

Model Language to Curb False Allegations of Domestic Violence

Developed By:

Stop Abusive and Violent Environments

www.saveservices.org

June 6, 2011

Table of Contents

Introduction.....	2
1. Findings.....	3
2. Definitions.....	3
3. Effective Alternatives to Restraining Orders.....	5
4. Standards Relating to Restraining Orders.....	7
5. Restraining Orders Involving Minor Children.....	9
6. False Reporting.....	11
7. Expungement of Records.....	13
8. Judicial Training.....	14

Introduction

False allegations of abuse now represent a legal, social, and financial threat in our society, with 11% of persons in a recent survey saying they had been falsely accused of child abuse, domestic violence, or sexual assault.¹ Each year, about 1.5 million restraining orders are issued that are unnecessary or false.² False claims made in the context of a divorce and custody dispute are associated with a \$20 billion taxpayer burden as a result of children growing up in single-parent households.³ False allegations have become widespread to the point of diverting critically needed services and protections from real victims.

In early 2011, Stop Abusive and Violent Environments (SAVE) commissioned a highly experienced civil rights attorney to draft the Model Language to Curb False Allegations of Domestic Violence. The Model Language incorporates language from existing laws and bills from the states of Florida,⁴ West Virginia,⁵ Minnesota,⁶ and Connecticut.⁷ Extensive comments and suggestions were provided by members of the SAVE Domestic Violence Legislative Project.⁸

The Model Language is designed to be incorporated into state civil laws and adapted as necessary to local circumstances. Obtaining appropriate legal expertise is recommended before making such changes. In many cases, it will be appropriate to propose only certain provisions of the Model Language.

The Model Language employs the generic term “restraining order,” recognizing that a variety of terms are in common use, such as “civil injunction,” “order of protection,” “peace order,” and the like. Proper wording should be substituted in the bill before introduction.

¹ Stop Abusive and Violent Environments. Press Release: 11% Falsely Accused of Abuse, Survey Shows. June 2, 2011. <http://www.saveservices.org/2011/06/press-release-11-falsely-accused-of-abuse-survey-shows/>

² Stop Abusive and Violent Environments. The Use and Abuse of Domestic Restraining Orders. Rockville, MD: 2011. <http://www.saveservices.org/downloads/VAWA-Restraining-Orders>

³ Stop Abusive and Violent Environments. What is the Cost of False Allegations of Domestic Violence? Rockville, MD: 2010. <http://www.saveservices.org/downloads/False-DV-Allegations-Cost-20-Billion>

⁴ Fla. Stat. Ann. Section 741.28.

⁵ 2008 Amendments to the Domestic Relations Code. <http://www.saveservices.org/pdf/West-Virginia.pdf>

⁶ Children’s Equal and Shared Parenting Act. <http://www.saveservices.org/pdf/Minnesota.pdf>

⁷ An Act Concerning the Presumption of Innocence and Protection of Constitutional Rights in Proceedings Alleging Child Abuse or Neglect by a Parent or Guardian. <http://www.saveservices.org/policymakers/connecticut-an-act-concerning-the-presumption-of-innocence-bill/>

⁸ SAVE Domestic Violence Legislative Project. <http://www.saveservices.org/dvlp/>

1. Findings

The following Findings provide the rationale for the provisions contained in the Model Language document.

[1.1] Whereas, law-abiding citizens with no prior criminal records are being deprived of liberty, property, and dignity as a result of false allegations;

[1.2] Whereas judicial/legal interpretation to “err on the side of caution” is in opposition to the “presumption of innocence until proven guilty” mandate;

[1.3] Whereas, false allegations of domestic violence may result in the issuance of restraining orders that serve to deprive citizens of due process of law;

[1.4] Whereas, false allegations of domestic violence strain police resources, overload the court system, and result in lost work, wages and tax revenue;

[1.5] Whereas, false allegations of domestic violence often compromise parents’ fundamental liberty interests in the care, custody, companionship, and control of their children;

[1.6] Whereas, false allegations of domestic violence may force children into single-parent households, placing them at greater risk of experiencing a broad range of social pathologies.

2. Definitions

Well-circumscribed definitions that preclude overly-broad interpretations are essential to curbing false allegations of domestic violence.

[2.1] “Domestic Violence” means any assault, assault and battery, sexual assault, sexual battery, aggravated stalking, false imprisonment or any criminal offense resulting in physical injury or death of any family or household member by another family or household member.

[2.2] “Family or Household Member” means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together or who have resided together in the past, and persons who are parents of a child in common.

[2.3] “Assault,” “Assault and Battery,” “Sexual Assault,” “Sexual Battery,” “Aggravated Stalking,” and “False Imprisonment” are understood to mean what the terms have been defined to mean in the criminal statutes of the State of _____.

[2.4] A “False Report” means a report of Domestic Violence not supported by the objective evidence or discernable facts, and which is maliciously made for the purpose of:

[A] Harassing, embarrassing, or harming another person,

[B] Obtaining financial gain or monetary benefit for the reporting person,

[C] Acquiring custody of a child by the reporting person or intended to eliminate or restrict the other person’s parental rights to the custody or access or companionship with the child.

[D] Damaging, obstructing, hindering, altering or modifying the parental rights of a person, or obtaining a benefit of tactical advantage in any subsequent divorce, paternity or custody action involving the child or children of the parties, or

[E] Obtaining a personal benefit of any kind or description for the reporting person in any other disputed domestic litigation.

3. Effective Alternatives to Restraining Orders

A restraining order is simply a piece of paper telling a person to avoid contact with another. Research shows restraining orders are not effective in stopping intimate partner violence.⁹ Granting a person an ineffective restraining order when viable protections are available is a waste of taxpayer money and may lead to a needless death. This section is designed to promote the use of effective alternatives to restraining orders.

[3.1] *Alternate Protections.* The State shall promulgate regulations and policies establishing and encouraging alternative courses of action other than the issuance and enforcement of temporary and permanent restraining orders, upon receiving a Domestic Violence complaint, claim, or application for the issuance of a temporary or permanent restraining order.

[3.2] *Assessment.* The Court shall order the complainant, as well as the respondent whenever the respondent can be located through reasonable efforts, to submit to a Domestic Violence Assessment. The Domestic Violence Assessment shall be performed by a licensed social worker, psychologist, counselor, or other trained and qualified person. The purpose of the Domestic Violence Assessment is to identify the following:

[A] Nature of the abuse: physical, verbal, sexual, and/or other.

[B] Severity of the abuse, including the degree of physical harm, if any.

[C] Dynamics of the abuse: one-way or mutual.

[D] When the abuse began and how it worsens or decreases over time.

[E] Whether the claimant has made any previous requests for a restraining order, and the judicial outcome.

[F] Whether other legal proceedings pertaining to a divorce or child custody are currently underway or anticipated in the near future.

⁹ Stop Abusive and Violent Environments. How Effective are Domestic Violence Programs in Stopping Partner Abuse? Rockville, MD. 2010. <http://www.saveservices.org/downloads/Why-DV-Programs-Fail-to-Stop-Abuse>

[G] Whether minor children of the parties have witnessed the partner abuse, or have been directly subjected to parental abuse.

[H] Prior criminal records.

[3.3] *Available Protections*. Based on the findings of the Domestic Violence Assessment, the Court may select and order the complainant and respondent in a Domestic Violence complaint and/or application for a temporary or permanent restraining order to participate in, submit to, and complete programs designed to reduce the risk of domestic violence. Some of these programs are, though not exclusively:

[A] Probationary, cooling-off period not to exceed ninety (90) days.

[B] Anger management classes.

[C] Parenting classes.

[D] Job training.

[E] Substance abuse treatment program.

[F] Psychological counseling and treatment.

[G] Couples counseling, but only when both parties are willing to participate in couples counseling and the therapist believes such counseling activities are safe.

[H] Safety planning.

[I] Referral to an abuse shelter.

[J] Relocation assistance.

4. Standards Relating to Restraining Orders

Restraining orders have been shown to be helpful in curbing verbal abuse and are appropriate to issue when such behavior has been demonstrated.¹⁰ In all cases, the issuance of a restraining order should respect due process considerations.

[4.1] *Jurisdiction.* The Standards Relating to Restraining Orders only apply to a court of competent jurisdiction that decides Domestic Violence civil issues of restraining orders, and does not apply to any court of competent jurisdiction that decides or has jurisdiction over paternity claims and/or dissolution of marriage actions between the parties in a civil injunction action.

[4.2] *Alternative Protections.* Based on the findings of the Domestic Violence Assessment, the Court shall consider the application of alternative protections rather than, or in addition to, the issuance of a restraining order.

[4.3] *In-Person Application.* Any person applying for the issuance of a temporary restraining order or injunction from a court of competent jurisdiction must do so in person and not by telephone, mail, or by the use of any electronic device.

[4.4] *Right to Counsel.* The petitioner and respondent in a domestic violence proceeding have the right to have counsel assigned by the court in any case where he or she is financially unable to obtain the same.¹¹

[4.5] *Presumption of Innocence.* During the course of all judicial proceedings arising from the allegation of Domestic Violence, a presumption of innocence of the accused person shall prevail. The burden of overcoming the presumption rests on the person making the accusation.

[4.6] *Evidence.* A Court shall not issue a temporary or permanent restraining order solely on the basis of an uncorroborated statement or application of the complainant. The standard of proof required

¹⁰ Stop Abusive and Violent Environments. How Effective are Domestic Violence Programs in Stopping Partner Abuse? Rockville, MD. 2010. <http://www.saveservices.org/downloads/Why-DV-Programs-Fail-to-Stop-Abuse>

¹¹ Taken from New York: N.Y. FAM. CT. ACT § 262(a).

to issue a temporary or permanent restraining order shall be by “clear and convincing evidence.” In reaching a judicial determination, the Court may consider police reports, forensic evidence, photographic evidence, audio recordings, medical evaluations, credible testimony, either in direct or affidavit form, from a witness who actually witnesses the incident upon which the application is being made, or other evidence that is discernable, objective, and credible.

[4.7] *Admissibility of Prior Acts.* No temporary or permanent restraining order shall be issued on the basis of alleged prior claims of Domestic Violence against the accused person unless such claims and/or acts resulted in a finding of guilt and/or an injunction was issued on the basis of said acts by a court of competent jurisdiction upon clear and convincing evidence, and only then if said judgments occurred and/or were recorded within twenty four (24) months of the application for injunctive relief being filed and/or claim made.

[4.8] *Period in Effect.* A temporary restraining order shall be valid and enforceable only for a period of ten (10) days from the date of entry. The time period in which the temporary restraining order is in effect shall be clearly stated on the face of the instrument and must be served on the accused party with proof of service being submitted to the court.

[4.9] *Notification of Final Hearing.* A temporary restraining order must state the date, time, and place for a hearing before the court within ten (10) days from the date it is issued, with notification of all due process rights being given to every party in writing.

[4.10] *Discovery.* The parties to any civil injunction proceeding shall have all the rights of discovery allowed by the Civil Procedure Rules of the State of _____ that are applicable in any civil, family, or juvenile proceeding. The accused party may seek an extension of time from the Court in order to conduct sufficient discovery as permitted by the Rules of Civil Procedure of the State of _____.

[4.11] *Assets*. No temporary or permanent restraining order can alter, modify, restrain or prevent any party from having access to any funds, monetary resources, bank accounts, bonds, stocks, insurance, investment accounts, rental income, or income from any employment and/or business venture, of any kind or description, or any other monetary resources that are necessary for the proper defense of a petition for an ex-parte restraining order, temporary injunction, or permanent injunction. Said provision only applies to monetary resources and other assets that are jointly-titled or solely titled in the name of the respondent.

[4.12] *Findings of Fact*. The Court shall issue a written finding of fact on every application for a temporary or permanent restraining order, whether the application for the order is granted or denied.

[4.13] *Statute of Limitations*. No Court shall issue a temporary or permanent restraining order on any claim of Domestic Violence that allegedly occurred more than fifteen (15) days from the date the injunction is applied for by the alleged aggrieved party, unless it is shown by clear and convincing evidence that the aggrieved party suffered an involuntary incapacity which prevented the application from being made and/or filed in a timely manner.

5. Restraining Orders Involving Minor Children

False allegations of domestic violence are often motivated by a desire to gain a strategic advantage in an impending child custody dispute. This section lays out the underlying principles and enumerates procedural safeguards to stop allegations that are driven by considerations of child custody.

[5.1] *Liberty Interests*. The Court shall respect both parents' fundamental liberty interests in the care, custody, companionship, and control of their children. The Court shall also recognize the societal importance of a child's development of strong parental bonds. No temporary or permanent restraining order shall abridge, deny, alter, restrict, or modify either parent's involvement in the lives of his or her

children, unless it is shown by clear and convincing evidence that the children are in immediate and substantial danger of abuse, abandonment, or neglect as these terms are defined in Statute [insert number of state's child abuse statute] of the State of _____.

[5.2] *Parental Access.* Every temporary or permanent restraining order shall include a case management plan that allows children's continued and regular access to both parties, unless the Court finds by clear and convincing evidence that the children are in immediate danger of harm by one of the parties. The mere existence of an allegation of Domestic Violence is not considered sufficient grounds to presume danger to the children.

[5.3] *Extension.* If the respondent files a petition and/or motion for an extension of time with the Court, said petition and/or motion shall include a proposed case management plan that sets forth visitation and/or custody rights with minor children, pending final resolution of the application for injunction.

[5.4] *Presumption of Access.* The case management plan of the respondent shall be granted unless it is shown by clear and convincing evidence that the proposed visitation and/or custody of children would constitute an immediate threat of abuse and/or neglect as those terms are defined by the law of the State of _____. The Court shall make a written finding of fact either granting and/or rejecting the case management plan submitted by the respondent.

6. False Reporting

False allegations of domestic violence are seldom prosecuted, which serves to encourage the problem, thus squandering scarce criminal justice resources. This section outlines the civil and criminal penalties for false reporting of domestic violence.

[6.1] *Advisement.* All petitioners for a temporary restraining order shall be advised of the legal consequences, as defined and identified under the statutory provisions of false reporting, of filing a false report of Domestic Violence.

[6.2] *Civil Liability.* Any person who issues or causes to issue a false report of Domestic Violence shall be guilty of violating the false reporting statute [insert number of state statute].

[6.3] *Adjustment of Custodial Time and Responsibility.* A person who, in the context of an existing or impending child custody proceeding, makes a false report of Domestic Violence, or who causes said report to be made or who advises another or conspires with another to make a false report, will be subject to an adjustment of custodial conditions and responsibilities. Said adjustments may include any of the following:

[A] Allocation of exclusive custodial responsibility to the accused party.

[B] Allocation of additional parenting time to the accused party in order to make up for any parenting time the parent lost as a result of the proscribed activity.

[C] Allocation of additional parenting time to the accused party in order to rehabilitate any adverse effect upon the relationship between the child and the falsely accused parent as a result of the proscribed activity.

[D] Supervision of the custodial time between the child and accusing parent.

[E] Denial of overnight custodial responsibility to the accusing parent.

[F] Restrictions on the presence of specific persons while the child is with the accusing parent.

[G] Any other conditions or constraints that the Court deems are necessary to assure the protection and continuation of strong child-parental bonds.

[6.4] *Criminal Liability.* A person who, in the context of an existing or impending child custody proceeding, knowingly and willfully makes a false report of Domestic Violence, or who causes said report to be made or who advises another or conspires with another to make a false report, is guilty of a felony in the third degree, may be punishable as provided in [insert number of state statute].

[6.5] *Remedies.* A person who makes a false report of Domestic Violence, or causes said report to be made or counsels or conspires with anyone for the making of a false report, whether such determination is reached under civil or criminal law, shall be civilly liable for treble damages suffered as a direct and proximate result of said false report including reasonable attorney fees and costs to the injured party and/or parties, as a result of said false report.

[6.6] *Public Notification.* A person who is determined to have filed, made, or caused to have been filed or made a false report of Domestic Violence, or who falsely applies for a temporary or permanent restraining order is not entitled to confidentiality. Subsequent to the conclusion of all administrative or judicial proceedings that conclude a false report has been made or caused to have been made, the name of the false reporter and the nature of the false report shall be made public. Such information shall be admissible in any subsequent civil or criminal proceeding. Any person making a report of Domestic Violence, or causing a report to be made, who is acting in good faith is immune from civil liability under this section and shall continue to be entitled to have the confidentiality of their identity maintained.

7. Expungement of Records

A restraining order should not be allowed to taint a person's reputation and compromise one's career opportunities for his or her entire life, especially if no permanent order was put in place. This section delineates procedures for the expungement of records.

[7.1] If a Court of competent jurisdiction issues a temporary restraining order, but does not continue the order at the time of the final hearing, the person who has been accused of Domestic Violence will have all record of the injunction expunged from all the books and records of the State within one (1) month from the date of the final hearing.

[7.2] A person who has been found guilty of same by a Court of competent jurisdiction issuing a temporary or permanent restraining order, may file a petition with the Court to have all record of the injunction expunged from all the books and records of the State after the expiration of twenty-four (24) months from the date the application for injunction is made and/or from the date the actual injunction expires by Court order or operation of law.

8. Judicial Training

Many domestic violence training programs have been shown to be biased and sometimes encourage judges to ignore constitutional protections of the accused.¹² This section defines the requirement for accreditation of such educational programs.

[8.1] Within twelve (12) months of the date that these provisions take effect, training programs shall be offered designed to orient judges, victim advocates, and other judicial personnel with the content and rationale of these provisions. Said training programs will be accredited by a non-governmental accreditation program for domestic violence training, education, and public awareness (TEPA). Said accreditation program shall:

[A] Be organizationally independent from the training organization.

[B] Have published objective criteria to determine the accuracy, balance, and scientifically-validated content of domestic violence training, education, and public awareness programs.

[C] Be established prior to December 30, 2010.

¹² Stop Abusive and Violent Environments. Unequal Justice in the Criminal Justice System. Rockville, MD. 2011. <http://www.saveservices.org/downloads/Unequal-Justice-in-the-Criminal-Justice-System>