



**DEFENSE**

NATIONAL DEFENSE CENTER  
FOR CRIMINALIZED SURVIVORS

# **SURVIVORS WITH CONCURRENT CRIMINAL CHARGES AND CIVIL PROTECTION CASES: CONSIDERATIONS FOR COMMUNITY-BASED ADVOCATES AND CIVIL ATTORNEYS**

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*This paper is not intended to be, nor should it be construed as, legal advice. We urge every survivor who is facing criminal charges and is also involved in the civil system to consult with both a criminal defense and a civil attorney, if at all possible, for help determining on how best to proceed.*

# INTRODUCTION

## Overview

There are many situations in which victims of battering charged with crimes might come into contact with the civil protection order court system. They might:

- Seek an order after being arrested and charged, based on what happened to them during that incident
- Seek an order based on events that don't involve the open criminal charges
- Have a petition for a civil protection order already pending at the time of arrest for a subsequent incident and/or
- Need to respond to an order sought by their abusive partner, either based on the arrest incident or another incident.

Advocates and civil attorneys must be prepared to help their clients weigh the possible risks and benefits of any intervention. Advocates and civil attorneys who work with victims of intimate partner battering are used to helping them evaluate the pros and cons of seeking a civil protection order and explore ways that an order could possibly increase or compromise safety.

But when victims seeking assistance also have open criminal charges pending against them, carefully weighing the pros and cons of seeking a protection order is particularly important. When a victim of battering is facing criminal charges, there may be many possible serious negative consequences (such as going to jail or prison) if their criminal case does not get dismissed or does not go well. Given this reality, it is critical to be aware of and minimize the risks that concurrent civil actions might create for victim defendants and their criminal cases whenever possible.

## Intended audience and purpose of this paper

The information in this paper is intended to assist community-based advocates and civil attorneys who work with survivors, especially those with little or no experience working with victims who have open criminal charges. Please note that this information is designed to provide an overview of some of the key issues raised when victims of battering facing criminal charges are also involved in civil protection order proceedings. Because civil and criminal laws vary from jurisdiction to jurisdiction, and each victim's situation is unique, it is critical to do an individualized assessment with each victim who seeks help.

## Civil protection orders vs. criminal stay-away orders

This paper addresses civil protection orders and does not address stay-away orders issued by a criminal court judge, but it is important to understand the difference. When someone gets arrested for a domestic violence-related charge or any incident in which violence is alleged, it is common for a judge to issue a criminal "stay away" or "no contact" order which prohibits the defendant from having contact with the complaining witness or witnesses. These criminal stay-away orders may be issued at any time while the criminal case is proceeding and may remain in effect throughout the duration of an open case, including, in some jurisdictions, during the time the defendant is on probation or parole. Some jurisdictions allow criminal stay away orders to remain in effect for a period of time after the criminal case is over, regardless of whether the defendant is subject to court supervision. If a judge finds that a defendant has violated a criminal stay-away order, they may face additional charges, a bail increase, more restrictive bail conditions, and/or possible jail time.

It is important to note that these criminal stay-away orders may be, and almost always are, issued without the defendant initially having an opportunity to argue why such an order should not be issued. In addition, criminal stay away orders are generally issued at the request of prosecutors or at the order of the judge; the complaining witness may or may not have any say in the decision to seek this kind of order.

A civil protection order, which gets issued in a civil proceeding after the opportunity for a hearing, is a completely different legal instrument with its own potential penalties and consequences for violations. It is possible for someone to be subject to both a civil protection order and a criminal stay-away order based on the same incident. The orders may differ from one another and might include different requirements. Sometimes, the requirements may seem, or actually are, in conflict with one another. For example, the criminal stay-away order might require the parties to have no contact with one another and the civil order might require the parties to exchange the children for visitation. Violation of either court order could result in significant penalties, so both orders need to be taken seriously. It is not uncommon for defendants to mistakenly believe that the order issued most recently is the only one that needs to be followed. In situations where there are conflicting orders issued, local statutes and case law must be consulted to determine whether one order takes precedence over the other.

## THE NEED FOR COMPLETE REPRESENTATION – ASSESSING THE RISKS

Ideally, every defendant survivor who is considering filing for a protection order, or who is already involved in the civil protection order process, has a criminal defense attorney, a civil attorney, and a community-based advocate working with them. All practitioners would understand not only the interplay between concurrent civil and criminal cases, but also the realities of the lives of victims of battering. The criminal and civil attorneys would strategize together about how to proceed in ways that would be most helpful to preserve their client's rights and options and minimize the survivor's legal and physical risks.

*Although survivors of intimate partner violence get protection orders pro se, or with the assistance of an advocate, those who are facing criminal charges have particular need for civil representation.*

But the reality is that survivors often lack representation, especially in civil court proceedings. Though the law requires that indigent defendants be appointed lawyers in most criminal cases, there is no such right to counsel in civil court in most jurisdictions. Many, if not most, victims of battering cannot afford to hire civil attorneys, and the resources of most anti-domestic violence programs and legal aid offices are extremely limited. While anyone would likely benefit from having an attorney representing them in their civil protection order proceeding, survivors who are also facing criminal charges have a particular need to be represented by a civil attorney in civil protection order proceedings.

### **Risk of self-incrimination**

First and foremost, anything and everything litigants document in written pleadings in civil cases and anything they say in civil court might be used against them in the criminal proceeding. This is especially true if the civil protection order will be based on the same incident that gave rise to the criminal charges. The petition for a protection order often requires the petitioner's oath (affidavit) and any testimony during the hearing will most likely also be taken under oath. Sworn statements, whether written or spoken, made in a civil case may be used later by prosecutors in a variety of ways. For example, for preparation of prosecution witnesses for trial, plea negotiations and leverage, trial strategy and cross-examination of the defendant survivor (if they testify),

and sentencing recommendations. Because of the potentially dire consequences of criminal convictions, it is extremely important to avoid or minimize any chance that a survivor's written or verbal statements will be used against them later in criminal court.

There are many ways that a litigant's seemingly harmless statements made during one court proceeding can be used against them in subsequent court cases. When the civil case goes first, there is a significant risk that what happens in civil court will be used against the defendant in the criminal court proceeding. Any perceived contradiction between what the survivor says in civil versus criminal court, no matter how minor, could be used by the prosecutor to undermine the survivor's credibility in the criminal case. Innocent omissions may be crafted to look like deliberate lies.

### *Prior statements can be harmful regardless of truth.*

Even if the survivor doesn't plan on testifying in the criminal proceeding, statements in pleadings or testimony in civil court may be introduced against them (unless their state's laws prohibit this). In addition, the survivor's testimony may make the prosecution aware of potentially harmful information that would have otherwise remained undiscovered.

## **Risk of collateral consequences**

The devastating impact of a conviction on survivors' lives can be far reaching. Not only could they face incarceration, there are numerous other risks as well. If they are not a citizen of the United States, they may be deported. A criminal conviction could result in losing – or not being able to get – employment or housing and may limit their educational opportunities. Victim defendants may be saddled with a presumption against getting custody of their children, and may ultimately lose physical and/or legal custody of their children. These represent only a few of possible negative consequences of a criminal conviction. If at all possible, charged survivors should consult with both an experienced criminal defense attorney and a civil attorney, that can help protect their legal rights and increase the likelihood of a more just result. For more information about the collateral consequences of criminal convictions, visit [the National Inventory of Collateral Consequences of Conviction](#).

## **Risk of collateral estoppel or issue preclusion**

There are other legal risks as well. The law prohibits issues of fact or law from being litigated more than once. This doctrine is called "collateral estoppel," or "issue preclusion." Whether this is at issue in any particular case is a very complicated legal determination, and requires careful attention, particularly when the same set of facts or allegations gives rise to both a civil and a criminal case. For example, suppose a victim seeks a protection order based on an incident in which they used self-defense to protect themselves from their partner's abuse and they were later arrested. In that civil case, the survivor seeking a protection order will be required to meet a certain threshold of evidence that their partner committed some act of abuse that is a sufficient basis for a protection order. If the judge at the civil protection order hearing does not rule in the survivor's favor and denies their petition, the judge may also issue a finding of fact that they did not meet the required threshold of evidence. In turn, in criminal court, that survivor's defense might now be vulnerable to an argument from the prosecutor that a judge already has ruled that there isn't sufficient evidence that their partner was abusing them at the time of the alleged crime.

Also, the prosecutor's decision-making process about possible dismissals, plea agreements, etc., may be adversely affected by what happens in civil court. Depending on the outcome of a civil protection order hearing, the State may conclude that the survivor is not credible and fabricated a claim of abuse. Additionally, if the court determines that allegations made by the survivor's abusive partner about the victim defendant's behavior are persuasive enough to grant an order against them, then the prosecutor may be swayed to conclude that the survivor was the "bad actor" or "aggressor" and should be held accountable in the criminal system.

# MINIMIZING THE LEGAL AND SAFETY RISKS

Civil attorneys, advocates, and defense attorneys – working individually and in collaboration – can do much to minimize the legal and safety risks faced by victim defendants who are also involved in the protection order process.

## Civil attorneys

In close collaboration with the criminal defense attorney, a civil attorney may:

- Advise their client about the legal risks and benefits of seeking a protection order, especially with regards to the open criminal matter
- Draft or respond to a petition in a way that minimizes the harm that may be done if the petition or response is introduced in criminal court
- Influence the “timeline” of the case, including which case proceeds first, if possible
- Prepare the survivor for testimony and cross-examination, with a focus on how such testimony interacts with the criminal case
- Anticipate and address any perceived inconsistencies in the survivor’s statements between the civil and criminal court processes
- Cross-examine the abusive partner in a way that locks them into their testimony
- Object to inadmissible and overly prejudicial statements made by the abusive partner
- Resolve the civil case in a way that requires no “admissions” or “findings of fact” on the record that could affect the survivor’s current or future criminal case(s) (or immigration actions) and/or
- Strategize with the defense attorney about how to make helpful arguments regarding collateral estoppel, where appropriate.

## Advocates

In addition to providing support and advocacy, an advocate may:

- Connect survivor defendants with the local public defender’s office, other local legal defense attorneys who might represent them in court, or the local bar association or lawyer referral service, if they do not yet have a criminal defense attorney
- Work with defense attorneys who often don’t have much experience representing victims of battering to help them understand the dynamics of domestic violence and the complexities of the lives of victims of battering
- Help the civil and defense attorneys understand the importance of collaborating with one another, and put them in touch with each other if necessary
- Consult with the defense attorney every time a victim defendant requests assistance with getting or responding to a civil protection order
- Ask the defense attorney to review any pleadings that will be filed in civil court if the survivor is unrepresented
- Work with the victim to tailor a safety plan relevant to their specific needs, whether or not they decide to file a petition for protection and/or
- Collaborate with the survivor’s attorneys to help them gain a better understanding of the intersection of the civil and criminal legal system as it pertains to their case.

## Defense attorneys

To assist survivor defendants with regards to their civil cases, a criminal defense attorney may:

- Advise the survivor, their advocate, and their civil attorney about the aspects of the criminal case that may be adversely affected by civil court proceedings
- Thoroughly explore the pros and cons of having the criminal case proceed first
- Advise victim defendants about their Fifth Amendment rights against self-incrimination
- If the survivor doesn't have a civil attorney and ultimately decides to seek a protection order, review the civil petition before submitting it in order to advise them regarding ways to minimize their risks with regards to their criminal case
- Provide the civil attorney with information about what happened in criminal court, so the civil attorney can be prepared for the protection order hearing
- Discuss the relevant local criminal and civil statutes and case law with civil attorney that may have an impact on the strategy, substance, and timing of the cases and/or
- Share their knowledge of collateral consequences stemming from criminal convictions as it pertains to the victim defendant and their case to fully advise them about and weigh the risks of the civil hearing.

## SUGGESTIONS FOR ADVOCATES AND CIVIL ATTORNEYS

In any situation, collaboration is key. If a survivor has pending criminal charges and is seeking or responding to a protection order, contact their defense attorney. The survivor, as well as their advocate and attorneys, should all be on the same page with regards to the potential risks and benefits of pursuing or responding to a civil protection order.

Although the following information is categorized for convenience, it is recommended that the section be read as a whole, as much of the information can be useful for many different situations. Keep in mind that these are just some of the many possible situations that may exist for victim defendants who are also involved in the civil protection order process.

### **If the victim is seeking an order based on the same facts for which they are charged:**

- Ask the defense attorney for their advice about the risks of going forward with the protection order.
- If the benefits of seeking an order outweigh the risks, see if the defense attorney will collaborate in the drafting of the petition. Depending on the facts of the case, there may be ways to draft the allegations that would lessen the potential negative consequences.
- Check in with the defense attorney about court dates; it will probably (though not always) be best to try to finish the criminal proceedings first.

### **If the victim is seeking an order based on a different incident than the one for which they were arrested:**

- Although this scenario is probably less risky than if both proceedings are based on the same incident, there are still ways in which survivor defendants' statements in civil court may be used against them in the criminal proceeding. For example, they may be asked about the facts that gave rise to

the criminal case, even though they are not alleged in the petition, such as during cross-examination. Another possibility is that the things said by the survivor during the civil hearing are used to impeach or undermine their credibility at the criminal proceeding.

- Talk with the defense attorney about what to do if the victim is asked about an open criminal case in the civil hearing. Depending on the reasons that a petitioner is being asked about the criminal case, there may be ways to limit or exclude testimony about the criminal case.
- Be aware of the chance that the prosecutor may make unfavorable assumptions about the victim and the strength of the criminal case based on what happens at the civil proceeding.
- Talk with the defense attorney about how to avoid saying or writing things during the civil protection order process that might “open the door” to information about the criminal case.

#### **If the protection order is pending when the victim gets arrested:**

- Talk with their defense attorney about whether the petition can or should be amended. The arrest doesn’t necessarily affect the validity of the previous petition, but some thought should be given as to whether it is wise to include the facts underlying the incident for which they were arrested.
- The defense attorney may wish to introduce prior instances of abuse as a part of the criminal case, or submit this information to the prosecutor for pre-trial negotiations. Depending on the circumstances of the case, it may be best if the protection order hearing proceeds first (so there is a record of the abuse). This decision needs to be carefully weighed in discussion with the survivor and their defense counsel.
- If the victim does not have a civil attorney for the protection order hearing, the defense attorney may be able to talk to the survivor about how to keep their testimony “within the bounds” of the protection order hearing, and how to respond to potential questions from their abusive partner about the incident for which the survivor was arrested.

#### **If the victim is arrested for an incident for which there already has been a civil protection order proceeding:**

- Advise the victim defendant to give their defense attorney copies of the civil pleadings, including the petition and final order. Help the survivor obtain copies, if necessary.
- The defense attorney might want transcripts of the civil proceeding, so keeping track of the civil court dates and locations is important.

#### **If the victim defendant has been arrested and is responding to a petition for a protection order sought by their abusive partner:**

- It may be a good idea to waive the right to file a written response to a petition as the risks of putting the survivor’s words on the record are the same as if they are the one who sought the petition.
- Filing a cross-petition might be a good option for a survivor, but again, this may require that they document their account of the incident, which could then be used against them in the criminal matter.
- If the survivor has not yet hired or been appointed counsel for the criminal matter, they should probably try to continue the civil hearing until they have a criminal defense attorney. As the respondent, the survivor might have a good chance to get a continuance, since their Fifth Amendment rights against self-incrimination are involved.



# ADDITIONAL CONSIDERATIONS

Some survivors with open criminal charges may immediately decide to seek a civil protection order after weighing the legal risks on their own or in consultation a civil attorney and/or advocate. Victim defendants may decide that the protection they hope to receive from the protection order hearing outweighs any possible risks that getting the order may create with their criminal case. In other words, they may decide that their immediate safety needs exceed any possible future legal consequences that may occur. Of course, victims make their own decisions about their lives. Notably, when victim defendants talk with their advocates, civil attorneys, and defense attorneys in advance of making this decision, they are given realistic information about the pros and cons of seeking a civil protection order.

## Timing matters

Although it is usually a good idea to proceed first with the criminal case, when possible, there may also be strategic reasons for proceeding with the civil protection order hearing first, despite the risks.

For example, some criminal defense attorneys use the records from civil protection order hearings so that they get a clearer picture of the facts alleged against their clients. This information may be very helpful in preparing for the criminal trial. In fact, some criminal defense attorneys want the words of the abuser on record, so that they can use his testimony to impeach him at the criminal trial. In certain jurisdictions, testimony given in protection order proceedings is not admissible in criminal court, so there would likely be no reason not to proceed immediately with the civil hearing.

## Different standards of proof

It is also important to note that the criminal and civil systems have very different “standards of proof” – meaning the minimum threshold amount of evidence a party needs to present for the court to enter a judgment in their favor. In civil court, the standard of proof is much lower, and allegations are easier to prove than in criminal court. This reality may affect strategy decisions about which case proceeds first, particularly when the survivor has some control over the timing of their cases.

For example, suppose a victim of battering is defending against an order of protection filed by their abusive partner based on the same incident from which the charges arose. If the civil case is heard first and their abusive partner is unsuccessful at proving to the court the facts he alleged surrounding the incident, the survivor’s criminal attorney may be able to argue for a dismissal of the criminal charges, arguing that the facts alleged in the criminal case have already been litigated, and that the evidence already presented was determined by the court to be insufficient to meet even the lower civil threshold.

Or, given the same scenario, if the civil case is heard first and the survivor’s abusive partner is successful in obtaining a protection order against them, due in part to the fact that there is a lower standard of proof in civil court, the prosecutor might view the issuance of the order as “proof” that the victim of battering is the aggressor. The fact that the survivor now has a final order of protection issued against them may make the prosecutor much less receptive to arguments from defense counsel as to why the criminal case should be dismissed. For example, the final order against the survivor may make the prosecutor much less open to arguments that there is insufficient evidence to proceed with the prosecution or that the criminal case should be dismissed in the interest of justice.

These examples above represent just a few of many ways that the differing standards of proof in civil and criminal cases could have an impact. The differing standards of proof are yet another reason why careful strategy about the timing of cases is extremely important. If possible, decisions about timing are a result of close collaboration between the criminal defense attorney, the civil attorney, the defendant, and the advocate.

It is also important to note that because the standards of proof are different, the outcomes of subsequent civil and criminal cases may differ greatly, even if both proceedings are based on the same set of facts.

## WHEN THERE IS NO CIVIL ATTORNEY: INFORMATION FOR COMMUNITY- BASED ADVOCATES

Despite the efforts of victim defendants and their advocates, the majority of victims of battering end up facing civil court proceedings without ever having consulted or retained an attorney. Others, who may eventually end up being represented, often are unable to get legal advice from an attorney during those very important early days (or even hours) of their legal case or potential case. Many community-based advocates work hard to provide unrepresented survivors with useful guidance and information. Given these realities, included below are a series of scenarios aimed primarily at advocates working with victims of battering who are not represented by a civil attorney and, in some situations, by a criminal defense attorney.

### Scenarios

**I am working with a survivor who was arrested and charged with a crime against their partner after defending themselves. The survivor just made bond and is awaiting trial, and is thinking about filing a petition to get a civil protection order based on what happened that day. The survivor cannot afford to hire a civil attorney. What should I tell them?**

Since a petition requires including a narrative about what happened during the incident, it is crucial that the survivor talk to their defense attorney before filing the petition. The defense attorney might feel that it is too risky to file a petition based on the incident for which there are now criminal charges against their client. Remember, anything in a sworn document or testified to in court can be used against the survivor in their criminal case! If the victim defendant and their defense attorney decide that the benefits of filing a petition outweigh the risks. Or, if the survivor decides to file regardless of the risks explained by the defense attorney, if possible, the defense attorney should review the content of the petition.

**I am working with a victim of battering who has been charged with a crime. The survivor wants to file for a civil protection order for an incident has nothing at all to do with the charged incident. Will it be okay for them doing so?**

This scenario is probably less risky than if both proceedings are based on the same incident, but there are still ways in which their statements in civil court may be used against your client in the criminal proceeding.

For example, there are circumstances under which they may be asked about the facts that gave rise to the criminal case, even though those facts aren't alleged in the petition, such as during cross-examination. This possibility raises the same set of legal hazards that exist when the underlying incident is the same. Another possibility is that the things said by the survivor during the civil hearing are used to impeach or undermine

their credibility at the criminal proceeding. There is also the risk that the prosecutor may make unfavorable judgments about your client based on the outcome of the civil proceeding.

**I am working with a survivor who wants to get a civil protection order against their partner. However, the survivor has open criminal charges pending for an incident that happened several months ago in which their partner is listed as the victim in the case. The survivor is worried that they might be asked about what happened during the old incident if testifying for the protection order hearing.**

It is possible that your client might be asked about that incident in civil court. Your client's partner and/or their partner's attorney would likely try to use that prior incident to try to show that their abusive partner is the "real" victim in the relationship. The judge may or may not allow the abuser's lawyer to introduce the fact that the survivor was arrested for the incident. If allowed, their response to questions about the facts of the case will certainly be put on the record, making it possible for the prosecution to use those statements against the survivor during the criminal case. Therefore, your client should consult with their criminal defense attorney before proceeding with filing for a civil protection order.

**I am working with a victim who filed a civil protection order petition against their abusive partner after being beaten by them. Two days later, the survivor was arrested for injuries to their abusive partner caused while protecting themselves during another subsequent beating. Should the survivor amend the petition to add the new incident?**

The mere fact of your client's arrest doesn't necessarily affect the validity of their previous petition. There is probably no reason to amend the petition, unless their defense attorney advises that they do so. It may, however, be a good idea for your client to talk with their defense attorney about whether they should seek a continuance in the protection order case if it is scheduled to proceed before the criminal case arising from the subsequent incident is resolved. Collateral estoppel, as discussed above, may be an issue.

In addition, the defense attorney in your client's criminal case may want to introduce past instances of abuse in order to support their defense. The prosecution could then try to use the statements made during the protection order hearing against the survivor in the criminal case. If, however, a continuance seems like a bad idea (i.e., because there is no temporary protection order that will cover the survivor until the next court date, or because the court will not grant such a request), then it would be a good idea for them to talk with their defense attorney about how to keep the survivor's testimony "within the bounds" of the protection order petition, and how to respond to questions from their abusive partner or his attorney that seem to be "outside the scope" of the petition.

**I am working with a victim who filed a civil protection order petition about a month ago and their abusive partner cross-filed. After the civil hearing on the merits, they each were issued a mutual protection order against the other. Subsequently, my client now has criminal charges filed against them based on the same incident for which the protection order was filed. The survivor will be meeting with their criminal defense attorney tomorrow for the first time. What information might help their defense attorney to know about the survivor's protection order case?**

It would be a good idea for the survivor to bring copies of all of the protection order paperwork that was filed, including the petition and final order, to their defense attorney. In addition, the survivor should bring the dates and locations of all of the previous hearings, in the event that the defense attorney would like to obtain transcripts of the proceedings.

**I am working with a victim defendant whose abusive partner had them arrested. The police also told their abusive partner to go get a civil protection order, so he filed for one right away. What should my client do?**

If the victim defendant is responding to a petition for a civil protection order sought by their abusive partner, the legal risks to them aren't necessarily different than if they had sought the order, but the strategies to minimize them might be.

For example, it might be a good idea to waive the right to file a written response or a cross-petition to an initial petition. In addition, it is sometimes easier for the victim as a respondent to obtain a continuance pending the outcome of the criminal proceeding. There are several reasons for this: your client may argue that forcing them to proceed with the civil hearing now violates their Fifth Amendment right against self-incrimination; your client also may also argue that a continuance is in the interests of judicial economy, as any findings of fact from criminal court will not need to be retried in the civil case.

**I am working with a victim who has a hearing in the next few days for a civil protection order petition filed against them by their abusive partner. Now there is also a pending criminal case against my client based on the same incident. The survivor has not yet been appointed a criminal defense attorney and cannot afford to hire one. What should my client's next steps be?**

If possible, it probably is a good idea for your client to request a continuance until they have a criminal defense attorney assigned to represent them (which should happen if your client cannot afford one). In fact, some civil judges prefer to wait until related criminal cases have been resolved. If the victim defendant is unable to get a continuance, it is vital that they understand that their statements in civil court can be used against them in criminal court. If your client decides not to testify in the civil court case, it might be helpful to put on the record that they decline to testify based on their rights under the Fifth Amendment.

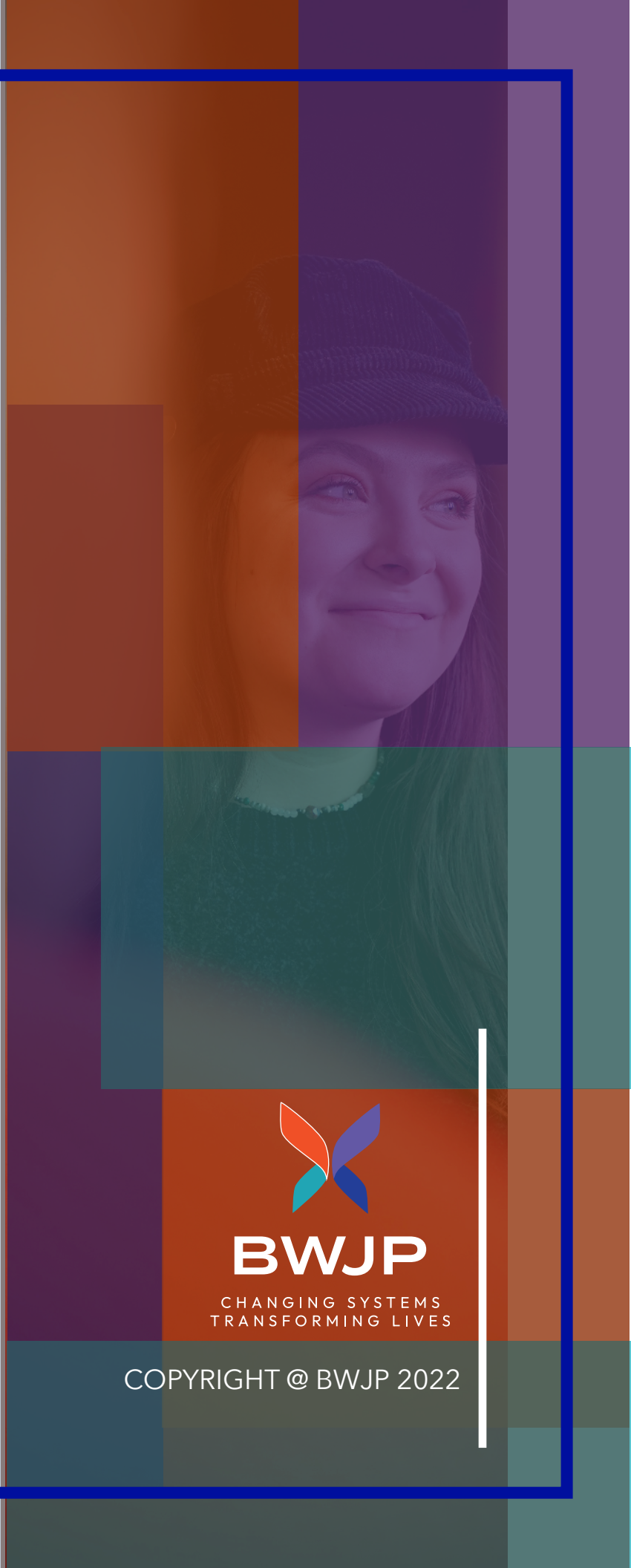
**A survivor told me they think criminal charges may be filed against them soon because their abusive partner told them he called the police and filed a report. He also recently filed for a civil protection order against the victim. My client wants to file a cross-petition. The victim doesn't have the money to hire any attorney. What should they do?**

The first thing your client might want to do is contact the local public defender's office to see if someone would be willing to speak to them, even if criminal charges are not yet filed. Sometimes, the public defender's office can determine whether there has been a police report filed, and/or whether there has been an arrest warrant issued. Keep in mind, it is not uncommon for abusive partners to lie about filing police reports as a scare tactic. In addition, filing a police report doesn't necessarily mean that there will ever be charges filed.

If your client cannot determine whether there are actual criminal charges pending against them, you might suggest that they try to get a continuance in the protection order case, until either the criminal case proceeds (at which time your client will probably get a lawyer appointed to represent them), or until it can be determined that there is no criminal case and the survivor can safely file the cross-petition. Remember, anything put in writing, and anything said in court could be used against the survivor later if they end up getting charged with a crime.

However, if the hearing is going to go forward, and the survivor has decided to be heard in court against the allegations in the petition (and cannot do so without testifying), then your client is going to have to testify under oath regarding their version of events. In that case, the potential harm in filing a cross petition may be reduced, as the survivor's words are going to end up on the record anyway.

If the protection order hearing proceeds (whether or not they ended up filing the cross petition) and your client is subsequently arrested and charged, it will be important for them to make sure their criminal defense attorney knows everything that happened during the protection order proceeding. Keeping accurate records of court dates, court rooms, judges, etc. and keeping track of all paperwork (complaints, subpoenas, etc.) will also be a big help to the defense attorney.



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