

## **Georgia Commission on Family Violence Position Statement on Alternatives to TPOs**

### Introduction

The Georgia Commission on Family Violence issues this statement with two goals in mind: increasing the safety of victims of family violence, and increasing accountability for perpetrators of family violence. The Commission believes that judicial practices that replace Temporary Protection Orders (TPOs) with alternative orders, such as mediation or consent agreements, do not adequately address the safety needs of petitioners and often have the potential to increase danger. We believe that petitions for Temporary Protection should be judged on the merits and either ordered or dismissed, based on the evidence and likelihood of abuse. As evidenced below, these alternative orders can have unforeseen consequences for both of the parties involved.

### Mediation

While court-ordered mediation may be appropriate for some situations, it is not appropriate as an alternative to or an element of the TPO process. Families in which violence is present have significant power imbalances. Batterers can and do use the mediation process to control their victims. For this reason, the philosophy of mediation between two equal parties is inconsistent with the realities of violence in intimate relationships. Given the past abuse, the victim may feel (often, quite correctly) that any rejection of the abuser's proposals during this process will result in greater danger. The presence of a mediator and attorneys in the room does not ensure an equal playing field, or that a victim will feel safe to speak freely and without fear of reprisal by the abuser. The role of a mediator is only to find common agreement, not to review evidence or advocate one position over another. In cases of domestic violence, in which the parties inherently disagree with regard to the victim's personal safety, safety concerns that might be addressed in the courtroom cannot survive the mediation process. If a TPO petitioner and respondent reach an agreement via mediation, this agreement does not afford the protections that the victim sought when filing for a TPO; namely, an order enforceable by law enforcement that carries criminal penalties.

### Consent Agreements

Likewise, petitioners seeking relief through a TPO who end up with a consent agreement often find that they did not get the protection they were seeking. Consent agreements, unlike TPOs, are not enforceable by law enforcement and do not carry the threat of criminal penalties. Instead, a victim in danger who wishes to report a violation of a consent agreement must file a Motion for Contempt, a difficult, often prohibitively expensive process that may not be heard for several weeks. Perpetrators may thus feel emboldened by law enforcement's inability to enforce the agreement, which only increases danger for the victim.

Additionally, many of the safety provisions built into TPOs do not apply to consent agreements, e.g.:

- Consent agreements are not given full faith and credit and are thus unenforceable across state lines.
- They do not mandate the federal restrictions on gun ownership that TPOs do.
- They do not mandate that the respondent attend a certified Family Violence Intervention Program to be held accountable for the violence.

Furthermore, in these cases, if the court asks the parties to negotiate the terms of the consent agreement themselves, all of the dangers of mediation are present, and further heightened if the victim is unrepresented. If, alternatively, the court suggests from the bench the terms of the

agreement, the victim may face increased danger upon voicing an objection in front of the perpetrator.

#### Mutual Consent Agreements

Consent agreements that are mutual in nature send a message to victims and perpetrators that the violence is equally the fault of both parties. Victims who hear this message from the court are less likely to seek legal relief in the future, and perpetrators who hear this message may believe that their violence is justified in the eyes of the court. In addition, ordering a mutual consent agreement is tantamount to issuing a Mutual Protective Order without complying with the necessary statutory requirements that the Answer and Counterclaim be filed three days prior to the hearing. In such a case, due process is denied to any victim who appears in court for one TPO hearing, but must suddenly and without notice defend against allegations by the respondent.

#### Consent Agreements with TPO Dismissal

Finally, those consent agreements accompanied by a specific dismissal of a TPO present additional problems. A petitioner who comes to court for a TPO hearing but instead receives a dismissal and, simultaneously, a consent agreement, is in a legal limbo. Such an agreement is a legal fiction, for once the underlying action is dismissed, the court is without the authority to approve or enforce any additional agreement in the matter. As a result, consent agreements arising from such proceedings are not only unenforceable, but entirely meaningless.

#### Conclusion

In relationships with a history and/or threat of violence, negotiations between victims and perpetrators will not yield fair outcomes. The Georgia Commission on Family Violence therefore opposes the practice of responding to requests for TPOs with other processes or orders, such as mediation and consent agreements. TPOs, enforceable immediately by law enforcement and carrying criminal and civil penalties, better ensure the safety of victims of family violence.