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Criminal orders of protection and how it can be a tool in civil cases

Family Law practitioners are well versed in the world of civil orders of protection. Unfortunately, civil orders of protection may become necessary when violence, harassment, or abuse is perpetrated by a family or household member, such as a spouse. When abuse occurs, the victim's attorneys may petition the court for a civil order of protection, barring the other party from perpetuating the abuse and contacting the victim.

The court also has the ability to order other remedies including exclusive possession of a residence or other property, financial remedies, counseling, setting parenting time, among others as detailed in the Illinois Domestic Violence Act (750 ILCS 60/214).

Civil orders of protection are streamlined proceedings. Initial orders can be entered on an ex parte basis, and the proceedings themselves are expedited. However, despite these procedures, practitioners can attest, in many cases, order of protection litigation can become very protracted. On occasion, these petitions take many court appearances to finalize, involve extensive testimony of the victim, subjects the victim to cross-examination by his or her abuser, and in many cases can be a traumatic event in and of itself.

Adding pending family law

litigation to the mix only exacerbates those problems as overlapping issues become ripe for further litigation, including the payment of support, limitations on parenting time and access and allocation of jointly held property, to name a few.

For decades, this civil method for obtaining an order of protection was the exclusive order of protection option for victims of abuse. However, a new type of order of protection has been recently enacted by the Illinois legislature. Enacted and effective Jan. 1, 2018, Article 112A of the Illinois Code of Criminal Procedure provides for a criminal order of protection. As stated in the text of the statute, the purpose of the new criminal order of protection is to protect victims by "minimiz[ing] the trauma and inconvenience associated with attending separate and multiple civil court proceedings to obtain protective orders" (725 ILCS 5/112A-1.5).

Criminal orders of protection under Article 112A are only available in cases in which the abuser is charged with a pending criminal case and are limited to domestic violence cases, sexual offenses and stalking offenses (725 ILCS 5/112A-2.5). The petition for a criminal order of protection can either be entered by the vic-



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tim personally, by a parent on behalf of a minor victim, or the by the state's attorney (725 ILCS 5/112A-4.5). These petitions are filed directly with the criminal case, and the underlying allegations of the criminal order of protection must at minimum include the underlying offense in the criminal case. However, despite being tied to the criminal case, victims may still obtain their own legal representation with respect to a criminal order of protection (725 ILCS 5/112A-4.5(d-5)).

The most significant benefit to filing an order of protection in conjunction with a criminal case, rather than as a separate civil proceeding, is that the entry of the order is mandatory in cases in which prima facie evidence exists that a crime involving domestic violence, sexual offenses or stalking has occurred (725 ILCS 5/112A-11.5). Per the statute, this prima facie evidence is simply the existence of a charging implement including an indictment, information or complaint. Therefore, the court only needs to review the court file to determine that such a charging implement exists, and the order shall issue. There is no need for the victim to testify, and the victim is not subject to cross-examination.

The remedies available to the petitioner in a criminal order of protection are largely identical to those available to petitioners under the Illinois Domestic Violence Act (725 ILCS 112A-13). Any violation of a criminal order of protection operates under the same legal principles of the violation of a civil order of protection.

The only significant difference in the operation of the orders is with respect to duration. A criminal order of protection follows the criminal case. Therefore, if a criminal order of protection

is entered during pretrial release (prior to conviction or acquittal), the order shall remain in effect until the criminal case is resolved. If the criminal charges are dismissed, the order of protection is likewise terminated (725 ILCS 5/112A-20). If the respondent is found guilty either by plea or by trial, the order of protection shall continue for two years after final disposition is entered. In cases of imprisonment, the order shall continue for two years following the respondent's release from parole or completion of supervised release (725 ILCS

5/112A-20(b)). In order to combat the entry of a protective order under Article 112A, the respondent's only option is to file notice of a meritorious defense which must be supported by evidence and affidavit (725 ILCS 5/112A-11.5(a-5)).

There was much discussion regarding the constitutionality of this statute when it was enacted. Specifically, opponents of the legislation were concerned that the prima facie nature of the issuance of these orders violates the due process rights of the respondent, as well as shifts the burden. These

issues were recently addressed by the Illinois Supreme Court in *People v. Deleon*, 2020 IL 124744, which upheld the criminal order of protection statute.

Based upon the court's holding in *Deleon*, it appears that criminal orders of protection are here to stay. While these orders may not be applicable in every case of abuse, they are certainly a substantial tool for victims in cases where criminal charges are pending. Victims' attorneys and family law counsel may also find that these orders are significant tools in their civil litiga-

tion toolbox. If a party in a family law case is charged with domestic battery or another qualifying offense under Article 112A, it may be prudent to explore the issuance of a criminal order of protection rather than seek a civil order in conjunction with the family law litigation. By utilizing a criminal order, litigators can avoid the trauma of their clients confronting their abusers and testifying in court, as well as remove the litigation of the order itself from the civil proceedings, narrowing the issues before the court.