



Best Practices: Juvenile-Respondent Orders of Protection

Presenter:
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Objectives



- Review of Juveniles as Petitioner
- Review of Jurisdiction and Venue for Juvenile Respondents
- Best Practices for Adjudicating Orders of Protection with a Juvenile Respondent



Overview of Juvenile as Petitioner

T.C.A. § 36-3-602



- If a juvenile wants to file an order of protection against someone the following persons have standing to file the order of protection on behalf of the juvenile:
 - The parent or legal guardian
 - The Department of Children's Services
 - Guardian Ad Litem
 - A domestic violence or sexual assault program



Notice to the Parents



- Notice to the parents or legal guardian must be done as long as it does not present risk to the juvenile petitioner.



Juvenile-Respondent— Venue and Jurisdiction (1)



- Before 2005, Tennessee law provided that victims could only take an order of protection against an adult.

*T.C.A. 36-3-602(a)(2005) Any victim who has been subjected to, or threatened with or placed in fear of, domestic **abuse by an adult** who falls into one of the categories set forth in § 36-3-601(8)(A)-(F) may seek relief under this part by filing a sworn petition alleging such domestic abuse by the respondent.*



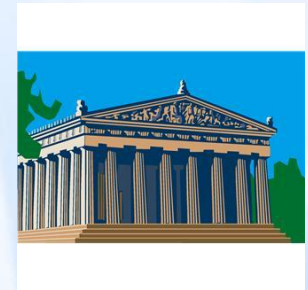
Juvenile-Respondent— Venue and Jurisdiction (2)



- In 2005, the requirement that the respondent be an adult was repealed.

Any victim who has been subjected to, or threatened with or placed in fear of, domestic abuse, stalking, or sexual assault may seek a relief under this part by filing a sworn petition alleging such domestic abuse, stalking, or sexual assault by the respondent. T.C.A. § 36-3-602 (a)

- When the legislature eliminated the “adult” requirement, it contemplated allowing a juvenile to be a respondent.



Juvenile as a Respondent



- Domestic violence, sexual assault, and stalking are not limited to adult perpetrators.
- Juveniles commit these acts against adults and other juveniles.
- Orders of protection are important because they give added protection in instances of bullying, stalking, teen dating violence, and sexual assault.



Common Cases When the Juvenile is a Respondent



- Dating violence relationships
- Stalking
- School bullying
- Juveniles assaulting parent or step-parent
- Juveniles committing sexual assault crimes against another minor or an adult



Best Practices



- The best court.
- The best service.
- The best hearing.
- The best enforcement.



Best Practice: Which Court?



- The best practice is to handle cases involving juvenile respondents in juvenile court.
- Juvenile court has the ability to handle any other underlining criminal offense.
- Juvenile court has the ability to impose other conditions, restrictions, and enforcement issues regarding the juvenile respondent.
- Juvenile court has access to services focused on youth as they relate to the petitioner and the respondent.



Best Practice: Who gets served?



- The clerk should serve the juvenile respondent AND the parent or legal guardian. For example, if the minor is in the custody of the Department of Children's Services, then the Department of Children's Services should also be served. (See *Rule 4 of the Rules of Civil Procedure*)

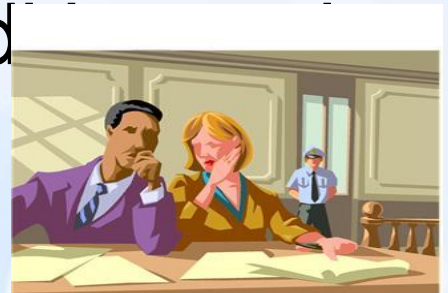


Best Practice:

How should a judge hear this case? (1)



- If there is an underlining delinquent act attached to the order of protection, the judge handle both of these simultaneously.
- This will allow the judge to explore other options to the behavior in add order of protection.



Best Practice:

How should a judge hear this case? (2)



- Orders of Protection by themselves are civil, and there is no right to an attorney for the respondent or the petitioner.
- Build relationships with your prosecutor and public defender to determine whether they will agree to help the respondent and the victim with the order of protection issues.



Best Practice:

How should a judge hear this case? (3)



- The judge should hear evidence just as if it were any other hearing and make decisions based on the proof. If there is a preponderance of the evidence to justify issuing the order of protection, the judge should grant it.



- Apply the costs according to T.C.A. § 36-3-617.

Best Practice: Costs (T.C.A. §36-3-617)



- Victims are not charged. Respondents are taxed with the fees if the order of protection is granted.
- If the order of protection is not granted the court must find by clear and convincing evidence:
 - (a) the petitioner is not a victim and that such determination is not based on the petitioner's request to dismiss the order, failure to attend the hearing or incorrectly filled out the petition; AND
 - (b) the petitioner knew that the allegations were false at the time the petition was filed.



Best Practice: Enforcement (1)



- What happens when the juvenile respondent violates the order of protection?
- Enforcement can be a problem:
 - No statutory guidelines on how to enforce
 - The abuse is between an adult family member and a juvenile who live together
 - School issues



Best Practice: Enforcement (2)



- These violations can be non-violent violations.
- These violations mean breaking any of the orders made in the order of protection.
- Engaging in the underlining conduct giving rise to the order of protection.



Best Practice: Enforcement (3)



- Treat the violation as a delinquent act and order appropriate penalties. This could include extending the order of protection.



Best Practice: What happens if the child turns 18 while the Order is in effect?



- The order stays in effect for the one year period, even if the respondent turns 18 during that time.
- A violation of the order after the age of 18 should be handled in the same manner as a violation of an adult.



What is happening in your county?



- Are you issuing orders of protections against juvenile respondents?
- How are you handling service of the juvenile-respondent orders of protection?
- How do you handle violations of the juvenile-respondent order of protection?



Best Practice: Questions????



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