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Civil Domestic Violence Protection Orders in Wyoming: Do They Protect Victims of Domestic Violence

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CIVIL DOMESTIC VIOLENCE PROTECTION ORDERS IN WYOMING: DO THEY PROTECT VICTIMS OF DOMESTIC VIOLENCE?

Sean D. Thueson¹

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I. INTRODUCTION

I maintain that as the children of America watch family violence occur in their own home, when they watch people who supposedly love each other be brutal to each other, they are going to accept it as a way of life and I think that's one of the reasons that youth violence is probably the greatest crime problem in America today.²

Despite ones political point of view, the preceding quote from Janet Reno describes one of the greatest problems facing our society today. Domestic violence is a reality that until recently was hardly ever discussed because of the "private" nature of the facts and circumstances. The prevailing view is that what happens within ones own home is "private" and none of anyone else's business. The reality, however, is that domestic violence is more prevalent than most want to admit, and the costs to society and the victims are great. Civil protection orders are just one way to protect victims of domestic violence. The question is: Do protection orders really protect victims? If not, why not? The effectiveness of protection orders in Wyoming and around the country have been called into question by proponents and critics alike – on one hand because of their enforcement, or lack thereof, and on another because of the way they are issued, or are not issued.³

Specifically in Wyoming, questions have been raised as to whether a "finding" of domestic violence must be made by a court before a domestic violence protection order ("DVPO") can be issued. Additionally, questions about whether a respondent can "stipulate" to a DVPO without the court making any kind of a finding have also been raised.⁴ Although seemingly separate issues, they are closely related. As will be discussed in detail below, the effectiveness of protection orders is directly related to how the court interacts with victims of domestic violence as part of the "coordinated efforts approach."⁵ The coordinated efforts approach is thwarted when a court allows a respondent to "stipulate" to a DVPO without any kind of finding of

2. Address of Att'y Gen Janet Reno (March 23-25, 1993), cited in COURTS AND COMMUNITIES: CONFRONTING VIOLENCE IN THE FAMILY 51 (National Council of Juvenile and Family Court Judges ed., 1993).

3. See *infra* note 47 and accompanying text.

4. See *infra* note 159.

5. See *infra* notes 58-65 and accompanying text.

domestic violence by the court.⁶ Furthermore, allowing a respondent to "stipulate" to a DVPO without the court making a finding is contrary to the clear language of the statute, and the intent of the legislature.⁷

The issuance of DVPOs are becoming more common.⁸ The new laws in Wyoming have begun to make the process of obtaining a protection order in Wyoming more 'user friendly,' such that those who are in need can obtain a DVPO without an attorney.⁹ One change making the process easier is Wyoming's adoption of the use of standardized forms. The current standardized form used in Wyoming has been revised over the years, the current form being better than any of the previous.¹⁰

Protection orders and courts play an important role in the battle against domestic violence. Protection orders have been shown to at least deter batterers from committing future acts of violence.¹¹ Studies have shown that court policies and practices could actually discourage a woman's effort to obtain a protection order.¹² This article will focus on the effectiveness of the current Wyoming protection order statute, and make recommendations on how the statute needs to be improved in relation to the coordinated efforts approach.

A. *Shedding Myths About Domestic Violence*

Ending an abusive relationship is not a one-time occurrence where a victim leaves and the abuse is over; leaving is a process that occurs over time.¹³ For many people who have not experienced the effects of domestic violence this is a difficult concept to understand. The typical response is: "Why doesn't she just leave him?" This question is more difficult to under-

6. *Id.*

7. *See infra* notes 160-85 and accompanying text.

8. *See* Catherine Klein & Lelsye Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 810 (1993).

9. WYO. STAT. ANN. § 35-21-101 *et seq.* (LexisNexis 2001). Victims of domestic violence in Wyoming are able to obtain protection orders on their own. Wyoming Courts now have standardized forms that victims can use to obtain a DVPO without an attorney. However, an important factor in obtaining an effective order of protection is the victim's access to legal representation. *See infra* notes 243-249 and accompanying text.

10. The previous form stated: "*The respondent* has stipulated that the court may exercise jurisdiction over him under the Domestic Violence Protection Act, but does not stipulate that he or she has committed an act of domestic violence against the Petitioner." The new form states: "*The parties* stipulate that the Court may exercise jurisdiction over them under the Domestic Violence Protection Act even though the Respondent may dispute that he or she has committed an act of domestic violence against the Petitioner."

11. *See infra* note 53 and accompanying text.

12. *See* Michelle Waul, *Civil Protection Orders: An Opportunity for Intervention with Domestic Violence Victims*, 6 GEO. PUBLIC POL'Y REV. 51, 56 (2000).

13. *Id.*

stand than it is to answer. Domestic violence is a pattern of behavior.¹⁴ Batterers use tactics of control, often referred to as the “wheel of power and control,” to exert control over their victims.¹⁵ These tactics include: Emotional abuse, sexual abuse, isolation, minimizing and denying the abuse, blaming the victim, using children, using male privilege and economic control (i.e. the abuser is the “breadwinner” and thus has control over the money), coercion and threats, and intimidation.¹⁶

For example, a victim of domestic violence may be in a relationship where there are children involved. A batterer will often use children as a means of leverage over the victim. A batterer will threaten a victim that if she leaves, she will never see the children again. A victim may also be in a difficult economic situation, one where the batterer controls the money or the victim is not allowed to work; thus, there is no financial means to escape. Domestic violence is never an isolated or individual event, but a pattern of conduct that builds on previous events; the previous events having a profound effect on the victim.¹⁷ One should never judge a victim of domestic violence thinking that they could, or should, leave at any time. The situation is usually more complex than someone on the outside can understand.

The lethality of domestic violence also increases when the batterer believes the victim is either leaving or has left.¹⁸ Abuse worsens even when a victim expresses a desire to leave, thereby serving as a warning and deterrent. Therefore, any contact that anyone, courts, attorneys, advocates, and judges, have with victims of domestic violence is critical because it is may be at a time when the victim is trying to leave, or is at least reaching out for help. This will always be true when a victim seeks an order of protection. A victim of domestic violence needs support, not judgment.

Domestic violence is usually a learned behavior.¹⁹ Nevertheless, domestic violence is not only learned from one’s own family, but also learned from society. Those who care can make a difference, perhaps not with the current abuser, but at least with generations to come.²⁰ Domestic violence is not caused by alcohol, drugs, “out of control behavior,” stress, or problems that are “inherent” in every relationship.²¹ Batterers can be found in every age, racial, socioeconomic, educational, occupational, and religious

14. See JANET CARTER ET AL., DOMESTIC VIOLENCE IN CIVIL COURT CASES: A NATIONAL MODEL FOR JUDICIAL EDUCATION 22-24 (Jacqueline Agtuca et al. eds. 1992).

15. See LISAE JORDAN ET AL., THE DOMESTIC VIOLENCE CIVIL LAW MANUAL: PROTECTION ORDERS AND FAMILY LAW CASES 2 (2001).

16. *Id.* at 2-6.

17. See CARTER, *supra* note 14, at 23.

18. *Id.* at 25.

19. *Id.* at 30.

20. *Id.*

21. *Id.* at 32-34.

group.²² Thus, doctors, lawyers, and even judges could be batterers; however, the majority of batterers are male, and the majority of all victims are female.²³ It is important for everyone to realize that there is no “typical” batterer so as not to stereotype and miss the signs of domestic violence.

B. *Disturbing Statistics*

Women suffer domestic violence in “greatly disproportionate numbers.”²⁴ Three to four million women are victims of domestic violence perpetrated by a husband or partner.²⁵ Women are subject to a one-in-four to a one-in-three chance they will become a victim of domestic violence at the hands of a partner during their lifetime.²⁶ Eighty-five percent of violent crimes committed by partners (boyfriends, spouses, or significant others) are perpetrated against women.²⁷ Domestic violence is the leading cause of injury to women in America.²⁸ One-third of women seeking treatment from hospitals do so because of domestic violence.²⁹ One-third of all homicides of women are committed by husbands or boyfriends.³⁰

Sixty-three percent of males in prison between the ages of eleven and twenty are in prison because they killed their mother’s batterer.³¹ These young boys also have higher rates of suicide, violent assaults, sexual assaults, and alcohol and drug abuse.³² Annual medical expenses stemming from domestic violence run between three to five billion dollars per year, of which the taxpayers absorb the majority.³³ During the Vietnam War, the United States lost 39,000 soldiers; during the same time period (1967-1973), 17,500 women and children were killed by members of their own families.³⁴

For children, often referred to as the “silent victims,” domestic violence has a devastating effect. Children who witness domestic violence are likely to suffer from emotional and developmental problems after either hearing or seeing the abuse.³⁵ Children may also inadvertently become vic-

22. *Id.* at 35.

23. *Id.* at 41 (95% of victims are women).

24. Melissa Tatum, *A Jurisdictional Quandary: Challenges Facing Tribal Governments in Implementing the Full Faith and Credit Provisions of the Violence Against Women Acts*, 90 KY. L.J. 123, 126 (2002).

25. *See* JORDAN, *supra* note 15, at 1.

26. *Id.*

27. *See* Tatum, *supra* note 24, at 126.

28. *Id.* at 126-27.

29. *Id.* at 127.

30. *Id.*

31. *Id.* at 127-28.

32. *Id.* at 128.

33. *Id.*

34. Klein & Orloff, *supra* note 8, at 809.

35. *See* JORDAN, *supra* note 15, at 10.

tims when they get in the way.³⁶ Males who are over the age of 15 often try to intervene and may be hurt, or may hurt someone else.³⁷ Children who have experienced domestic violence often have problems knowing who they can trust, which often leads to these same children becoming victims to sexual and/or physical abuse later as adults.³⁸ Children who are exposed to domestic violence are more likely to become involved in the criminal justice system, whether for violent crimes, sexual crimes, or for drugs and alcohol.³⁹

Perhaps the most important statistic for our purposes, however, is that studies have proven that men who batter their partners are likely to batter their children as well.⁴⁰ These children, especially male children who are exposed to domestic violence, are likely to become batterers themselves.⁴¹ Children are indeed victims when it comes to domestic violence, and they do not have to suffer actual physical abuse to be a victim.

C. *Statistics on Protection Orders*

An effective approach to protecting victims of domestic violence is essential because sixty percent of women in one study reported that the court's protection order was violated, and of those violations, twenty-nine percent of the violations resulted in severe violence.⁴² Women who seek protective orders have typically endured abuse over a prolonged period of time.⁴³ One-fourth of victims that responded to one survey indicated they had endured abuse for over 5 years.⁴⁴ Most petitioners asking the court for a protective order have suffered physical abuse, and over half of those have endured "severe abuse."⁴⁵ The longer the women experienced domestic violence, the more severe the violence became.⁴⁶

Some research has indicated that the issuance of protective orders does not reduce the likelihood of future violence.⁴⁷ The outcome, however, seems to be dependant upon how the batterer is treated by the courts.⁴⁸ Research indicates that vigorous prosecution and significant sanctioning of

36. *Id.*

37. *Id.*; see also *supra* note 31 and accompanying text.

38. See JORDAN, *supra* note 15, at 10-11.

39. *Id.* at 10.

40. *Id.* at 11; see also *infra* note 77.

41. JORDAN, *supra* note 15, at 10-11.

42. See Andrew Klein, *Re-abuse in a Population of Court-Restrained Male Batterers: Why Restraining Orders Don't Work*, in ADELE HARRELL & BARBARA SMITH, *DO ARRESTS AND RESTRAINING ORDERS WORK?* (Eve Buzawa & Carl Buzawa eds., Sage Publications, 1996).

43. See Waul, *supra* note 12, at 57.

44. *Id.*

45. SUSAN KEILITZ ET AL., NATIONAL CENTER FOR STATE COURTS, *CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE* (1997).

46. See *id.*

47. Waul, *supra* note 12 at 54.

48. *Id.*

abusers prevents re-abuse.⁴⁹ Another reason victims seek protective orders from the court is to document and create a record of the abuse they have experienced.⁵⁰ This may be a way to “break the silence,” sending the abuser a message that she is not going to tolerate the abuse anymore, a way of regaining control, or perhaps creating a record in case something worse happens.⁵¹ Therefore, the effectiveness of protective orders may not only depend on whether the violence immediately decreases, but also on whether the DVPO is actually issued to help create the record or establish the independence of the victim.

More than half of women seeking protective orders do so because some type of physical injury was inflicted upon them during the last “incident.”⁵² While respondents usually violate a protection order in some way, the protection order does generally deter the respondent from committing repeated incidents of abuse.⁵³ Therefore, the batterer may violate the order, such as contacting the victim by phone, but the chances of physical abuse decrease after the order is issued.

Many women believe that a protective order is effective to document abuse, but less than half believe the batterer had to obey the order.⁵⁴ For courts, a batterer’s prior abuse history is a “significant predictor” of whether abuse may continue after the issuance of a protective order.⁵⁵ Additionally, sixty-five to eighty-five percent of respondents in protection order proceedings have prior criminal arrest histories.⁵⁶ Prior criminal history is relevant and should be considered. Moreover, the probability of continued abuse is increased when a male strongly resists the order, the batterer and victim live separately when the order is sought, and the woman has children.⁵⁷ These are all important factors for courts, attorneys, and advocates to consider when issuing or seeking a DVPO.

II. PROTECTION ORDERS - A COORDINATED EFFORTS APPROACH

A coordinated efforts approach, coordinating the combined efforts of police, prosecution, and community service providers, increases the successful protection of victims of domestic violence.⁵⁸ “[T]he most effective response [to domestic violence] is created when all parts of the justice system coordinate their operations and function in a collaborative effort to ad-

49. Klein, *supra* note 42.

50. Waul, *supra* note 12, at 56.

51. *Id.*

52. See Klein, *supra* note 42.

53. See KEILITZ, *supra* note 45.

54. See Klein, *supra* note 42.

55. See Waul, *supra* note 12, at 54.

56. *Id.*

57. See Klein, *supra* note 42.

58. See Waul, *supra* note 12, at 58.

dress the problem.”⁵⁹ Victims who are supported in their efforts to obtain a protection order and to end the abuse in their lives are much more likely to take other steps to keep themselves safe.⁶⁰ The protection order process is a “prime opportunity” for providing the necessary support and encouragement to keep victims of domestic violence safe.⁶¹

Courts are on the front lines during the protection order process. “How effectively the judiciary handles domestic violence cases ultimately determines how effectively the justice system is able to break the cycle of violence. It is a judge who sets the tone in the courtroom, and it is the judge who makes the most critical decisions affecting the lives of the victim, the perpetrator, and children.”⁶² There are nine core values that courts dealing with cases involving domestic violence should strive to uphold, the first of which is victim and child safety. The courts accomplish victim and child safety through the fifth value, coordination of procedures and services.⁶³ Courts can coordinate with “community partners” to ensure those who are seeking help actually receive the help they seek.

“Community partners” are those resources within the community that have abilities to provide services for victims of domestic violence. These community partners include representatives from the court system, law enforcement, and victim advocates such as Project SAFE and the Coalition Against Domestic Violence. An effective “community partner” approach may involve formal and informal meetings where the discussion focuses on how these partners can work together to provide coordinated services for victims.⁶⁴ The most important thing to remember is that without a “coordinated efforts” approach, a victim of domestic violence may not get the help needed to break free from a batterer’s power and control.⁶⁵

III. WYOMING’S PROTECTION ORDER STATUTE

Wyoming’s Protection Order statute is found in title 35, chapter 21, of the Wyoming statutes.⁶⁶ It is referred to as the “Domestic Violence Pro-

59. See EMILY SACK, *CREATING A DOMESTIC VIOLENCE COURT I* (Lindsey Anderson et al. eds. 2002).

60. See Waul *supra* note 12, at 57.

61. *Id.*

62. See CARTER, *supra* note 14, at xvii.

63. See SACK, *supra* note 59, at 5-6.

64. *Id.* at 10.

65. For instance, a victim coming to a court to obtain a protection order may need shelter, food, or other necessities because the batterer has control of the money. She may be too frightened to stay at her own home, even if the courts award her possession of the residence, because the batterer will still physically abuse her, or worse, kill her. She may need legal representation, or any number of things. If a court and its personnel has a list of these resources, and is trained to identify the need, the victim is much more likely to remain safe and gain the control needed to either leave the relationship or take steps to protect herself.

66. WYO. STAT. ANN. § 35-21-101 *et seq.* (LexisNexis 2003).

tection Act.”⁶⁷ This Act allows a victim of “domestic abuse” to obtain an order from the Circuit Court, or the District Court if the County has no Circuit Court, which orders the batterer or abuser to “refrain from abusing the petitioner or any other household member.”⁶⁸ Domestic abuse is defined as “physical abuse, threats of physical abuse or acts which unreasonably restrain the personal liberty of any household member by any other household member.”⁶⁹ A “household member” includes: 1) persons married to each other; 2) persons living with each other as if married; 3) persons formerly married; 4) persons formerly living together as if married; 5) parents and their adult children; 6) adults sharing common living quarters; 7) persons who are the parent of a child, but who are not living together; and 8) persons who are in, or have been in, a dating relationship.⁷⁰

One interesting aspect of the statute’s definition of a “household member” is that children are not included anywhere in the definition.⁷¹ The statute defines adult as “a person who is sixteen (16) years of age or older, or legally married.”⁷² The result is that children under the age of sixteen who are unmarried are left unprotected by this statute.⁷³ At least thirty-six states and the District of Columbia issue DVPOs to children.⁷⁴ Wyoming does allow a petitioner to ask the court for “temporary custody” of any minor

67. WYO. STAT. ANN. § 35-21-101 (LexisNexis 2003).

68. WYO. STAT. ANN. § 35-21-105(a) (LexisNexis 2003); WYO. STAT. ANN. § 35-21-102(a)(ii) (LexisNexis 2003) (defining court as the Circuit Court, unless the County does not have a Circuit Court, in which case the District Court is the court of jurisdiction).

69. WYO. STAT. ANN. § 35-21-102(a)(iii) (LexisNexis 2003).

70. WYO. STAT. ANN. § 35-21-102(a)(iv)(A)-(H) (LexisNexis 2003).

71. See *supra* note 70 and accompanying text. It appears that the Wyoming legislature has purposely excluded minors when examining such included definitions as “parents and their adult children.” WYO. STAT. ANN. § 35-21-102(a)(iv)(E) (LexisNexis 2003). This has been the case since the statute was adopted in 1982. See Session Laws of Wyoming, ch. 45 (defining “household member” as: “[S]pouses, person living together as spouses, former spouses, parents, adult children and other adults sharing a common household”).

72. WYO. STAT. ANN. § 35-21-102(a)(i) (LexisNexis 2003).

73. *Id.*

74. ALA. CODE § 30-5-2 (2003); ALASKA STAT. § 18.66.990 (2002); ARIZ. REV. STAT. ANN. § 13-3601 (2003); ARK. CODE ANN. § 9-15-103 (2002); CAL. FAM. CODE § 6211 (2003); COLO. REV. STAT. ANN. § 14-4-101 (2003) (defining domestic abuse as that on any relation); COLO. REV. STAT. ANN. § 14-4-103 (2003) (restraining abuse of children); CONN. GEN. STAT. ANN. § 46b-38a (2003); 13 DEL. CODE ANN. § 701A *et. seq.* (2003) (“Child Protection From Domestic Violence Act”); D.C. CODE § 16-1004 (2003); GA. CODE § 19-13-1 (2002); HAW. REV. STAT. § 586-1 (2003); IDAHO CODE § 39-6303 (2003); 750 ILL. COMP. STAT. 60/103 (2003); KAN. STAT. ANN. § 60-3102 (2002); KY. REV. STAT. ANN. § 403.720 (2002); LA. REV. STAT. ANN. § 46:2132 (2003); ME. REV. STAT. tit. 19, § 4002 (2003); MD. CODE ANN., FAM. LAW § 4-501 (2002); MICH. COMP. LAWS § 600.2950 (2003); MINN. STAT. § 518B.01 (2003); MISS. CODE ANN. § 93-21-3 (2003); NEB. REV. STAT. § 42-903 (2003); NEV. REV. STAT. § 33.018 (2003); N.M. STAT. § 40-13-2 (2003); N.Y. FAM. CT. ACT § 822 (2003); N.D. CODE § 14-07.1-01 (2003); OHIO CODE § 3113.31 (2003); OKLA. STAT. tit. 22 § 60.1 (2003); 23 PA. CONS. STAT. § 6102 (2003); S.C. CODE § 20-4-20 (2002); S.D. LAWS § 25-10-1 (2003); TEX. FAM. CODE § 71.003 (2003); VT. STAT. ANN. tit. 15, § 1101 (2003); WASH. REV. CODE ANN. § 26.50.010 (2003); W. VA. CODE § 48-27-204 (2003); WIS. STAT. § 813.122 (2002).

children, but also allows the court to give the respondent visitation "if adequate provision can be made for the safety of the children" ⁷⁵ The Wyoming Child Custody statutes state, "The court *shall* consider evidence of spousal abuse or child abuse as being contrary to the best interest of the children."⁷⁶ Nevertheless, some judges and attorneys do not seem to feel that spousal abuse has anything to do with child custody; thus, batterers who abuse their victims will often get equal custody even though there is ample evidence to show that those who abuse "adults" are just as likely to abuse their children.⁷⁷

The process of obtaining an order of protection is fairly easy and straightforward. Wyoming, like most states, allows victims of domestic violence to file a petition with the Circuit Court, or District Court if there is no Circuit Court in the County, for an order of protection without charging a fee.⁷⁸ The application must be accompanied by a sworn affidavit setting forth specific facts alleging domestic abuse.⁷⁹ This is all done simply by obtaining the standard petition packet from the court and following the instructions.⁸⁰ If it appears from the facts alleged in the sworn application for the order of protection that there exists a danger of further abuse, the court *shall* immediately grant the petition for an ex parte temporary restraining order.⁸¹ The court then sets a hearing for seventy-two (72) hours from the date the ex parte order was granted, or "as soon thereafter as the petition

75. WYO. STAT. ANN. § 35-21-105(b)(i) (LexisNexis 2003).

76. WYO. STAT. ANN. § 20-2-201(c) (LexisNexis 2003) (emphasis added).

77. See *infra* Section "III(D)" (relating a real life experience in which the GAL and Judge had this point of view); see also Lynne R. Kurtz, *Protecting New York's Children: An Argument for the Creation of a Rebuttable Presumption Against Awarding a Spouse Abuser Custody of a Child*, 60 ALB. L. REV. 1345, 1352 n.52 (1997) (explaining that spousal abusers are more likely to abuse their children as well and violence actually increases after divorce) (citing LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* 59, 63 (1984) (finding that 53% of men studied who abuse their wives also abuse their children and suggesting that the child abuse is more likely to occur as the children grow older)); LEE H. BOWKER ET AL., *ON THE RELATIONSHIP BETWEEN WIFE BEATING AND CHILD ABUSE*, IN *FEMINIST PERSPECTIVES ON WIFE ABUSE* 158, 162 (Kersti Yllo & Michele Bograd eds., 1988) (finding that 70% of the men studied who abused their wives also abused their children); Mary McKernan McKay, *The Link between Domestic Violence and Child Abuse: Assessment and Treatment Considerations*, 73 CHILD WELFARE 29 (1994) (indicating "child abuse is 15 times more likely to occur in families where domestic violence is present"); Evan Stark & Anne H. Flitcraft, *Women and Children at Risk: A Feminist Perspective on Child Abuse*, 18 INT'L J. HEALTH SERVS. 97, 106 (1988) (noting that half of the men studied abused both their wives and children); Stephen E. Doyno et al., *Custody Disputes Involving Domestic Violence: Making Children's Needs a Priority*, 50 JUV. & FAM. CT. J. 1 (1999).

78. WYO. STAT. ANN. § 35-21-103(a), (d) (LexisNexis 2003).

79. WYO. STAT. ANN. § 35-21-103(b) (LexisNexis 2003).

80. See WYO. STAT. ANN. § 35-21-103(e) (LexisNexis 2003) (requiring the court to make standard forms available to petitioners).

81. WYO. STAT. ANN. § 35-21-104(a) (LexisNexis 2003).

may be heard by the court,"⁸² and causes the notice of the hearing, along with the temporary order of protection, to be served upon the respondent.⁸³

The court then holds a hearing to determine whether an order of protection should be awarded to the petitioner.⁸⁴ The statute specifically states, "Upon finding that an act of domestic abuse has occurred, the court shall enter an order of protection ordering the respondent household member to refrain from abusing the petitioner or any other household member. The order shall specifically describe the behavior that the court has ordered the respondent to do or refrain from doing."⁸⁵ Some powers the court has include: 1) grant sole possession of the residence to the petitioner; 2) give the petitioner custody of any children, and order the respondent not to abduct or remove any of the children from the jurisdiction; 3) arrange visitation for the respondent of any children; 4) order counseling; 5) order child support; 6) order support for the petitioner; 7) prohibit the respondent from selling or disposing of property; and 8) order other relief as the court deems necessary for the protection of the petitioner, children, or other household members.⁸⁶ The order of protection is good for up to three (3) months, but can be extended for "good cause."⁸⁷

A. *Needed Changes in Wyoming*

There are at least four (4) changes or additions that need to be made in the Wyoming protection order statute to make it more effective in protecting victims of domestic violence. First, the duration of an *ex parte* protective order needs to be more clearly defined. Previously, Wyoming's statute had the shortest duration for an *ex-parte* order of protection in the country, only seventy-two (72) hours, but now does not limit its duration. Second, the amount of time for which a protection order remains in effect must be increased. Third, the statute must be changed to adequately address the child custody, visitation, and support issues that arise in DVPO proceedings. Fourth, the statute must address child custody in the protection order statute when there is already a child custody order or agreement in effect. Additionally, there are changes that need to be made at the trial court level, the law enforcement level, and at the practitioner level, to create an effective "coordinated efforts" approach; thus, making domestic violence victim assistance as effective as possible.

82. WYO. STAT. ANN. § 35-21-104(a)(iii) (LexisNexis 2003). This section was amended by H.R. 0133, 57th Leg., Reg. Sess. (Wyo. 2003), Enrolled Act No. 93, 2003, ch. 173 § 1, 2003 Wyo. Session Laws. Previously the statute required the hearing be held within 72 hours. See *infra* notes 88-97.

83. WYO. STAT. ANN. § 35-21-104(a) (LexisNexis 2003).

84. WYO. STAT. ANN. § 35-21-105 (LexisNexis 2003).

85. WYO. STAT. ANN. § 35-21-105(a) (LexisNexis 2003). Recall that a child under 16 years of age is not a "household member." See *supra* notes 70-73 and accompanying text.

86. WYO. STAT. ANN. § 35-21-105(a)-(b) (LexisNexis 2003).

87. WYO. STAT. ANN. § 35-21-106(b) (LexisNexis 2003).

1. Ex parte Orders – Duration of More Than 72 Hours Needs Limitation

Before the statute was amended in 2003, the DVPO statute required a judge issuing an ex parte temporary restraining order (TRO) to hold a hearing within 72 hours after the TRO had been issued.⁸⁸ A hearing concerning the issuance of a protective order is required to fulfill the respondent's right to due process.⁸⁹ Wyoming had a much shorter duration than most states when it came to the TRO.⁹⁰ Wyoming's short time period made it difficult for petitioners, and their attorneys, to put together a case to present at the DVPO hearing.⁹¹ When children were involved, the short TRO period also made it difficult on parties to put a case together and present evidence to the court regarding what the best interests of the child may be. This made a court's decisions about custody and visitation difficult, and arguably led to some poor custody and visitation decisions because of the lack of information the court had on which to base its decision.

On July 1, 2003, the statute was changed to allow a judge to hold a hearing on a petition for an order of protection "as soon thereafter as the petition may be heard by the court . . ."⁹² This is a step in the right direction because it addresses the previous limitations addressed above. A court can now hold a hearing more than seventy-two (72) hours after the ex-parte order was issued and not be in violation of the statute.⁹³ The court must utilize this new tool effectively to ensure parties are given adequate time to find legal counsel, prepare its case, and in cases where children are involved, to make decision about custody and visitation based on the best interests of the child.

88. WYO. STAT. ANN. § 35-21-104(a)(iii) (LexisNexis 2002).

89. U.S. CONST. amend. V (stating that no person shall be deprived of life, liberty, or property without due process of law). *See also* Blazel v. Bradley, 698 F. Supp. 756 (W.D. Wis. 1988) (holding that ex parte orders generally do not violate due process); *People v. Forman*, 546 N.Y.S.2d 755 (N.Y. Crim. Ct. 1989) (holding temporary protection order does not violate due process when issued before hearing so long as a hearing is held promptly after issuing the temporary order); *In re Penny R.*, 509 A.2d 338 (Pa. Super. Ct. 1986) (holding that due process required a hearing within 10 days after issuance of an ex parte temporary protection order that discontinued visitation rights).

90. Waul, *supra* note 12, at 54. Most states give effect to a TRO for 7-14 days. *Id.* *See also infra* notes 100-109.

91. It is also difficult on the petitioner because many times she is representing herself *pro se*. *See infra* note 243 and accompanying text.

92. WYO. STAT. ANN. § 35-21-104(a)(iii) (LexisNexis 2003). This section was amended by H.R. Bill 0133, 2003 Leg., 57th Sess. (Wyo. 2003), Enrolled Act No. 93, 2003, ch. 173 § 1, 2003 Wyo. Session Laws. One additional change in the statute was to exclude acts of self-defense from the definition of domestic abuse – another huge step in the right direction.

93. In the past, courts routinely held hearing beyond the 72 hour time period. One of the reasons most often used to extend the time was to allow the respondent time to obtain legal counsel.

While this is a step in the right direction, the statute as it is now worded makes it easier to abuse the system.⁹⁴ Attorneys should only ask for an extension beyond seventy-two (72) hours, and judges should only grant extensions, if there is good cause to extend the time beyond seventy-two (72) hours. Make no mistake, abusers use orders of protection as another means of controlling their victims. Extending the duration of an ex-parte order could violate a victim's right to due process. Judges must be cautious when extending the 72-hour period and make sure the extension is warranted by good cause. Good cause may be established by showing that a good faith effort to obtain counsel has been made, or that additional time is necessary to prepare for custody and visitation matters. Courts of other states have held that removing a respondent from his residence or suspending rights of visitation with children for up to ten to fourteen (10-14) days does not violate due process.⁹⁵ Therefore, Wyoming courts should not allow an extension of A TRO that contains child custody orders or an order removing a person from their residence for more than ten (10) days, and no extension should be given unless warranted by good cause. The legislature should change the language of the statute to include a "good cause" requirement, define "good cause,"⁹⁶ and add a limitation of seven to ten (7-10) days so no due process rights are violated.⁹⁷

2. Duration of Protection Orders

Currently, Wyoming has the shortest duration for protection orders in the country.⁹⁸ The Domestic Violence Model Code adopts the position that the court should determine the duration of protective orders; or in other words, that the order should remain effective indefinitely until the court de-

94. Waul, *supra* note 12, at 54.

95. *Pendleton v. Minichino*, No. 506673, 1992 Conn. Super. Ct. LEXIS 915, at *7 (Conn. Super. Ct. April 2, 1992) (holding that a temporary ex parte protection order which suspended visitation for 14 days until hearing did not violate due process); *Williams v. Marsh*, 626 S.W.2d 223 (Mo. 1982) (holding that a temporary ex parte protection order excluding the respondent from his home and prohibiting contact with his children for 15 days before a hearing was held did not violate due process); *People v. Derisi*, 442 N.Y.S.2d 908 (Suffolk County Ct. 1981) (holding that the respondent must be granted a prompt hearing after an ex parte temporary protection order denied him access to his home and personal belongings); *Marquette v. Marquette*, 686 P.2d 990 (Okla. Ct. App. 1984) (holding that an ex parte protection order that restrained the respondent from communicating with his wife and effectively denied him visitation with his children for 10 days prior to the hearing did not violate due process).

96. Good cause would include: Additional time to prepare when temporary child custody and support is an issue, additional time to secure evidence or witnesses essential to the hearing, and additional time to serve the respondent. Requiring an attorney, or a pro se party, to file an affidavit describing the reasons necessitating the extension, and have an ex parte hearing if necessary, could accomplish this.

97. See Waul, *supra* note 12, at 54. Courts have held that a duration of 7-10 days, perhaps as many as 14 days, would not violate due process.

98. WYO. STAT. ANN. § 35-21-106(b) (LexisNexis 2003); see *infra* notes 100-09 (describing the durations of protection orders in all 50 states and D.C.).

cides the order should be modified or dissolved.⁹⁹ Ten states, including Alaska, Colorado, Florida, Hawaii, Michigan, New Jersey, North Dakota, Oklahoma, Vermont, and Washington, have followed the model code and place no limits on the duration of protective orders.¹⁰⁰ In Ohio, courts can enter domestic violence protection orders for a period of five years.¹⁰¹ In Wisconsin, a court can enter a protective order for a duration asked for by the petitioner, but not for more than four years.¹⁰² California, Kentucky, Mississippi, Rhode Island, and South Dakota courts issue protective orders for a duration of three years.¹⁰³ In California, the DVPO can be renewed for an additional three years, or indefinitely.¹⁰⁴ Arkansas, Illinois, Indiana,

99. See NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, FAMILY VIOLENCE: A MODEL STATE CODE § 306 (1994) [hereinafter "Model Code"]. The Model Code contains model statutes recommended by judges, battered women's advocates, batterer's defense attorneys, prosecutors, and other legal experts, to effectively combat domestic violence.

100. ALASKA STAT. § 18.66.100 (2002) (stating that a respondent is indefinitely prohibited from threatening or committing acts of domestic violence against the petitioner until further order of the court, but specific prohibitions, such as phone calls, contact, exclusion from residence, child custody, etc., remain effective for six months; temporary orders remain effective for 10 days); COLO. REV. STAT. ANN. § 13-14-102 (2002) (stating that protective orders are unlimited, but that a respondent can apply to the court for dismissal or modification after issuance; temporary orders are good for 14 days, but can be extended by 14 days for good cause); FLA. STAT. ANN. § 741.30 (2002) (stating that protective order shall remain in effect until modified or dissolved, respondent may petition court for such; temporary order good for 15 days, but may be extended to obtain service); HAW. REV. STAT. § 586-5.5 (2002) (stating that a protective order is effective for a reasonable time period to be determined by the court; a temporary order is good for a period determined by the court, but not more than 90 days); MICH. COMP. LAWS ANN. § 600.2950 (2002) (stating that a protective order has no limitation on duration, but may not be issued for less than 6 months; temporary orders are good for 14 days); N.J. STAT. ANN. § 2C:25-29 (2002) (stating that a protective order is good until modified or dissolved by the court; a temporary order is good until the hearing is held, usually within 10 days, but can be extended for good cause); N.D. CENT. CODE § 14-07.1-02 (2002) (stating that a protective order is effective until modified or dissolved; a temporary order is good for 14 days); OKLA. STAT. ANN. tit. 22, § 60.4 (2002) (stating that a protective order is good for whatever duration the court decides; a protective order is good for 15 days, unless the respondent cannot be served, at which time the order automatically renews for an additional 15 days); VT. STAT. ANN. tit. 15, § 1103 (2002) (stating that protective orders good for duration as determined by the court; temporary orders good for 10 days); WASH. REV. CODE ANN. § 26.50.060 (2002) (stating that the order's duration can be set by the court; a temporary order is good for 14-24 days).

101. OHIO REV. CODE ANN. § 3113.31 (2002) (stating that a protective order effective for up to 5 years; temporary order good for 7 days);

102. WIS. STAT. ANN. § 813.12 (2002) (stating that a protective order can be issued for up to four years; a temporary order is good for 14 days).

103. CAL. FAM. CODE § 6345 (2002) (stating that the protective order is issued for three years, but can then be renewed for an indefinite time period; temporary orders are good for 7 days); KY. REV. STAT. ANN. § 403.750 (2002) (stating that a protective order is good for three years, but may be extended for an additional 3 years; temporary order good for 14 days); MISS. CODE ANN. § 93-21-17 (2002) (stating that a protective order shall not exceed 3 years; temporary order good for 10 days); R.I. GEN. LAWS § 15-15-3 (Supp. 1993) (stating protective orders good for three years, may be extended; temporary orders good for 21 days); S.D. CODIFIED LAWS § 25-10-5 (2002) (stating protective orders good for 3 years; temporary orders good for 30 days).

104. See *supra* note 103.

Maine, Texas, and Virginia courts can issue protective orders for up to two years.¹⁰⁵ Alabama, Arizona, Delaware, the District of Columbia, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, Oregon, Pennsylvania, Tennessee, and Washington State all issue DVPOs for at least one year.¹⁰⁶ Five states, Connecticut, Georgia, New Mexico, South Carolina,

105. ARK. CODE ANN. § 9-15- 205 (2002) (stating that protective orders good for 90 days up to two years, but can be extended; temporary order good for 30 days); 725 ILL. COMP. STAT. § 5/112A-20 (2002) (stating that a protective order is good for a period of two years, but can be extended to satisfy the requirements of the statute; temporary orders are good for 14-21 days); Burns IND. CODE ANN. § 34-26-5-9 (2002) (stating that protective orders issued for two years; temporary orders good for 30 days); 19-A M.R.S. §4007 (2002) (stating that a protective order is good for 2 years, and may be extended; temporary order good for 21 days); TEX. FAM. CODE § 85.025 (2002) (allowing protective orders for 2 years; temporary orders good for 14 days, but may be extended); VA. CODE ANN. § 16.1-279.1 (2002) (allowing protective orders to be effective for up to 2 years).

106. ALA. CODE § 30-5-7 (2002) (stating that protective order must be for one year unless court orders longer or shorter duration, but may be extended; temporary order good for 14 days); ARIZ. REV. STAT. ANN. § 13- 3602 (2002) (stating that the protective order is good for up to one year; in Arizona, there are no temporary orders, a petitioner is granted a protective order ex parte if she proves an act of domestic violence; if the respondent wishes to contest the protective order he may request a hearing); DEL. CODE ANN. tit. 10, § 1045 (2002) (stating that protective orders good for one year, but may be extended; temporary orders good for 10 days); D.C. CODE ANN. § 16-1005 (2002) (stating that protective order good for one year, but may be extended; temporary order good for 14 days); IOWA CODE ANN. § 236.5 (2002) (stating that protective order good for 1 year, but may be extended; temporary order good for 15 days); KAN. STAT. ANN. § 60-3107 (2002) (stating that protective order good for one year; temporary order good for 20 days); LA. REV. STAT. ANN. § 46:2136 (2002) (stating that a protective order is good for up to eighteen months, but can be extended for good cause; temporary order good for 20 days); MD. CODE ANN., FAM. LAW § 4-506 (2002) (stating that protective orders are good for up to one year, but can be extended for good cause; temporary orders are good for 7 days after service on respondent); MASS. GEN. LAWS ANN. ch. 209A, § 3 (2002) (stating that protective order good for one year, but may be extended; temporary order good for 10 days); MINN. STAT. ANN. § 518B.01 (2002) (stating that protective order good for one year, but may be extended; temporary order good for 14 days); Mo. Rev. Stat. 455.040 (2003) (stating that the protective order is good for up to one year, temporary order good for 15 days); MONT. CODE ANN. § 40-4-121 (2002) (stating that protective order good for one year; temporary order good for 20 days); NEB. REV. STAT. § 42-924 (2002) (allowing protective orders for a period of one year; temporary orders for 14 days); NEV. REV. STAT. ANN. § 33.080 (2002) (stating protective orders issued for 1 year, but may be extended for one additional year; temporary order good for 30 days); N.H. REV. STAT. ANN. § 173-B:5 (2002) (stating that protective orders issued for 1 year; temporary orders good until respondent requests hearing); N.Y. FAM. CT. ACT § 842 (2002) (stating that protective orders issued for one year, unless aggravating circumstances, then issue for three years); N.C. GEN. STAT. § 50B- 3 (2002) (stating that protective orders good for 1 year); OR. REV. STAT. § 107.718 (2002) (allowing protective orders for 1 year; temporary orders good for up to 180 days); PA. STAT. ANN. tit. 23, § 6108 (2002) (allowing protective orders to be effective for up to 18 months, but may be extended; temporary orders good for 19 days); TENN. CODE ANN. § 36-3-605 (2002) (stating protective order good for 1 year, extended for one year if necessary; temporary order good for 15 days); WASH. REV. CODE ANN. § 26.50.60 (2002) (stating protective order good for 1 year; temporary order good for 14 days).

and West Virginia all issue DVPOs for six months.¹⁰⁷ It is important to point out, however, that the vast majority of all these states allow a DVPO to be extended beyond the original term for which it was issued.¹⁰⁸

There are only three states, Idaho, Utah, and Wyoming that issue DVPOs for less than six months.¹⁰⁹ The vast majority of states, 42 states plus the District of Columbia, have DVPOs with durations of at least one full year.¹¹⁰ In Idaho, although the initial duration of a DVPO is three months, the order is extended by one full year if the petitioner requests it.¹¹¹ In Utah, the initial DVPO period is five months, but the judge has the discretion to extend the duration of the initial order far beyond five months if he indicates, on the record, why more than five months is necessary.¹¹² Furthermore, in Utah, all that is required is a review by the court at five months.¹¹³ The court is not required to set the expiration date of the DVPO for five months.¹¹⁴ A judge in Utah can decide to review the DVPO at five months to see if a modification or dissolution is necessary; thus, the duration of the DVPO could literally be indefinite, only to be "reviewed" every five months.¹¹⁵

These statistics indicate how far behind Wyoming is when protecting victims of domestic violence. Although DVPOs in Wyoming can be extended past the three-month period, judges seem very reluctant to extend them and it is very difficult to get the respondent served again before the

107. CONN. GEN. STAT. ANN. § 46b-15 (2002) (stating that a protective order is good for six months, but may be extended six months at a time upon good cause shown; temporary orders good for 14 days); GA. CODE ANN. § 19-13-4 (2002) (stating a protective order effective for six months; a temporary order is good for 10 – 30 days); N.M. STAT. ANN. § 40-13-6 (2002) (stating that a protective order is good for six months, but can be extended for six months upon good cause; temporary order good for 72 hours, but may be extended to 10 days); S.C. CODE ANN. § 20-4-70 (2002) (stating that a protective order must be effective for at least six months, but may be issued for one year, and can be extended upon good cause; temporary order good for 15 days); W. VA. CODE § 48-27-505 (2002) (stating that protective order good for 90-180 days; temporary order good for 10 days);

108. See *supra* notes 100-07.

109. IDAHO CODE § 39-6306 (2002) (stating that protective order shall be issued for three months, extended to one year upon application of petitioner; temporary order good for 14 days); UTAH CODE ANN. § 30-6-4.2 (2002) (stating that the judge sets either an expiration date of the order, or a date when the order is to be reviewed by the court, but may not exceed five months unless the court indicates on the record why a date beyond five months is necessary; temporary order good for 20 days); WYO. STAT. ANN. § 35-21-106 (LexisNexis 2002) (three months with unlimited extensions of additional three month durations, each on a showing of good cause; temporary order good for 72 hours).

110. See *supra* notes 100-07.

111. IDAHO CODE § 39-6306 (2002).

112. UTAH CODE ANN. § 306-4.2 (2002).

113. *Id.*

114. *Id.*

115. *Id.*

protection order expires.¹¹⁶ Additionally, the statute requires “good cause” to extend a DVPO, but gives no definition or guidance as to what constitutes “good cause.”¹¹⁷ There is no case law in Wyoming that would guide a practitioner as to what constitutes good cause. Furthermore, Circuit Court judges seem confused as to what constitutes good cause, for good reason. Some judges in Wyoming even require a showing of further abuse, something the legislature did not intend.¹¹⁸ It is time that Wyoming amended its laws so that domestic violence victims get the protection that they not only deserve, but the protections that they need, by increasing the durations of its DVPOs.

3. Custody, Visitation, and Support Issues in Extended Orders of Protection

During recent discussions about increasing the duration of DVPOs in Wyoming, some judges have expressed concern about the effect an increased duration would have on child custody, visitation, and support issues. Even without a change in the duration, Wyoming needs to change the DVPO statute to adequately address these issues in DVPO proceedings. Nevertheless, along with the change in the DVPO duration, the statute should be changed to address the increased time period as reflected in other state DVPO statutes.

The current statute in Wyoming grants a court the power to “award temporary custody of any children involved to the petitioner” when the “court finds it to be in the best interests of the children.”¹¹⁹ This language differs from the Wyoming child custody statute that reads: “Custody shall be crafted to promote the best interests of the children, and may include any combination of joint, shared or sole custody.”¹²⁰ The Wyoming statute does not address the issue of custody and visitation in terms of the best interest of the child. Rather, the statute allows the petitioner custody if in the best interests of the child. Additionally, a Wyoming court can also “[o]rder the payment of child support” in a DVPO proceeding.¹²¹ The Wyoming statute also does not require the court to follow the presumptive guidelines when ordering child support in the DVPO proceeding.

116. See *infra* notes 186-210 and accompanying text (discussing extending protection orders for “good cause”). See also WYO. STAT. ANN. § 35-21-104, 106 (LexisNexis 2003) (stating that the order of protection cannot exceed three months, meaning that it expires at the three month time limit unless the court has extended the order, which can only occur after the respondent has been served and a hearing is scheduled and held). The burden of having the respondent served again and a hearing held before the order expires falls on the petitioner, so if no hearing is held before the order expires the petitioner would have to re-file.

117. WYO. STAT. ANN. § 35-21-106(b) (LexisNexis 2003).

118. See *infra* notes 186-210 and accompanying text.

119. WYO. STAT. ANN. § 35-21-105(b)(i) (LexisNexis 2003).

120. WYO. STAT. ANN. § 20-2-201(d) (LexisNexis 2003).

121. WYO. STAT. ANN. § 35-21-105(b)(ii) (LexisNexis 2003).

Aside from possible changes in the duration of DVPOs, the statute needs to be changed to be harmonized with the child custody and support statutes so that there is uniform application of child support and a requirement that a court determine the best interest of the child. This is only logical, as custody and visitation should be based upon the best interests of the child, and support should be set based on income. Harmonizing the statutes would also require a court to “consider evidence of spousal abuse or child abuse as being contrary to the best interest of the children.”¹²²

When examining the statutes of states with DVPO durations longer than Wyoming, it becomes clear how these “issues” are really non-issues if the Wyoming statutes cross-referenced the proper statutes. For example, California has a DVPO duration of three years.¹²³ A DVPO in California can address issues of custody, visitation, and child support.¹²⁴ Rather than have special rules for child support, custody, and visitation in the DVPO statute, the California DVPO statute refers to the California Family Code concerning visitation and custody,¹²⁵ and the California statute addressing presumptive child support.¹²⁶ The California statute bases the custody and visitation of children during the DVPO period on the best interests of the child.¹²⁷ Likewise, child support is figured just as it would be in a regular child custody determination using the presumptive support guidelines.¹²⁸

In California, DVPOs addressing custody, visitation, and support matters are issued without prejudice.¹²⁹ Therefore, petitioners and respondents are free to bring a petition to establish custody, visitation, and child support at any time, even while the DVPO is in effect, just as they would if no DVPO had been issued. The California statutes encourage the court issuing the permanent custody, visitation, and/or support order to harmonize the permanent order with the DVPO whenever possible. Courts are required to harmonize the two orders unless not possible, or if the best interests of the

122. WYO. STAT. ANN. § 20-2-201(c) (LexisNexis 2003). What is interesting about the organization of the Wyoming statutes is that DVPO statutes make no reference to the child custody statute, which states that domestic violence shall be considered contrary to the best interests of the child. Additionally, the child custody statutes are found in Chapter 2 of Title 20, the dissolution of marriage section. While it makes sense that a judge or an attorney would refer to the child custody statute when making a custody determination in a DVPO proceeding, just as a court refers to the child custody statute even when there is no “dissolution of marriage,” when there is no express cross-reference the statute is considered ambiguous and subject to varying interpretations.

123. CAL. FAM. CODE § 6345 (West 2003).

124. CAL. FAM. CODE § 6223 (West 2003) (addressing visitation and custody); CAL. FAM. CODE § 6341 (West 2003) (addressing child support).

125. CAL. FAM. CODE § 6223 (West 2003).

126. CAL. FAM. CODE § 6341 (West 2003).

127. CAL. FAM. CODE § 3020 *et seq.* (West 2003); CAL. FAM. CODE § 6323 (West 2003).

128. CAL. FAM. CODE § 6341 (West 2003); CAL. FAM. CODE § 3500 *et seq.* (West 2003)

129. CAL. FAM. CODE § 6323(b) (West 2003).

child require otherwise.¹³⁰ Additionally, orders involving divorce, nullity of marriage, or legal separation can include a DVPO without having to bring a separate action.¹³¹ Rather than create separate statutes, the statutes in California reference each other. This way there are not separate standards depending on what type of action a party brings.

In Nevada, a state with a duration of one year for a DVPO,¹³² the same method is used. A court issuing a DVPO can order custody, visitation, and support in a DVPO proceeding.¹³³ The court issuing the DVPO makes a determination of what is in the best interests of the child just as the court would if it were deciding permanent custody.¹³⁴ This is logical and focuses on the purpose of what a custody determination should, the best interests of the child. Additionally,

a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interest of the child.¹³⁵

As stated in the Wyoming statute, domestic violence is contrary to the best interests of the child. In Nevada, however, this creates a rebuttable presumption that the best interests of the child are not served when custody is given to the batterer. This should also be adopted by Wyoming. In Nevada, as in California, a DVPO does not act “in lieu of” another civil proceeding, such as a custody proceeding; thus, a parent can bring a separate action for custody, visitation, and support even during the pendency of the DVPO.¹³⁶

A longer duration for a DVPO in Wyoming should not be an issue. In Wyoming, the DVPO statute should cross reference the custody and visitation statutes rather than creating a new scheme. Cross-referencing statutes focuses on the best interests of the child and is fair to all concerned parties. A Wyoming court now has the authority to issue custody orders for three months. It is not acceptable to argue that a Circuit Court can determine custody of a child for three months, but not longer. This somehow suggests that

130. CAL. FAM. CODE § 3031(a) (West 2003).

131. CAL. FAM. CODE § 6360 (West 2003).

132. NEV. REV. STAT. § 33.080 (2003).

133. NEV. REV. STAT. § 33.030 (2003).

134. NEV. REV. STAT. § 125.480(5) (2003).

135. *Id.*

136. NEV. REV. STAT. § 33.040 (2003).

the custody order made by a Circuit Court was a mistake. That kind of mistake would not be acceptable for any duration, three days or three months. Additionally, what happens at the end of the three months? One scenario is that there is another "incident" of domestic abuse over child custody. An extended DVPO protects all parties, the petitioner, the children, and the respondent.

The vast majority of jurisdictions around the country have a DVPO duration of up to one year. These states have made it work. One reason is that if a party to a DVPO proceeding really feels that there has been a mistake in custody, visitation, or support, or even if they want to try and change the lower court's order, they can bring an action for custody and support in District Court as soon as the day after the DVPO has been issued. The statute must require that a District Court be made aware of the DVPO; thus, the District Court can inform the Circuit Court that an order concerning custody, visitation, and support had been entered. The Circuit Court could then modify its order to reference the District Court's custody, visitation, and support order. Nevertheless, the District Court should attempt to harmonize the permanent order with the DVPO unless it is not in the best interests of the child.

There are going to be times when the Circuit Court cannot order custody or visitation because paternity has not been established. In these types of scenarios, a District Court is going to have to make a paternity determination anyway. Therefore, a Circuit Court's order concerning custody will be simple and not require a custody determination.

It is, of course, favorable to have the District Court make all custody, visitation, and support decisions. Nevertheless, victims of domestic violence have the right to be protected. So do the children. As the research outlined above has indicated, domestic violence has a serious effect on children, not only when they are actually physically abused, but also when they witness or even hear domestic abuse. This is a serious subject. Courts must take DVPO proceedings very seriously. Most victims of domestic violence do not seek DVPOs because they have been hit once. Courts must understand the dynamics of domestic abuse and understand that these are emergency proceedings meant to protect the person seeking the DVPO. It is not an ideal situation. It is, however, an important proceeding that will affect the victims and the children involved.

We must give judges the tools to protect victims and children. This tool should not be limited to three months simply because we do not understand – and it is difficult to understand how and why domestic violence occurs. How can someone beat another person? How can someone beat a small child? How can someone be so cruel to another? The reality is that domestic violence does occur, more frequently and with more devastating effects than we want to admit. A majority of citizens of the United States

and Wyoming, are decent, kind people. This is one reason why domestic violence is so difficult to understand.

The majority of jurisdictions with DVPO durations of one year or more use the method of cross-referencing applicable statutes. This method ensures that these issues are adequately addressed when the duration of a DVPO is more than three months. This method of resolving custody, visitation, and support issues also ensures that there is uniform application of the law, and that the best interests of the child are followed even when the duration of a DVPO is only three months. This is how DVPO orders should be issued; without regard to the duration. Changing the statute in Wyoming to cross-reference the statute concerning child custody whenever deciding a child custody issue, and cross-referencing the child support statute when determining child support, will only make the law easier to apply and more uniform in application.

4. Custody and Visitation Considerations in DVPO Proceedings

Generally, courts should immediately suspend any visitation rights the respondent has when it appears from the facts alleged in a request for a temporary order that there is a danger of further abuse, or at least require that visitation be supervised.¹³⁷ Research supports the concept that the respondent's visitation rights should be completely suspended for the duration of the temporary protection order. A study performed by the National Institute of Justice ("NIJ") found that the potential for renewed violence is greatest during visitation.¹³⁸ The National Council of Juvenile and Family Court Judges ("NCJFCJ") also notes that since visitation provides the batterer with continued access to the victim through the children, violence against the petitioner often continues when visitation is allowed.¹³⁹ Additionally, "A batterer may seek visitation with the children in an effort to maintain contact with and control over the abuse victim;"¹⁴⁰ thus, "[v]isitation remains a catalyst for continued intimidation and abuse."¹⁴¹

137. See Model Code, *supra* note 99, § 306 (indicating that visitation should be, at the very least, supervised).

138. PETER FINN & SARAH COLSON, NATIONAL INST. OF JUSTICE, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT 4, 43 (1990), *cited in* Klein & Orloff, *supra* note 8, at 811 n.19.

139. NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, FAMILY VIOLENCE PROJECT, FAMILY VIOLENCE: IMPROVING COURT PRACTICE, RECOMMENDATIONS FROM THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES (1990), *reprinted in* 41 JUV. & FAM. CT. J. 26 (1990).

140. JUDGE BEN GADDIS, DOMESTIC ABUSE PROTECTION ORDER CONCEPTS 8 (1992), *cited in* Klein & Orloff, *supra* note 8, at 1034 n.1437.

141. TASK FORCE ON RACIAL AND ETHNIC BIAS AND TASK FORCE ON GENDER BIAS IN THE COURTS, DISTRICT OF COLUMBIA COURTS, FINAL REPORT 141, 151 (May 1992) (finding that civil protection orders are more likely to be awarded after trial if petitioner is represented by counsel and fewer cases are returned to files without court action. The report concluded that

In Wyoming, visitation options and judges' decisions are difficult because of the limited resources available providing places or people to supervise child visitation. This leads to the conclusion that if sufficient information appears on the face of the affidavit for a DVPO, there should be no visitation allowed during the TRO period.¹⁴² At the very least, judges must consider that those who abuse someone such as a wife, a girlfriend, or husband are more likely to abuse children. This fact alone should give a judge pause when deciding custody and visitation arrangements. The best interests of the child should be the focus. Their best interests are served by protecting them from abuse. The focus must shift away from the "rights" of parents to their children, like children are a type of property, and onto the rights of the children to be raised free from harm and fear.

5. Child Custody in Protection Orders – Previous Child Custody Orders

In Wyoming, there is also confusion as to whether a judge's granting of temporary child custody in a DVPO can supercede a previous order in a child custody proceeding from a District Court. Wyoming's DVPO statute states that a judge can grant the petitioner temporary custody of children in an *ex parte* or final protective order.¹⁴³ However, Wyoming's statute also makes clear that an order entered by *any* court under the Domestic Violence Protection Act, whether the DVPO comes from a District Court or Circuit Court, cannot supercede a previous order from a District Court if the parties in the protection order proceeding were parties in the original District Court proceeding.¹⁴⁴ Thus, if the parties have already been through a child custody proceeding, and an order was entered concerning custody and visitation, the

counsel should be appointed to represent petitioners in civil protection order contempt actions for enforcement and that representation of petitioners by members of the private bar should be encouraged), *cited in* Klein & Orloff, *supra* note 8, at 845 n.213.

142. *See generally supra* note 97 (stating that suspension of visitation for up to 14 days does not violate due process).

143. WYO. STAT. ANN. § 35-21-105(b) (LexisNexis 2003).

144. The Wyoming statute states:

(a) Any order entered in a district court in this state in a proceeding where the petitioner and respondent are parties shall supercede any inconsistent language in any other order entered under this act or in any other court proceeding in this state.

(b) Any order entered under this act shall supercede any inconsistent language in any other order other than the one issued by a district court proceeding described in subsection (a) of this section.

WYO. STAT. ANN. § 35-21-108(a)-(b) (LexisNexis 2003). A District Court, even the same District Court that issued the custody or visitation order, cannot modify an order in a DVPO proceeding. A District Court with proper jurisdiction may only modify a custody or visitation order upon the application of one of the parties. "[A] petition of one of the parents seeking modification of an existing order is a statutory prerequisite to the court's power to act." *Erhart v. Evans*, 30 P.3d 542, 546 (Wyo. 2001).

petitioner would not have the option of obtaining a protective order that includes modified custody or visitation against the other party to the previous child custody proceeding. This is completely backwards because it is very likely that this may be the person from which the petitioner is seeking protection. Moreover, because the Wyoming DVPO statute does not include children as "household members," a batterer could continue to use the children as a means of power and control over the petitioner, or worse, continue to abuse the children.

Many judges in Wyoming now believe that they have the power to alter custody or visitation, even if another order from a District Court is in place, because a DVPO is a means to protect the petitioner and the children. These judges believe they have broad, plenary power to protect the children and do what is in the children's best interest.¹⁴⁵ Nevertheless, the statute is clear that courts issuing DVPOs do not have this power. For advocates and attorneys representing victims of domestic violence, the fact that the court does not have this power should be very disturbing.¹⁴⁶

As mentioned earlier, those who abuse their adult partners are much more likely to abuse their children.¹⁴⁷ A victim of domestic violence in Wyoming is helpless to protect her children from an abusive partner if a previous custody or visitation order is in place, unless or until she is able to modify the previous order in District Court. This is true even if the victim knows that there is child abuse and presents incontrovertible evidence of abuse to the issuing court, unless the Department of Family Services intervenes and takes protective custody of the children. A petitioner does have the option of petitioning the original District Court where the custody or visitation order was entered to modify the order.¹⁴⁸ This process, however, takes time the children may not have if the abuser takes custody because he has the right under the original District Court order.

The Wyoming statute should be amended to allow a court issuing a DVPO to temporarily modify custody and/or visitation if it appears from the facts that a modification is warranted to protect the children, or is in the children's best interests.¹⁴⁹ In Idaho, the Supreme Court recognized the im-

145. See *infra* Section "III(D)" (containing real life examples of this notion).

146. For a real life example of why this should be disturbing, one need only look to the case of Jessica Gonzales in Denver, Colorado. *Gonzales v. City of Castle Rock*, 307 F.3d 1258 (10th Cir. 2002). In the *Gonzales* case, Ms. Gonzales' three children were murdered by their father even while a protective order was in place. See *infra* note 233.

147. See *supra* notes 40, 77 and accompanying text.

148. WYO. STAT. ANN. § 20-5-104 (LexisNexis 2003). See also *supra* note 144.

149. See CAL. FAM. CODE § 3064 (West 2003). The California statute allows a court to modify a custody order, even *ex parte*, if there has "been a showing of immediate harm to the child or immediate risk that the child will be removed from the [s]tate . . ." *Id.* "Immediate harm to the child" includes having a parent who has committed acts of domestic violence,

portance of protecting children within the purview of a domestic violence statute.¹⁵⁰ In the *Ellibee* case, the petitioner sought and obtained an order of protection from her ex-husband.¹⁵¹ The Ellibeas had already obtained an order regarding custody and visitation from a separate District Court.¹⁵² Like Wyoming, the issuing court retains jurisdiction over the original order in Idaho; thus, Mr. Ellibee claimed that the court issuing the protective order did not have jurisdiction to affect his custody and visitation rights.¹⁵³ The Idaho court recognized that the domestic violence statute gave courts authority to “temporarily” affect child custody rights even though a prior order is in effect.¹⁵⁴ The court concluded, “Clearly, the Act empowered Judge Harden with wide discretion to engage in “best interest” analysis, and upon his determination that William (ex-husband) had caused Tolen’s (the child) bruises and the children were in immediate danger of further domestic violence, to temporarily alter William’s custody rights awarded under the prior decree.”¹⁵⁵

Children are often referred to as the “silent victims” in domestic abuse because they are often forgotten when the focus is on the abused partner or the batterer.¹⁵⁶ Exposure to domestic violence, as well as being abused themselves, has a very adverse effect on children.¹⁵⁷ For Wyoming to allow a way for batterers to continue to use children as a means of power and control over their victims, or to allow them to continue to abuse and victimize the children through this statute, is incomprehensible. Wyoming must change this part of the statute to allow courts the ability to consider the best interests of the children when issuing DVPOs. In fact, the Wyoming legislature must mandate, as it does in the child custody statute, that domestic abuse is contrary to the best interests of the children and give courts the ability to limit a batterer’s access to the children involved.¹⁵⁸

where the court determines that the acts of domestic violence are of recent origin or are a part of a demonstrated and continuing pattern of acts of domestic violence.” *Id.*

150. *Ellibee v. Ellibee*, 826 P.2d 462 (Idaho 1992).

151. *Id.* at 463.

152. *Id.*

153. *Id.*

154. *Id.* at 465.

155. *Id.* at 466.

156. See generally GEORGE HOLDEN, THE DEVELOPMENT OF RESEARCH INTO ANOTHER CONSEQUENCE OF FAMILY VIOLENCE; CHILDREN EXPOSED TO MARITAL VIOLENCE: THEORY, RESEARCH AND APPLIED ISSUES (G.W. Holden, R. Geffner & E.N. Jouriles, eds. 1998).

157. *Id.* at 6-11; see also *supra* notes 35-41 and accompanying text.

158. WYO. STAT. ANN. § 20-2-201(c) (LexisNexis 2003) (stating that evidence of abuse shall be considered as contrary to the best interests of children).

B. Changes at the Trial Court Level

1. Findings of Domestic Violence

Wyoming courts must find that an act of domestic abuse has occurred before entering an order of protection. There has been some discussion around the state that there is no need for a court issuing a DVPO to make a finding that domestic violence has occurred.¹⁵⁹ This interpretation, however, does “violence” to the statute itself, by undermining the clear and unambiguous language of the statute, by undermining the clear intent of the statute, and by advocating a court’s self-legislating.

First, the clear and unambiguous language of the statute states: “Upon finding that an act of domestic abuse has occurred, the court shall enter an order of protection”¹⁶⁰ When interpreting a statute, the “legislative intent” must first be ascertained.¹⁶¹ The Wyoming Supreme Court has stated:

Legislative intent must be ascertained initially and primarily from the words used in the statute. When the words are clear and unambiguous, a court risks an impermissible substitution of its own views, or those of others, for the intent of the legislature if any effort is made to interpret or construe statutes on any basis other than the language invoked by the legislature. Our precedent demonstrates that this rule also is an absolute.¹⁶²

The Court continues, “We previously have articulated the proposition that a statute is ambiguous only if it is found to be vague or uncertain and subject to varying interpretations.”¹⁶³ When interpreting this statute, the clear and unambiguous language is controlling.

159. Some judges in Wyoming have openly expressed the opinion that although the Wyoming statute states that a court shall issue a DVPO upon a finding that domestic violence has occurred, the statute does not state that the court cannot issue a DVPO if it does not make a finding that an act of domestic violence has occurred; thus, allowing a respondent to stipulate to the court issuing a DVPO without any finding by the court. This option, to allow a respondent to stipulate to the issuance of a DVPO, was actually an option for courts contained within the standard forms. *See supra* note 5. However, the latest standard form has changed the language to allow the “parties [to] stipulate that the Court may exercise jurisdiction over them under the Domestic Violence Protection Act even though the Respondent may dispute that he or she has committed an act of domestic violence against the Petitioner.”

160. WYO. STAT. ANN. § 35-21-105(a) (LexisNexis 2003).

161. *Allied-Signal, Inc. v. Wyoming State Bd. of Equalization*, 813 P.2d 214, 219 (Wyo. 1991).

162. *Id.*

163. *Id.*

Nowhere in the statute does the language allow a court to issue a protective order for any reason other than because there is domestic violence. Arguing that the statute is "silent" as to whether an order can be entered even if the court does not make a finding that domestic violence has occurred is analogous to arguing that an order of protection can be issued when the court expressly finds that there has been no domestic violence. The statute does not expressly state that a court cannot issue an order of protection even if it finds there has been absolutely no domestic violence. This argument just does not make sense.

The argument that the statute is silent also fails because the clear language and intent of the statute indicates that an order of protection is meant to protect victims of domestic violence. Wyoming statutory history is hard to come by, but in this case the legislature attached a preamble when it passed this Act: "AN ACT to create W.S. 35-21-101 through 35-21-107 relating to public health and safety; providing for injunctive relief from acts of domestic abuse" ¹⁶⁴ Clearly, this statute is intended to provide a petitioner relief *from acts of domestic abuse*. If there has been no domestic abuse, there is nothing that merits relief; thus, the primary purpose of the statute is frustrated if a DVPO is issued without a finding that there has been acts of domestic abuse.

Furthermore, when interpreting a statute a court interprets a statute *in pari materia*, or according to the ordinary and obvious meaning of the words in relation to their arrangement and connection to the statute as a whole. ¹⁶⁵ Since title 35, chapter 21 was passed as an Act, the entire Act should be interpreted together. In the "Domestic Violence Protection Act," a court is given the power to dramatically affect the lives of the petitioner and respondent. The court has the power to remove a respondent from his home, deny him visitation with his own children, order him to pay child support or monetary support to the petitioner, and the power to order anything else "[the court] deems necessary for the protection of the petitioner, the children, or other family or household member." ¹⁶⁶ The order is good for up to three months or longer if extended for good cause, ¹⁶⁷ is reported into a state-wide registry, ¹⁶⁸ and is enforceable in every other state in the union. ¹⁶⁹ Violation of an order of protection is a crime in Wyoming. ¹⁷⁰ Additionally, contrary to the belief of some prosecutors and judges, any issuance of an order

164. Family Violence Protection Act of 1982, Session Laws of Wyoming, ch 45 (1982).

165. *Murphy v. State Canvassing Bd.*, 12 P.3d 677, 679 (Wyo. 2000).

166. WYO. STAT. ANN. § 35-21-105 (LexisNexis 2003).

167. WYO. STAT. ANN. § 35-21-106(b) (LexisNexis 2003).

168. WYO. STAT. ANN. § 35-21-110 (LexisNexis 2003).

169. WYO. STAT. ANN. § 35-21-109 (LexisNexis 2003); *see also* Violence Against Women Act, 42 U.S.C. § 13981 *et seq.* (giving full faith and credit to each states' orders of protection).

170. WYO. STAT. ANN. § 6-4-404 (LexisNexis 2003).

of protection, even if the respondent stipulates to its issuance and the court does not specifically “find” that an act of domestic violence has occurred, prohibits the respondent from possessing any firearm or ammunition.¹⁷¹

The use of the word “shall” in the statute also exemplifies why a finding of domestic violence must be made before an order of protection can be issued. The Wyoming Supreme Court has already made clear the word “shall” means the content is mandatory and that the directive must be obeyed.¹⁷² The legislature's choice of the word shall indicates how seriously this subject is to be taken. If there is domestic violence, the court must issue an order protecting the victim. Considering the breadth of areas the issuance of a protective order effects, and the areas the legislatures give the courts the authority to affect, there is no question that the issuance of DVPOs are seri-

171. This is an important point. Some prosecutors, defense attorneys, and judges, think that if a respondent stipulates to an order of protection, he avoids the prohibition of possessing firearms contained in the federal firearms statute because the court has made no “finding” of domestic violence. This, however, is absolutely false. The federal firearms state, situated at 18 U.S.C. § 922, states:

(g) It shall be unlawful for any person—

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence; to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Thus, if the DVPO was issued: 1) after a hearing of which the respondent received notice, and had an opportunity to participate (if the respondent is stipulating to a DVPO at a hearing this is obviously fulfilled); 2) and restrains the respondent from threatening or abusing (an order of protection automatically fulfills this, *see* WYO. STAT. §35-21-105(a) (LexisNexis 2003); and 3) the court either makes a “finding” of a credible threat, OR prohibits the use of force, again *see* WYO. STAT. ANN. § 35-21-105(a) (LexisNexis 2003) (all three criteria are met in Wyoming just by issuing an order of protection), a respondent is restrained from possessing any firearm or ammunition during the term of the DVPO under the federal firearms statute. Therefore, any protection order issued in Wyoming, whether stipulated to or not, whether a “finding” of domestic violence or not, automatically precludes possession of a firearm under federal law.

172. *In re Gonzales v. Wyoming, ex rel. Worker's Com. Div.*, 992 P.2d 560, 562 (Wyo. 1999).

ous business.¹⁷³ Therefore, a court should not issue an order this serious without first considering the consequences, nor could the legislature have intended a court to enter an order this serious without making the requisite finding before issuance as mandated by the statutory language. This would necessarily include the issuance of a DVPO to a batterer who is attempting to obtain the DVPO against the petitioner in a separate proceeding. The victim may have used some sort of self-defense, or the batterer may be trying to use the DVPO as retaliation. These types of problems would be avoided if a court considered the seriousness of DVPOs.

Finally, as indicated by the Appellate Court of Illinois, when a respondent "agreed" to the issuance of an order of protection, but did not "stipulate to a factual basis of abuse," the finding of abuse was implied.¹⁷⁴ The Illinois court in the *Lutz* case concluded: "[T]he parties' consent to the original plenary order of protection essentially conceded the factual basis necessary to support that order."¹⁷⁵ The *Lutz* court points out that a factual basis is necessary to support the court's issuance of an order of protection; a stipulation by the respondent essentially concedes the facts as contained in the petitioner's affidavit so that the court has the support it needs *before* it can issue a DVPO. Currently the Wyoming form application for an order of protection states: "The parties stipulate that the Court may exercise jurisdiction over them under the Domestic Violence Act even though the Respondent may dispute that he or she has committed an act of domestic abuse against the Petitioner."¹⁷⁶ This language must be changed because it does not accurately represent a DVPO's meaning and consequences.

If a respondent stipulates to the issuance of a DVPO, he "essentially" stipulates to the allegations contained in the petitioner's affidavit.¹⁷⁷ He is still subject to criminal sanctions and the federal firearms laws even if the court does not check the box that indicates the court finds an act of domestic violence has occurred.¹⁷⁸ Furthermore, "A judgment in a civil action is not ordinarily admissible as evidence in a subsequent criminal prosecution."¹⁷⁹ The standard in a criminal proceeding is "beyond a reasonable doubt," but in a civil proceeding, such as a hearing for a DVPO, the standard is "preponderance of the evidence."¹⁸⁰ For this reason, "Judgments in criminal cases are generally inadmissible to establish the facts of a civil case, and

173. See *supra* note 86 and accompanying text (describing the areas of a respondent's life a protection order effects).

174. *Lutz v. Lutz*, 728 N.E.2d 1234, 1237 (Ill. App. Ct. 2000).

175. *Id.*

176. See *supra* note 10.

177. See *supra* note 175 and accompanying text.

178. See *supra* notes 170-71 and accompanying text.

179. *Hodges v. State*, 222 P.2d 386, 388 (Okla. 1950) (citations omitted), *cited in Craver v. State*, 942 P.2d 1110, 1115 (Wyo. 1997).

180. *In re Avery*, 47 P.3d 973, 976 (Wyo. 2002).

vice versa.”¹⁸¹ Thus, if a respondent has also been criminally charged for the same conduct contained in the affidavit accompanying the petition for an order of protection, the outcome of the DVPO has no bearing on the criminal case. If a respondent chooses to testify at the DVPO hearing, the testimony could be used to impeach him at the criminal trial; however, the respondent has nothing to fear if he is really telling the truth.¹⁸²

Because no one can force a respondent to incriminate himself by testifying, a respondent can invoke his Fifth Amendment right against self-incrimination and choose not to testify.¹⁸³ This means that the petitioner can choose to present evidence at the hearing or can rely on her sworn affidavit as sufficient evidence to create the factual basis to justify the court’s issuance of a DVPO. Either way, the court has made a “finding” contrary to the current language in the standard form. Furthermore, because this is a civil case, the court cannot enter into a one-sided stipulation with the respondent while ignoring the wishes of the petitioner.¹⁸⁴ Either both parties must stipulate to the court entering a DVPO without a formal hearing, or the hearing must take place. The form should be changed so that the current “stipulation” language is deleted and replaced with two additional boxes that read: “The Respondent chose not to present any evidence,” and “The parties stipulate to the Court’s jurisdiction under the Domestic Violence Act and to the Court’s issuance of an order of protection.” This way if the civil order is brought up in a criminal trial, the judge in the criminal trial can refuse to allow it as evidence because the respondent presented no evidence and the DVPO has no relevance or probative value in the criminal case.¹⁸⁵ Based on the foregoing, Wyoming courts must make a finding, one way or another (i.e. express or implied), that an act of domestic abuse has occurred before issuing an order of protection pursuant to Wyoming statutory law.

181. *Hodges*, 222 P.2d at 388 (citations omitted).

182. *See* WYO. R. EVID. 607, 801(d)(1). The only time previous testimony would be relevant is if the respondent / defendant told two different stories on two different occasions. The previous testimony would be admissible to impeach him. Additionally, the concern that the defendant’s statements would be used against him is ludicrous because anything the defendant says is admissible as a statement of a party opponent. *See* WYO. R. EVID. 801(d)(2).

183. U.S. CONST. amend. V.

184. This is a basic principle that some have forgotten. When a petitioner asks the court to issue a DVPO, due process in a civil context requires an opportunity for both parties to be heard. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) (“The fundamental requisite of due process of law is the opportunity to be heard”). When a court, on its own, fashions an agreement between the respondent and the court, without allowing the petitioner the opportunity to present what she was there to present in the first place, the court violates the due process rights of the petitioner. Furthermore, no rule or statute gives a court the authority to enter into an agreement with a respondent, defendant, or whomever, that affects a third party, without obtaining the consent of the third party (i.e. plaintiff).

185. *See supra* notes 179-81 and accompanying text.

2. Considering Past Abuse – Good Cause

As mentioned previously, the Wyoming statute allows a DVPO to be extended in three-month increments upon “good cause.”¹⁸⁶ The statute itself, however, does not define what constitutes good cause. Case law in this area of Wyoming law is non-existent. There is not one decision from the Wyoming Supreme Court that would guide a court or practitioner as to what constitutes good cause. While it would be helpful if the legislature would add a definition of “good cause” to the statute, common sense and other states’ case law provide some guidance as to what constitutes good cause.

The first and most important point to understand is that a victim does not, and should not have to prove that there have been additional occurrences of domestic violence or a violation of the current protective order before obtaining an extension. It has already been shown that the intent of this statute is to protect victims of domestic violence.¹⁸⁷ The intent of the statute is frustrated when victims have good reasons for extending orders of protection even though there has not been a violation of the order. First, if the legislature had wanted a black and white line that required a violation of the order before it could be extended, the legislature could have required this in the language of the statute.¹⁸⁸ This, of course, is not the case. In order to really understand why a court cannot and should not require a violation of the current order before allowing a DVPO to be extended, a court must understand the basics of the domestic violence paradigm.

The domestic violence paradigm has been described above as a “wheel of power and control.”¹⁸⁹ Most victims of domestic violence do not come to the court seeking an order of protection the first time they have been abused.¹⁹⁰ In fact, it has been shown that many victims have been subjected to abuse for as many as five years before seeking assistance.¹⁹¹ Additionally, courts must understand that separation is a process, not an event.¹⁹² Chances for violence increase during separation, both in frequency and in severity.¹⁹³ This is one of the reasons why virtually every state has increased the duration of their protective orders to at least one year.¹⁹⁴ Although an order from the court is not going to stop an abuser if he really wants to abuse his victim,

186. WYO. STAT. ANN. § 35-21-106(b) (LexisNexis 2003).

187. See *supra* note 164 and accompanying text.

188. Gaab v. Ochsner, 636 N.W.2d 669, 671 n.1 (N.D. 2001) (stating that had the legislature intended to require a certain showing by the petitioner, they could have so provided in the statute).

189. See *supra* notes 15-16 and accompanying text.

190. See *supra* note 17 and accompanying text.

191. See *supra* note 44 and accompanying text.

192. See *supra* note 13 and accompanying text.

193. See *supra* note 18 and accompanying text.

194. See *supra* notes 100-07.

an order of protection serves several important purposes in the “coordinated efforts” approach.¹⁹⁵ An order of protection gives the victim some sense of security.¹⁹⁶ An order of protection also serves as one means to get the victim the assistance necessary to protect her from abuse, to build the necessary support network to give her the ability to leave the abuser, and to provide necessary means of survival for her, and perhaps for her children as well.¹⁹⁷

Other courts that have addressed this issue recognize the need not to place too high a hurdle before petitioners seeking an extension of a DVPO. In North Dakota, the Supreme Court recognized that a petitioner has a rather low threshold to meet in order to obtain an extension.¹⁹⁸ The court recognized that the petitioner was afraid of the respondent when she testified, “I’m afraid of what might happen to me if I don’t get another protection order because I do not trust him and he violated the first protection order, and I’m afraid.”¹⁹⁹ Although the respondent in this case had violated the initial order, driving by her apartment and making harassing phone calls, the court found no need to focus on the violation because the petitioner was “afraid,” and the “act of domestic violence which formed the basis for the original order occurred less than a year prior to the Petitioner bringing her petition to extend that order,” giving the court sufficient reason to extend the order.²⁰⁰ A trial court has broad discretion when extending orders of protection because the statute must be construed “liberally, with a view to effecting its objects and to promoting justice;” thus, a trial court’s decision to extend an order is reviewed under an abuse of discretion standard of review.²⁰¹

In another case from Illinois, the court did not look for a violation of the protection order, or even any changes for that matter; rather, the court extended the order of protection based on the initial complaint for the order of protection.²⁰² In *Lutz*, the “trial court relied on the original plenary order as the basis for the extension.”²⁰³ Although the respondent had “agreed” to the original protection order, but did not stipulate to any actual “findings,” the court found that the respondent “essentially conceded the factual basis necessary to support that order.”²⁰⁴ The court held that the trial court had not abused its discretion when it extended the order of protection solely based on the allegations contained in the original order.²⁰⁵

195. See *supra* notes 58-65 and accompanying text.

196. See *supra* note 53 and accompanying text.

197. See *supra* note 65 and accompanying text.

198. *Gaab v. Ochsner*, 636 N.W.2d 669 (N.D. 2001).

199. *Id.* at 672.

200. *Id.*

201. *Id.* at 671; see also *Lutz v. Lutz*, 728 N.E.2d 1234, 1236-37 (Ill. App. Ct. 2000).

202. *Lutz*, 728 N.E.2d at 1237.

203. *Id.*

204. *Id.*

205. *Id.*

These court decisions make one point very clear: A petitioner need not be in “immediate peril” before an order of protection, or an extension of that order, is issued.²⁰⁶ This is an important point for courts to remember not only when deciding whether to issue an extension of a DVPO, but when a court is deciding whether to issue a DVPO in the first instance. As the Utah court explained, “[I]f past abuse is coupled with a present threat of future abuse, a person may seek a protective order.”²⁰⁷ A court, when issuing a DVPO or an extension to a DVPO, must consider the “evidence in its totality.”²⁰⁸ As the Utah court stated, “[I]n light of the husband’s past abusive behavior, sufficient evidence exists to infer a present intent to inflict fear or imminent physical harm, bodily injury or assault within the meaning of the Domestic Abuse Act.”²⁰⁹ If a victim expresses a reasonable concern of future domestic abuse, based on present or past conditions, the court must look at this evidence in totality when deciding whether to issue an extension of a DVPO. If a victim has a reasonable concern for her future safety based on past acts, a Wyoming court must issue an extension of an order of protection, especially, as was pointed out by the *Lutz* court, if the abuse has taken place within the last year before the petitioner is seeking the extension.²¹⁰

3. Training for Judges and Court Structure

In order for anyone, including judges, to be effective in the battle against domestic violence, one must have the necessary training, understanding, and resources to do the job. Judicial education is an important part of the battle against domestic violence for many reasons: Courts are a “crucial part of the system, bearing the ultimate responsibility for case outcomes;” courts have “leverage” others do not; a court can “address the needs of the many victims coming through its doors, providing them links to services; monitor the behavior of perpetrators and mandate them to appropriate interventions;” and use the authority of the bench to “demonstrate publicly the commitment that the system has to ending domestic violence.”²¹¹ Curricula have been established “to guide the development of a comprehensive judicial educational program on civil court cases where domestic violence is an issue.”²¹² Additionally, models of how states can establish “domestic violence courts” have been established so that these types of special cases can be dealt with most efficiently and effectively.²¹³ Court options include: A

206. See *Gaab v. Ochsner*, 636 N.W.2d 669, 671 (N.D. 2001); *Stollo v. Stollo*, 828 P.2d 532, 534 (Utah App. Ct. 1992).

207. *Stollo*, 828 P.2d at 534.

208. *Id.*

209. *Id.* (internal quotations omitted).

210. See *supra* note 200 and accompanying text.

211. SACK, *supra* note 59, at 1.

212. CARTER, *supra* note 14.

213. See generally SACK, *supra* note 59 (establishing several model domestic violence courts that states can use to develop their own method of dealing with these types of cases within the states’ current court structure).

dedicated judge, trained in domestic violence handling all domestic violence protection orders and related cases (such as divorce, child custody), specially trained support staff, and links to victim resources through the court when victims first have contact with the court, whether through petitions for protection orders or otherwise.²¹⁴

A current judge, the Honorable Pamela M. Macktaz, an Associate Justice sitting on the Rhode Island Family Court, has recognized some of the current shortcomings in the judicial system and advocates change.²¹⁵ Justice Macktaz recognizes that the general belief within the justice system is that "marital privacy" is a "sacred cow" and the "unspoken reaction of the law enforcement community."²¹⁶ Justice Macktaz "finds it inconceivable that there was an extended period of time when the criminal justice system responded one way to 'stranger' violence and another way to violence between intimates."²¹⁷ The "rule of thumb" to which Justice Macktaz refers continues today, although not as prevalent as it once was.²¹⁸ Domestic violence in this country is increasing: In 1987 a battered woman in Massachusetts was murdered every 22 days, in 1991 every 16 days, in 1992 every 9 days, and in the first quarter of 1993 every six days.²¹⁹ "[T]rial court judges can have a major impact on preventing domestic violence."²²⁰ Although this is far too lengthy a topic to adequately address in this article, courts have an important role to play in preventing domestic violence. Resources are available for attorneys, judges, courts, boards, and legislatures to review and utilize to effectively combat domestic violence.²²¹

C. *Changes With Law Enforcement*

1. Training – Self Defense

It goes without saying that law enforcement plays a critical role in the battle against domestic violence. Police officers may be the first contact a victim of domestic violence has with someone who can help when responding to a call. First, police officers and other law enforcement officials must realize the special problems associated with investigating domestic

214. *Id.* at 9.

215. Pamela Macktaz, *Domestic Violence: A View From the Bench*, 6 MD. J. CONTEMP. L. ISSUES 37 (1995).

216. *Id.* at 39.

217. *Id.*

218. *Id.*

219. *Id.* at 41.

220. *Id.*

221. These very helpful resources, see SACK *supra* note 59 and CARTER *supra* note 14, along with the Model Code, see *supra* note 99, are available through the Wyoming Coalition Against Domestic Violence, 409 South Fourth Street, Laramie, WY 82070, (307) 755-5481, or from the University of Wyoming Domestic Violence Legal Assistance Project, 217 South First Street, Suite 3, Laramie, WY 82070, (307) 721-5815.

violence cases, especially the real possibility the victim will recant.²²² Additionally, the victim is often hysterical when police arrive, during which time the batterer may accuse the victim of battery.²²³ This may often lead to police either not knowing how to handle the victim, or lead them to believe the victim is not the victim at all, but is a “mutual combatant.” Police need to recognize this and act accordingly. Proper investigation may lead to a finding that the victim was acting in self-defense. The model code addresses this in its definition of abuse by excluding acts of self-defense from the definition of domestic violence.²²⁴ Although Wyoming's former definition arguably excluded acts of self-defense from acts of domestic abuse,²²⁵ Wyoming has now adopted the model code definition that specifically excludes acts of self-defense.²²⁶ The important point to remember is that law enforcement needs to be aware to look for acts of self-defense, rather than concluding the situation to which they responded was “mutual combat.”

2. Liability for not Enforcing DVPOs

“[P]rotection orders must be enforced to be effective.”²²⁷ In Wyoming, peace officers are those who enforce the laws of the state.²²⁸ Thus, they are the ones who primarily enforce DVPOs. Wyoming allows victims of domestic violence to seek emergency assistance from law enforcement officers.²²⁹ A law enforcement officer then takes whatever steps are necessary to protect the victim from further acts of domestic violence.²³⁰ A law enforcement officer is shielded from liability when he responds to a request

222. Casey Gwinn & Anne O'Dell, *Stopping the Violence: The Role of Police Officer and Prosecutor*, 20 W. ST. U. L. REV. 289, 300-03 (1993).

223. *Id.*

224. See Model Code *supra* note 99, § 102(1) (defining “Domestic or family violence” as “one or more of the following acts by a family or household member, but does not include acts of self-defense”).

225. Because of the language of the statute, some judges felt that any physical contact against another, even a victim against an abuser, warrants the issuance of a DVPO against the person who caused the contact. WYO. STAT. ANN. § 35-21-102(a)(iii) (LexisNexis 2002) defined domestic abuse as “physical abuse, threats of physical abuse or acts which unreasonably restrain the personal liberty of any household member by any other household member.” Abuse is defined by Black’s Law Dictionary as: “A departure from legal or reasonable use.” BLACK’S LAW DICTIONARY 10 (7th ed. 1999). To abuse means to “depart from legal or reasonable use in dealing with a person or thing.” *Id.* Abusive is defined as “wrongful or improper use.” *Id.* Webster’s defines abuse as: “improper or excessive use or treatment.” WEBSTER’S COLLEGIATE DICTIONARY 5 (10th ed. 1996). Therefore, acts of self-defense, by definition, are not abuse or abusive because they are neither unreasonable nor illegal. Wyoming recognizes a person’s right to defend themselves against an attack from another; thus, self-defense did not fit into any of the categories of “abuse” in the Wyoming statute before the definition was changed.

226. WYO. STAT. ANN. § 35-21-102(a)(iii) (LexisNexis 2003).

227. JORDAN, *supra* note 15, at 7.

228. See WYO. STAT. ANN. § 7-2-101(a)(iv) (LexisNexis 2003).

229. WYO. STAT. ANN. § 35-21-107(a) (LexisNexis 2003).

230. WYO. STAT. ANN. § 35-21-107(b) (LexisNexis 2003).

for help from a victim of domestic violence.²³¹ This immunity from liability would also appear to extend to officers who seek to enforce the provisions of a protective order. However, when an officer fails to enforce an order of protection, he risks liability in federal court under 18 U.S.C. § 1983.²³² Not only does he risk suit for a procedural due process violation, but he also risks grave consequence to human life.²³³ County attorneys, county governments, law enforcement officials, and the state legislature need to be aware that if a law enforcement agency fails to enforce a DVPO issued by a court, they may subject themselves to liability in federal court as in *Gonzales*.

D. Practitioners in Wyoming – A Real Life Example

To illustrate the need to make the above referenced changes in Wyoming, a real-life example of a victim of domestic violence in Wyoming is described below. The names of those involved are not disclosed, nor the location in Wyoming revealed to protect the victim. This example encompasses virtually every problem discussed thus far.

In 1998, a woman who would later become a client of the University of Wyoming Domestic Violence Legal Assistance Project (UWDV) was going through a divorce. Her troubles began when her ex-husband hired an attorney whom she thought represented both of them. A divorce decree was drafted and signed, which included a child custody and visitation agreement. Immediately she had concerns about the custody arrangement, but was told by her ex-husband that the agreement's terms were necessary in order to keep the children on his insurance. She went ahead and signed the agreement. The husband began using the children to control her. She could spend more time with the children if she lived with him. When she decided

231. WYO. STAT. ANN. § 35-21-107(c) (LexisNexis 2003).

232. See John Zorza, *The Criminal Law of Misdemeanor Violence*, 83 J. CRIM. L. & CRIMINOLOGY 46, 53-60 (1992).

233. See *Gonzales v. City of Castle Rock*, 307 F.3d 1258 (10th Cir. 2002). In *Gonzales*, the police department refused to enforce a protection order obtained by Jessica Gonzales against her ex-husband. Contrary to the order, Mr. Gonzales took his three children sometime between 5:00 and 5:30 p.m. Mrs. Gonzales called the police several times between 7:30 p.m. and 12:00 a.m. Mrs. Gonzales had reached Mr. Gonzales on his cell phone at approximately 8:30 p.m. and learned he had the children at Elich Gardens, an amusement park in Denver. Mrs. Gonzales phoned the police to alert them as to the whereabouts of her ex-husband, but they still refused to enforce the protection order. Mrs. Gonzales also went to Mr. Gonzales' apartment around 12:00 a.m., but he was not there. The last time she called the police, it was to report to them that she was at her ex-husband's apartment. The dispatcher told Mrs. Gonzales they would send police, but after waiting for the police to show for approximately 50 minutes, she drove to the police station. An officer took a report, but never tried to enforce the protection order. At approximately 3:20 a.m., Mr. Gonzales showed up at the police station, got out of his truck, and began to fire a semi-automatic handgun at the police station. The officers shot and killed Mr. Gonzales, and found the three children in the cab of the truck, murdered. The Tenth Circuit Court of Appeals panel held that Mrs. Gonzales could bring a suit for a procedural due process violation under § 1983 for failing to enforce the protection order. *Id.*

this arrangement did not work, she moved out. Things got worse when she started dating a new boyfriend for the first time since the divorce. Her ex-husband did not like her seeing another man, so he would not allow her to take the children for visitation, and would show up at her house unannounced and would refuse to leave.

Twice in one month, there were two very serious incidents of abuse. The first time he assaulted and raped her, the second time he assaulted her and attempted to rape her before she got away. The second incident actually stopped because the children came in the room. He pled guilty to the first incident, and is currently awaiting trial on the second.²³⁴ After these incidents, she petitioned the court for an order of protection. It was granted. Nevertheless, even while he was awaiting trial on the second offense, the protection order was set to expire.²³⁵ She petitioned for an extension, but before he could be served the order expired. She petitioned the court for a new order of protection, which was also granted. This order stated that the visitation provisions within the original agreement were to be followed. This is where the majority of problems begin. Up to this point, the protection order statute had been fairly effective. Aside from the fact that the duration of the order was only three months, and therefore not long enough, things have generally worked effectively. Even though the DVPO ordered him to follow the visitation set forth in the agreement, he continued to refuse to let her have her scheduled visitation. This became especially objectionable when she was supposed to have two months summer visitation, but he was denying her any visitation at all.

About this time is when she sought help from the UWDV. The first thing UWDV did was to file a motion to enforce the DVPO with the court. A hearing took place in front of the judge that had issued the second protection order.²³⁶ At the hearing, the ex-husband made some unsupported allegations concerning the client's fitness as a mother. Rather than rule on the motion before the court, the judge decided to do otherwise: First, the judge decided, on his own, to appoint a *guardian ad litem* for the children; second, the judge dissolved the protection order because there were similar protections given to the client in the ex-husband's bond order; third, the court

234. He was charged with violating WYO. STAT. ANN. § 6-2-501(a) (LexisNexis 2003), simple assault, the first time, and for violating WYO. STAT. ANN. § 6-2-501(e) (LexisNexis 2003), simple assault on a household member, the second time. How beating and raping a person constitutes a simple assault, however, is a topic for another day.

235. He is currently awaiting trial on the second offense now because the prosecutor had not charged the enhanced offense the first time, and had to dismiss and recharge.

236. This case has some interesting jurisdictional issues. Although it is the same judicial district, the divorce was entered in a separate county than the county where the DVPO was issued. The judge that was involved with the divorce, and had issued the one of the two DVPOs, assigned, on its own motion, both cases (the divorce and the DVPO) to the judge handling the current DVPO. This, obviously, was only possible because the judicial district did not have a circuit court.

modified the visitation schedule from the original decree; and fourth, the court ordered the children to be interviewed by DFS.

The mother then had to wait for another two months before the court held another hearing. The mother had just been denied her entire summer visitation, not to mention visitation during the two months she was waiting for another hearing, and lost the order of protection she had been given just a month earlier, all at a hearing to enforce the protection order. The day of the hearing, we (including the *Guardian Ad Litem* and the ex-husband's attorney) were talking before the hearing began. Amazingly, the *Guardian Ad Litem* made the comment that the ex-husband's conviction and his current impending trial played no part in his recommendation concerning visitation because it had nothing to do with what kind of father he was to the children. At the hearing, the judge then announced that the hearing's purpose was to "modify visitation," without any notice or petition from either of the parties. At the hearing, the *Guardian Ad Litem* was allowed to testify with no cross-examination and make his "recommendations" to the judge. The allegations were indeed "unfounded" so the judge reverted to the original visitation agreement finding that there was no substantial change in circumstances (despite the conviction, the impending trial, and the fact that no petition to modify the decree was pending).

At a subsequent proceeding involving child support issues, we reminded the judge of the previous summer's complete denial of visitation; thus, the judge warned the ex-husband to make sure the impending summer visitation took place as ordered - mom had the children for two months. Just before summer visitation was to take place, the ex-husband packed up the children and moved them to another state. The ex then refused to allow the mother the visitation ordered by the court. Again, another entire summer passed without the mother receiving the visitation to which she was entitled.

Aside from the problem that the protection order would not have expired so early if the duration was closer to every other states' DVPO duration, there are several problems with this case that would be resolved should the recommendations of this paper be adopted. First, the court should be given the power to temporarily modify custody and visitation in an order of protection even where there is a previous custody order in place. Additionally, a court should be *required* to consider domestic abuse as contrary to the best interests of the children and award custody to the victim.²³⁷ Second, the court in this case did not follow the statute. The court modified visitation in a DVPO proceeding, modifying visitation on its own initiative, without a petition from either party, or a finding of a substantial change in circum-

237. See *supra* notes 71-77, 156-58 and accompanying text. The court must consider the fact that abuse, even of an ex-spouse, is contrary to the best interests of the children.

stances.²³⁸ Third, the court dissolved the DVPO because it found that the ex-husband's bond provisions provided similar protections and the DVPO was thus duplicative. Not only did the judge dissolve the DVPO without giving the victim a chance to respond, the judge removed the threat of a criminal violation for violating the DVPO. Furthermore, the ex-husband could enter into a plea bargain with the prosecutor at any time and she would be left with no protection.²³⁹

This emphasizes the point that judges need to be trained in the area of domestic violence.²⁴⁰ This judge appeared to be unfamiliar with the statute and its requirements, and appeared to be unfamiliar with the dynamics of domestic violence and the impact of domestic violence on children. It was also clear that neither the judge nor the *Guardian Ad Litem*, the one person who is supposed to be representing the best interests of the children, thought that the fact that the ex-husband abused his ex-wife, the mother of their children, was relevant to custody and visitation even though the children were fully aware of the violence.²⁴¹ The unfortunate thing about this case is that if the original attorney in the divorce proceeding had made clear that he represented the husband only, this whole scenario may never have taken place.²⁴²

IV. THE NEED FOR REPRESENTATION OF DOMESTIC VIOLENCE VICTIMS

Many victims of domestic violence must seek orders of protection without the assistance of counsel.²⁴³ From my own experiences and from talking with others about their experiences, it is clear that victims of domestic violence need representation.²⁴⁴ In fact, the single strongest predictor of whether a woman will return to court to seek assistance from domestic vio-

238. A court may not modify visitation or custody in a DVPO proceeding. *See supra* notes 143-44 and accompanying text.

239. For those of you who think that she would be informed before any plea arrangement was entered, you are incorrect. The last plea arrangement was made without her ever knowing about it.

240. *See supra* notes 211-21 and accompanying text.

241. *See supra* notes 35-41 and accompanying text (discussing the effects of domestic violence on children). If you also recall, the second instance of abuse was actually stopped by the children coming into the room.

242. The Rules of Professional Responsibility do not allow one attorney to represent completely adverse parties, such as in a divorce. Arguably, because the mother's perception was that the attorney represented her, the original attorney violated the Rules of Professional Responsibility. If the mother had legal counsel and knew that the husband was not telling the truth with regard to the need for him to have custody to keep the children on his medical insurance the custody situation could have been reversed; thus, none of these problems would have occurred.

243. *See JORDAN, supra* note 15, at 1, 3-4.

244. The Wyoming Coalition Against Domestic Violence has a waiting list of victims that need representation. The University of Wyoming has just started a program as part of its legal services clinic to provide legal assistance to victims of domestic violence, and that program has a waiting list. There are also many victims around the state that are not on a list, or cannot be helped by the UW clinic because they are too far away.

lence is whether she has an attorney.²⁴⁵ Victims of domestic violence are in "direct need of assistance from attorneys in civil protection order proceedings. Women who appear in court with legal representation are much more likely to receive civil protection orders than those women who appear *pro se*, and those orders are much more likely to contain more effective and complete remedies."²⁴⁶ Victims of domestic violence need competent attorneys, those who understand the issues and have tools necessary to represent their special needs.²⁴⁷ Attorneys need to develop the skills necessary to provide safe and effective representation.²⁴⁸ That is the purpose of resources that are available to attorneys: To help attorneys learn about domestic violence issues and how to address them effectively when dealing with clients.²⁴⁹ If every attorney in the state represented one domestic violence victim *pro bono*, much fewer victims would go without legal representation. For a small allotment of time, Wyoming attorneys could make a huge contribution to fighting domestic violence.

V. CONCLUSION

Although victims of domestic violence in Wyoming are somewhat protected, changes are necessary to adequately protect victims and children under the Domestic Violence statute. First, the statute allowing an *ex parte* order to be in effect for more than seventy-two (72) hours must include a requirement that good cause be shown, good cause must be defined, and the statute should limit the extension to no more than ten to fourteen (10-14) days. This would allow petitioners and respondents an opportunity to retain counsel and effectively prepare for the hearing, but not infringe on due process rights. Second, the duration of DVPOs needs to be extended to at least one year to become equivalent to other states. Third, the DVPO statute should cross reference the child custody, visitation, and support statutes to create uniform application and focus on the best interests of the child. Additionally, the child custody, visitation, and support issues in DVPOs need to be issued without prejudice so the District Court can address the issues subsequent to the issuance of a DVPO if requested by either party. Fourth, before and during a hearing, judges need to be given the power to consider the best interests of the children in a DVPO proceeding, even if there is a previous custody order in effect. Additionally, judges should be required to find that abuse is contrary to the best interest of the children.

Furthermore, judges in Wyoming need to be trained in the area of domestic violence so that they understand the issues affecting victims of

245. Waul, *supra* note 12, at 67.

246. See Klein & Orloff, *supra* note 8, at 812.

247. See JORDAN, *supra* note 15, at 3.

248. *Id.*

249. See generally *id.* (containing a complete training manual for attorneys, which includes additional resources, training, cases, statutes, and sample pleadings).

domestic violence and the obstacles victims face when trying to protect themselves. The statute requires a finding, whether expressed or implied, that an act of domestic violence has occurred before a court can issue a DVPO. Concerns about concurrent or future criminal proceedings are unnecessary because a criminal defendant is adequately protected from self-incrimination. A defendant can tell the truth or at least tell the same story in the DVPO proceeding that he does in the criminal proceeding, or he can choose not to testify in either.

Law enforcement and attorneys also need to be trained in domestic violence and recognition of self-defense so that victims of domestic violence are adequately protected. Protection orders are very effective if the "coordinated efforts" approach is utilized. Combining resources can only make victims of domestic violence more empowered and more protected in Wyoming.