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# ◆ The Legal Advocate ◆

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## When Victims of Domestic Violence are Charged with Crimes

Increasingly across the state, victims of domestic violence are being arrested for crimes resulting from the violence in their lives. Victims are sometimes wrongly arrested by law enforcement for fourth degree assault when an officer wrongly finds them to be the primary aggressor. In other situations, desperate victims seeking safety for themselves and their children are charged with custodial interference for keeping children from the abusive parent. In the most extreme cases, they may be charged with felonies for taking defensive actions to find safety when they believe the system has failed to protect them. It is important for attorneys and advocates to know the legal and economic consequences of an arrest and conviction for victims of domestic violence.

First of all, victims of abuse will often attempt to expedite the legal process to their own detriment so that they may return home. Fearful for their children, who may be at risk of state custody or in the home of a dangerous or neglectful abuser, the abused victim may take a plea without even consulting an attorney if it means that she can return home quickly to her family. If you have

contact with the victim at this stage of a proceeding, it is very important to encourage her to contact an attorney before she decides to plead out of the case.

Second, battered women may face long-term adverse consequences to their convictions that attorneys and advocates should know about. These may include:

*Employment options:* A conviction for certain crimes may bar one from getting licenses or employment in certain fields and can be grounds for firing. Many of the jobs barred by convictions are traditionally "women's work" such as childcare, teaching and health-care jobs.

*Public benefits* - A conviction could affect eligibility and in some cases can create a lifetime ban.

*Public Housing* - A conviction of certain crimes could affect eligibility.

*Custody determinations* - If a woman is convicted of a crime either as a result of a trial or a plea, this fact will almost certainly be held

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## **Lea McDermid Joins I&R Services**

Immigration and Refugee Services in Anchorage welcomes another attorney to their office! Lea McDermid joins Robin Bronen and Mara Kimmel June 1, 2004, and is available to assist immigrant victims of domestic violence and sexual assault throughout Alaska with protective orders, in addition to helping with immigration issues. Lea is bi-lingual in English and Spanish. Please welcome her, and continue to contact I&R Services with immigration questions. Calls are confidential.

**Immigration & Refugee Services  
Catholic Social Services Center  
3710 E 20<sup>th</sup> Ave.  
Anchorage, Alaska 99508  
276-5590 office  
258-1091 fax**

***Mark your calendars for  
these upcoming trainings!***

**AWRC welcomes Lundy Bancroft  
to Anchorage  
October 12, 2004**

**Hilton Hotel, Anchorage**

For more information on this upcoming training, visit [www.awrconline.org](http://www.awrconline.org)  
contact: Andrea Axelson  
276-0528

**6th Annual ANDVSA  
Legal Advocacy Conference  
October 13-15, 2004**

**Hilton Hotel, Anchorage**

contact: Mary Kay MacNaughton  
586-5643, x23

*More conference information and  
registration brochures will be  
mailed to all programs later this  
summer..*

# Protective Orders Offer Greater Safety for Victims Than No Contact Orders

by Cynthia Cooper

Opposing counsel (or a judge) may suggest your client agree to a no-contact order in the divorce case, in lieu of a protective order. They may even tell you that a no-contact order is just as good as a protective order and can be enforced by a superior court judge through contempt. However, don't even consider it unless there is some reason a court would not grant a protective order. A protective order contains more favorable language; it is more likely a law enforcement officer will take action when your client calls to report a violation of a protective order; the District Attorney's Office is more likely to prosecute for a violation of a protective order than for contempt; and the maximum penalty is greater.

AS 18.66.130(d) mandates the following language be included in bold-face type of the protective order:

- (1) "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and up to a \$5,000 fine" and
- (2) "If you are ordered to have no-contact with the petitioner or to stay away from the petitioner's residence, vehicle, or other place designated by the court, an invitation by the petitioner to have the prohibited contact or to be present at or enter the residence, vehicle, or other place does not in any way invalidate or nullify the order."

No-contact orders do not, and in fact cannot, contain the language in (1) because violation of a no-contact order is punishable as contempt, not as a class A misdemeanor. A no-contact order could contain the language in (2), but it is not mandatory. Without the language, contact pursuant to an invitation would not be prohibited by the no-contact order. This means many respondents will say the contact was invited, even when it wasn't, making it difficult (if

not impossible) to prove a violation beyond a reasonable doubt.

Protective orders are entered into the central registry. No-contact orders are not. This means that when your client calls the police to report a violation of the protective order, the police will check the registry for the terms and conditions of the protective order. It is more likely that a police officer will arrest the respondent and/or charge him with violating a protective order than it is that the officer will arrest and or charge him with contempt.

Prosecution for violating a protective order under AS 11.56.740 is more likely than prosecution for contempt under AS 09.50.010(5) because it is easier for the District Attorney to prove the elements of the former. Conduct does not constitute contempt unless it is "willfully contumacious." Conduct is "willful" when it is purposeful and done in bad faith, i.e. when it is done with the intent to disobey and disregard the order. Conduct that is negligent or inadvertent is not willful. In order to find a person in contempt, the court or jury must be convinced beyond a reasonable doubt that the conduct was willful.

This culpable mental state for contempt is more akin to intentionally under the

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Criminal Code, and is more onerous than culpable mental state the legislature adopted in AS 11.56.740, violating a protective order. All the state need prove under 11.56.740 is that the offender knowingly engaged in conduct, knew the literal terms of the order, and recklessly disregarded that his conduct violated or would violate the provisions of the protective order. The legislative commentary to AS 11.56.740 states that it replaces the crime of harassment by violating a restraining order and “reduces the necessary mens rea from ‘intentionally’ to ‘knowingly’.”

Not only is contempt harder to prove, but the penalties are significantly less. The maximum penalty for contempt is a \$100 fine, unless a right or remedy of a party has been prejudiced. If a right or remedy has been prejudiced, the maximum penalty is a \$300 fine and six months’ imprisonment (half of the one-year maximum for violating a protective order).

Opposing counsel or a judge may tell you that the respondent can be held in contempt even if the District Attorney declines to prosecute. This is correct, but as noted above the maximum penalty for the

typical contempt is \$100 -- hardly a deterrent for most batterers. If the court finds that a right or remedy of a party has been prejudiced, thereby making imprisonment a possibility, the offender is entitled to a six-person jury trial. The good news is that the Alaska Supreme Court has held a husband’s violation of a no-contact order prejudiced wife’s right to be left alone, so jail time can be imposed. The bad news is the District Attorney is unlikely to prosecute and the court can’t order the District Attorney to do so. The court has the power to appoint you to prosecute the contempt if the state won’t, but guess what – the court system won’t pay you, so you’ll be doing it pro bono.

If the respondent violates a protective order while on probation for a crime, the government could petition to revoke probation based on the violation. The government would have to prove the violation by a preponderance of the evidence, a much lesser standard than reasonable doubt. Even with this lesser burden, it is easier to revoke probation for violating a protective order than for contempt.

In short, a protective order affords domestic violence victims more protections than a no-contact order in a divorce case. A batterer is more likely to be prosecuted for violating a protective order than for contempt, and if convicted, is more likely to be sentenced to imprisonment or suspended imprisonment.

## Web Site Manager

**Ami Cecil left the Legal Advocacy Project several months ago to spend more time at home with her young son and run the climbing gym she owns and manages with her partner.**

**The Network has hired Ami part-time to be the ANDVSA Web Site Manager for 6 months. In that capacity she will continue to update and edit the web site and create new pages/sections as needed. She will also continue to monitor the web site email, so feel free to contact her about web site content at [info@andvsa.org](mailto:info@andvsa.org).**

**ANDVSA's Information and Referral Hotline****Upcoming Hours:**

TUESDAY, June 15, 5-7 p.m.

TUESDAY, June 29, 5-7 p.m.

TUESDAY, July 13, 5-7 p.m.

TUESDAY, July 27, 5-7 p.m.

**Call toll-free 1-888-988-3725****WHO SHOULD CALL? VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT WHO WANT BASIC INFORMATION ABOUT THEIR LEGAL RIGHTS AND OPTIONS AND REFERRAL INFORMATION FROM AN ATTORNEY***(Continued from page 1)*

against her in a custody matter.

*Immigration status:* A conviction of certain crimes may prompt deportation

*Voting Rights and other civil rights* - convicted felons may lose the right to vote, to serve on a jury, or to hold public office. In over half the states, convicted felons who have served their sentence remain disenfranchised for life.

Since many victims of domestic violence are the primary caretakers of their children, the loss of public benefits, housing or immigration status can be devastating to the entire family unit.

In addition to educating victims of domestic violence about the adverse effects of convictions on their lives, it is also critical for advocates to educate the criminal system about the harmful effects of arresting domestic violence victims. Advocacy to this end with the police and the district attorney's office to improve case screening before an arrest is made is the first step. If an arrest is made, then civil attorneys and advocates need to help criminal defense attorneys understand the dynamics of domestic violence to best represent victims.

Battered women's advocates and attorneys need to be educated about the effects of a conviction on a victim to be able to fully inform battered women about the consequences of their convictions. Only then can women fully assess and make informed decisions about how to proceed in their legal cases.

*Excerpts of this article are reprinted from materials written by the National Clearinghouse for the Defense of Battered Women. The Clearinghouse serves as a technical assistance provider to attorneys and advocates working with victims of domestic violence who have been charged with crimes. They provide training to professionals and technical assistance on cases. To obtain their assistance, contact 215-351-0779.*

**ANDVSA's CLE  
2004**

47 people attended the 6th Annual ANDVSA CLE, March 29-30, 2004 in Anchorage. 19 of the 47 participants were from Anchorage and 28 were from other parts of Alaska. Of the 47 attendees, 36 are attorneys and 2 are paralegals. Additionally, one mediator attended the CLE. Of the 36 attorneys, 22 are current volunteers for ANDVSA. 5 attorneys who had not previously volunteered agreed to take a case for the Pro Bono Program. ANDVSA paid the travel, hotel and per diem for 17 attorneys; 15 of these attorneys were already volunteers and 2 agreed to become a volunteer attorney for the Pro Bono program.

Many legal advocates and shelter staff also attended the CLE. 5 legal advocates from different shelters and 2 additional shelter staff members attended. 6 Alaska Legal Services attorneys attended the CLE from Juneau, Anchorage and Fairbanks.

**CLE 2005 dates are tentatively set! Mark your calendars for March 14-15, 2005 Anchorage for the 7th Annual Continuing Legal Education training.**

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**Pro Bono Mentoring Project**

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(907) 747-7545 phone  
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*The newsletter is edited by Mary Kay MacNaughton. Questions? (907) 586-5643, x23.*

**The Legal Advocate**

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