently few protected parties know they can get copies of Criminal Court orders of protection from the courts that issued them. Since protected parties rarely attend criminal proceedings, notices within the courthouse will have limited effect. Rather, the Office of Court Administration and the NYPD should use their public websites to convey this information to those who need it. OCA's website should also inform protected parties that they can get copies at any local precinct, which may be closer their homes and easier to reach than a courthouse.

OCA should also prepare court personnel to respond to protected parties' requests for copies of orders of protection. Court officers, clerks and others to whom the public turns for information should know which office provides copies, and staff in that office should be designated and ready to meet these requests.

**Using the 311 System.** Callers should be able to use New York's 311 system to get information about how and where copies of orders of protection can be found. Currently, callers may eventually be directed to the courts, but the route to this information is long and circuitous.<sup>5</sup> All 311 responders should be trained to answer questions about orders of

---

<sup>5</sup> Members of the Domestic Violence Committee recently tested the 311 system in the Fall of 2007. One caller requested information about an existing Criminal Court order of protection which led to a phone tree in which the sixth option was either for mediation or an order of protection. When the caller finally arrived at the end of the tree, the caller was told to go to the clerk's office in the court where the order was issued. Another

protection, and all callers should be able to get the information directly, without numerous transfers and long phone trees.

### **Improving Police Access to Orders of Protection**

**Training.** Police need more training so that they can use the databases that are available to them. Patrol officers should know how to get order of protection information from the computers in their cars, from the IDENT system at police headquarters, and from precincts. Police personnel within precincts, at all levels from Police Administrative Aides to desk sergeants to domestic violence officers, should be able to access both the NYPD database and the NYS registry.

**Victim Outreach.** Protected parties should be allowed to go to the local precinct in their neighborhood and retrieve both information about their order of protection and an actual copy. The NYPD should be responsible for publicizing this option.

**Staffing.** Officers with familiarity with all of the domestic violence databases must be available 24 hours a day. The difficulties that protected parties, prosecutors, attorneys and others encounter in accessing NYPD information must be resolved.

### **Updated Technology**

OCA, the District Attorney's Office and the NYPD should coordinate all available technology to assure that orders are transmitted at the time of effectuation in Criminal Court to all available databases. These databases should also be uniformly available to precinct and patrol officers, and provide information for 311 and other victim notification devices.

### **Further Considerations for NYS Agencies**

---

attempt to obtain an existing criminal court order of protection transferred the caller to the Office of Court Administration, where the caller eventually had to dial zero for the operator. In this instance, the operator advised the caller to go to the Criminal Court and ask at the front desk.

**New York State Office for the Prevention of Domestic Violence.** OPDV should review this report and see what, if any, implications are present for state-wide issues. OPDV may also consider proposing legislation to the Governor to amend the Penal Law to more specifically detail the responsibility to distribute orders of protection, the mechanisms under which this should be done, and the possible evidentiary issues discussed above.

**Expanding the VINE System.** New York State's VINE system, which now provides information about the incarceration/custody status of offenders to protected parties, could be expanded to include information about orders of protection. The VINE system both reaches out to protected parties and provides a means for protected parties to find information themselves. Under the current system in New York State, protected parties can register anonymously for notification by phone and in writing about when an offender is to be released or paroled, has a sentence changed, is discharged by court order, or escapes. When a change of status is anticipated, an automated system dials the victim with a computer-generated message every thirty minutes until the victim enters a four digit personal identification number indicating the message was received. Information on offender status is also mailed to protected parties. Additionally, any member of the public can find an inmate's custody status by calling a toll free number or checking online. All that is necessary to obtain the information is the offender's name or institutional number.

## Appendix A

The procedures for delivering orders of protections to protected parties differ from county to county, and some work better than others.

**New York County.** The District Attorney's Witness Aid Services Unit (WASU) has responsibility for mailing criminal orders of protection. Criminal court clerks take orders of protection to the WASU each day and give the files to the WASU court part specialist. Currently three of the thirty people assigned to the WASU work on mailing out the order. Using the District Attorney's Data Sheet for contact information, they address envelopes for the orders. When an address cannot be found or when mail is returned because it is undeliverable, the court part specialist contacts an ADA for further information.

**Bronx County.** Like New York County, Bronx County relies on support staff in the District Attorney's office to mail orders of protection to protected parties. Each of Bronx County's Criminal Court parts has a support staff person assigned to looking after orders of protection. Immediately after a judge signs an order of protection, the support staff checks the court file for the location of the complaining witness, addresses an envelope, and mails out the copy of the order. No backlog accumulates, and only a few orders are returned undelivered each week.

**Kings County.** Like other counties, Kings County relies principally on mailing copies of orders of protection to domestic violence victims. In Kings County, Safe Horizon mails the orders of protection to complaining witnesses, a job it undertakes without dedicated funding. Court clerks from the two domestic violence parts and the grand jury take copies of orders of



protection to Safe Horizon's office at the end of each day. Safe Horizon's six employees all have a hand in looking up addresses and getting envelopes ready for mailing. A court clerk mails them. Safe Horizon has a backlog of unmailed orders of protection, so about a week elapses from the time the order is issued to the time the order is mailed. One to five orders are returned each day because of delivery problems.

Protected parties also have two other ways of finding information on their orders of protection through the Kings County Family Justice Center housed in the District Attorney's Office. NYPD officers within the Family Justice Center have access to computerized printouts of orders of protection and scanned copies of the orders. Also, a new initiative, called Project EVE, will fund counselors to staff arraignment parts. The counselors will call protected parties about orders of protection as soon as they are issued, and when requested, they will email the orders to protected parties.

**Queens County.** In Queens County, the Safe Horizon employees who take charge of conveying information about Orders of Protection to complaining witnesses do far more than search a file for an address and mail an envelope. Several times a day a Safe Horizon employee picks up files with newly-issued orders of protection from court parts and brings them to Safe Horizon's Office. Safe Horizon staff calls each victim, tells them that an order of protection has been issued, explains what the order of protection means, asks about fax or email for providing the protected party with a copy, and sends out the order. Only if email and fax are unavailable or the Safe Horizon staff can not reach the protected party by telephone, does Safe Horizon find the address from the file and mail the order to the protected party. In addition to these efforts by Safe Horizon, the Queens District Attorney's Office faxes copies of orders of

protection to domestic violence police officers so that they can take copies when they make their visits to protected parties' homes.

**Richmond County.** In Staten Island, Safe Horizon employees pick up orders of protection throughout the day during their regular rounds to court parts. Employees mail out the orders the same day. Few are returned in the mail.

August 2008