

Pro Bono Protective Order Manual:

**A Step by Step Guide to Providing
Trauma-informed Representation
to Victims of Domestic Violence,
Sexual Assault and Stalking in
Protective Orders**

This manual was made possible by a grant from the City of San Antonio for the Bexar County Protective Order Project. Manual produced by Texas RioGrande Legal Aid and authored by Erin Martinson.



Dear Volunteer,

Texas RioGrande Legal Aid would like to thank you for volunteering to help ensure victims of domestic violence, sexual assault and stalking have access to protective orders. As you know, domestic violence is an epidemic and we cannot combat the problem without the help of skilled community volunteers. We are grateful for your dedication to helping victims find safety in the aftermath of abuse. We recognize the difficulty of this work and also want you to know that, for some clients, your efforts will be life-saving.

This Protective Order Manual is the culmination of lessons learned through a 20-year career of litigating and training on protective orders. It is intended to be a step-by-step guide to understanding abuse and how trauma impacts victims and their demeanor, providing trauma-informed representation and support to victims and filing and litigating protective orders in Texas. We have provided resources and forms, pleadings and orders as tools to help you prepare for interacting with your client and representing them in court. This manual should be used in conjunction with the trainings, which are both live and recorded, to prepare you for this important pro-bono work.

It is our hope that volunteering with the Pro Bono Protective Order Project will be a rewarding experience for you and your clients. To that end, we have built in support for the project through our partnership with the San Antonio Legal Services Association and will remain a ready resource as you navigate your work with this vulnerable population and the court system.

We wish you the best of luck and encourage you to reach out at any time with questions or suggestions: poproject@sa-lsa.org.

Thank you,
Texas RioGrande Legal Aid, Inc.

Erin Martinson
Manager, Pro Bono Protective Order Project

SECTION I

Types of Abuse

As attorneys, it is likely you will come into contact with someone who is a victim of domestic violence at some point in your career. While we tend to think of physical abuse when we think of intimate partner violence, in reality, individuals who abuse their partners use a broad range of tactics to control and intimidate their partners. It is important to screen for all of these behaviors when interviewing clients in order to accurately assess the client's legal options and lethality.

Physical abuse is when the abuser seeks to cause physical harm to their partner using either violence or restrictive control. This can include scratching, biting, grabbing, yanking, throwing, shoving/pushing, and restraining the victim. Physical abuse can also include hitting, punching, slapping, hair-pulling, strangling, attacking with weapons, burning the victim, and/or killing the victim, or attempting to kill a victim or her family members. Physical abuse can involve throwing objects at the victim, subjecting the victim to reckless driving, and locking the victim in or out of the home. Controlling a victim by withholding food, medication, medical assistance, or causing sleep deprivation through ongoing abuse are also forms of physical abuse.

Sexual abuse involves sexual acts or manipulation to control or harm the victim. At times, abusers will be exceptionally jealous and make accusations of infidelity or sexual promiscuity against the victim. Often, abusers will use insults like, "whore" or "slut" to make this point. Other times, an abuser might withhold sex or physical affection as a means to punish or control the victim. Abusers will also use threats of violence or other means of coercing a victim into engaging in sexual acts that the victim does not want to do. Abusers may demand sex after physically assaulting the victim by directly or indirectly threatening further violence. Engaging the victim in sexual acts after consent has been denied whether through physical force or not, is also sexual abuse. Denying the victim contraception or protection against sexually transmitted infections whether directly or without the victim's knowledge is another way that sexual abuse is perpetrated. Causing injury, pain, or discomfort that is unwelcome and is sexually specific is another way victims are sexually abused.

Emotional or psychological abuse involve intimidation and manipulation tactics of control. Many times, abusers will use the history of physical and sexual violence to control the victim. In these situations, the victim's fear of further violence makes it easier for the abuser to maintain control. Other times, psychological abuse can degrade the victim's self-esteem to a level that makes the victim easy to control and less likely to leave the abusive relationship. This is done through, among other things, insults, humiliation, degradation, and criticism. Gaslighting is a term that refers to a pervasive pattern of psychological abuse where the abuser will manipulate the victim into questioning their own mental stability and sanity. This can be done through convincing the victim that the abuse is not as bad, blaming the victim for the abuse, and convincing others outside the relationship that the victim is mentally unstable. An abuser might harass or even stalk a victim with the goal of getting the victim to submit to being in or remaining in an abusive relationship. Abusers often threaten to cause legal trouble for the victim by threatening to make false reports of criminal activity or child abuse against the victim. For immigrant victims, abusers may threaten to report undocumented victims to immigration or refuse to assist in the immigration process for the victim. Other abusive tactics include systematic isolation of the victim by controlling access to family, friends, and other support and discrediting the victim's relationships with others (employers, clergy, friends, etc.) by spreading negative rumors about the victim. This makes the victim less likely to report violence or abuse and less likely to leave the relationship.

Abusers frequently use children in their abuse of the victim. An abuser might harm or threaten children to control the victim. An abuser might also force the children to watch acts of abuse or engage in violence against the victim when the children are present. On the other hand, an abuser may purposely hide the abuse from the children in an effort to manipulate the children against the victim. This is important because courts often falsely believe that abuse will end when a relationship is over, but the reality is, abusers often use the children to continue their pattern of control. It is important that we listen to victims and advocate for the safest visitation arrangement possible within the protective order.

Economic abuse is another way abusers control victims by demanding paychecks or maintaining control over bank accounts, refusing to share information about the abuser's earnings. Sometimes abusers will outright forbid the victim from earning a separate income and will thwart attempts by the victim to work. As a result, victims are often unable to escape their abusers due to a lack of resources.

Other forms of abuse can involve harming or threatening to harm pets and service animals to manipulate the victim and maintain control.

What does a victim look like?

There is no victim profile. Domestic violence cuts across race, ethnicity, sexual orientation, status and socio-economic backgrounds. While the overwhelming majority of victims are female, it must be noted that males and gender nonconforming individuals are also victimized by intimate partner violence, sexual assault, and stalking.

Each person's story is unique, so will be the way that they present themselves. At times, victims might appear to have a flat affect and show little to no emotion when talking about the abuse they have suffered. Victims might also do just the opposite and be very emotional throughout the interview process. The victim might exhibit sadness, anger, disappointment, resentment, sorrow, or regret. There are victims who might even laugh or make jokes about the abuse. Victims may shift swiftly in mood and end up exhibiting all of these emotions and more in a single sitting. A lot of how a victim presents depends on the neurobiological response to trauma. For this reason, it is important that you understand the very basics of neurobiology of trauma so that you can understand, empathize with and prepare to explain victims' behaviors in court. Often a victim may seem to present in ways that are counter intuitive to how we imagine victims will act. However, with a basic understanding of neurobiology and trauma, you will learn that these "counter-intuitive" responses actually help corroborate that abuse has occurred.

While every victim is different and unique, there are definitely patterns that we see over and over again with a majority of cases involving intimate partner violence. Many experience guilt and regret. Victims will blame themselves for the abuse and often use their choice to stay in the abusive relationship as justification for self-blame. Victims might also have very diminished self-esteem and use language that is self-deprecating. Victims are often hyper-vigilant and remain in a constant state of arousal with fear of the abuser finding them and hurting or killing them or someone they care for. It is important to listen to victims. If they believe their partner will kill them or seriously harm them or a family member, we must take this as fact and do everything we can to minimize danger for that victim. Working in the field of domestic violence is homicide prevention and every action we take on behalf of the victims we represent should be treated as potentially life-saving. Simple mistakes (like leaving a confidential address on an order) or a failure to take victims seriously (minimizing their experiences) may cost them their lives. We do not say this to scare you, but rather to illustrate how important this work is.

POWER AND CONTROL WHEEL

Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviors by the batterer, when reinforced by one or more acts of physical violence, make up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instill threat of future violent attacks and allow the abuser to take control of the woman's life and circumstances.

The Power & Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by a batterer to establish and maintain control over his partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.



Developed by:
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Trauma Informed Advocacy

The best approach when interacting with victims of abuse is one that is trauma informed. This is defined by two simple ideals. First, it is important that service providers know what effect trauma can have on victims. Second, there should be a commitment to not re-traumatizing the victim through the screening process.

Trauma affects how the brain takes in and processes memory and information. A very simplified explanation is that when a person is in danger or has been hurt, the more primitive part of the brain activates in an effort to protect the person. Hormones are released that mitigate pain and make it so the victim can have the physical resources to escape the situation. During a traumatic event, the conscious part of the brain is not in charge of the victim's responses and further, higher order function (memory storage) is restricted. This leads to memories being stored as part of a survival warning system to protect from future harm. However, we can access memories the way these warnings were always intended to be accessed: through the senses and feelings. (For more info on how trauma affects the brain see Trauma and the Brain – The Full Video from NHS Lanarkshire <https://www.youtube.com/watch?v=4-tcKYx24aA>).

The first thing to do with a victim is to “meet them where they are.” This simply means that the victim should guide the process. The Stages of Change says that people will move through various stages when considering or partaking in change and the same can be said of abuse victims. In the first stage, Pre-contemplation, the victim is not aware of, or minimizing the problem and may not have a desire to leave the abusive relationship. In the next stage, Contemplation a victim begins acknowledging the problem and considering possible changes. This leads to the next stage, Preparation. In the preparation stage, the victim begins making plans and doing things to leave. After preparation comes the Action stage where the victims follow through with their plans to leave. For victims of abuse, the preparation and action stages are the most dangerous. Many times when the abuser is made aware of the victim's intent to leave, they will escalate their abuse and sometimes the worst violence happens during this time. The final stage is Maintenance where the victim continues the practice of staying away.

Knowing the various stages of change can help service providers maintain positive working relationships with the victims we are trying to help. If the victim is not ready to leave (pre-contemplation), affirm their decision rather than trying to convince them otherwise. Express that the abuse was wrong and no one deserves that sort of treatment and encourage them to reach out in the future if they need to. This maintains rapport so the victim feels empowered and supported. It will be important to adjust personal expectations so that this exchange is genuine.

When a victim is in the contemplation stage, they may continue to minimize the violence that occurred and could even defend or protect the abuser. Again, resisting the urge to convince them they are wrong will be key. It is important to listen to what is motivating them. Is the abuser the sole financial provider? Is the abuser a good parent and the victim is concerned with taking the children from them? Is the victim afraid to ruin the abuser's life? It is important to validate these concerns so the victim feels heard. This is a good time to talk about options and help them find solutions to these concerns. A strong statement that can go a long way in with victims in this stage is, “This is not your fault.” This can help the client feel less like they are responsible for any consequences that the abuser might face.

Regardless of what stage the victim comes to you in, it is important to let them maintain self-determination throughout the process.

Trauma Informed Screening for a Protective Order

A screening for a protective order should always begin the same. First, let the victim know what to expect during the screening so they are not caught off guard. Be sure to give them a chance to find a safe and private space to talk if they are on the phone with you. Finally, don't forget to include statements about confidentiality and mandatory reporting. A good introduction sounds like this:

“So to begin with, I just want you to know what this will be like. I'm going to ask you a series of questions about Jack and others in your household. We will talk about abuse that you have been through. I must tell you that I am legally mandated to break confidentiality to make a report should you say anything that makes me believe abuse to children, the elderly, or someone who is disabled has occurred or if I believe you are a danger to yourself or someone else. I will be asking you details about the violence including sexual violence so it is important that you have a fair amount of privacy to talk. Should we get started?”

Start with questions that they know the answers to and that matter (names, dates of birth, addresses, etc). These questions ground the victim and can help prepare them for what is to come. Doing this can also build rapport by allowing the victim to get used to the interaction so they are more comfortable when the more troubling parts of the conversation come up. From there, you move on to broad, general questions: “Do you remember the most recent time there was violence? Can you tell me about that?” At this point, it is important to listen for clues in what the victim is saying to get the most detailed account possible. The victim might minimize what happened:

<u>Question</u>	<u>Response</u>
Did he hit you?	“Not really”
Did you feel pain?	“Not much”
Do you have any injuries?	“Not hardly”
Could you breathe?	“Sort of”

Also, fragmented memory retrieval will create jumps from one moment to another. Catch these by catching changes in physical location at the scene:

Example:

“He was shaking me and I banged into the refrigerator. I fell by the couch and hit my head.”

Follow up questions:

“How did you feel when you went from the kitchen to the living room?”

“What were you thinking when you went from the kitchen to the living room?”

Gathering more information:

“What were you thinking when you went from the kitchen to the living room?”

Response: “I know it sounds crazy but I was worried about my extensions.”

“Hmm. Tell me about that.”

Response: “Yeah he had them wrapped around his hand and was telling me that he was going to set them on fire if I didn't shut up.”

Victims may use the passive voice or “I” to take responsibility away from the batterer:

Example:

“I lost my balance and fell into the table”

Follow up question: “Do you remember what was happening when you lost your balance?”

Response: “He’d had his hand under my chin and when he let go, I had a hard time standing so I fell.”

Victims might skip what they perceive to be the worst part of an incident and end up missing entire chunks of time.

Example:

“That morning Taylor thought I’d been cheating. Taylor wouldn’t let me go to work. There was just all this yelling and yelling and name calling. I was scared. At some point, I was just begging him to let me pick up the kids from school – that’s when it finally ended.”

Bring them back around to the lapsed time by asking them general grounding questions like:

“Did you and Taylor stay home the whole day?”

“What was going on with Taylor while the kids were at school?”

“What about Taylor scared you that day?”

Here are some practical examples of using better language for a trauma informed approach:

DON'T	DO
Ask “Why...”	Ask open questions/statements: “Tell me about that.” “How did you feel then?”
Use labeling language: “Batterer” “Abuser” “Victim” “Survivor”	Use neutral language: “Jack” “Spouse” “Ex” “Son’s father”

DON'T ASK	DO ASK
“Did he strangle you?”	“Did he put his hands on your neck?” Follow this with, “Could you catch your breath?”
“Has he ever raped you?”	“Did he ever have sex with you even after you said ‘No’ or that you didn’t want to?”
“Has he ever beaten you?”	“Can you tell me about a time that he hurt you or made you feel scared?”
“Did you call the police?”	“Were the police called?”

When conducting a screening for a protective order, it will be important to assess the lethality of the situation. This simply means making a determination of how likely it is that this victim might be killed by their abuser. Using a [risk assessment](#) like the one provided can be really helpful for this. Further,

weaving the questions in a risk assessment into the [screening template](#) can accomplish the same goal. Once you know how dangerous the case is, you can prioritize how quickly it needs to move.

If the victim talks about the abuser harassing or stalking her, you should have her fill out a [stalking log](#) to determine whether there could be a case for a stalking protective order. A simple template can be used so the victim does not become overwhelmed by creating this log.

Additional Considerations

Throughout the screening it is important to remember who is the applicant or client. In some cases, this can be difficult. In cases where an adult is applying for a protective order for a minor child, the adult is still the applicant but the primary victim is the child. Further, many victims will have very complex stories involving various people besides the primary abuser. It is important to identify who the respondent or opposing party is.

There are some situations where it practically does not make sense to file a protective order and doing so might create a more dangerous situation for the victim. An example of this would be a case in which the victim has fled and the abuser has no knowledge of the victim or has not made contact in some time. These special cases often have legal remedies (like filing the protective order in the county the abuser is living in) and should be addressed with the victim so they can make an informed decision about what to do.

Sexual abuse is often the most sensitive subject to discuss with a client so it might help to wait until later in the interview to ask about it. Give the victim space to talk about it at their own pace to make it easier for them to provide necessary details (Did the victim verbally refuse intercourse? Was there penetration?).

If possible, an advocate should be assigned to escort the victim in court. Victims are often terrified by the thought of having to see their abuser or even just going in front of a judge. It can be a scary and confusing process and the attorney will not be able to stay near the victim throughout the process. An advocate can be present to make the victim feel safer and more supported. A great place to find advocates is local domestic violence and sexual assault programs. The National Domestic Violence Hotline maintains a list of programs in the United States. (<https://www.thehotline.org/>)

Finally, beware of the abuser masking as the victim. There are times that an abuser manipulates the situation to get the victim arrested or get a protective order against her. These kinds of “upside down” cases are tricky to spot but there are some tell-tale signs of an abuser to look out for. First, abusers tend to show little or no sympathy for the other person by saying things like, “She is really violent and I am going to make sure that she goes to jail for a long time.” They might also say, “I’m going to get full custody and she will never see the kids again.” An abuser might also make a point of trying to “warn” others about this person which more serves as a form of discrediting and isolating the true victim. An abuser might list all the people they have spoken to about the perceived violence from this person to try and sound more credible. Abusers tend to present as self-confident and in control. They may make a point of stating how well they handled an incident by remaining calm throughout. For example, they might say, “She was screaming and yelling. I tried to get her to calm down but she is just crazy.” Abusers also tend to be very presumptuous. They will have expectations and requests but when met with resistance, might become hostile or aggressive. Abusers tend to try and control the conversation with service providers. They may use your first name a lot throughout the conversation and will often want a direct phone or email address.

RISK ASSESSMENT & STALKING LOG

[Click here for a printable risk assessment template.](#)

[Click here for a printable Stalking log.](#)

Please refer to the Resources Section for more helpful resources.

Statistics

Texas DPS Uniform Crime Reporting Program for 2016
(<http://www.dps.texas.gov/crimereports/16/citCh5.pdf>)

Total number of reported family violence incidents in Texas in 2016 was 196,564. These incidents involved 214,815 victims and 208,764 offenders. Of those cases where the sex of the offender was known, 73.7% were male and 26.3% were female. (it is important to note that these numbers only represent cases where there was an arrest for family violence. The vast majority of victims do not report their abuse and so the occurrence of intimate partner violence is actually much higher than these numbers.)

Texas Health and Human Services Commission Family Violence Program Statewide Report for 2016
(<https://hhs.texas.gov/reports/2016/10/texas-family-violence-program-statewide-report-2016>)

In 2016, 146 women were killed by their intimate partners. This is a 7.6% decrease from the 2015 number of 158. In 2016, a male killed his current or former female intimate partner every 2.5 days in Texas.

TAASA Statistics Page (<http://taasa.org/resources/understanding-sexual-assault/>)

6.3 million Texans have experienced some form of sexual assault in their lifetime. 2 out of every 5 women and 1 in 5 men in Texas have been sexually assaulted. 91% of sexual assault victims did not report to law enforcement. Only 3% of sexual assault offenders spent time in jail for the assault(s) they committed.

Texas DPS Uniform Crime Reporting Program for 2016
(<http://www.dps.texas.gov/crimereports/16/citCh7.pdf>)

18,349 sexual assault incidents were reported in Texas. Of the victims whose sex was known, 87.1% were female and 12.9% were male. The age group that had the highest number of victims was the 15-19 year-old group. There were 19,245 offenders involved in sexual assault incidents in 2016. Of those offenders whose sex was known, 95.6% were male and 4.4% were female.

Stalking Resource Center (<http://victimsofcrime.org/our-programs/stalking-resource-center/stalking-information#what>)

A 2014 CDC Study found that 7.5 million people are stalked in one year in the United States.

Of those, over 85% of stalking victims are stalked by someone they know. 61% of female victims and 44% of male victims of stalking are stalked by a current or former intimate partner. 25% of female victims and 32% of male victims of stalking are stalked by an acquaintance. About 1 in 5 of stalking victims are stalked by a stranger. Persons aged 18-24 experience the highest rate of stalking. 11% of

stalking victims have been stalked for 5 years or more. 46% of stalking victims experience at least one unwanted contact per week.