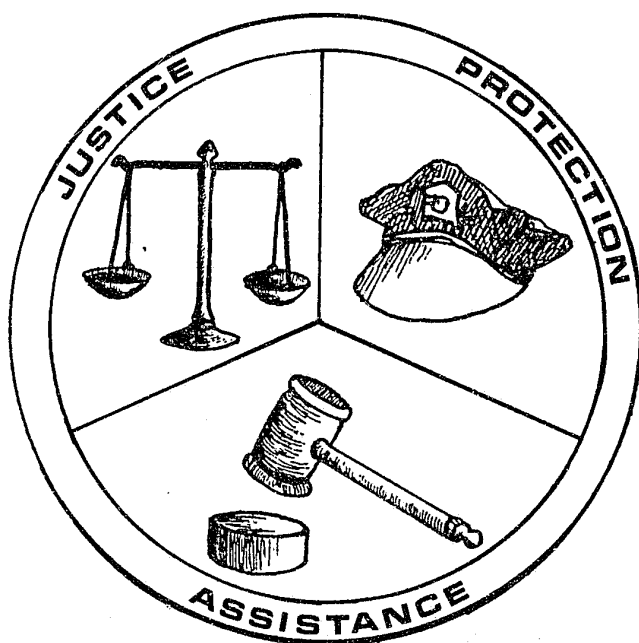


# ILLINOIS DOMESTIC VIOLENCE ACT:

## A STATE'S ATTORNEY'S MANUAL

154621



ILLINOIS COALITION AGAINST DOMESTIC VIOLENCE

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# Act:

## A State's Attorney's Manual

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Nell F. Hartigan, Attorney General

## Preface

The Illinois Coalition Against Domestic Violence is a Statewide network of more than thirty-five community-based domestic violence programs. These programs provide victims of assault by other family members with 24-hour protection and safety, support, advocacy and referral through both residential and non-residential services.

The Illinois Coalition Against Domestic Violence, under a grant from the Illinois Department of Public Aid and the Chicago Resource Center, has developed materials and presented training on the recently enacted Illinois Domestic Violence Act. The Act, which is designed to provide effective legal remedies to domestic violence victims, requires full implementation by law enforcement officials, state's attorneys, and judges in order to provide victims with the protection they need.

State's Attorneys, who play a particularly important role, may be interested in the findings of two recent studies of criminal justice policies relative to family violence. The first, Prosecution of Spouse Abuse: Innovations in Criminal Justice Response, found that "The probability of victim cooperation is in fact better predicted by the conduct of the prosecutor than by the conduct of either the victim or the defendant."<sup>1</sup> Prosecutorial policies which take the victim and the violence seriously and which support the victim through the criminal process dramatically improve the rate of both victim follow-through and abuser convictions. The second study of domestic violence victims stated that "Court officials should realize that women who decide to drop charges or are reluctant to have their husbands prosecuted may nonetheless benefit from filing charges in court. Forty-seven percent of the women reported that their spouses did not bother them again after their cases were disposed."<sup>2</sup> Furthermore, this same study found

1. Lerman, Lisa G., Prosecution of Spouse Abuse: Innovations in Criminal Justice Response, Center for Women Policy Studies, Washington, D.C. 1981, page 41.

To obtain a copy of the study send \$7.00 to: Center for Women Policy Studies, 2000 P Street, Suite 508, Washington, D.C. 20036.

2. Connick, Elizabeth, The Experiences of Women with Services for Abused Spouses in New York City, Victim Services Agency, New York, 1982, pages 76-77.

To obtain a copy of the study send \$15.00 to: Victim Services Agency, 2 Lafayette Street, New York, N.Y. 10007.

that 73% of the women thought that taking their problem to court had helped. Thus the policies and attitudes of prosecutors are critical and potentially extremely effective in interrupting the ongoing and escalating patterns of family violence.

This Manual is a comprehensive explanation of the new tools available to State's Attorneys under the Illinois Domestic Violence Act which can help achieve this goal. Other materials on the Act, including manuals for law enforcement officers, practicing attorneys and advocates, are available from the Illinois Coalition (please see Appendix H for list). The Coalition welcomes the opportunity to distribute these materials, to answer questions and to cooperate with state and local officials in implementing the law.

The Illinois Coalition Against Domestic Violence is very grateful to the State's Attorneys who reviewed and commented on this Manual, and to the State's Attorneys Association for its cooperation in both its review and distribution.

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## I. INTRODUCTION TO DOMESTIC VIOLENCE

### A. Why domestic violence is a criminal justice problem.

In recent years, domestic violence has become an increasingly visible and important social issue. Many law enforcement agencies consider violence within the family - child abuse, woman abuse and elderly parent abuse - to be the most frequent and underreported crime in the United States.

Many police officers, prosecutors and judges have found domestic violence to be a difficult and frustrating problem for the criminal justice system to handle effectively. Some people believe that these cases are intrafamily matters that belong in the civil courts in domestic relations proceedings. Some people have become frustrated, indifferent or even hostile after encountering victims who are repeatedly abused and either do not press charges or return to the battering relationship. Still others hold onto faulty beliefs that victims of domestic violence provoke the attacks or masochistically enjoy the beatings.

The dynamics of domestic violence are many and complex. What is important for State's Attorneys and Assistant State's Attorneys to know is that abuse often begins as a slap or a shove, but slowly escalates into repeated beatings of a serious nature, sometimes ending in homicide. Since domestic violence is a repeater crime early intervention and proper response may prevent more serious injury and possible homicide.

Data collected from a study of the Kansas City Police Department during a two year period (1976-1977) supports this view. In 85% of the cases of serious assaults and homicide within the family, police had responded to a domestic disturbance call at the victim's or suspect's address at least once. In 50% of the cases, they had visited those same residences 5 or more times. The most reliable predictor of future family violence is a history of violence.

Furthermore, the criminal justice system is where victims turn for assistance and protection, often in desperation. Whether they have obtained civil injunctions, or have marriage dissolutions pending, they call on the police and prosecutors when they need emergency assistance. If the State's Attorney takes the domestic violence victim seriously from the beginning, (s)he may provide the support the victim needs to continue with the prosecution and thereby apply the coercive powers of the

of the criminal justice system to actually reduce violence within that family.

A criminal justice response to domestic violence is thus a good long-term investment -- both in preventing the inevitable escalation to serious violence and in handling the domestic violence so effectively from the start that the victims in the violent family will need to depend on the state's attorney less and less for protection.

#### B. Understanding the parties in domestic violence cases.

The new Illinois Domestic Violence Act applies to all cases of domestic violence - including children, women and elderly parent victims. However, it will be most frequently used by battered women, who represent over 90% of all adult domestic abuse victims and whose problems are the most difficult to understand by the various segments of the criminal justice system.

Many battered women come from homes in which they were taught to be dependent upon their husbands or partners for economic survival and emotional identification. In fact, economic dependency is often the primary reason why these women do not leave: they have no money, no jobs and very often, little hope of getting either. The low self-esteem of battered women is enhanced by the physical abuse and the economic dependence.

The humiliation and shame of being assaulted time and time again by someone who is intimate must create grave doubts about one's worth. The self image of the abused wife may drop to the point where she believes she was responsible for and deserving of abuse. (Martin. Battered Wives San Francisco: Glide Publications, 1976.)

Battered women are often threatened by their spouses or partners that if they take any steps to leave, they will be abused even worse. Thus, many of these women do not know how to escape from their violent relationships. They often blame themselves for the failure of their relationships and start to believe that they are somehow to blame for the violence that has occurred.

The most common characteristic of men involved in abusive relationships is that they were raised in violent homes, in which their mother was beaten or in which they were abused. Having seen this as children results in their having a higher tolerance for violence which may



follow them throughout life. (Straus and Steinmetz. Behind Closed Doors: Violence in the American Family New York: Anchor/Doubleday, 1980.)

These men frequently have a general feeling of being inadequate and unable to fulfill the masculine image of being strong and in control. They often use violence as a way to feel powerful and superior to others. The State's Attorney will find that the men involved in these relationships often are excessively possessive and jealous about their partners. Battered women often complain that they were accused of having affairs which were clearly in the men's imaginations.

In addition the men in these situations often minimize the seriousness of their behavior and repeatedly deny that they have committed violence against the women. They can be so convincing that a reasonable person might begin to question whether the injured woman actually inflicted her own injuries.

While all the reasons that men batter women are not known, these are men who usually suffer from personal and interpersonal problems who could probably benefit from required participation in a treatment program.

Most often, victims of domestic violence seek assistance from the criminal justice system in the hope that some force larger than they will make the man stop the beatings. It is now widely known that abusers in domestic violence cases do not voluntarily seek treatment and do not consider civil court sanctions, such as contempt, as deterrents for their behavior. Only a criminal justice response -- through a combination of court-mandated treatment (including alcoholism, drug and therapy) and/or swift, effective criminal sanctions -- can potentially alter the violent behavior of many men involved in domestic violence situations.

If the parties continue living together, criminal prosecution will take on an urgency and complexity that other cases lack. The State's Attorney can refer the complainant to a local social service agency for counseling and recommend that she locate emergency housing in case she finds herself in danger pending the outcome of the trial.

The manner in which the State's Attorney responds to domestic violence as a representative of the criminal justice system communicates an important message to the parties involved. If the victim is treated seriously and

respectfully, she will begin to realize that what has happened to her is a crime, which should not be tolerated by her or by society. If the offender is likewise treated seriously, he will learn that his behavior is not acceptable and that he will suffer criminal repercussions if he continues in his course of conduct. Thus, the attitude that the State's Attorney conveys and the legal protections and assistance offered will have a major impact on the incidence and recurrence of domestic violence. In fact, in jurisdictions where the prosecutor has adopted the policy of signing the complaints and providing the victim with support, as have some in California and New York, over 90% of the victims cooperate with prosecution and the overwhelming majority of cases result in either guilty pleas or convictions.

C. When victims of domestic violence want to discontinue prosecution.

Research by Dr. Lenore Walker identifies a predictable cycle of violence in domestic violence, instead of random occurrences. Awareness of these phases helps in understanding the reactions of victims of domestic violence.

In the first phase, which can last for varying periods of time, tensions build and threats are made against the victim. The next stage is the explosion or actual beating stage in which the victim may be slapped, shoved, punched, hit, severely beaten or killed. It is during this stage that prosecution is especially important. In the third stage, the abuser is remorseful, extremely loving, apologetic and may overwhelm the victim so that she is persuaded to remain in the relationship.

Battered women often appear in court while their partners are going through this third stage and, for this reason, may want to drop charges. Far from masochistic, the woman may be motivated by compassion for the abuser during his period of remorse, a willingness to forgive him, a genuine desire to keep the family intact, or even understandable economic considerations.

Battered women also tend to discontinue prosecution due to fear. From the moment that a victim signs a criminal complaint through trial and even afterwards, she is vulnerable and defenseless to the abuser's rage and violence. The Illinois Domestic Violence Act and its new Order of Protection available to victims pending trial and after conviction might offer the actual or perceived protection that many victims need in order to prosecute.

These are the different reasons why domestic violence victims are sometimes reluctant to continue with prosecution. When confronting this situation, always discuss with the complainant:

- (1) the cycle of violence in domestic violence cases and its inevitable escalation;
- (2) the new protections and range of remedies available under the Illinois Domestic Violence Act; and
- (3) the appropriateness of court-ordered counseling as an alternative to jail or to dropping charges.

## II. THE ILLINOIS DOMESTIC VIOLENCE ACT

### A. Introduction to Illinois Domestic Violence Act.

The Illinois Domestic Violence Act (IDVA), Public Act 82-621, effective March 1, 1982, brings legislative recognition to the nature and seriousness of domestic violence by providing a wide range of civil and criminal remedies, law enforcement assistance and institutional reforms to assist victims of domestic violence and ultimately to alter the cycle of violence in Illinois families.

IDVA recognizes that domestic violence is a serious crime against the individual and society which produces family disharmony in thousands of Illinois families, promotes a pattern of escalating violence which frequently culminates in intrafamily homicide and creates an emotional atmosphere that is not conducive to healthy childhood development. IDVA further recognizes that victims of domestic violence are often emotionally and financially dependent on their abusers and are therefore unable to appropriately protect themselves from violence.

The unique feature of IDVA is the emphasis it places on the critical role of the criminal justice system in providing protection to victims as well as in pressing abusive family members to change violent behaviors. This new law necessarily requires a coordinated response from all segments of the criminal justice system -- police, state's attorneys, criminal court judges and probation departments -- in vigorous enforcement and prosecution of domestic violence cases. If any of these parties fails

to take IDVA seriously, it will quickly send a message throughout the system, the ripple effect of which will be continued frustration with domestic violence cases, further deterioration of Illinois families, and in many cases serious injuries or death.

The Illinois Domestic Violence Act is incorporated into Illinois Revised Statutes Chapter 40, Sections 2301 to 2305.

B. How the Illinois Domestic Violence Act will assist prosecutors.

The new legal concept in IDVA is an Order of Protection, a hybrid civil-criminal legal remedy. The Order of Protection resembles a civil injunction or restraining order in that it may be obtained in civil court in conjunction with an action for marriage dissolution, child custody, legal separation or annulment; or it may be obtained in civil court in an independent action for an Order of Protection. However, there are two features of the Order of Protection that concern prosecutors:

- (1) the Order of Protection may be issued by a criminal court where a charge is pending against the abuser (during pre-trial release) or, upon conviction, as a condition of supervision, conditional discharge or probation; and
- (2) certain remedies in an Order of Protection are enforceable as a Class A misdemeanor, creating a new crime called "violation of an Order of Protection".

The significance of these two provisions is that there is no longer a legal distinction between civil and criminal remedies in domestic violence cases. Instead, IDVA is an accurate reflection of domestic violence as a quasi-criminal/quasi-civil social problem, requiring both civil courts and criminal courts to intervene in appropriate situations.

The Order of Protection will assist prosecutors in their work in the following ways:

- (1) it will provide emotional and economic support and a sense of safety to victims of domestic violence pending the outcome of the prosecution, thereby offering the protection and practical support many complainants need to continue with the prosecution;

- (2) it will provide a mechanism for issuing a valid and recorded court order pending trial, thereby deterring some abusers from wreaking vengeance on the victim during the prosecution process;
- (3) in cases where the Order of Protection is violated with impunity before trial, it will begin to educate judges about the flagrant disobedience of their orders, and may result in appropriately harsher penalties in those domestic violence cases; and
- (4) it may deter abuse after conviction, if violation of an Order of Protection results not only in violation of a supervision order but also in prosecution for a new Class A misdemeanor.

Although none of these assumptions have yet been time-tested, IDVA and its new Order of Protection are clearly premised on a recognition that prosecution is necessary to convince or coerce abusive family members to change their violent behavior. The Assistant State's Attorney will hopefully approach IDVA as a useful tool for keeping victims of domestic violence involved in the prosecution, and for fashioning individually tailored remedies through Orders of Protection.

#### C. Civil or criminal remedies?

The Illinois Domestic Violence Act clearly states that remedies issued under the new law "shall be in addition to other civil or criminal remedies which may be available" to the victims of domestic violence (Section 208 (a) of IDVA). IDVA also establishes legislative policy that the criminal justice system can and should play a major role in eliminating or reducing domestic violence in Illinois families.

It is not appropriate for State's Attorneys to discourage victims of any violent crime, including domestic violence, from prosecution merely because they are pursuing other types of remedies in civil court. If she or he is filing for marriage dissolution, reconciliation is likely not to interfere with prosecution and the victim may particularly need protection from the criminal justice system pending the outcome of the civil litigation. In certain cases, such as where child custody, visitation or support seem to be in dispute, it is appropriate to advise the domestic violence victim about his or her civil alternatives.

In addition, State's Attorneys should not project or express the attitude that beating of a spouse is not a criminal matter, that it is "not serious", that the parties should "kiss and make up" or that the victim should pursue remedies in domestic violence relations or civil court instead of criminal court. Based on what we know about domestic violence, the violence is likely to escalate in both frequency and severity. For this reason, an effective criminal justice response during the early stages of the abuse may very well prevent future serious injury or homicide.

D. Orders of Protection: Who is covered?

The IDVA is intended to apply to situations between family or household members in which violence has occurred or is threatened, or in which harassment is being used to create the fear or apprehension of physical violence. "Abuse" is defined broadly in Section 103 to include any act of striking, threatening, harassing or interfering with the personal liberty of any family or household member by any other family or household member. As in any other case, prosecutors must discern the facts as accurately as possible and make a reasoned judgment as to the appropriate charge or charges to bring.

Nothing in IDVA changes criminal laws that pertain to violence between persons, most commonly included in Criminal Code sections related to assault, aggravated assault, battery, aggravated battery and disorderly conduct.

The definition of "family or household members" is found in Section 103 and includes spouses, individuals who were formerly spouses, individuals sharing a common household, or parents and children. The IDVA will most frequently apply to battered women, abused elderly parents and battered children. This new Order of Protection in IDVA incorporates the civil "Order of Protection" obtainable in Juvenile Court, which is frequently used to keep parties physically separated in incest or child sexual assault cases.

The IDVA lends support for the policy of all State's Attorney's Offices to vigorously prosecute offenses under the Criminal Code. The fact that a defendant and complainant live together, are married, divorced or separated does not disqualify that case for either misdemeanor or felony prosecution. The decision to prosecute should always be determined by the evidence, not the status of the parties.

## E. Remedies in Orders of Protection

The Order of Protection should be tailored to meet particular needs and objectives of individual families. The remedy in IDVA which will most frequently apply to criminal court cases is found in Section 401. This section amends Chapter 38, by adding a new Section 111-8, which states, in part:

"(b) In addition to any other remedies specified in Section 208 of the Illinois Domestic Violence Act, as now or hereafter amended, the order (of Protection) may direct the defendant to initiate no contact with the alleged victim or victims who are family or household members and to refrain from entering the residence, school or place of business of the alleged victim or victims."

This section does not preclude the court from ordering other remedies outlined in Section 208. However, the State's Attorney will most frequently deal with Sections 208 (c)(1) and (2) because these are the only two remedies of Section 208 which are criminally enforceable as a Class A misdemeanor.

Sections 208 (c)(1) and (2) permit the court (refer to IDVA for full text):

- (1) to order the defendant to refrain from striking, threatening, harassing or interfering with the personal liberty of the complainant or any other family or household member;
- (2) to grant possession of the residence or household to the complainant, to the exclusion of the defendant, when:
  - (i) the parties are spouses, or
  - (ii) the residence or household is solely or jointly owned or leased by the complainant, or
  - (iii) the defendant has a legal duty to support the complainant or minor children.

The court may also order the defendant to provide suitable, alternate housing for the complainant or minor children in lieu of excluding the defendant from the mutual residence or household.

Consequently, State's Attorneys will most frequently request the court: (a) to issue an Order of Protection during or after criminal prosecution, or (b) to enforce an existing Order of Protection, with respect to two remedies -- prohibiting further abuse and temporarily

barring the abuser from the shared residence -- which intend to prevent physical contact between the parties and which pose the greatest and most immediate danger to victims when violated.

The criminal court may also order other remedies under Section 208(c). Although IDVA does not distinguish between remedies that may be ordered by civil versus criminal courts, the remedies requested in criminal court should be appropriate to the prosecution of criminal charges. These might include (refer to IDVA for full text):

Section 208(c):

- (4) prohibiting child snatching and concealment or requiring appearance in court with the child;
- (5) requiring or recommending counseling for the defendant;
- (6) prohibiting theft, destruction or transfer of the complainant's property; and
- (10) providing other relief as needed -- such as prohibiting contact with the complainant at her school or place of business.

Other Section 208(c) remedies are more appropriately fashioned by civil courts, such as: (3) establishing temporary custody and visitation rights; (7) requiring payment of temporary support; (8) requiring compensation for monetary losses sustained by the complainant; and (9) requiring payment of court costs and attorney's fees. Since IDVA expressly allows criminal courts to consider these wide range of remedies, the State's Attorney may find them necessary and useful in some unusual circumstances.

In addition, Section 208(b) specifically provides that "the court's decision to deny any or all of these remedies shall not be based in whole or in part on evidence as to whether or not the petitioner has acted in defense of himself or herself, or other family or household member or any minor child, or has left the residence or household to avoid further abuse by the respondent."

F. How to obtain Orders of Protection

Before Trial. The State's Attorney will find an Order of Protection to be a useful way to offer the complainant some measure of protection during the criminal proceedings (hopefully to prevent her/him from discontinuing the



prosecution) and also to monitor the defendant's behavior through a valid, recorded judicial order pending the outcome of the prosecution.

Under IDVA, Orders of Protection may be issued by the court at any and every stage of the prosecution: pre-trial, during trial or post trial.

There are two procedures by which the State's Attorney may request an Order of Protection before trial:

- 1) without notice, pursuant to Section 401(c) of IDVA (Chapter 38, new Section 111-8):

"The court may grant emergency relief without notice upon a showing of immediate and present danger of abuse to the victim or minor children of the victim and may enter a temporary order pending notice and full hearing on the matter."

This Order of Protection granted without notice to the defendant has these features:

- (a) it should be utilized in emergency cases, where there is reason to believe that the abuse will be repeated, and the defendant has either failed to appear in court or has not been appointed an attorney;
- (b) it is only a 10-day temporary order designed to expire after notice to the defendant and a hearing on the merits, unless extended by the court;
- (c) an Order of Protection issued without notice does not become criminally enforceable unless the violation occurs after the defendant has been served notice of the order or otherwise has acquired actual knowledge thereof (Section 212 of IDVA).

- 2) with notice, pursuant to Section 401(a) of IDVA (Chapter 38, new Section 111-8):

"(a) Whenever a violation of Section 9-1, 9-2, 9-3, 10-4, 10-5, 11-1, 11-3, 11-4, 11-5, 11-10, 11-11, 11-15, 11-5.1, 11-20a, 12-1, 12-2, 12-3, 12-4, 12-4.1, 12-5, 12-6 or 12-11 of the Criminal Code of 1961, as now or hereafter amended, is

alleged in an information, complaint or indictment on file, and the alleged offender and victim are family or household members, as defined in the Illinois Domestic Violence Act, as now or hereafter amended, the People through the respective State's Attorneys may by separate petition and upon notice to the defendant, except as provided in subsection (c) herein, request the court to issue an order of protection."

This Order of Protection with notice is appropriately issued when a defendant is in the courtroom and is represented by his attorney. If the defendant or his attorney have appeared to request an additional continuance, notice may be effected in the courtroom and the hearing on the Order of Protection may proceed. There is no right to trial by jury in any proceeding to obtain or modify an Order of Protection, except with regard to monetary compensation (Section 213 of IDVA).

Upon Conviction. An Order of Protection may be requested after conviction of a defendant as a condition of probation, supervision or conditional discharge. It closely resembles any other order issued in conjunction with probation, supervision or conditional discharge, except that it is issued for the complainant against the defendant. It is also useful in describing the specific responsibilities of the defendant-abuser and, accordingly, involves the person with the most at stake - the complainant herself or himself - in its enforcement.

The Order of Protection requested and issued at this stage of the criminal process should also be individually tailored to the needs of each family. Victims of domestic violence - especially if battered women or elderly parents who have carried their complaints through to prosecution have a strong investment in having the violence stop. These are precisely the victims who are likely to be subject to continued and repeated violence, yet they have little information about the terms and enforcement of supervisory or probationary orders. Orders of Protection granted in domestic violence cases will become recorded, indexed, court-ordered and enforceable remedies against future violence. They will be on file both with the court and in the statewide LEADS computer system, as available to law enforcement as any outstanding arrest warrant.

The Order of Protection issued after conviction may include any or all of the ten remedies outlined in Section 208(c) of IDVA. One remedy which is especially forceful

and potentially effective at this stage of the prosecution is a court mandate for the defendant to attend counseling or alcoholism or drug treatment. The goal of many victims of domestic violence is to have the court use its coercive powers to alter the defendant's violent behavior. Participation in a treatment program, with criminal sanctions uniformly and swiftly applied for failure to attend, might produce this result, as it has done in other jurisdictions.

#### G. Recommended usage and court procedure for Orders of Protection.

Pre-trial Orders of Protection. It has been stated that Orders of Protection may provide a new tool for State's Attorneys to offer protection to complainants pending trial and thereby keep them in the prosecution. There are three situations in which pre-trial Orders may be effective and might therefore be utilized:

- 1) if there is evidence of a pattern of repeated or serious physical abuse of the complainant by the defendant.

The evidence the State's Attorney should offer to the court is the historical pattern of abuse and the likelihood of future abuse pending trial. If the Order of Protection is granted as an emergency order without notice, it will expire within ten days unless otherwise extended by the court.

- 2) if there is evidence of any new acts of violence by the defendant from the time the complaint is filed and before trial, especially during any continuances when complainants tend to be most vulnerable.

The evidence the State's Attorney should offer during the hearing on the petition for the Order of Protection is competent evidence on the newest act of violence -- not evidence on the original battery which gave rise to the criminal complaint. However, it is usually preferable to dispose of the case as quickly as possible by urging the court to hold the trial, instead of having protracted hearings on an Order of Protection.

- 3) if the complainant appears frightened that the defendant will retaliate because of her/his role in the prosecution, the pre-trial Order of Protection may create the necessary comfort and peace of mind to enable the complainant to continue with the prosecution.

Instead of, or in addition to, seeking an Order of Protection, the State's Attorney should also consider requesting the court to increase the defendant's bond, if he has committed additional acts of violence pending trial. If the new act of violence has resulted in an arrest and/or a separate criminal complaint (e.g. new battery charge), the two complaints -- based on the original act of violence and on the newest act of violence -- should be consolidated for trial so that the court may consider and rule on the entire pattern of violence in that family or household.

The relief a State's Attorney is most likely to request in a pre-trial Order of Protection is:

- 1) that the defendant refrain from striking, threatening, or harassing the complainant(s) (Section 208 (c)(1) of IDVA); and/or
- 2) that the defendant initiate no contact with the complainant(s) and refrain from entering the residence (Section 208(c)(2)), school or place of business of the complainant(s) before trial (Section 401).

An Order of Protection granted before the trial on the criminal complaint with notice to the defendant must be entered into the Illinois Department of Law Enforcement LEADS computer system by the sheriff in the county in which the case is being prosecuted. This information of an existing Order of Protection stored in the LEADS system will be available and useful to local law enforcement officers at the scene of an alleged domestic violence incident, in cases where the defendant violates the order before trial.

The routing for the Order of Protection by the Clerk of Circuit Court to the sheriff is prescribed by regulation of IDLE and does not concern the State's Attorney's Office. However, the State's Attorney is responsible for completing the standard Order of Protection form fully and accurately, so that all the necessary information may be entered into the computer. (As example, the computer code for an Order of Protection granted by the criminal court pending trial is different than any other code in order to designate that this type of Order of Protection expires at trial). Every Order of Protection must include the defendant's date of birth before it can be entered into the computer system. The complainant and defendant must also receive a paper copy of the Order of Protection. Law enforcement officers arriving at the scene of an Order violation may need to refer to the complainant's copy if there is a backlog of computer entries at the sheriff's office or if the system is down.

Pre-trial ex parte Orders of Protection issued without notice in emergency cases will not be entered into the LEADS system in Cook County and may not be in other counties.

Judicial standards under IDVA. Section 208(d) of IDVA clearly requires judges to use the following standards in determining whether to grant Orders of Protection:

Section 208(d) "In determining whether to grant a specific remedy in an Order of Protection, the court shall consider relevant factors, including but not limited to the following, and shall make findings thereon (emphasis added):

- 1) the frequency, severity, pattern and consequences of the respondent's past abuse of the petitioner or any family or household members, including the concealment of his or her location in order to evade service of process or notice, and the likelihood of danger of future abuse to the petitioner or any family or household members;
- 2) whether any minor child is in danger of abuse or neglect by the respondent, or whether the respondent has threatened or attempted to remove the child from the jurisdiction of the court; and
- 3) where the court has denied a remedy under paragraph (2) of subsection (c) of this Section, the manner in which the hardship which would result from temporary exclusion of the respondent from his or her residence substantially outweighs the hardship which would result if the petitioner or any family or household members were deprived of safe and peaceful occupancy of the home by the threat of future abuse.

While this section is probably intended to apply to practices in civil courts, it also demonstrates legislative recognition that domestic violence is an often repeated and serious act of violence. The State's Attorney should therefore encourage the criminal judges with whom (s)he works to consider these important and relevant factors: the frequency, severity, pattern and consequences of past abuse and the likelihood of danger of future abuse.

Evidence at Trial. Domestic violence is a crime that remains hidden behind closed doors and shrouded in a cloak of secrecy and shame. In most cases, there are no witnesses. In those cases, prior history of abuse, prior calls to the police and prior medical treatment may establish a pattern of abuse that bolsters the evidence - within strict rules of evidence as to introduction of evidence regarding other crimes.

Between the signing of the criminal complaint and the trial, the victim/complainant should be advised to obtain or preserve the following types of evidence which may be useful to the State's Attorney in prosecution:

- 1) photos of any visible injuries;
- 2) photos of broken furniture, room in disarray, etc. after the beating;
- 3) a witness who can testify to the accuracy of the photos;
- 4) doctors' reports or hospital records demonstrating medical attention received;
- 5) torn clothing and other property damage;
- 6) weapon or object used, if any, to inflict abuse.

In addition, police reports from this incident as well as previous calls for police assistance, plus the defendant's criminal record, should be obtained.

If a pre-trial Order of Protection has been obtained, the victim should be advised as to appropriate actions to take (i.e. making a police report and collecting evidence) if the order is violated.

The State's Attorney may consider consolidating the hearing for a post-trial Order of Protection with the trial on the criminal complaint, introducing competent evidence as to why a continuing court order in conjunction with supervision, etc., is necessary.

#### H. How to enforce Orders of Protection.

The key to making Orders of Protection effective in reducing violent behavior is in enforcing them when they are violated. The Illinois Domestic Violence Act is premised on a theory that abusers will change when the legal and criminal justice system places sanctions on their conduct.

State's Attorneys should also note that victims who have already obtained an Order of Protection (in either civil or criminal court) should be the most willing to prosecute and should therefore be the most cooperative witnesses in prosecution. These are victims who have tried and failed in getting the abuser to stop the violence through other means.

Orders of Protection Issued in Civil Court. As previously stated, two court-ordered remedies in an Order of Protection - Sections 208(c)(1) and (c)(2) - are

enforceable as Class A misdemeanors. A victim of domestic violence thus has the option of selecting EITHER civil or criminal contempt to enforce a violation of an Order of Protection OR criminal prosecution for a Class A misdemeanor. One or the other enforcement mechanism must be selected to prevent double jeopardy.

If the Order of Protection is enforced through the civil process, the contempt penalty provides for a fine or jail, or both. Depending on the seriousness of the violation, a 6-month maximum jail term for contempt may not be as potent as the possibility of a 1-year jail sentence, plus future criminal sanctions, available under a Class A misdemeanor penalty.

If the Order of Protection is enforced through the criminal process, then the State's Attorney prosecutes the new Class A misdemeanor, called "violation of an Order of Protection", as any other misdemeanor. Since the penalty includes the possibility of a jail sentence, IDVA specifically provides the right to trial by jury in enforcing Orders of Protection.

Analogous to a probation order, the State's Attorney may want to charge the act of violence as either "violation of an Order of Protection" or battery (or assault, etc.) or both. This is to impress upon the criminal judge that this defendant is not only violent but also violates with impunity past orders of the court.

If the domestic violence victim has already obtained an Order of Protection in civil court which is still in effect, then the State's Attorney need not obtain another one for her/him from the criminal court pending trial. However, each violent act committed before trial in violation of the Order should be charged separately as "violation of an Order of Protection" and/or battery, assault, etc. All of the charges should then be considered by the judge or jury in issuing the verdict in the case or as aggravation in sentencing.

Orders of Protection Issued in Criminal Court Before Trial. Not using enforcement of orders issued by the civil court, each violent act occurring pending trial should be considered and therefore charged as a separate "violation of an Order of Protection" or battery, assault, etc., or both.

If the Order of Protection is violated pending trial, the State's Attorney has three options to enforce the Order:

- 1) ask the judge to issue a jail sentence or fine for contempt of court;
- 2) ask the judge to increase or revoke the bail of the defendant; or
- 3) offer evidence at trial of violation of the Order of Protection (which may or may not be filed as new charges) for the judge or jury to consider in issuing the verdict or in aggravation of sentence.

Orders of Protection Issued in Criminal Court Upon Conviction of the Defendant. Orders of Protection issued by the court after conviction of the defendant become terms and conditions of supervision, conditional discharge or probation.

If violated, there are two options to enforce the Order of Protection:

- 1) ask the judge to terminate or change the terms of the supervision, conditional discharge or probation; or
- 2) where another violent act has occurred or is threatened in violation of Sections 208(c)(1) or (c)(2), charge the appropriate crime and prosecute the Class A misdemeanor -- using evidence of the previous violation(s) at trial for the judge or jury to consider in issuing the verdict or in aggravation of sentence.

It is important to properly educate the victim of domestic violence in how to best enforce an existing Order of Protection. The State's Attorney should encourage her/him to treat each violation of an Order of Protection as a separate act of violence and to respond accordingly by:

- 1) calling the police and having a police report made;
- 2) collecting or preserving evidence;
- 3) carefully documenting any harassment, threats or attempted violence.



In conclusion, IDVA is premised on a theory that if the State's Attorney and the judge appear to take the victim of domestic violence seriously, she will take herself seriously and will feel less hopeless in ending the violence in her family. If the victim learns about evidence collection and documentation of the facts and circumstances, the State's Attorney can then select among the various options and use the inherent powers of the criminal justice system to end the violence and ultimately improve the quality of life within that family.

SAMPLE POLICY FOR STATE'S ATTORNEYS IN DOMESTIC VIOLENCE CASES

I. Policy:

It is the policy of this office to fully implement the Illinois Domestic Violence Act, which took effect on March 1, 1982. Through its new legal remedy, the Order of Protection, the criminal justice system has a new tool for stopping family violence, for offering protection to domestic violence victims, for issuing individually tailored remedies to both complainants and defendants in domestic violence cases, and for effectively enforcing orders of the court.

It is the policy of this office to vigorously prosecute all offenses under the Criminal Code. The fact that a defendant and complainant live together, are married, divorced or separated does not disqualify that case from prosecution. The decision to prosecute in every case should be determined by the evidence, not the status of the parties.

II. Procedures for Prosecution of Domestic Violence Cases:

1. Orders of Protection may be granted by the court during and/or after criminal prosecution. Pre-trial Orders of Protection are appropriate in the following circumstances:
  - a) If at any time the complainant alleges serious physical injury, there is a historical pattern of abuse in the family or household, and there is "immediate and present danger" of abuse to the complainant or any minor children, the State's Attorney should request an emergency, temporary Order of Protection without notice to the defendant. An emergency Order of Protection without notice may also be necessary in cases where the defendant has failed to appear in court and a warrant has been issued.
  - b) If the complainant alleges that the physical abuse recurred after the criminal complaint was filed and before trial, the Assistant State's Attorney may request an Order of Protection if it will assist the complainant and aid in the criminal prosecution.

- c) If there is reason to believe that the complainant may discontinue prosecution based on fear of, or threats by, the defendant, the State's Attorney may request an Order of Protection if it will assist the complainant and aid in the criminal prosecution.
2. In all domestic violence cases, the goal is to proceed to trial as expeditiously as possible. The State's Attorney shall request the court to limit the number of continuances granted in these cases, and, if no Order of Protection is requested or issued, to admonish the defendant that any physical abuse of the complainant will subject him to additional criminal charges or revocation of bail.
  3. In disorderly conduct and other domestic violence cases in which the charges have been set by the police, the Assistant State's Attorney should review them to determine whether other or more serious charges can be proven. If so, those should be filed.
  4. In determining whether to grant a specific remedy in an Order of Protection, Section 208(d) of the Illinois Domestic Violence Act requires the court to consider relevant factors, including the frequency, severity, pattern and consequences of past abuse and the likelihood of danger of future abuse. Where appropriate, the Assistant State's Attorney should demonstrate to the court a pattern of abuse by the defendant against the complainant, in accordance with strict rules of evidence as to introduction of evidence regarding other crimes.
  5. The following dispositions are appropriate in cases in which the defendant is convicted of a crime which constitutes domestic violence:
    - a) A "peace bond" shall be opposed by the Assistant State's Attorney in any case in which an injury has been inflicted or the defendant has a prior record of violence.
    - b) If a court offers a disposition of supervision, the Assistant State's Attorney should request an Order of Protection which prescribes specific, uniquely tailored remedies against future abuse. Court-ordered counseling for the defendant provided by a local social service agency or the court may be appropriate as a condition of supervision, conditional discharge or probation.

6. Whenever an Order of Protection has been violated, the Assistant State's Attorney should take the following actions:
  - a) If the Order of Protection was issued by a civil court, and a Section 208(c)(1) or (2) remedy has been violated, the offense may be prosecuted as a "violation of an Order of Protection", a Class A misdemeanor.
  - b) If a case initiated by arrest or criminal complaint alleges a Criminal Code violation which constitutes domestic violence, and an Order of Protection was issued pre-trial, the violation shall be offered as evidence:
    - in hearings to revoke or increase the bail bond;
    - at trial, for deciding the verdict or in aggravation of sentencing; or
    - in proceedings for contempt of court.
  - c) If an Order of Protection was issued as a condition of supervision, conditional discharge or probation, the violation shall be offered as evidence:
    - in hearings for violation of probation; and/or
    - in charging the new offense of "violation of an Order of Protection", a Class A misdemeanor.
7. Copies of an Order of Protection should be furnished to the complainant and the defendant. A copy should additionally be furnished by the Clerk of Circuit Court to the County Sheriff for entry into the statewide LEADS computer system. Information about the existence of an Order of Protection will be made available to law enforcement investigating an alleged domestic violence incident, as are any open arrest warrants.

---

State's Attorney

STATE OF ILLINOIS

COUNTY OF \_\_\_\_\_

IN THE CIRCUIT COURT OF

— Vs. —

No. \_\_\_\_\_

☐ Independent Petition☐ Criminal Proceeding☐ IMDMA Proceeding

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PETITIONER/PLAINTIFF

ADDRESS

CITY

On behalf of:

RESPONDENT/DEFENDANT

ADDRESS

CITY

SERVICE MADE ON RESPONDENT BY: ☐ Presence in Court ☐ Personal Service Date: \_\_\_\_\_**DOMESTIC VIOLENCE ORDER OF PROTECTION**

The Court, having jurisdiction over the subject matter and the parties, finds that the respondent has committed abuse as defined by the Illinois Domestic Violence Act.

**IT IS HEREBY ORDERED THAT:**

- ☐ 1. The respondent shall refrain from striking, threatening, harassing or interfering with the personal liberty of \_\_\_\_\_ or any other family or household member, namely, \_\_\_\_\_  
Particularly s/he shall not: \_\_\_\_\_
- ☐ 2. Possession of the residence located at \_\_\_\_\_ is granted to \_\_\_\_\_ to the exclusion of the respondent, who shall not enter it even with the consent of any of its inhabitants. This order does not affect title to property.

Any violation of paragraphs 1 or 2 of this Order of Protection constitutes a **CLASS A MISDEMEANOR** and subjects the respondent to immediate arrest, provided s/he has been served notice or has actual knowledge of this order.

**WILLFUL VIOLATION OF ANY PROVISION OF THIS ORDER CONSTITUTES CONTEMPT OF COURT AND MAY RESULT IN FINE OR IMPRISONMENT.**

- ☐ 3. Temporary custody of the minor child/ren \_\_\_\_\_ is awarded to the petitioner, subject to visitation on the following days and times: \_\_\_\_\_  
Respondent shall pick up and drop the child/ren at: \_\_\_\_\_
- ☐ 4a. The respondent is prohibited from removing the minor child/ren from the jurisdiction of the Court and from concealing them from the parent or person in loco parentis.
- ☐ 4b. The respondent shall appear in Courtroom \_\_\_\_\_ at \_\_\_\_\_ m. on \_\_\_\_\_ with the minor child/ren.
- ☐ 5. The respondent shall undergo counseling at \_\_\_\_\_ at least \_\_\_\_\_ per \_\_\_\_\_, beginning no later than \_\_\_\_\_ and continuing at least until \_\_\_\_\_.

# DOMESTIC VIOLENCE ORDER OF PROTECTION

Case No. \_\_\_\_\_

- ☐ 6. The respondent shall not transfer, encumber, conceal, damage, or otherwise dispose of any property solely or jointly owned by the petitioner, or any other family or household member, except as follows: \_\_\_\_\_
- ☐ 7. The respondent shall pay temporary monthly maintenance of \$ \_\_\_\_\_ and monthly child support of \$ \_\_\_\_\_. Payments must reach \_\_\_\_\_ by no later than the \_\_\_\_\_ of each month.
- ☐ 8. The respondent shall pay petitioner \$ \_\_\_\_\_ by no later than \_\_\_\_/\_\_\_\_/\_\_\_\_, as compensation for the following losses resulting directly from abuse by the respondent: \_\_\_\_\_  
This amount does not include any other such losses, nor preclude future recovery thereof.
- ☐ 9. The respondent shall reimburse petitioner \$ \_\_\_\_\_ for court costs and shall pay for any future costs in connection with any action to obtain, modify, enforce, appeal or re-open any Order of Protection. Respondent shall pay \$ \_\_\_\_\_ for/toward petitioner's attorney fees. Payment shall be made to \_\_\_\_\_ no later than \_\_\_\_/\_\_\_\_/\_\_\_\_.  
This order is enforceable by petitioner or the attorney.
- ☐ 10. The respondent is further enjoined as follows: \_\_\_\_\_

The following remedies, requested by the petitioner pursuant to the Illinois Domestic Violence Act, Subsection (c) of Section 2302-8, were denied for the stated reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This order was issued on: \_\_\_\_\_ Date \_\_\_\_\_ Time.

This order will remain in full force and effect until: ☐ Date: \_\_\_\_\_; or  
☐ The occurrence of the following event: \_\_\_\_\_

Name \_\_\_\_\_  
Attorney for \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_  
Telephone \_\_\_\_\_

ENTER: \_\_\_\_\_ JUDGE

The petitioner, the petitioner's attorney or Clerk of the Court should complete the following information about the respondent so that this order can be entered into the Illinois Department of Law Enforcement's LEADS computer system by the sheriff.

BIRTHDATE	SEX	RACE	HEIGHT	WEIGHT	HAIR	EYES	SOCIAL SECURITY NUMBER
DISTINGUISHING FEATURES AND ALIAS INFORMATION							DRIVER'S LICENSE

STATE OF ILLINOIS

COUNTY OF

IN THE CIRCUIT COURT OF

— Vs. —	No. _____	File Stamp Here
	<input type="checkbox"/> Independent Petition <input type="checkbox"/> Criminal Proceeding <input type="checkbox"/> IMDMA Proceeding	
PETITIONER/PLAINTIFF	ADDRESS	CITY
On behalf of:		
RESPONDENT/DEFENDANT	ADDRESS	CITY

**EX PARTE DOMESTIC VIOLENCE ORDER OF PROTECTION**

The Court, having jurisdiction over the subject matter, finds that the respondent has committed abuse as defined by the Illinois Domestic Violence Act.

**AND BASED ON THE FOLLOWING FURTHER FINDINGS:**

- ☐ The petitioner has diligently attempted to obtain service of process upon the respondent and has diligently attempted to serve written notice of the date, time and location of the hearing together with a copy of the petition and all supporting affidavits upon the respondent in accordance with Supreme Court Rules 11 and 12; and/or
- ☐ The irreparable injury which the following remedies are intended to prevent would have been likely to occur if respondent had been given prior or earlier notice of this hearing;

**IT IS HEREBY ORDERED THAT:**

- ☐ 1. The respondent shall refrain from striking, threatening, harassing or interfering with the personal liberty of \_\_\_\_\_ or any other family or household member, namely, \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Particularly s/he shall not: \_\_\_\_\_
- ☐ 2. Possession of the residence located at \_\_\_\_\_ is granted to \_\_\_\_\_ to the exclusion of the respondent, who shall not enter it even with the consent of any of its inhabitants. This order does not affect title to property.

Any violation of paragraphs 1 or 2 of this Order of Protection constitutes a **CLASS A MISDEMEANOR** and subjects the respondent to immediate arrest, provided s/he has been served notice or has actual knowledge of this order.

**WILLFUL VIOLATION OF ANY PROVISION OF THIS ORDER CONSTITUTES CONTEMPT OF COURT AND MAY RESULT IN FINE OR IMPRISONMENT.**

**EX PARTE DOMESTIC VIOLENCE ORDER OF PROTECTION**

Case No. \_\_\_\_\_

- ☐ 3. Temporary custody of the minor child/ren \_\_\_\_\_  
\_\_\_\_\_ is awarded to the petitioner, subject to visitation on the following days and times:

Respondent shall pick up and drop the child/ren at: \_\_\_\_\_

- ☐ 4a. The respondent is prohibited from removing the minor child/ren from the jurisdiction of the Court and from concealing them from the parent or person in loco parentis.

- ☐ 4b. The respondent shall appear in Courtroom \_\_\_\_\_ at \_\_\_\_\_ m. on \_\_\_\_\_  
\_\_\_\_\_ with the minor child/ren.

- ☐ 5. The respondent shall not transfer, encumber, conceal, damage, or otherwise dispose of any property  
(LEADS #6) solely or jointly owned by the petitioner, or any other family or household member, except as follows:

- ☐ 6. The respondent is further enjoined as follows: \_\_\_\_\_

(LEADS #10)

- ☐ Petitioner, having filed a proper affidavit, shall be permitted to proceed with this claim as a pauper and shall not be required to pay fees for filing, service, transcripts or copies of orders.

The following remedies, requested by the petitioner pursuant to the Illinois Domestic Violence Act, Subsection (c) of Section 2302-8, were denied for the stated reasons:

The hearing for an extension of this Order of Protection will be held on:

Date \_\_\_\_\_ Time \_\_\_\_\_ Courtroom \_\_\_\_\_

This Order was issued on:

Date \_\_\_\_\_ Time \_\_\_\_\_

This Order will expire on:

Date \_\_\_\_\_ Time \_\_\_\_\_

Name \_\_\_\_\_

Attorney for \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

Telephone \_\_\_\_\_

ENTER: \_\_\_\_\_

JUDGE

The petitioner, the petitioner's attorney or Clerk of the Court should complete the following information about the respondent so that this order can be entered into the Illinois Department of Law Enforcement's LEADS computer system by the sheriff.

BIRTHDATE	SEX	RACE	HEIGHT	WEIGHT	HAIR	EYES	SOCIAL SECURITY NUMBER
DISTINGUISHING FEATURES AND ALIAS INFORMATION							DRIVER'S LICENSE

**NOTICE TO RESPONDENT:**

Upon 2 days notice to the petitioner who has obtained an ex parte order, or upon such shorter notice as the Court may prescribe, a respondent who is subject to an ex parte order may appear and move for its dissolution or modification. Any motion for dissolution or modification by the respondent must be supported by affidavit.



STATE OF ILLINOIS

COUNTY OF \_\_\_\_\_

IN THE CIRCUIT COURT OF

— Vs. —

No. \_\_\_\_\_

- ☐ Independent Petition  
☐ Criminal Proceeding  
☐ IMDMA Proceeding

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LEADS # \_\_\_\_\_

Respondent's Date of Birth: \_\_\_\_\_

**ORDER**

The Court Finds that

- ☐ An Ex Parte Domestic Violence Order of Protection was issued  
 on \_\_\_\_\_  
☐ A Domestic Violence Order of Protection was issued  
 on \_\_\_\_\_

THE COURT HAVING JURISDICTION OF THE SUBJECT MATTER, IT IS HEREBY ORDERED THAT:

- ☐ 1. An extension of the ex parte Order of Protection is granted and is hereby extended to \_\_\_\_\_ 19 \_\_\_\_\_  
 at \_\_\_\_\_ m.  
☐ 2. A hearing on the ex parte Order of Protection is set for \_\_\_\_\_ m., on \_\_\_\_\_ 19 \_\_\_\_\_  
 in Courtroom No. \_\_\_\_\_.  
☐ 3. The ex parte Order of Protection is vacated.  
☐ 4. The Order of Protection previously issued is extended to \_\_\_\_\_ 19 \_\_\_\_\_.  
☐ 5. A hearing on the Order of Protection is set for \_\_\_\_\_ m., on \_\_\_\_\_ 19 \_\_\_\_\_,  
 in Courtroom No. \_\_\_\_\_.  
☐ 6. The Order of Protection is vacated.  
☐ 7. ☐ The ex parte Order of Protection is modified as follows:  
☐ The Order of Protection is modified as follows:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Name \_\_\_\_\_

Attorney for \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

Telephone Number \_\_\_\_\_

Enter: \_\_\_\_\_

JUDGE

Date: \_\_\_\_\_

## UNITED STATES OF AMERICA

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE

COUNTY OF

JUDICIAL CIRCUIT

MISDEMEANOR

THE PEOPLE OF THE STATE OF ILLINOIS  
PLAINTIFF  
— Vs. —

No. \_\_\_\_\_

File Stamp Here

LEADS #

## COMPLAINT

\_\_\_\_\_ complainant, now appears before  
(Complainant's Name Printed or Typed)

The Court and says that

\_\_\_\_\_ has, on or about  
(defendant)

\_\_\_\_\_ at \_\_\_\_\_  
(date) (place of offense)

committed the offense of violation of an Order of Protection in that he

ex: having knowledge that an Order of Protection was entered by the court, ordering him to refrain from striking, threatening, harassing or interfering with the personal liberty of the victim or other family or household member, did in fact knowingly violate said Order of Protection, to wit: (recite facts, such as, by striking the victim about the face with his fists...)

or: having knowledge that an Order of Protection was entered by the court, granting possession of the residence to the victim, to the exclusion of the defendant, did in fact knowingly violate said Order of Protection, to wit: (recite facts, such as, by entering the premises and remaining thereon...)

in violation of Chapter 40 Section 2302-8(c)(1) or (c)(2).

ILLINOIS REVISED STATUTES

\_\_\_\_\_  
(Complainant's Signature)\_\_\_\_\_  
(Complainant's Address)\_\_\_\_\_  
(Telephone No.)

STATE OF ILLINOIS )  
COUNTY OF ) ss.

\_\_\_\_\_  
(Complainant's Name Printed or Typed)

being first duly sworn, on oath, deposes and says that s/he has read the foregoing complaint by her/him subscribed and that the same is true.

\_\_\_\_\_  
(Complainant's Signature)

Subscribed and sworn to before me \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
(Judge or Clerk)

I have examined the above complaint and the person presenting the same and have heard evidence thereon, and am satisfied that there is probable cause for filing same. Leave is given to file said complaint.

Summons issued,

or

Warrant issued,

Judge \_\_\_\_\_

Bail set at \_\_\_\_\_

Judge \_\_\_\_\_

or  
Bail set at \_\_\_\_\_

Judge \_\_\_\_\_

SAMPLE PETITION FOR AN ORDER OF PROTECTION

AND

SAMPLE APPLICATION TO SUE AS A POOR PERSON

The attached sample Petition for an Order of Protection and sample Application to Sue as a Poor Person were developed by the DuPage County Clerk of the Court's Office and are reprinted here with their permission.

**UNITED STATES OF AMERICA**

**STATE OF ILLINOIS** **COUNTY OF DUPAGE**  
**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT**

\_\_\_\_\_  
 Plaintiff/Petitioner

-VS-

\_\_\_\_\_  
 Defendant/Respondent

No. \_\_\_\_\_

- ☐ Independent Petition  
☐ Criminal Proceeding  
☐ Matrimonial

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**PETITION FOR ORDER OF PROTECTION**

Now comes the Petitioner \_\_\_\_\_ on his/her own behalf or on behalf of \_\_\_\_\_, a minor child, or on behalf of \_\_\_\_\_, a person prevented by physical or mental incapacity from seeking relief on his/her own behalf, pursuant to Illinois Revised Statutes, Chapter 40, Section 2302-2 Et Seq. and moves this honorable Court to issue an Order of Protection in this cause and in support thereof, states as follows:

**COUNT I**

(Check only the boxes that apply)

- ☐ 1. That the Petitioner hereinafter referred to as the "Alleged Abused" resides at \_\_\_\_\_ in the County of \_\_\_\_\_ State of \_\_\_\_\_.
- OR**

- ☐ 2. That the Petitioner resides at \_\_\_\_\_ in the County of \_\_\_\_\_ State of \_\_\_\_\_. And that \_\_\_\_\_, the person on whose behalf this petition is brought, hereinafter referred to as the "Alleged Abused", resides at \_\_\_\_\_ in the County of \_\_\_\_\_ State of \_\_\_\_\_.

3. That the Respondent \_\_\_\_\_, hereinafter referred to as "Respondent" resides at \_\_\_\_\_ in the County of \_\_\_\_\_ State of \_\_\_\_\_.

- ☐ 4. That the Respondent stands in the following relationship to the Alleged Abused as  
☐ Spouse ☐ Former Spouse ☐ Mother ☐ Father ☐ Child
- OR**

- ☐ 4. That the Respondent shares a common household with the Alleged Abused at \_\_\_\_\_ in the County of \_\_\_\_\_, State of \_\_\_\_\_.

5. That on personal knowledge of affiant, the Respondent has acted in the following manner toward the Alleged Abused in that on or about the \_\_\_\_\_, 19\_\_\_\_, said Respondent did (describe in detail the facts involved in this specific incident or incidents).
- \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

6. That pursuant to I. R. S. Chapter 40, Paragraph 2302-8, Section 208C, the Petitioner seeks the following remedy or remedies

- ☐ That the Respondent refrain from striking, threatening, harassing or interfering with the personal liberty of \_\_\_\_\_
- \_\_\_\_\_

- ☐ That possession of the residence or household located at \_\_\_\_\_, be granted to \_\_\_\_\_ to the exclusion of the Respondent (this will not affect title to property) because
- ☐ A. the parties hereto are spouses.
- ☐ B. the residence is solely or jointly owned or leased by Petitioner.
- ☐ C. the Respondent has the legal duty to support the Petitioner or minor children.

**(Check this box if you wish the Court to make a child custody determination)**

- ☐ That the Petitioner further moves the Court to determine that it has jurisdiction pursuant to Section 4, of the Illinois Uniform Child Custody Jurisdiction Act and to award temporary custody to \_\_\_\_\_ or establish visitation rights with regard to the minor child/children \_\_\_\_\_, in accordance with the standards set forth in Part IV of the I.M.D.M.A. and in support thereof states:

**(Complete sections I to III that are necessary to establish jurisdiction for child custody)**

- ☐ **I. That this state**
- ☐ A. is the home state of the child at the time of the commencement of this proceeding, and/or
- ☐ B. had been the child's home state within 6 months before commencement of this proceeding and the child is absent from this state because of his/her removal or retention by a person claiming his/her custody or for other reasons, and a parent or person acting as parent continues to live in this state;
- ☐ **II. That it is in the best interest of the child/children that a court of this state assume jurisdiction because** the child and his parents, or the child and at least one contestant, have a significant connection with this state, and there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;
- ☐ **III. That the child/children is/are physically present in this state and**
- ☐ A. the child has been abandoned
- ☐ B. it is necessary in an emergency to protect the child/children because he/she/they has/have been subjected to or threatened with mistreatment or abuse or is/are otherwise neglected or dependent;
- ☐ C. that it appears that no other state would have jurisdiction under prerequisites substantially in accordance with Sub Paragraph I-II-or III or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child/children and it is in the best interest of the child/children that this Court assume jurisdiction.
- ☐ That the Respondent be prohibited from removing the minor child/children from the jurisdiction of the Court or concealing the child/children from his/her parent or person in loco parentis.
- ☐ That the Respondent be ordered to appear in Court with the minor child/children \_\_\_\_\_
- ☐ That the Respondent be ordered to undergo counseling for a specified duration with a social worker, psychologist, clinical psychologist, psychiatrist, family service agency, mental health center guidance counselor or any other guidance service the Court deems appropriate.
- ☐ That the Respondent be restrained from transferring, encumbering, concealing, damaging or otherwise disposing of any of the Petitioner's property or joint property of the Petitioner and the Respondent.
- ☐ That the Respondent be required to pay temporary support for the Petitioner and the minor child/children in the amount of \$\_\_\_\_\_ frequency\_\_\_\_\_.
- ☐ That the Respondent be required to pay to the Petitioner \$ \_\_\_\_\_ as actual monetary compensation for loss suffered as a direct result of this abuse.
- ☐ That the Respondent be required to pay Court costs in this matter.
- ☐ That the Respondent be required to pay attorney fees in the amount of \$ \_\_\_\_\_ in connection with any action to obtain, modify, appeal or reopen any order of protection.

- ☐ That the Respondent be further enjoined or ordered as follows \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WHEREFORE**, Petitioner moves this honorable Court to grant the relief as requested in Paragraph 6 (six) of COUNT I.

**COUNT II**

**COMPLETE THIS SECTION ONLY IF YOU ARE SEEKING *EX PARTE RELIEF* IN ADDITION TO THE ORDER OF PROTECTION REQUESTED IN COUNT I.**

6. The Petitioner realleges and incorporates by reference Paragraphs one through five inclusive of Count I of this petition and further alleges as follows:

**Check one**

- ☐ 7. that should Petitioner be required to give prior notice to the named respondent of his/her attempt to obtain judicial relief as to any remedy requested in Paragraph 8 of this Count II, the irreparable injury which that remedy seeks to prevent would be likely to occur

**OR**

- ☐ 7. that Petitioner has diligently attempted to obtain Service of Process upon the Respondent and has diligently attempted to serve written notice of the date, time and location of the hearing, together with a copy of the petition and all supporting affidavits upon the Respondent in accordance with the Illinois Supreme Court Rules 11 & 12, through the actions specified below

- ☐ 8. that pursuant to I. R. S. Chapter 40, Paragraph 2302-8, Section 208C, the Petitioner seeks the following remedy or remedies
- ☐ That Respondent be ordered to refrain from striking threatening, harassing or interfering with the personal liberty of \_\_\_\_\_ or any other family or household member.

- ☐ That possession of the residence or household located at \_\_\_\_\_ be granted to \_\_\_\_\_ to the exclusion of the Respondent (this will not affect title to property) because
- ☐ A. the parties hereto are spouses
- ☐ B. the residence is solely or jointly owned or leased by Petitioner
- ☐ C. the Respondent has the legal duty to support the Petitioner or minor children

**(Check this box if you wish the Court to make a child custody determination)**

- ☐ That the Petitioner further moves the Court to determine that it has jurisdiction pursuant to Section 4 of the Illinois Uniform Child Custody Jurisdiction Act and to award temporary custody to \_\_\_\_\_ or establish visitation rights with regard to the minor child/children \_\_\_\_\_

in accordance with the standards set forth in Part IV of the I.M.D.M.A and in support thereof states:

**(Complete sections I to III that are necessary to establish jurisdiction)**

☐ **I. That this state**

A. is the home state of the child at the time of the commencement of this proceeding, and/or

B. had been the child's home state within 6 months before the commencement of this proceeding and the child is absent from this state because of his/her removal or retention by a person claiming his/her custody or for other reasons, and a parent or person acting as a parent continues to live in this state;

- ☐ **II. That it is the best interest of the child/children that a Court of this state assume jurisdiction because** the child and his parents, or the child and at least one contestant have significant connection with this state, and there is available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationships;

**OR**

☐ **III. That the child/children is/are physically present in this state and**

☐ A. the child/children has/have been abandoned, or

☐ B. it is necessary in an emergency to protect the child/children because he/she/they have been subjected to or threatened with mistreatment or abuse or is/are otherwise neglected or dependent, or

☐ C. that it appears that no other state would have jurisdiction under the prerequisites substantially in accordance with Subparagraphs I -- II or III or another state has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum to determine the custody of the child/children and it is in the best interest of the child/children that this Court assume jurisdiction.

## Continuation of Paragraph 8

- ☐ That the Respondent be prohibited from removing the minor child/children from the jurisdiction of this Court or concealing the said minor child/children from his/her parent or person in loco parentis.
- ☐ That the Court order the Respondent to appear in Court with the minor child/children. \_\_\_\_\_
- ☐ That the Respondent be restrained from transferring, encumbering, concealing, damaging or otherwise disposing of any of the Petitioners property or joint property of the Petitioner and Respondent.
- ☐ That the Respondent be further enjoined or ordered as follows \_\_\_\_\_

**WHEREFORE**, Petitioner moves this honorable Court to grant the relief as requested in Paragraph 8 (eight) of Count II

\_\_\_\_\_  
PETITIONER

**AFFIDAVIT**

The undersigned being first duly sworn upon oath, deposes and states that the contents of the foregoing petition for the Order of Protection are true and correct.

\_\_\_\_\_  
Affiant

Name \_\_\_\_\_  
DuPage Attorney No. \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_  
Phone \_\_\_\_\_

SUBSCRIBED AND SWORN to before me

Date \_\_\_\_\_

\_\_\_\_\_  
Judge - Circuit Clerk - Notary Public

## UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF DUPAGE

## IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

No. \_\_\_\_\_

☐ Order application to  
(sue) defend as a poor person  
is granted.

☐ Order application to  
(sue) (defend) as a poor person  
is denied.

Date \_\_\_\_\_

Enter \_\_\_\_\_

Judge

File Stamp Here

-VS-

## APPLICATION TO SUE OR DEFEND AS A POOR PERSON

I, \_\_\_\_\_  
☐ on my own behalf  
☐ as ☐ Parent ☐ Guardian ☐ Other \_\_\_\_\_ of  
 \_\_\_\_\_, a \_\_\_\_\_  
 (Name) (Minor) (Incompetent)

1. Applicant's occupation or means of subsistence:

A. Applicant is employed as \_\_\_\_\_  
 by \_\_\_\_\_  
 (Job) (Employer)

B. Applicant's other sources of income or support are:

2. Applicant's income for the preceding year was \$ \_\_\_\_\_.

3. The sources and amount of income expected by the applicant hereafter are:

The person dependent on applicant for support are:

4. Applicant owns (A) no real estate except: (Location and Value) \_\_\_\_\_ and

(B) Personal Property which in the aggregate does not exceed \$ \_\_\_\_\_  
 and consists of: \_\_\_\_\_  
 including a \_\_\_\_\_ motor vehicle, valued at \$ \_\_\_\_\_.

5. No applications were filed by or on behalf of application for leave to sue or defend as a poor person during the preceding year except: \_\_\_\_\_

6. Applicant is unable to pay the costs of this case.

7. Applicant has a meritorious ☐ Claim ☐ Defense

Subscribed and sworn before me

Date \_\_\_\_\_

Notary Public — Circuit Court Clerk

Signature of Applicant

Name:

DuPage Attorney No.

Address:

City:

Phone:



## ILLINOIS DOMESTIC VIOLENCE ACT: RIGHTS OF VICTIMS

**Battery is a crime.** Any person who hits, chokes, kicks, threatens, harasses or interferes with the personal liberty of another family or household member (except reasonable parental discipline) has broken the law.

Victims of domestic violence have the right to:

- be protected from further abuse
- press criminal charges against the abuser. (NOTE: jail is not the only outcome if the abuser is found guilty.)

The court may now issue an **Order of Protection** on the victim's behalf. The Order can:

- protect from further abuse\*
- bar the violent party temporarily from the home\*
- order the offender to pay support, medical costs and legal expenses
- award child custody and prohibit child snatching
- prohibit destruction of victim's property
- require offender to undergo counseling
- offer other relief as appropriate

To obtain an **Order of Protection**:

1. ask your attorney to file a petition in civil court; or
2. request an **Order of Protection** in conjunction with divorce proceedings; or
3. request an **Order of Protection** during the course of criminal prosecution.

Law enforcement officers are to use all reasonable means to prevent further abuse, including:

- arranging for the victim's transportation to a medical facility or safe shelter, and/or accompanying the victim back to the residence to get belongings.
- arresting the abuser where appropriate, and completing a police report on all bona fide incidents (victim should get a copy of the report)
- advising the victim of his/her rights and the importance of preserving evidence

If the abuser has left the scene and has not been arrested, you can still press criminal charges by going to your local State's Attorney Office during normal business hours.

To contact the domestic violence program in your area, see the reverse side of this sheet. For other help, contact \_\_\_\_\_

\*Violation of these provisions is a Class A Misdemeanor

## ACTA DE VIOLENCIA DOMESTICA DE ILLINOIS: DERECHOS DE LAS VICTIMAS

**La violencia es un crimen.** Cualquier persona que golpée, estrangula, patée, amenaza, acosa o interfiere con la libertad personal de un miembro de su familia o de otra persona que vive en casa (con excepción de disciplina parental razonable) ha quebrantado la ley.

Victimas de violencia doméstica tienen el derecho de:

- ser protegidas de abuso adicional
- formular cargos criminales contra la persona que comete el abuso. (NOTA: Encarcelamiento es resultado posible si la persona que comete el abuso se encuentra culpable, pero hay otros alternativos.)

La corte puede expedir una **Orden de Protección** a favor de la víctima. La Orden puede:

- proteger de abuso adicional\*
- excluir temporariamente la persona que comete violencia de vivir en la casa\*
- ordenar a la persona que comete la ofensa a pagar manutención, costos médicos y honorarios legales
- conceder custodia de los niños y prohibir el secuestro de los niños
- prohibir destrucción de la propiedad de la víctima
- requerir que la persona que comete la ofensa tenga tratamiento
- ofrecer otra solución como sea apropiada

Para obtener una **Orden de Protección**:

1. pida a su abogado que registre una petición en la corte civil; o
2. pida una **Orden de Protección** en conjunto con el procedimiento de divorcio; o
3. pida una **Orden de Protección** durante el curso del enjuiciamiento criminal.

Una Orden puede ser pedida a favor suyo y/o a favor de sus niños o un adulto incapacitado.

Los oficiales encargados del cumplimiento de las leyes han de usar todos los pasos razonables para evitar abuso adicional, incluyendo:

- haciendo arreglos para la transportación de la víctima a una facilidad médico o albergue seguro, y/o acompañando la víctima a su residencia para recoger sus pertenencias.
- arrestando a la persona cometiendo el abuso cuando es apropiado, y completando un reporte de policía de todos los incidentes actuales (la víctima debería recibir una copia del reporte).
- informando a la víctima de sus derechos y de la importancia de preservar evidencia de los hechos

Si la persona que comete el abuso ha abandonado la escena del delito y no ha sido arrestado, todavía usted puede formular cargos criminales presentándose a la Oficina del Fiscal del Estado local durante las horas normales de trabajo.

Para ponerse en contacto con el programa de violencia doméstica en su area, vea el otro lado de este documento. Para otra ayuda póngase en contacto con: \_\_\_\_\_

\*Violación de estas provisiones es un Delito Menosgrave Clase A



# ILLINOIS COALITION AGAINST DOMESTIC VIOLENCE

931 South Fourth Street — Springfield, Illinois 62703 — 217/789-2830

- ALEDO**  
Mercer County CADV  
309/582-7233 (day/evening)
- ALTON**  
Oasis Women's Center  
618/465-1978
- AURORA**  
Mutual Ground  
312/897-0080
- BELLEVILLE**  
Women's Crisis Center  
618/235-0892
- BLOOMINGTON**  
YWCA of McLean County —  
Countering Domestic and  
Sexual Violence  
800/322-5015  
309/827-4005
- CAIRO**  
Community Health Services —  
Cairo Women's Shelter  
618/734-HELP
- CANTON**  
Fulton County Women's  
Crisis Service  
309/647-8311
- CARBONDALE**  
Women's Center  
618/529-2324
- CENTRALIA**  
Call For Help/Women In Need  
618/533-SAFE
- CHARLESTON**  
Coalition Against Domestic  
Violence  
217/345-4300  
217/235-4300
- CHICAGO**  
Chicago Abused Women  
Coalition  
312/278-4566
- Chicago Department of  
Human Services  
312/744-5829
- Family Rescue  
312/375-8400
- Loop YWCA — Women's  
Services  
312/372-6600 (office)
- Neopolitan Lighthouse  
312/248-9261
- Rainbow House/Arco Iris  
312/521-4865
- Southwest Women Working  
Together  
312/436-0550 (office)
- Travelers & Immigrants Aid  
312/889-6611 (day/evening)  
312/686-7562 (night/weekend)
- Uptown Center Hull House —  
Family Violence Task Force  
312/561-3500 (day)  
312/769-0205 (night/weekend)
- CLAY CITY**  
Stopping Woman Abuse Now  
618/676-1911
- DANVILLE**  
Danville YWCA/Woman's  
Alternative Shelter  
217/443-5566
- DECATUR**  
DOVE Domestic Violence  
Project  
217/423-2238
- DE KALB**  
Safe Passage  
815/756-2228
- DES PLAINES**  
Life Span  
312/824-4454
- DIXON**  
Sterling-Rock Falls YWCA —  
COVE  
815/288-1011
- EAST ST. LOUIS**  
Women's Crisis Center  
618/398-8540
- ELGIN**  
Community Crisis Center  
312/697-2380
- EVANSTON**  
Evanston YWCA  
312/864-8780
- FREEPORT**  
YWCA of Freeport  
815/235-9421 (day)  
815/233-HELP (night/weekend)
- GLEN ELLYN**  
Family Shelter Service  
312/469-5650
- HAZEL CREST**  
South Suburban Family  
Shelter  
312/335-3028
- JACKSONVILLE**  
Women's Crisis Center  
217/243-4357
- JOLIET**  
Guardian Angel Home  
815/722-3344
- KANKAKEE**  
Kankakee County Coalition  
Against Domestic Violence  
815/932-5800
- OAK PARK**  
Sarah's Inn  
312/386-4225
- PEORIA**  
Tri-County WomenStrength  
309/674-4443
- PRINCETON**  
Freedom House  
815/875-8233
- QUINCY**  
Quincy Area Network Against  
Domestic Abuse  
217/222-2873
- ROCHELLE**  
HOPE of Rochelle  
815/562-8890
- ROCKFORD**  
WAVE/PHASE  
815/962-6102
- ROSICLARE**  
Anna Bixby Women's Center  
618/252-8389
- SPRINGFIELD**  
Sojourn Women's Center  
217/544-2484
- STERLING**  
Sterling-Rock Falls YWCA —  
COVE  
815/626-7277
- STREATOR**  
Against Domestic Violence  
800/892-3375
- SUMMIT**  
Des Plaines Valley  
Community Center  
312/485-5254
- URBANA**  
A Woman's Place  
217/384-4390
- WAUKEGAN**  
A Safe Place  
312/249-4450
- WOODSTOCK**  
Turning Point  
815/338-8080
- WORTH**  
Crisis Center for South  
Suburbia  
312/974-1791
- Unless otherwise indicated, all  
numbers listed are 24-hour crisis  
lines.



## ILLINOIS COALITION AGAINST DOMESTIC VIOLENCE

931 South Fourth Street — Springfield, Illinois 62703 — (217) 789-2830

### Materials Available

on the

### Illinois Domestic Violence Act

- . Illinois Domestic Violence Act booklets with section by section summary (\$.50)
- . Professional Manuals:
  - Law Enforcement (\$2.00)
  - State's Attorneys (\$2.00)
  - Civil Court Practice (\$3.00 + \$1.00 shipping)
  - Advocates and Service Providers (\$3.00 + \$1.00 shipping)
  - Pro Se Handbook (\$2.00)
- . Victim Rights Sheets (master copy) Free
- Original Pads of Victim Rights Sheets (\$3.00 per 100)
- . Videotape for Law Enforcement Role Call Training (\$15.00 to purchase\*)
- . Slide/tape presentation for victims (\$50.00 to purchase)\*
- . General information brochures and posters (Free)  
(English and Spanish)
- . A Handbook for Domestic Violence Victims (Free)
- . A Family Affair, an excellent 30 minute film which effectively demonstrates the use of an Order of Protection to stop violence within a family.\*

To request any of the materials or the slide show, Please contact Merrill McDaniels at (217) 789-2830 or at the address above.

To reserve the film please contact Karen Reesor at the same address and telephone number.

\*These can all be borrowed at no charge, except for shipping costs, from ICADV.