

Considerations for Judges: Drafting Technology-Responsive Dispositions in Cyberviolence Cases

Whether drafting civil protection orders, criminal no-contact orders, parenting plans, or visitation orders, it is imperative that orders be crafted specific to the case at hand. Boilerplate language may not be effective in addressing the ways technology is used or misused in every case. This guide is intended to assist judicial officers in identifying how to effectively intervene in the unique circumstances presented in cyberviolence cases.

Effective dispositions benefit from considering accountability for the party who has misused technology and the needs of the protected party. The following are suggestions for accountability and safety.

To help ensure accountability:

- Orders should address how the offender has misused technology to abuse, harass, or stalk.
- The focus should be on the specific behavior of the offender rather than the specific technology being misused. This will ensure the order addresses the behavior without leaving loop-holes or misunderstanding in the order.
- Whenever possible, limitations on the use of technology should only be used to prevent further abuse and harassment by the offender, not to punish the victim.

To help ensure safety:

- Orders should also consider the technology needs and requirements of the protected parties. Technology has become an important part of life for most people and victims frequently need technology to maintain community, find safety, and access services.
- Finally, courts should identify tech issues that create safety risks for victims in cyberviolence cases to ensure orders do not unintentionally create new risks for victims. Understanding these factors can assist courts in drafting orders that include unique and specific conditions to meet the needs of individual cases and more effectively address technology in dispositions.

The following is a non-exhaustive list of things to consider when drafting orders in cyberviolence cases.

General Considerations:

- What technologies are currently being misused?
- What technologies have been misused in the past?
- Can the abusive person access or control the victim's technology or accounts?
 - a. For example, do they share a phone plan? Is the abusive person the account holder and able to inappropriately shut off important services such as phone or internet?
- Are there any technologies that are especially important for the victim to have access to?
 - a. For example, does the victim work by selling items on eBay or through social media? Does the victim have a website where they advertise their professional services?
 - b. Are there any technologies the victim uses for safety and support?
- What are the victim's concerns about the misuse of technology?
- What are the victim's wishes regarding technology?
 - a. Issues to consider: The victim should not be punished for the abuser's actions. Therefore, they should not be asked to delete their accounts or give up their devices.
- If the abusive person has access to accounts, are there ways to sever or protect against future misuse?
 - a. For example, would a court order help a person to sever a family phone plan? Are there other remedies in your state that could help?
- Are there pictures, videos, or other digital content in the abuser's possession or under their control that the victim wants turned over or destroyed?
 - a. Issue to consider: What orders can be imposed to ensure that the content is not uploaded online or otherwise misused?

Considerations for Cases that Include Children:

- Do the parties share access to the children?
- Do the parties use technology to communicate or interact with the children?
- Who controls the children’s technology accounts?
- Has the abusive party given a technology-related gift to the children that could be misused to track or stalk?
- What is your policy for exchanging technology gifts with children?
- How do the parties use technology to communicate?
 - a. Issue to consider: Orders to only communicate about the children can often be misused to continue harassment. Are there appropriate limitations on communication to address abusive behavior such as setting timeframes for calls or time limits during calls?

Consideration for Case that Involve Intimate Partner Violence:

- Is this cyberviolence case related to intimate partner violence?
 - If so, should there be a danger assessment?
 - Should the case be moved to a high-risk docket, if available?
 - Is ordering completion of a Batterer’s Intervention Program appropriate?
- Has technology been used as a tool of abuse?
 - What steps might help protect against future abuse?

Compliance Considerations:

- What mechanisms can you put in place to increase compliance and enforceability of your order?
 - Are you able to order a compliance review hearing?
- What options for monitoring defendants do you have in your state?
 - Interactions with Probation?
 - GPS monitoring?
- Does your order respond to all credible allegations?

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