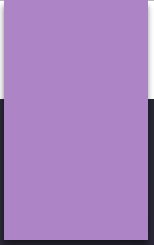




TPOs and Beyond

OTHER WAYS TO USE CIVIL LAW TO HELP SURVIVORS

- 
- Different types of protection orders
 - Housing Law
 - Consumer Law
 - Public Benefits and Financial assistance
 - Civil Law
 - Immigration



Different Types of Protective Orders

Civil, Military, and Employer

Family Violence Protective Orders

OCGA §19-13-1 et seq

- ▶ In 50% of cases, Protective Orders End the Violence Completely
- ▶ In 25% additional cases, Protective Orders Substantially Reduce the Violence
- ▶ The Community saves \$30.75 in community costs – law enforcement, ER visits, Courts, CPS, DV agency services - for every \$1 dollar invested in Civil Protective Orders

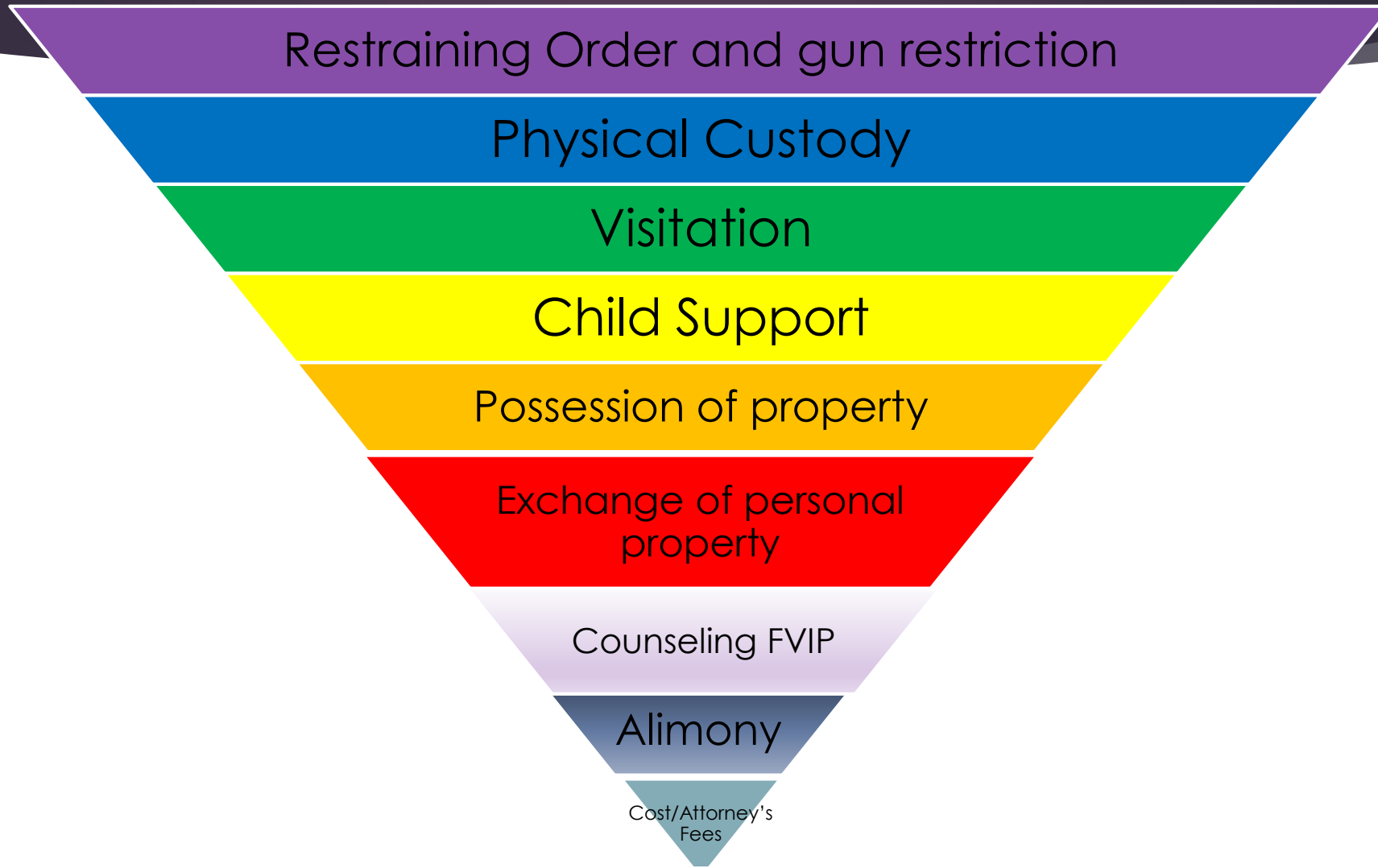
Logan,T.K., The Kentucky Protective Order Study

Family Violence protective orders

- ▶ Requires certain familial relationship
 - ▶ If doesn't meet family requirement, may be able to proceed under stalking tpo
- ▶ Requires a showing that there has been a prior act of family violence and that, unless the court issues this order, the violence is likely to continue.
- ▶ No requirement that violence have been recent (Lewis v Lewis **728 S.E.2d 741 (Ga. Ct. App. 2012)**)

Recency may play into likelihood of violence continuing, but not a bar

What Family Violence TPOs Can Do



Military Protective Orders

- ▶ Issued by commanding officer
- ▶ Includes provisions for stay away, no contact, removal from shared house, and counseling
 - ▶ Provisions for spousal/child support handled separately.
- ▶ Only in effect while under that officer's command. CO can request another officer also order
- ▶ Although usually in writing, verbal orders equally enforceable
- ▶ Enforcement under UCMJ article 90 et seq
 - ▶ Family Violence TPOs are also enforceable this way for military personnel

Employer Protective Orders

O.C.G.A. § 34-1-7

- ▶ the employer must prove that:
 1. the employer has an employer-employee relationship with the employee;
 2. the employee has suffered unlawful violence or a credible threat of violence; (a) from the respondent
(b) at the employee's workplace or in the course of the employee's work.
 3. the burden of proof is clear and convincing evidence.
- ▶ may only order the cessation of "unlawful violence or threats of violence".
O.C.G.A. § 34- 1-7(e). Since the petitioner is not the victim, but the employer, no overlap with either family violence or stalking orders exists.



HOUSING PROTECTIONS

Public Housing and Foreclosure Prevention

Fair Housing Act- Section 8 and HUD 24 C.F.R. §982.315(a)

- ▶ § 982.315(a)(1) The PHA has discretion to determine which members of an assisted family continue to receive assistance in the program if the family breaks up.
- ▶ § 982.315(a)(2) If the family break-up results from an occurrence of domestic violence, dating violence, or stalking as provided in 24 CFR part 5, subpart L, the **PHA must ensure that the victim retains assistance.**

Fair Housing Act- Section 8 and HUD 24 C.F.R. §982.315(a)

- ▶ § 982.354(a)(b)(4) A PHA may not terminate assistance if the family, **with or without prior notification to the PHA, already moved out of a unit in violation of the lease, if such move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the dwelling unit.**



Foreclosure Defense Options

Official Programs

- ▶ HAMP- Home Affordability Modification Program
- ▶ HARP- Home Affordability Refinance Program
- ▶ HAFA- Home Affordable Foreclosure Alternatives
- ▶ UP- Unemployment Program

Informal Options

- ▶ Cash for Keys
- ▶ Try to get mortgage information despite Gramm Leach Bliley Act, 15 USC 6802(e)

Eviction Defenses

No specific rights for survivors in private housing, but that doesn't mean you shouldn't try





CONSUMER PROTECTIONS

Bankruptcies, Fair Credit Reporting, Identity Theft, and Tax Help

Bankruptcy

- ▶ Fee Waivers
- ▶ Keeping the Address Confidential
- ▶ Restricting Public Access

Identity Theft- prevention

- ▶ Regularly check credit report
 - ▶ Annualcreditreport.com – get one report ever 4 months
- ▶ Place a freeze on credit (OCGA §10-1-913)
 - ▶ Does not allow unauthorized access to credit history
 - ▶ Does not allow someone to open new credit without knowing the password
 - ▶ Does not allow credit reporting agency to change address or other identifying information without notifying first
- ▶ Safeguard mailing address
 - ▶ Opt out of junk mail
 - ▶ Use a PO Box

ID Theft Response

- ▶ Report fraud and ID theft to police if victim feels comfortable
 - ▶ May be basis for a TPO since can be a felony
- ▶ Report inaccuracies, fraud, and mistakes immediately
 - ▶ Credit Reporting Agency has the duty to keep information current and accurate
 - ▶ 15 U.S.C. § 1681c – Fair Credit Reporting Act-- Prohibits Obsolete Information
 - ▶ Criminal records stay forever, unless special action taken
 - ▶ In Georgia, record restriction under O.C.G.A §35-3-37
 - ▶ Other states may have expungement or other options

Fair Credit Reporting Act: Reporting a Problem

- ▶ Dispute in writing and include documentation supporting dispute
 - ▶ Have client write an affidavit rather than just a letter
 - ▶ Send the creditor/furnisher a copy of the dispute
 - ▶ Make the dispute letter as detailed as possible
- ▶ CRA must investigate and respond within 30 days or 5 days after investigation completed (15 U.S.C. § 1681i)
 - ▶ Information furnisher (i.e. the creditor) is required to participate in investigation (15 U.S.C. § 1681s-2(b))
 - ▶ Separate right to dispute directly with furnisher (15 U.S.C. § 1681s-2(a)(8)) but consumer cannot enforce remedy
- ▶ Block access to social security number- no one can access or change online
 - ▶ <http://www.socialsecurity.gov/blockaccess>

Tax Problems

- ▶ Various options for Survivors whose batterers filed improper or fraudulent taxes
 - ▶ Innocent Spouse Relief – § 6015(b)
 - ▶ Separation of Liability – § 6015(c)
 - ▶ Equitable Relief – § 6015(f)--Special considerations for DV Survivors
 - ▶ Takes into account duress
 - ▶ Addresses situations where victim signed under duress
 - ▶ Addresses situations where victim was unable to challenge an improper filing
- ▶ Some time limits apply
- ▶ May be able to get a refund or reduced/eliminated tax liability

Factors	Rules for Innocent Spouse Relief	Rules for Separation of Liability	Rules for Equitable Relief
Type of Liability	You must have filed a joint return that has an understatement of tax due to an erroneous item of your spouse.	You must have filed a joint return that has an understatement of tax due, in part, to an item of your spouse.	You must have filed a return that has either an understatement or an underpayment of tax.
Marital Status		You must be no longer married, legally separated, or have not lived with your spouse in the same house for an entire year before you file for relief.	
Knowledge	You must establish that at the time you signed the joint return you did not know, and had no reason to know, that there was an understatement of tax.	If IRS establishes that you actually knew of the item giving rise to the understatement, then you are not entitled to make the election to the extent of the actual knowledge.	
Other Qualifications			You do not qualify for innocent spouse relief or separation of liability.
Unfairness	It must be unfair to hold you liable for the understatement of tax taking into account all the facts and circumstances.		It must be unfair to hold you liable for the underpayment or understatement of tax taking into account all the facts and circumstances.
Refunds	Yes, your request can generate a refund.	No, your request cannot generate a refund.	Yes, for amounts paid between July 22, 1998, and April 15, 1999, and for amounts paid pursuant to an installment agreement after the date the request for relief is made.

FYI

We're not tax attorneys

Call the Georgia State University Low Income Taxpayer Clinic for more assistance



"And as my chart clearly shows, I haven't got a clue what I'm talking about."



Public Benefits

Unemployment, TANF, Food Stamps, and Social Security

Unemployment Benefits

- ▶ Scott v. Butler, 327 Ga. App. 457, 759 S.E.2d 545 (2014)
 - ▶ Quitting due to DV/Stalking good work-related quit
 - ▶ Does not make ineligible for unemployment benefits



And don't forget about UP

TANF- Temporary Aid to Needy Families

SNAP- Supplemental Nutrition Assistance Program

- ▶ TANF- cash assistance for low income families with children
- ▶ SNAP- food stamps
- ▶ Special DV considerations:
 - ▶ O.C.G.A. § 49-4-191 : waives residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for individuals receiving TANF assistance to escape domestic violence or unfairly penalize such recipients who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.
 - ▶ Similar federal requirement for SNAP
- ▶ Even if still married, as long as living apart other spouse's income not counted

Social Security Benefits

- ▶ Depression and PTSD may be the basis for a disability award
 - ▶ Adult Listings 12.04 (depression) and 12.06 (PTSD and Severe Anxiety)
- ▶ Requires high level of disability
- ▶ Not a bar to custody



Social Security Benefits

Special Protections for DV Survivors in determining assets

- ▶ Primary residence does not count against a person for SSI eligibility
 - ▶ Normally a house person doesn't live in counts as an asset and may make him or her ineligible for SSI
- ▶ BUT, if fled the house due to DV, will not count as an asset
- ▶ Once person acquires a new home, Social Security will determine if it is fair to count the other house as an asset, but won't if the disabled person does not have access due to DV



Changing a Social Security Number

- ▶ Survivors must apply **IN PERSON** at the social security office
- ▶ Bring evidence of abuse
 - ▶ “The best evidence of abuse comes from third parties, such as police or medical personnel, and describes the nature and extent of harassment, abuse, or life endangerment. Other evidence may include court restraining orders and letters from shelters, family members, friends, counselors, or others who have knowledge of the domestic violence or abuse. We’ll help you get any additional evidence needed.”
- ▶ Bring birth certificate or passport and prior social security card
- ▶ Bring custody orders and/or name change order, if applicable
- ▶ Picture ID

Changing a Social Security Number

▶ PROs:

- ▶ Making Survivor harder to find
- ▶ Reducing chances of identity theft

▶ Cons:

- ▶ False sense of security
- ▶ Potentially losing some or all credit history
- ▶ Credit Confusion





Immigration Protections

U-Visas, T-Visas, and I-360 Self Petitions

Immigration Protections

U-Visas

Requires applicant or immediate family member be the victim of a specified crime in the United States

Must suffer substantial mental or physical abuse

Be willing to assist in investigation and prosecution of crime

Law enforcement signs off on a certification, which is good for 6 months

Allows work permit and eventually adjustment of status

T-Visas

Specific for trafficking victims

Must be severe forms of trafficking

Trafficking can be employment exploitation or sexual exploitation

Adult applicants must cooperate with law enforcement, but minors are not required

Allows work permit and eventual adjustment of status

I-360

Requires family relationship (marriage or parent/child) to US Citizen or LPR

Requires showing of extreme cruelty by Citizen/LPR

Requires good faith marriage and good moral character

Allows victim to file without abuser's knowledge or consent

Allows work permit and eventual adjustment of status



Civil Legal Protections

Name changes and lawsuits for damages

Name Change

- ▶ Like social security numbers, name changes have pros and cons
 - ▶ One danger is the false sense of security because in general, name changes are public record
- ▶ Filing Under Seal OCGA 9-11-7.1d and/or Superior Court Rule 21
 - ▶ For good cause, a court can order records “(1) be sealed and may also order that a redacted version of the same filing be filed for the public record; and (2) Limit or prohibit a nonparty's remote electronic access to a document filed with the court.”
 - ▶ This could restrict the batterer from being able to find out new name
- ▶ Filing a complaint in equity OCGA 23-1-3, allows relief from general rule of law when there are “peculiar circumstances”
- ▶ Motion to Proceed in Pseudonym- filing as a Jane Doe

Suit for Damages (hitting where it hurts) Exception to OCGA 19-3-8

- ▶ Assault and Battery
- ▶ Intentional infliction of Emotional Distress
 - ▶ Negligence only if there is concurrent physical injury or monetary lost
- ▶ Fraud
 - ▶ Fraud in the inducement of the marriage
 - ▶ Child Support fraud
- ▶ Potential for punitive damages may be available under OCGA 51-12-5.1

- ▶ Generally have to show two things:
 - ▶ No marital harmony
 - ▶ No opportunity for collusion

Harris v Harris 252 Ga 387 (1984)