



Mary Savage Kentucky Domestic Violence Association

AMANDA'S LAW: CHANGES TO THE KENTUCKY PROTECTIVE ORDER STATUTES

NEW DEFINITION: FAMILY MEMBER

- "Family member" means a spouse, including a former spouse, a grandparent, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim; ~~related by consanguinity or affinity within the second degree; and~~

KRS 403.720(2)

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IMPLICATIONS

Effects who qualifies for an EPO/DVO

Note: non-listed relatives *may* still qualify if the victim is a minor (e.g. siblings)

Effects law enforcement: warrantless arrest on probably cause for assault 4-family member

Will it be applied retroactively – eg where there was an EPO prior to 7/15, or, where petitioner is asking for an extension of a DVO

EXPIRATION DATE OF EPOS

- An emergency protective order issued in accordance with this section shall be effective *until the full hearing provided for in this subsection or in KRS 403.745, or until withdrawn by the court*~~[for a period of time fixed in the order, but not to exceed fourteen (14) days]~~.
- See bottom of page 1 of EPO

FIRST HEARING DATE W/IN 14 DAYS


- Upon the issuance of an emergency protective order, *the court shall set a date and time* for a full hearing, *within fourteen (14) days* as provided for in KRS 403.745, *and shall summon the adverse party to appear.*
- New AOC form 275

REISSUANCE OF SUMMONS EVERY 14 DAYS IF THERE IS NO SERVICE

- *If, at the hearing, the adverse party is not present and has not been served, the emergency protective order shall remain in place, and the court shall direct the issuance of a new summons for a hearing set not more than fourteen (14) days in the future.*
- LINK screen will show date of hearing
- LEO must add an S# for each new summons

72 HOUR NOTICE REQUIRED

- If service has not been made on the adverse party prior to seventy-two (72) hours before that hearing or a subsequent hearing, the emergency protective order shall remain in place and the court shall continue the hearing and issue a new summons with a new date and time for the hearing to occur, which shall be within fourteen (14) days of the originally scheduled date for the continued hearing.

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- There is no waiver of this 72 hour notice requirement so it's unclear if a judge can go forward with the hearing if respondent shows up and "agrees" to go ahead with the hearing
 - If respondent is savvy or speaks to an attorney and knows about the 72 hour requirement, can they just not show up? Then law enforcement will have to serve yet another summons? (The EPO will have been served though)

CONTINUED REISSUANCE OF SUMMONS

- *The court shall repeat the process of continuing the hearing and reissuing a new summons after noting the lapse of time since the issuance of the emergency protective order until the adverse party is served at least seventy-two (72) hours in advance of the scheduled hearing*

NOTICE TO PETITIONER

- *In issuing the summons, the court shall simultaneously transmit a copy of the summons or notice of its issuance and provisions to the petitioner*

CONTINUANCE OF EPO

- 6 months maximum
- Then rescinded by the Court w/out prejudice – there is a place on p.2 of the DVO form – to notice the LINK entry operator
- Petitioner will get notice and can file a new petition – new AOC form 275.13 – sent by clerk via mail
- Unclear if issuance of new EPO based on same allegations is automatic/discretionary
- The new EPO gets a new trailer #
- 2 year maximum for series of unserved EPOs

PETITIONER MUST SPECIFICALLY
DESCRIBE PLACES RESPONDENT MUST
STAY AWAY FROM

- *Restraining the adverse party from going to or within a specified distance of a specifically described residence, school, or place of employment of the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order;*
- KRS 403.740(d)/KRS 403.750(d)/p.3 petition (may be revised to make this optional)

DVO hearing - Petitioner

- *provide the court with a list of specified areas from which the petitioner would like the respondent excluded*
- *The petitioner shall provide the court with an explanation of the reasons for and the benefits of ordering the respondent to be excluded from each location.*

DVO hearing - Respondent

- Provide any objections or concerns relating to areas which the petitioner has requested that the respondent be ordered to refrain from going to or near.
- provide the court with an explanation of the reasons for or the benefits of denying the petitioner's request.
- If the respondent or counsel for the respondent fails to appear for the hearing, the respondent is deemed to waive, until and unless another hearing is set, any objection to the petitioner's request.

SPECIFIC DEMONSTRABLE DANGER

- *(4) The court shall not order the respondent to refrain from going to or near a location where there is not a specific, demonstrable danger to the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order.*

NEW MAXIMUM STAY AWAY DISTANCE

- *Restraining the adverse party from approaching the petitioner or a minor child of the petitioner within a distance specified in the order, not to exceed five hundred (500) feet; or*
- KRS 403.740(g)/KRS 403.750(i)
- Some indication this may have been a “leftover” tied into the GPS language; may ultimately be tweaked

RECORDS AT DVO HEARING

- Petitioner, Respondent, or Court may initiate request
- Respondent's Kentucky criminal records
- Respondent's Kentucky EPO/DVO/compliance records
- It's anticipated the clerks will automatically get these records, it'll be up to the judge whether they look at them or not
- KRE 404—prior bad acts – potential litigation

The Court shall:

- Consider . . . respondent's record of past violence, threats of violence, and danger to others;
- Consider . . . the record of the respondent's compliance or noncompliance with those orders;
- assess which sanctions may protect against danger
- *Provide copies to petitioner/respondent*

COUNTY ATTORNEY

- Court *may* refer petitioner to speak to the County Attorney; optional for petitioner to do so
- This could be triggered by the allegations in the petition, the respondent's EPO/DVO records or the respondent's criminal record
- Purpose is to give petitioner information about options for filing criminal charges
- The Court is to facilitate arranging that meeting
- P.3 of petition – informs petitioner of option

GLOBAL POSITIONING MONITORING SYSTEM

- Can NOT be ordered at the EPO stage
- KRS 403.740(h)
- Can NOT be ordered at the initial DVO hearing – but notice on p.3 of DVO that violation might result in GPS monitoring
- KRS 403.750(j)
- ONLY if a *substantial violation* occurs

SUBSTANTIAL VIOLATION


- *(a) An assault prohibited by KRS Chapter 508;*
- *(b) Menacing as prohibited by KRS 508.050;*
- *(c) Terroristic threatening as prohibited by KRS Chapter 508;*
- *(d) Stalking as prohibited by KRS Chapter 508;*
- *(e) Wanton endangerment as prohibited by KRS Chapter 508;*
- *(f) Kidnapping or a related offense as prohibited by KRS Chapter 509;*

SUBSTANTIAL VIOLATION CONT.

- *(g) A sexual offense as prohibited by KRS Chapter 510 other than indecent exposure;*
- *(h) Burglary as prohibited by KRS Chapter 511;*
- *(i) Destruction or damage to property as prohibited by KRS Chapter 512;*
- *(j) Theft as prohibited by KRS Chapter 514;*
- *(k) Harassment or harassing communications as prohibited by KRS Chapter 525; or*
- *(l) Any felony offense against the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order.*

HEARING

- Petitioner reports the violation to the court
- The court obtains the respondents KY EPO/DVO and criminal records
- At the hearing the court has to explain to petitioner:
 - Right to participate/refuse GPS monitoring
 - How GPS works and its limitations
 - What to do if there is a violation
 - Community support services



What's the standard for the court to apply?


- *Consider the likelihood that without the utilization of a global positioning monitoring system the respondent will seek to kill, assault, stalk, harass, menace, or otherwise threaten the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order; and*

Court must make specific findings of fact

- *Enter a determination of findings of fact and reasons as to why the petitioner's request for the respondent to be ordered to participate in global positioning monitoring is being granted or denied.*



VIOLATIONS

- Definitely can be handled as contempt
 - Is the GPS order a modification of the DVO such that violations can be charged as violation of a PO – class A misdemeanor?
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Who pays?

- *Neither the Commonwealth, nor the Court of Justice nor the county, urban county, charter county, or consolidated local government shall be responsible for payment of any costs associated with operating the global positioning monitoring system in relation to an indigent respondent or petitioner.*

Who responds to violations?

- *the court shall provide to the petitioner who participates in a global positioning monitoring system under this section, the name and telephone number of an appropriate local law enforcement agency in the county in which the order is issued whom the petitioner may call to request immediate assistance if the respondent violates a condition of the domestic violence order imposed pursuant to Section 5 of this Act and this section*

May devolve to 911


- *If the local law enforcement agency does not provide service twenty-four (24) hours per day, seven (7) days per week, the petitioner shall be instructed to call the local public safety answering point using the 911 telephone number.*

Wearing the device

- 1. Fail to wear the device;
- 2. Remove a device that the respondent has been ordered to wear; or
- 3. Tamper with or destroy a device that the respondent has been ordered to wear.
- (b) A respondent who violates paragraph (a) of this subsection shall be guilty of a Class D felony.



Can the respondent ask that it be removed?

- Respondent can request that it be removed after 3 months
 - If that request is denied, respondent can make another request after another 6 months and every 6 months thereafter
 - Petitioner can also request that it be removed
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Confidentiality of monitoring records


- information obtained from persons subject to monitoring pursuant to KRS 403.715 to 403.785 shall not be utilized for any criminal investigation, prosecution, or other criminal justice related purpose without a valid search warrant or order issued by a court of competent jurisdiction. Information obtained in violation of this subsection or without a valid search warrant or court order shall be inadmissible in court for any purpose.

Penalty for releasing monitoring records

- *Any person or organization who knowingly or wantonly divulges global positioning monitoring system information about any person in violation of subsection (6) or (7) of this section shall be guilty of a Class A misdemeanor*



Use of GPS monitoring in criminal court

- Home incarceration
 - Pretrial release
 - Pretrial diversion
 - Conditional discharge
 - For all types of criminal cases, not limited to DV
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Miscellaneous provisions


- Justice must provide training to all law enforcement officers on DV; officers must have training once every 2 years; available technology may be used (online, DVDs, ?)
- KRS 431.005 warrantless arrest upon probable cause, reflects change to definition of family member
- If court denies EPO the court shall inform the petitioner of ability to contact county attorney

DV shelter trespass – a new class A misdemeanor

- *A person is guilty of domestic violence shelter trespass when:*
- *(a) The person enters the buildings or premises of a domestic violence shelter that the person knows or should know is a domestic violence shelter or which is clearly marked on the building or premises as being a domestic violence shelter; and*
- *(b) At the time of the entering, the person is the subject of an order of protection entered under Section 2 or 5 of this Act or a foreign protective order filed under KRS 403.7521.*

New/amended sections of KRS

- Sec.1 – KRS 403.720(a)
- Sec.2 – KRS 403.740(a)
- Sec.3 – KRS 403.741(c)
- Sec.4 – KRS 403.743(c)
- Sec.5 – KRS 403.750(a)
- Sec.6 – KRS 403.747(c)
- Sec.7 – KRS 403.761(c)
- Sec.8 – KRS 403.762(c)

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- Sec.9 – KRS 67.372(c)
 - Sec.10 – KRS 67.347(c)
 - Sec.11 – KRS 431.517(a)
 - Sec.12 – KRS 431.518(a)
 - Sec.13 – KRS 431.520(a)
 - Sec.14 – KRS 533.250(a)
 - Sec.15 – KRS 533.030(a)
 - Sec.16 – KRS 15.334(a)











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- Sec.17 – KRS 431.005(a)
 - Sec. 18 – KRS 511.085(c)
 - Sec.19 – KRS 403.735(a)
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Questions?

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