

ADVOCATE'S GUIDE TO COURT ADVOCACY IN NEVADA

NCEDSV.ORG

GUIDE ACKNOWLEDGEMENTS

NCEDSV would like to thank Amber Huff, Tonya Yell, and Stephanie MacDonald, Esq. for their assistance and input of this guide.

This project was supported by Subgrant No. 2021-VAWA-28 awarded by the state administering office for the Office on Violence Against Women, U.S. Department of Justice's STOP Formula Grant Program. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the state or the US Department of Justice

CONTENTS

Guide Acknowledgements	1
Introduction	3
The History of Court Advocacy	3
What Is the Unauthorized Practice of Law?	5
Applying Facts to Law/Giving Legal Advice.....	6
Filling out forms for clients	7
What is Court Advocacy?	7
Victim Rights in Nevada.....	9
Crime Victims Bill of Rights	9
Marsy’s Law	12
Sexual Assault Bill of Rights	17
Nevada Revised Statutes	20
Advocate Privilege	20
Legal Systems.....	21
Criminal Legal System	21
Civil Legal System.....	26
Legal Aid Resources in Nevada	29
Preparing For Court.....	30
Domestic Violence Protection Order Application.....	32
Special Considerations when applying for DV POs.	32
Separation Violence.....	32
Firearms	33
Teens	34
How to Assist with Clients without UPL.....	34
Sexual Assault Protection Order Application (SA TPO)	34
Sample Application.....	35

INTRODUCTION

Court advocacy is a specialized area of victim advocacy that calls for court advocates to follow *specific* procedures and ethical boundaries. While every jurisdiction is different, there is some information that all court advocates must understand and be able to share with their clients.

Much of court advocacy is learned with a first client. Not unlike being tossed in the deep end of the pool to learn how to swim! Much is also learned by being taught on the job by another advocate. Often, new advocates learn where protective order applications are kept, where to go to file the application, and how to tell clients about the result. However, some information *doesn't* get passed on: like how to help someone fill out an application, answer clients' questions, and why advocates do things in specific ways. Also, bad habits can be passed on from advocate to advocate.

The Nevada Coalition to End Domestic and Sexual Violence (NCEDSV) developed this guide to provide new advocates with an ongoing reference on providing court advocacy that meets national best practices and Nevada statewide program standards. This guide builds and expands on the Court Advocacy Modules of NCEDSV's Advocate Certificate Program, including information on the history of advocacy, the unauthorized practice of law, how to provide court advocacy, and annotated forms to help advocates assist victim-survivors in negotiating the civil and criminal legal systems. As always, the NCEDSV technical assistance team is here to assist you in developing your court practice. Please feel free to reach out to NCEDSV at info@ncedsv.org for support.

THE HISTORY OF COURT ADVOCACY

The victim's rights movement had its origins in the turbulent 1960s and the idealism of the 1970s¹. However, the women's movement galvanized services for victim-survivors of domestic violence and sexual assault in the United States. The feminist leaders saw sexual assault and domestic violence and the lack of response from law enforcement and the courts as critical issues to be addressed². The feminist movement spawned the development of domestic violence shelters and rape crisis centers throughout the 1970s and early 1980s.³

The movement's leadership understood that providing services for victim-survivors was different than services for other crimes. There was an understanding that the legal

¹ Office of Victim of Crime, The History of the Crime Victims' Movement in the United States, December 2004, https://www.ncjrs.gov/ovc_archives/ncvrv/2005/pg4c.html accessed August 31, 2021.

² *Ibid.*

³ *Ibid*

definitions (if there were any) didn't adequately define their clients' experience. Beyond the physical, --survivors experienced emotional and mental injury as well.

Local leaders of primarily volunteer-run shelters in Nevada lobbied for laws criminalizing domestic violence and sexual assault in relationships. However, these laws thrust victim-survivors into a complex, sometimes hostile, and regularly confusing criminal justice system. With a lack of access to attorneys (often due to financial constraints), volunteers from local programs began to assist victim-survivors with the applications for protection orders and provide court accompaniment as moral support for clients. Frequently trained volunteers were survivors who themselves had weathered the process. Courts and attorneys did not universally welcome these actions. It took further legislation (that was hotly debated and opposed by some) to allow community-based advocates to provide court advocacy for victim-survivors. Even then, advocates were not always welcome.

Today, while services have been professionalized and access to legal services has increased, the needs for court advocacy far outweigh the availability of services. Community-based court advocates help victim-survivors by providing information about the court systems, assisting with self-help legal forms, and providing moral and emotional support while navigating the different court systems.

Community-based advocates provide a much-needed service, especially for victim-survivors who may not be comfortable accessing police or court services. These victim-survivors may be undocumented persons who fear deportation or their partner who financially supports them. They may have substance use issues, a mental health illness, or a criminal history and feel they won't be credible with law enforcement. Additionally, community-based programs are often the sole providers for emergency shelter, 24-hour hotline assistance, and support groups.

Most police departments and district attorney offices employ advocates. These system-based advocates are the primary contact for victim-survivors within a criminal justice agency. They are equally dedicated to supporting the survivor and can provide referral access to the same support services that community-based advocates do. Additionally, system-based advocates are usually not attached to emergency shelter or hotline services but have access to information regarding the status of an investigation or trial that community-based advocates don't have.

It is important to note that system-based advocates have a different level of confidentiality than community-based advocates. System-based advocates have the ethical responsibility to inform their agencies of any pertinent or exculpatory information⁴ learned while

⁴ Exculpatory information means information that may prove the innocence of an accused person.

working with the victim-survivor. Depending on the information, the case may be dropped. Additionally, any exculpatory information will also be turned over to the defense counsel. Like community-based advocates, they share the same responsibility to report the abuse of children, vulnerable adults, or the elderly.

If a victim-survivor is involved with the criminal legal system, it's possible that they are working with both a community-based and a system-based advocate. Advocates should develop and maintain a positive working relationship with their law enforcement and prosecution based advocate counterparts. Each type of advocate has a vital role in supporting a victim-survivor. They each have subject matter knowledge about their own roles and work settings that benefit their counterpart. It's always the victim-survivor's choice as to which advocate they wish to work with on which issues.

Regardless of differences, domestic or sexual assault program court advocates are important for victim-survivors. Advocates provide much-needed information about self-help applications and legal documents for victim-survivors representing themselves and court systems and procedures. Advocates also connect victim-survivors to legal resources, including pro-bono attorneys.

WHAT IS THE UNAUTHORIZED PRACTICE OF LAW?

Before learning what Court Advocates are supposed to do, it is crucial to understand what Court Advocates are **not** supposed to do because it can sometimes rise to the level of the crime of the Unauthorized Practice of Law (UPL).

The Nevada Revised Statutes define the UPL as:

A person shall not practice law in this state if the person:

- (a) Is not an active member of the State Bar of Nevada or otherwise authorized to practice law in this state pursuant to the rules of the Supreme Court; or
- (b) Is suspended or has been disbarred from membership in the State Bar of Nevada pursuant to the rules of the Supreme Court.⁵

The statute isn't very helpful because it doesn't define what activities or actions make up the unauthorized practice of law. The practice of law is very complex and involves more than knowing a statute. It is also researching case law and interpreting the statute in light of judicial decisions. It is analyzing situations and understanding how one decision can affect several other legal options. There isn't much black and white in the law; it is fact specific and characterized by subtle and complex features. Yes, victim-survivors can represent themselves, but they are at a disadvantage not having the attorneys' tools and resources.

⁵ Nev. Rev. Stat. § 7.285 (1999)

This is why advocates need to be very mindful in their interactions with clients. Advocates have access to information that many clients may not have. Still, advocates don't have all of the information that attorneys do. Advocates also can have a lot of influence over their clients, so advocates should provide information to empower clients to make their own decisions.

Common acts of UPL where advocates may accidentally cross the line are detailed below.

APPLYING FACTS TO LAW/GIVING LEGAL ADVICE

A crucial function of court advocacy is to provide legal information. Legal information is broad, general information that applies to everyone. However, once an advocate talks specifically about the legal options for one client *based on the facts of the client's case*, it crosses the line into the UPL.

For example, a married client with children receives a protection order, then the advocate says, "Perfect! Now you should file for divorce." The advocate has crossed the line from advocacy to UPL. There are many legal considerations for victim-survivors about if and when to file for divorce based upon what a client wants to do. There are custody and safety considerations too. These considerations should be explored with an attorney. Advocates do not have the expertise or the authority to have those legal conversations with clients. However, advocates can always have safety conversation with clients. It's not empowering to tell a client what they **should do** instead of giving them their legal options and referrals.

Advocates should never tell a client how the court should rule or what the final outcome of their case should be. There are many factors the court or jury can use to make a decision. No one can or should ever state they know how a case will be decided. Some words and phrases that are warning signs that an advocate may be giving legal advice are:

- You should
- You need to
- In my opinion
- You could
- I think

Always think, "Can I give this answer to any client?" If the answer is yes, you are fine. If the answer is no, you are probably crossing the line from advocacy to UPL. If a client is asking specifically for legal advice, advocates should let the victim-survivor know that the questions they are asking can have many consequences, good or bad, on other legal issues they may have. Programs should try to develop relationships with local attorneys and legal aid agencies who may be willing to provide consultation services. Having regular ongoing

meetings with legal aid staff can be very beneficial for community-based advocates. High risk client referral, barriers to legal remedies for victim-survivors, or procedural issues are common concerns where system-based advocates may be useful.

FILLING OUT FORMS FOR CLIENTS

While filling out a form may sound simple, every answer on a legal application is a legal determination and can have lasting repercussions. The incorrect answer can result in perjury or, in immigration cases, removal (deportation). **Please note:** If an advocate does not have specific immigration training and has no attorney supervision, they should not be assisting clients with immigration forms.

Clients should be the ones writing and filling in the application form. An advocate should only assist a client when there is no other option; for example, if the client is injured, there are language/literacy challenges, or if the process is being handled over the phone. Ideally your program will have discussed with the court in-your jurisdiction how and when they will accept an advocate assisting in filling out forms and how the court wants to be informed of this. Examples of this are: some jurisdictions want the advocate to initial every question; others may want a cover letter explaining why the advocate is assisting.

When assisting a client with filling out the application, the advocate should ask the questions **as written** on the form and fill in the **answers using the client's words**. Suppose a client asks for an explanation of a question, advocates may give generic examples but never use specific instances from a client's experience. At no time should an advocate "help" a client by adding information that wasn't introduced by the victim-survivor. Towards the end of this guide, there are sample protection order applications for domestic violence and sexual assault.

Other examples of UPL

Here are some other less common actions that can constitute UPL:

- Negotiating claims and advising clients whether or not to accept a settlement;
- Doing legal research and drafting legal documents;
- Conducting legal presentations and answering legal questions without attorney supervision.

WHAT IS COURT ADVOCACY?

As mentioned before, court advocates have an important role in the justice system. Advocates are sources of information and referrals for victims-survivors. One role of a court advocate is to serve as the connection between the victim-survivor and the legal system(s). An advocate may be the link between the victim-survivor and all criminal justice

and legal systems. These include law enforcement, District Attorney's offices, the courts, Probation, Parole, and Corrections. Because of this, a court advocate must be able to build and maintain relationships with their community partners while still maintaining client confidentiality. This is important when advocating for a client's rights within a system is necessary.

The court advocate ensures all agencies communicate as required with the victim-survivor and does so with sensitivity and respect. Similarly, the advocate is also a support person to a victim-survivor in court settings, whether criminal or civil court.

Another aspect of the court advocate role is to provide resources and information to assist the victim-survivor when they make important decisions. When someone has experienced a traumatic event such as intimate partner violence (IPV), there are often many decisions that need to be made. Decisions such as, whether to file a police report, getting medical attention, or filing temporary protective order. Victim-survivors may consider leaving their partner, finding alternative living arrangements, etc. The IPV history may be such that the victim-survivor is in a place of having to make a permanent decision about the relationship. They may need to get legal advice about divorce.

Still other decisions may need to be made around public assistance, returning to previous employment, or changing employment while taking into account the effect on their minor children. All of these decisions and more must be made by the victim-survivor while possibly still being affected by their trauma response. Perhaps most importantly, the decisions must be made while considering the ever changing safety issues surrounding EVERY decision.

Advocates assist in identifying those decisions that need to be made; provide the victim-survivor with the necessary information for them to make informed decisions, and help the victim-survivor consider their options. Once decisions are made, the advocate is responsible for supporting the victim-survivor implementation of those decisions. Since they're dealing with someone who has experienced trauma, advocates walk that fine line of presenting those options while supporting the survivor in being empowered after losing that self-determination to their partner.

Given the extent and intensity of support, advocates must be able to mobilize to work with multiple clients experiencing similar trauma. It's important that the first course of business for the advocate is to have and implement a self-care plan that serves them and ultimately the victim-survivors with whom they work.

VICTIM RIGHTS IN NEVADA

Another essential function is to inform the survivor of their rights. Advocates often hear that an accused person has more rights than the victim-survivor. Both the US and Nevada constitutions give particular rights to persons accused of crimes, including the right to an attorney and the right for their attorney to have all of the information the prosecution has in the case.

Until recently, victim-survivors had no constitutional or legislative rights. Sadly, this means in the past in some jurisdictions victim-survivors didn't know what was happening with their cases. Cases were dropped without notification given to the victim-survivors, and many sexual assault victim-survivors never had their forensic exam kits processed. In response to the frustrations of victim-survivors, Nevada passed three pieces of legislation that grant victim-survivors of crime specific rights. These are the Crime Victims Bill of Rights, Marsy's Law, and the Sexual Assault Bill of Rights.

Victim's rights were created to make sure that victim-survivors are treated fairly and well by the legal systems. This is where good relationships with system partners are necessary. It is important to have conversations with your partners about how clients should assert their rights. It could be as easy as picking up a phone and calling. Other partners may have forms or specific protocols. Sometimes, it is having hard or challenging conversations, so having good working relationships are essential.

In order to access many of the victim rights, there are procedures created by law enforcement, the prosecutor's office, and the department of correction/parole and probation. These procedures differ jurisdiction to jurisdiction and court to court. It is **strongly** recommended that advocates take the time to ask and learn about those procedures. These should be written down in a handy place for future advocates to access. Your agency should have copies of all victim's rights laws to give to clients. Reach out to NCEDSV Technical Assistance staff for copies.

CRIME VICTIMS BILL OF RIGHTS

In 1983, Nevada passed the first Crime Victims Bill of Rights⁶, which grants the following:

The right to have their personal information kept confidential⁷.

A victim-survivor has the right for all their personal information to remain confidential by law enforcement and the prosecutor's office. This includes, but is not limited to, a current or former address, which pertains to a victim-survivor, relative, witness, or another person.

⁶ Nev. Rev. Stat § 178-569-178.571

⁷ Nev. Rev. Stat. § 178.5691 (1983)

Advocates have a confidentiality obligation as well. The Violence Against Women Act⁸, Victim of Crime Act⁹, and Family Violence Prevention and Services Act¹⁰ have stringent confidentiality requirements for agencies and advocates. It is essential that advocates follow their agency's protocols including needing a confidentiality waiver or release of information signed by the client with the specific information they want to be released and to whom.

The right to know the status of the case in which they are involved.

System-based advocates are the "go-to" person for victim-survivors when dealing with law enforcement or the district attorney's office in many jurisdictions. If your service area has a system-based advocate, it is always a good idea to establish a good working relationship with them as you will have clients in common. Again, this is also an excellent opportunity for advocates to learn more about each other's system, it's requirements and reasons for their protocols or practices.

If you are in a jurisdiction without a system's advocate, work with your law enforcement and district attorney's office to develop a system on how you can assist and support your client with their case. For example, suppose a detective or attorney are having issues contacting your client. In that case, they can call you and leave a message to pass on. It is important to remember that advocates cannot acknowledge that a particular victim-survivor is a client, even if the caller already knows. So, advocates should respond with something like, "*Based on VAWA confidentiality, I can't confirm if this person is a client. However, if we are in contact with them, I will give them the message.*" It is crucial to make sure your law enforcement partners know that you can't promise someone will call; however, if the person is a client or in shelter, they **will** get the message. As an advocate, it is also necessary that you have a conversation with your client about why it is necessary to contact law enforcement, **especially** if they have a warrant. In these conversations it's important that the survivor knows that you'll continue to assist them with services, shelter, or other resources regardless of the outcome of the warrant. In some programs the advocate (with a release) can be part of contacting law enforcement or accompanying the survivor to court.

While having a warrant cannot be a barrier to seeking safety, a program cannot harbor someone hiding from law enforcement. As such, they will have to work at resolving the warrant. Programs should have protocols on how that should be done and within what

⁸ 34 USC §12291 (a)(20) & (b)(2)

⁹ 28 C.F.R. 94.115

• ¹⁰ 42 U.S.C. 10406(c)(5)

time frame from learning of the warrant. Advocates can provide referrals to attorneys and provide support through the process.

Additionally, suppose your client is having difficulty getting answers about their case. It is appropriate for a community-based advocate to call the detective or district attorney on behalf of a client, *provided you have a signed release of information* for this purpose. It is always best for a client and advocate to place the call together.

*The right to be free from intimidation or dissuasion;*¹¹

This means that upon notification, law enforcement and the district attorney's office should provide reasonable protective measures if a victim-survivor informs them of harassment by an abusive partner or other people acting on their behalf. Reach out to the local police department or sheriff's office for their procedures. Additionally, if the victim-survivor is being harassed by their employer for participating in a court case, the prosecutor's office can intercede on their behalf. The victim-survivor must request this in writing.

*The right to know when any impounded property can be released*¹².

There are times when law enforcement holds property as evidence. Local law enforcement or the District Attorney's office will give a time frame for the release and the procedures for claiming the property.

*The right to receive a witness fee for lawful obedience to a subpoena*¹³.

According to the NRS 50.020, witnesses to a case have the right to be reimbursed \$25 per day for their time. Additionally, witnesses can claim mileage from their residence to the courthouse at the county reimbursement rate.

*The right to understand the existing victim compensation laws, and, if applicable, receive compensation*¹⁴.

All advocates should understand the state Victim of Crime Compensation Fund guidelines. Victim-survivors of domestic violence and sexual assault are eligible for compensation for certain expenses, including medical bills, counseling, wage loss, emergency shelter and relocation, and home security repair.

To be eligible, a victim-survivor must report the crime to law enforcement within five (5) days of the incident, unless they are physically or mentally unable. It's helpful if the program includes this notification early in the client intake process. They must cooperate

¹¹Nev. Rev. Stat. 178.5692 (1983) and Nev. Rev. Stat. 178.5694 (1983)

¹² Nev. Rev. Stat. NRS 178.5696 (1983)

¹³ *Ibid.*

¹⁴ *Ibid.*

with law enforcement in the investigation and prosecution of the crime. The application must be submitted within two (2) years of the crime. For more information, visit the Nevada Victim of Crime Compensation Fund website at www.voc.nv.gov.

The right to a secure waiting area, which is not available to the defendant and their family, when at court¹⁵.

Advocates who regularly attend court with clients should develop a working relationship with the bailiffs at the courthouse or work with the court administrator to address safety concerns. The bailiffs are in charge of court security. So, if a victim-survivor is in the place where the defendant or the defendant's family and friends are waiting, an advocate can ask the bailiff to move the victim-survivor to a safe place.

The right to know when the defendant is released from custody before or during trial, upon written request¹⁶.

Most jurisdictions use Victim Information Network Everyday (VINE) to provide defendant or prisoner status. VINE has an online portal and a phone app. For more information, visit the VINE website at <http://vinelink.com>. Also, verify with your local law enforcement that they are on the VINE system, and if not, what procedure they require. It will vary from jurisdiction to jurisdiction.

The right to know when the offender is released from prison, upon written request¹⁷.

Most jurisdiction use Victim Information Network Everyday (VINE) to provide defendant or prisoner status. VINE has an online portal and a phone app. For more information, visit the VINE website at <http://vinelink.com> Also, verify with your local law enforcement that they are on the VINE system, and if not, what procedure they require. It will vary from jurisdiction to jurisdiction.

Additionally, the Nevada Department of Corrections provides victim notification regarding individuals who are incarcerated. This also includes information about upcoming parole and probation hearings. You can find more information at <https://doc.nv.gov/Victims/Home/>.

MARSY'S LAW

In 2018, voters enshrined victim's rights into the Nevada Constitution with the passage of Marsy's Law. Marsy's Law does duplicate some rights already granted through the Crime Victims Bill of Rights. There are some additional rights added which will be covered.

¹⁵ Nev. Rev. Stat 178.5696 (1983)

¹⁶ Nev. Rev. Stat. 178.5698 (1983)

¹⁷ *Ibid.*

While Marsy's Law amended the Nevada Constitution and rights granted are constitutional rights, it is important to note the implementation of these rights is no different than those legislatively granted.

To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process¹⁸.

This provision is similar to the first provision in the Crime Victim Bill of Rights. However, this also explicitly references the juvenile justice system. Reach out to your local law enforcement and prosecutor's office to find out how to notify them regarding harassment by a defendant.

To be reasonably protected from the defendant and persons acting on behalf of the defendant¹⁹.

See above regarding harassment and intimidation.

To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant²⁰.

The prosecutor's office is the conduit by which the victim-survivor can talk to the court. Again, each prosecutor will handle this differently. A victim-survivor should speak with the prosecutor about their concerns, wishes, and whether they want to speak in court at a bail hearing.

To prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim's family²¹.

The rights that Marsy's Law creates are designed to ensure that the government systems treat victims in a positive, respectful manner, and keep victims informed. However, community-based advocates must do the same. Community-based advocates have strict confidentiality obligations. It is essential that advocates follow their agency's policies. Suppose an abusive partner finds the victim-survivor, it is important to explore all the ways the abusive partner could have received the information. Keep in mind, most court filings are public record. Protection Orders have a confidential information sheet to keep victims from being tracked by an abusive partner. If there are other court actions, information could have been found there. Things to consider:

- Victim-survivor's (and children's) social media.
- Is the cell phone location turned on?

¹⁸ Nev. Const. art. 1 § 8A, cl. 1(a).

¹⁹ Nev. Const. art. 1 § 8A, cl. 1(b).

²⁰ Nev. Const. art. 1 § 8A, cl. 1(c).

²¹ Nev. Const. art. 1 § 8A, cl. 1(d).

- Do they share a cell phone plan with their partner?
- Was mailed forwarded?
- Could the partner have followed the victim-survivor?
- Did a family member accidentally say something?

At this point, safe shelter and safety planning should be the focus.

If there is conclusive proof that there was a leak, then talk to your executive director about having a conversation about the confidentiality concerns with the agency.

To refuse an interview or deposition request, unless under court order, and to set reasonable conditions on the conduct of any such interview to which the victim consents²².

Victim-survivors have the right to refuse to be interviewed by police, prosecutor, or opposing counsel. They also have the right to decline a deposition request by opposing counsel or the prosecution.

- This “request” may come by phone, to which the client can say no.
- The request may also come in the form of a subpoena. If a client receives a subpoena **signed by an attorney** for an interview or deposition, they have the right to decline, but they must respond. An appropriate response is, “I am exercising my Nevada constitutional right granted by Marsy’s Law to decline to be interviewed or sit for a deposition.”

Victims should know that whoever sent the subpoena will most like file a motion with the court and have the court issue a subpoena. If **a judge signed** the subpoena, the victim-survivor **must comply** or risk being held in contempt of court.

To reasonably confer with the prosecuting agency, upon request, regarding the case²³.

In many jurisdictions, the district attorney or city attorney’s victim witness advocate will be the primary point of contact. They can access the case status and provide information to the victim-survivor. It may be more challenging to contact the prosecutor in areas without a victim-witness. If they are not returning calls in a reasonable time, advocates can help, with a release, the victim-survivor in making a call. Again, this is why good relationships are essential in our work.

To receive reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings²⁴.

²² Nev. Const. art. 1 § 8A, cl. 1(e).

²³ Nev. Const. art. 1 § 8A, cl. 1(f).

²⁴ Nev. Const. art. 1 § 8A, cl. 1(g).

The prosecutor's office may require a written request if someone wants to be notified in some jurisdiction. Check on the procedure. Additionally, VINE will allow victim-survivors to access release dates and times.

*To be reasonably heard, upon request, at any public proceeding, including any delinquency proceeding, in any court involving release or sentencing, and at any parole proceeding.*²⁵

Advocates should discuss the procedure for providing a victim-witness statement for a release, sentencing, or parole hearing with the prosecutor's office.

*To the timely disposition of the case following the arrest of the defendant*²⁶.

This right may conflict with the right of a defendant to have a fair trial. However, both have the right to speedy trial; the defendant can waive this right. In this conflict, the courts would most likely side with the defendant because there is a liberty issue at stake: the defendant's incarceration.

If the client wants to be involved and informed about the status of the case, the client should contact the appropriate agency. If a client is having difficulty getting a response, an advocate, with a release, can reach out to the agency to get a response.

*To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant*²⁷.

This is another conversation with the prosecutor's office that should occur before you have a client asking about testifying. Sentencing recommendations may come from the prosecutor's office or the Department of Corrections. It is important to understand your county's procedures.

*To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody*²⁸.

As mentioned previously, VINE is the primary notification tool for the status of incarcerated individuals. Upon request or contact with a victim-witness advocate, victim-survivors should be able to access the information. Additionally, much of the information is public record. If the court's information is online, advocates can show victim-survivors how to access the information.

²⁵ Nev. Const. art. 1 § 8A, cl. 1(h).

²⁶ Nev. Const. art. 1 § 8A, cl. 1(i).

²⁷ Nev. Const. art. 1 § 8A, cl. 1(j).

²⁸ Nev. Const. art. 1 § 8A, cl. 1(k).

*To full and timely restitution*²⁹.

Many expenses can be reimbursed through the Victim Compensation Fund when a victim-survivor has incurred expenses. However, the Victim Compensation Fund does not reimburse some expenses, like property damage. The judge or jury may order the defendant to pay restitution to the victim-survivor in some cases. While someone is incarcerated, the State of Nevada collects funds owed and provides restitution payment to victims. Contact the State of Nevada Department of Parole at 775-684-2614 or email at fiscalservices@dps.state.nv.us for more information.

Once someone leaves state custody, the restitution becomes a civil debt. The victim-survivor will have to get a judgment from a court and attempt to collect the debt through a debt collector. If a victim-survivor chooses to demand restitution, advocates should have conversations with different safety concerns and if engaging with the former partner in such a manner is safe.

*To the prompt return of legal property when no longer needed as evidence*³⁰.

There are times when property is held as evidence. Local law enforcement or the District Attorney's office will give a time frame for the release and the procedures for claiming the property.

*To be informed of all post-conviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender*³¹.

VINE will notify a victim-survivor if a person who is incarcerated is going to be released. However, if a person who is incarcerated is being considered for parole, the victim-survivor must inquire with the appropriate parole and probation offices. County Parole/Probation if the sentence is for misdemeanors (less than one (1) year; and Nevada Parole/Probation if the sentence is for felony offenses (one (1) year or longer).

*To have the safety of the victim, the victim's family and the general public considered before any parole or other post-judgment release decision is made*³².

If a victim-survivor is concerned about their safety after the release of someone due to threats during incarceration, they have an opportunity to testify before the parole board. The victim-survivor needs to contact the parole board for the appropriate process.

²⁹ Nev. Const. art. 1 § 8A, cl. 1(l).

³⁰ Nev. Const. art. 1 § 8A, cl. 1(m).

³¹ Nev. Const. art. 1 § 8A, cl. 1(n).

³² Nev. Const. art. 1 § 8A, cl. 1(o).

*To have all monetary payments, money and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim*³³.

If restitution is owed, the victim-survivor needs to contact the State of Nevada Department of Parole at 775.684.2614 or email at fiscalservices@dps.state.nv.us for more information on the process of receiving funds from an incarcerated person.

*To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public.*³⁴

Most law enforcement agencies and counties post victim rights on the website and in their offices. Your agency should have all of the victims' rights readily available for clients.

SEXUAL ASSAULT BILL OF RIGHTS

In Nevada, it was discovered that like many other states, law enforcement never processed thousands of sexual assault kits. With a considerable investment of grant resources, Nevada processed their backlog. To ensure sexual assault victims' rights are protected, Nevada passed legislation with time frames for which sexual assault kits are processed.

It is important to remember a victim-survivor has the right to report the crime to the police **or not**. This is a choice for them to make. It is not the role of an advocate to pressure a victim-survivor to make a choice either way. It is the role of the advocate to discuss all options. Even if someone doesn't choose to report a sexual assault immediately, they have up to 20 years to make the report.

Upon making a report and being interviewed or undergoing a forensic exam, the Sexual Assault Bill of Rights then applies to the victim-survivor. Even if the victim-survivor waives a right at some point, they still maintain the right to invoke the right. They retain all of their rights even if they decline to continue working with law enforcement or prosecution³⁵.

The Nevada Attorney General's Office has a document that may help explain the Sexual Assault Bill of Rights to a victim-survivor. It can be found on their [website](#).

*A victim-survivor has the right to consult with an advocate and to have a support person during a forensic exam and interviews*³⁶.

All victim-survivors have the right to have the attendant of their choice at any interview or exam. The "attendant" can be a friend, family member, or an advocate.

³³ Nev. Const. art. 1 § 8A, cl. 1(p).

³⁴ Nev. Const. art. 1 § 8A, cl. 1(q).

³⁵ Nev. Rev. Stat 178A.180 (2020)

³⁶ Nev. Rev. Stat. 178A. 170 (2020)

The exception is if a law enforcement official or prosecutor interviews a survivor who is a minor. The interviewer may exclude the attendant **if** the law enforcement official or prosecutor has completed specialized training in interviewing survivors who are minors that meets the standards of the National Children’s Alliance, or another national organization that provides specialized training in interviewing survivors who are minors.

All sexual assault victims have the right to a sexual assault forensic exam³⁷. Law enforcement or prosecutors cannot discourage a victim-survivor from getting an exam and must inform victim-survivors of their rights³⁸.

All victim-survivors have the right to a forensic medical exam free of cost. A victim-survivor can request an exam up to seven (7) days after an assault. If a victim-survivor chooses to undergo an exam immediately after the assault, advocates should counsel them not to shower and use the bathroom as little as possible. If they have changed clothes, they should bring the clothes in a clean paper bag. It is important that the bag is paper because both plastic and cotton totes may contaminate evidence. In many cases, advocates will be transporting the victim-survivor to the exam location or arranging transport.

If available, the victim-survivor has the right to a free shower after the exam. Check with the exam facility to see if they have clothing for the victim-survivor to wear after the exam. Most likely, their clothing will be taken as evidence. If the facility doesn’t have clothing, programs should partner with local stores to donate appropriate clothes for programs to have on hand for survivors after an exam.

Law enforcement and prosecutors cannot discourage a victim-survivor from reporting or undergoing an exam. If an advocate is made aware of such actions, they should report this to their supervisor. Agency leadership should bring the concern to law enforcement or prosecution leadership.

A victim-survivor has the right to choose the gender of their interviewer³⁹.

Many of the interview questions can be very personal. As such, given the magnitude of sexual assault trauma, victim-survivors have the right to choose the gender of their interviewer if they feel uncomfortable. While advocates should not be speaking for a client, they can suggest a break if they notice the client is upset or uncomfortable. If the victim-survivor mentions they are uncomfortable with the gender of the person interviewing them, an advocate should let the survivor know they can ask for an interviewer of a different gender.

³⁷ Nev. Rev. Stat 178A.190 (2020)

³⁸ Nev. Rev. Stat. 178A.200 (2020)

³⁹ *Ibid.*

A victim-survivor has the right to retain an attorney⁴⁰.

As we know, sexual assault cases can become very public and controversial even with confidentiality and rape shield laws (laws preventing the media from printing the name of a rape victim-survivor). Even if it isn't a public or high-profile case, a victim-survivor may feel the need to have legal representation through the process. They can, at their own cost, retain an attorney.

A victim survivor has the right to have the forensic exam tested⁴¹. They have the right to know if any DNA was recovered and if there is a match in CODIS (FBI's Combined DNA Index System) ⁴².

A victim-survivor has the right to have the evidence from their forensic exam processed promptly. Law enforcement has 30 days from the receipt of the exam evidence to submit it to a forensic lab for processing, unless the victim-survivor chooses to remain anonymous and not file charges or delays the testing⁴³. The lab has 120 days to test the evidence and send a report to law enforcement.⁴⁴ Forensic kits must be kept for 50 years if a case is unsolved and for 20 years if a case is anonymous and unsolved⁴⁵.

Victim survivors also have the right to know if the exam uncovered any DNA and match in CODIS.

Some victim-survivors may be hesitant to get a forensic exam due to substance use or their own personal history. The Sexual Assault Bill of Rights expressly forbids the use of the forensic exam results to be used in criminal proceeding against the victim-survivor for misdemeanors or substance use⁴⁶.

Victim-survivors have the right to the reports and information generated by law enforcement and the prosecutor's office⁴⁷.

A victim-survivor can request, in writing, and law enforcement must provide all information regarding the case free of charge. Law enforcement may redact (blackout) all personal identifying information. Also, a victim-survivor can request, in writing, information regarding their case, including pre-trial dispositions, final disposition of the case, and if convicted, whether the defendant has registered on the Sex Offender Registry.

⁴⁰ Nev. Rev. Stat. 178A.210 (2020)

⁴¹ Nev. Rev. Stat. 178A.220 (2020)

⁴² Nev. Rev. Stat. 178.230 (2020)

⁴³ Nev. Rev Stat, 200.3786 (1) (1999)

⁴⁴ Nev. Rev. Stat. 200.3789 (2) (1999)

⁴⁵ Nev. Rev. Stat. 178A.220 (2020)

⁴⁶ Nev. Rev. Stat. 178.260 (2020)

⁴⁷ Nev. Rev. Stat. 178.280 (2020)

NEVADA REVISED STATUTES

Another vital function of a court advocate's job is understanding the law and explaining it to their clients. Remember, never explain the law in relation to the client's situation, but general information that applies to anyone. There are too many statutes to refer to for this guide, however, advocates can access the Domestic Violence Legal Compendium and the Sexual Violence Legal Compendium on the [NCEDSV website](#). It does take time to update the compendiums after each session—Compendiums are not updated to the current year, instead, the Legislative summary for each session is listed. Used together, victim advocates can stay advised of the most recent statutes. The NCEDSV technical assistance and policy teams are available to help interpret statutes.

ADVOCATE PRIVILEGE

Advocate privilege prevents agency records from being turned over to opposing counsel or forcing advocates to testify in court about confidential information⁴⁸. If an advocate or agency receives a subpoena, they should follow their agency's procedures. The agency must respond to the attorney issuing the subpoena. Usually, all that is necessary is a response to the attorney stating that the information is confidential and privileged according to Nevada Revised Statute 349.2546-349.2549 and Violence Against Women Act 34 U.S.C. 12291(b)(2). If the attorney files a motion to compel documents with the court, the agency should have their attorney respond to the court that the communication between advocate and client is confidential and privileged under the state and federal provisions.

Often, agencies will receive requests from clients to release files or to have an advocate testify on their behalf in a court proceeding. Advocates should have a conversation with their client about why releasing documents for legal use can be dangerous. If the opposing counsel requests all evidence a victim-survivor's attorney has in their possession, the attorney must turn it over⁴⁹. However, if someone insists on the release of their records with a signed release, the agency *must* release the documents. The released records must be separated from any other records or subsequent records as they are no longer confidential.

⁴⁸ *Ibd.*

⁴⁹ Nev. Justice. Ct. R. Civ. P. 26 Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(i), (ii), and (iii)

If an advocate testifies on behalf of a victim-survivor regarding the facts in the case, the client and advocate waive their privilege, and they are subject to cross-examination. Cross examination is not always like it is on television or in movies. It can be a very intimidating process. Advocates have to answer truthfully regardless of the questions asked. This can put advocates in a place where they unintentionally harm a client. As such, advocates and agencies should vigorously oppose any attempt to release of records or testify as a fact witness in a case.

Advocates can act as an expert witness who testifies on the dynamics of domestic or sexual violence. It is unethical to do so on behalf of your client. It is also against best practices to do so in your geographical or service area because it can look like the agency or advocate is in collusion with the prosecution. Advocates always need to remember that victim-survivors are arrested and prosecuted as well.

LEGAL SYSTEMS

Most people have very little involvement with the legal system. Advocates work with victim-survivors who are now thrust into a very complex system with rules and expectations with which they are not familiar. Any time someone is navigating the legal system, they are dealing with some of the most challenging issues in their life while traumatized. Victim-survivors are trying to figure out a complex system, dealing with trauma, having their lives upended, and are naturally overwhelmed. This is where advocates can help.

Advocates can familiarize victim-survivors with court rules and expectations, help them understand court documents, and understand the process they are navigating. Because of the sensitivity of the information shared between victim-survivors and advocates, advocates are afforded legal privilege⁵⁰. There are two legal systems; the criminal system and the civil system. Advocates need to know which system the victim-survivor is involved in or potentially will be involved in. Each system requires knowledge of the different processes and support systems.

Regardless of which system, advocates do not speak in court nor “coach” their client in what to say. When in court, advocates are there to provide moral support.

CRIMINAL LEGAL SYSTEM

The objective of the criminal legal system is punitive, to punish the wrong-doer. Legal action in the criminal system is initiated by the State (the prosecutor’s office). The standard

⁵⁰ Nev. Rev. Stat. 349.2546-349.2549

of proof in criminal court is “beyond a reasonable doubt,” which means the prosecution must prove to the jury that there is no other reasonable explanation about who and how the crime was committed supported by the evidence presented at trial.

The general steps of a criminal case are reporting, interviewing the victim, arrest of the suspect, charges filed or not filed, defense interview, arraignment, case setting, trial, and sentencing. It is also important to remember that it may take time to complete each step. If law enforcement is waiting for evidence processing, it may take months. Advocates must be prepared for this and be able to address the survivor’s emotional responses to waiting, false starts and rescheduling or moving court dates.

Reporting

In some way, law enforcement receives notice of a crime. Either someone called 9-1-1 because a crime was committed, or someone filed a report at the station. If law enforcement responds to a 9-1-1 call, the police will want to talk to both parties and witnesses if available. The person suspected of committing the crime may be arrested at that time.

If someone files a police report at the police station, the report is reviewed and may be sent to the detective for further investigation. Sometimes the detectives will want more information; other times, they may conclude there is enough information to move forward on the case. On both occasions, they may want to interview the victim-survivor. Depending on what the interview reveals, a warrant for the suspect’s arrest may be issued or not.

In the case of sexual assault, if a report is submitted to the police within five days of the assault, they will likely request the victim-survivor to undergo a sexual assault forensic exam/rape kit. A victim-survivor does not have to undergo the exam, but if not, the case will most likely be closed at that point. If the victim-survivor does undergo the exam, law enforcement has 30 days to submit the rape kit to the crime lab. The lab has 120 days to process the rape kit. Victim-survivors do have the right to know the results of the rape kit.

In many jurisdictions, community-based advocates are called by law enforcement to the scene of a crime to provide advocate support. Sometimes “the scene” is at a hospital or a home. If it is at a home and the suspect has not been arrested, advocates should ask the law enforcement officer to stay while the victim-survivor and advocate meet. If the suspect has been arrested, it is still best practice for the law enforcement officer to remain, especially if the advocate doesn’t feel safe. In some instances, the suspect may engage their friends or family to intervene with or threaten the victim-survivor.

When the victim-survivor and advocate meet, they need to be in a private location without the law enforcement officer hearing what is discussed. At no time should an advocate tell the officer what is said. If the victim-survivor has information for the officer, they should be the one to give the information. The advocate can support the victim-survivor through the interview.

When an advocate is on the scene, their job is to let the victim-survivor know their options, help them decide their next steps and to safety plan. Their options can be an emergency protection order, shelter, forensic exam, or nothing. Regardless of what the victim-survivor chooses or doesn't chooses to do, the advocate should give the victim-survivor information on how to contact the agency or advocate in the future.

Interview with Victim: An interview with a victim-survivor may happen more quickly if the offender is in custody. The type of interview may be based upon county protocols. Most initial interviews are handled by the local police or sheriff's office at the scene or if it is a sexual assault, at the hospital.

In cases that are self-submitted police reports regarding domestic violence, it may take longer for law enforcement to contact the victim-survivor. When they do, the victim-survivor can give the officer any evidence they may have, including photographs of injuries, past incidences, voice mail, or emails.

In sexual assault cases, victim-survivors have the right to have an advocate or attendant present for support during interviews; They can assist a victim-survivor in organizing their thoughts but not coach them into what to say. For example: helping the victim-survivor create an outline of events as they remember them. A victim-survivor probably remembers additional details after an event. It is common for people who survived a traumatic event to remember additional details later. The victim-survivor isn't making up new facts, but this is an effect of trauma and advocates should remind the interviewer of this. Advocates can also ask the victim-survivor if they need a break if necessary.

Arrest of Suspect: Arrest and continued in-custody status is determined by the seriousness of the crime, the need to protect the community, and the alleged perpetrator's flight risk. Arrest and release may occur, and formal charges may come later.

In battery constituting domestic violence (BDV) cases, the police should identify and arrest the primary aggressor. The primary aggressor is *not necessarily* the person who struck first but the person who poses the most serious, ongoing threat of harm. According to the Nevada Revised Statutes, a law enforcement officer should look at the following:

- Prior domestic violence involving either person;
- The relative severity of the injuries inflicted upon the persons involved;

- The potential for future injury;
- Whether one of the alleged batteries was committed in self-defense; and
- Any other factor that may help the peace officer decide which person was the primary physical aggressor⁵¹.

Charges Filed or Not Filed: For most crimes, except homicide, the prosecutor generally has a time limit for which a crime may be formally filed with the court. This is known as the statute of limitations (SOL). For crimes of sexual assault, the statute of limitations may vary depending on the age of the victim-survivor. For adult sexual assault victim-survivors, the SOL is 20 years. For misdemeanor BDV, the SOL is one (1) year after the assault⁵². For felony BDV, it is three (3) years after the assault⁵³.

Regarding BDV cases, victim-survivors cannot “drop the charges.” Once someone is charged with BDV, the state takes the case over. BDV charges are dropped if the prosecutor determines that there wasn’t probable cause for the charges or the charges can’t be sustained⁵⁴.

Regarding sexual assault cases, in most cases where the prosecutor is going to issue formal charges against an alleged perpetrator, it may occur within six months to a year from the report depending on the pace of the detective’s investigation.

Sometimes the prosecutor cannot locate the defendant, but will formally file charges against them to preserve the ability to prosecute the case later.

This is not uncommon when DNA evidence is available but the prosecutor has not yet identified to whom the DNA belongs. If the victim-survivor is a child, some prosecutors may wait until a medical assessment has been conducted. If the victim-survivor is an adult, prosecutors are likely to wait until the results of a forensic exam are returned.

Defense Interview: A pretrial interview that the defense attorney requests with the victim-survivor. Unless ordered by the Court, a victim-survivor has the right to refuse an interview or deposition request and to set reasonable conditions on the conduct of the interview.

During a defense interview, sexual assault victim-survivors have the right to have an attendant or advocate at the interview. While domestic violence victim-survivors don’t

⁵¹ Nev. Rev. Stat 17.137(2)

⁵² Nev. Rev. Stat 17.090 (2)

⁵³ Nev. Rev. Stat. 171.085 (3)

⁵⁴ Nev. Rev. Stat. 200.485 (10)

have that right, they often are allowed. During the interview, it is the advocate's job to support the victim-survivor, remind them that they can break or end the interview, and also intervene if someone is threatening, yelling, or badgering them.

Arraignment: Formal court proceeding where charges are entered against the defendant and the defendant pleads either guilty or not guilty. This is generally when the Court will appoint an attorney for the defendant if they cannot afford one themselves. Victim-survivors do not have to attend the arraignment. The results of the arraignment are public record. Advocates should know how to access court records in their community. Are they online? Who do you call at the court? Every jurisdiction will have its own procedures.

Case Setting Hearing/Status Check: The attorneys and judge meet to discuss the logistics of the case. For example, they exchange general case information, determine what information needs to be exchanged, what evidentiary issues need to be decided, exchange potential witness lists, etc. Results may be: set the case for trial, the defendant pleads guilty, or the case is continued to further complete discovery and/or negotiate a plea agreement. Status checks generally occur about one to three weeks before trial date. Victim-survivors usually do not attend the case setting hearing.

Trial: If the defendant is in custody, a trial must occur within sixty days; if out of custody, the trial must occur within sixty days, unless the defendant applies to extend the deadline. Defendants often waive their right to a speedy trial to give their attorney more time to prepare for their case. In felony rape cases, it is not uncommon for the trial dates to be a year after the initial assault occurred.

Victim-survivors are only required to be present when testifying. Before testifying, victim-survivors should meet with the prosecutor or the victim-witness staff to review what they will say in court and the questions they will be asked.

If asked, advocates should attend and offer support before and after the testimony. Additionally, suppose the victim-survivor is being harassed or threatened by the defendant or the defendant's friends or family. In that case, the advocate should talk to the bailiff about a secure waiting area and escorts from the courthouse to their transportation.

Sentencing: The defendant's punishment is formally presented based on their criminal conviction. The victim-survivor may attend and submit and/or give a statement about the impact of the crime.

Advocates can help the victim-survivor prepare the statement and practice presenting. Advocates should take care not to overstep and tell the victim-survivor what to say, but

help with statement structure and grammatical editing. Each court may have a different system. Advocates should work with the prosecutors' office and the court to understand the process for submission of the victim impact statement.

Pre-sentence investigation report (PSI) is prepared in all felony sex crimes; thus it is likely that sentencing will not occur for several weeks after the trial to allow for the PSI to be drafted by Parole and Probation.

CIVIL LEGAL SYSTEM

The victim-survivor may want to initiate legal action in the civil system. In civil court, the standard of proof is "preponderance of the evidence," or more likely than not, that the complaint is true. Civil legal actions include divorce, custody, child support, and protection orders.

The Nevada Self-Help Center (<https://selfhelp.nvcourts.gov/>) is an excellent resource for advocates and victim-survivors. It provides step-by-step instructions on how to self-represent in court. Court advocates should become very familiar with this website and the processes therein. The site also provides links to all of the necessary forms and gives the deadlines for each.

Civil Protection Order – A victim-survivor may want to apply for a protection order to keep the other person away from them. Nevada offers protection orders against domestic violence, stalking/harassment, sexual assault, and harm to minors. A victim-survivor may qualify for several kinds of protection orders. The domestic violence protection order is the most common if intimate partner violence is the basis for seeking protection. If granted, a protection order can require the other party to stay away from the victim-survivor's home, work, school, or other places they frequent. The order can include a temporary custody order if the parties share children together. The order can also include protections for any pets.

Filing for a protection order can be a triggering event that escalates the other person's behavior. It is imperative that a victim-survivor engage in safety planning and is prepared for what might happen once the other person is served with a protection order. The rule of thumb is that a protection order should usually be based on domestic violence that occurred within the past 30-60 days, however, there is no exact timeline. A victim-survivor's safety is paramount, and timing the filing of the protection order should be done carefully.

The victim-survivor can submit an application for protection along with some other required forms to the local family court or justice court "ex parte". This means the judge

will review the application and make a decision without notifying the other party first. Judges may want to have a hearing with the applicant to ask questions, or may make a decision based just on the written application. In a few situations, the judge may set it for a hearing for the adverse party to attend before making a decision. Either way, the judge must make a decision within one judicial day after the application is filed.

The protection order forms allow the victim-survivor to provide their contact information confidentially, however, the adverse party will be able to see anything written on the application and the order. If the judge issues a protection order, the local Sheriff will have the adverse party served with copies of the application and order if they live in the jurisdiction.

A temporary protection order (issued ex parte) lasts up to 45 days. The applicant can request an extended order that would last up to 2 years. If requesting an extended order, the judge will have a hearing with both the victim-survivor and the adverse party so both parties can explain their position before the judge makes any decisions.

Anything granted in a protection order is ultimately only temporary in nature, and all terms will expire when the protection order ends. If victim-survivors are married to the other party or share children with them, they may need to seek a divorce, custody order, or some other kind of civil order that would last indefinitely.

Other Applications—On the Nevada Self-Help Center site, you will find applications for the following court processes:

- Divorce/Legal Separation/Annulment
- Custody, Paternity, and Child Support
- Guardianship
- Adoption/Termination of Parental Rights
- Name Changes

These forms are all public record. The adverse / opposing party will be able to see everything on these forms, including the victim-survivor's address and contact information. The victim-survivor must provide a mailing address so the adverse / opposing party knows where to serve their responses. If enrolled in the Confidential Address Program (CAP) that address can be provided on the forms. (For more information about the CAP can be found [here](#).) If not, the victim-survivor can provide a PO Box or another physical address where they can receive mail. Of course any action automatically becomes a triggering event for safety planning discussions.

Service—The next step is Service or serving the papers. All documents filed must be served on the adverse/opposing party. If the other party has an attorney, the documents must be served to the attorney.

It is the responsibility of whoever files the case to “serve” the adverse/opposing party; however, the victim-survivor cannot serve the paper personally. There are different options to serve papers.

- Someone over **18** who isn’t involved with the case must serve the papers and fill out an “Affidavit of Service” stating when, where, and what was served. The Affidavit of Service must be filed with the court clerk’s office.
- If the defendant does not have an address where they can be personally served, the victim-survivor can request permission from the court to serve them by “alternate service.” This can include serving through email, text, social media, or any way that could get notice to the defendant.
- If defendant has no physical address and there is no possibility of contacting them through any means, the victim-survivor could request court permission to serve them through publication. If the court orders service by publication, the court order must direct the publication of the notice to be made in a newspaper (decided by the court) for a period of four weeks.

Responding—The main reason for serving the legal papers is to ensure the adverse/opposing party has the time to respond. They will file an answer stating why the application should be denied and what they are asking. The response will have to be filed with the court and the initiating party must be sent the paperwork.

Motions—During long cases, a party can file a motion for temporary relief/order such as Motion for Temporary Custody. Either party can file a motion. The other party should always respond and attend the court hearing. If not, the judge will usually rule in favor the party in attendance.

Orders—In a civil case, when the judge decides something, it is called an order. Often, the orders are written by one side, approved by the other, and submitted to the court; however, the orders must align with what the judge decided in court. Orders can be temporary or final. A temporary order will be in place until the judge decides on the final order. The only way to change a final order is to file a motion to re-open the case.

Fee Waivers—There will be various fees to file papers depending on what is filed and in what court. If a victim-survivor cannot afford to pay, they can apply for a fee waiver. They can fill out an [“Application to Proceed in Forma Pauperis”](#) and turn that form in with the rest of their papers. Fee waivers are approved if a person is on public assistance, if their

income is less than 150% of federal poverty guidelines, if their basic expenses exceed their income, or if they have other compelling reasons. In most courts, the clerk will file the paperwork for no charge and then forward the fee waiver request to the judge for review. If the waiver isn't approved, the advocate should talk to NCEDSV about a Jan Evans Direct Assistance Fund application or a L.I.F.E. Microloan.

Judicial Discretion—Judicial discretion is defined as “The exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law.”⁵⁵ This means that judges look at all of the facts in a case, including past behavior of the parties, employment, and decisions in past cases when making their decision. Judicial discretion is used often in civil cases. This is also why judges may rule differently in cases that advocates think have the same facts and so should have similar decisions made by the judge. As mentioned at the beginning of this guide, advocates should never tell a victim-survivor how a court should rule.

Legal Representation--As always, it is best to have a lawyer to help a victim-survivor through this process. The different legal aid agencies can help some victim-survivor with divorce, custody, and other legal actions. While these agencies can help some victim-survivors, there are always some that will not meet the eligibility requirements. As such, it is important that advocates and agencies develop relationships with local attorneys who may be willing to provide pro-bono services. And the Nevada State Bar also has referral programs to help find lawyers in good standing who practice in the jurisdiction.

LEGAL AID RESOURCES IN NEVADA

Legal Aid Center of Southern Nevada

725 E. Charleston Blvd., Las Vegas, NV 89104

702.386.1070

www.lacsn.org

Service Area: Clark County and Southern Nye County

Areas of Practice:

- Children's Attorney
- Domestic Violence: Temporary Protection Orders(TPOs), Divorce, Custody, Immigration
- Consumer Protection: Lease Break due to Domestic Violence/Sexual Assault/Stalking, Tenant Rights, Bankruptcy, Debt Collection
- Pro Bono Attorney

Nevada Legal Services

530 South 6th Street, Las Vegas, NV 89101

702.386.0404 or toll free 866.432.0404

⁵⁵ *Black's Law Dictionary* 208 (Brain A. Garner ed., second pocket ed., West 2001).

www.nevadalegalservices.org

Offices in Carson City, Elko, Las Vegas, Reno, and Yerington

Service Area: Statewide

Areas of Practice:

- Tenant Rights: Lease Break due to Domestic Violence/Sexual Assault/Stalking, Lease Break for Medical Reasons, Habitability (repairs & fixes), Security Deposits
- Consumer Rights: Bankruptcy, Debt Collection, Debt Collection Practices
- Public Benefits: Unemployment, Social Security, SNAP/TANF
- Pro Bono Attorney Program

Nevada Self Help Center

<https://selfhelp.nvcourts.gov/>

Legal forms and information for self-representation in civil cases.

Nevada State Bar Legal Referral Service

For individuals who do not qualify for pro bono legal services, the Nevada State Bar can help you find an attorney in your area.

<https://nvbar.org/for-the-public/find-a-lawyer/lrs/>

Volunteer Attorneys for Rural Nevadans

412 W. John Street, Suite C, Carson City, NV 89706

775.883.8278

www.varn.org

Areas of Practice:

- Domestic Violence Victim's Assistance Project: Emergency Legal Representation to extend or modify protections, Divorce, Custody, and Immigration
- Pro Bono Attorney Program

Washoe Legal Services

299 S. Arlington Ave, Reno, Nevada 89501

775.329.2727

www.washoelegalservices.org

Areas of Practice:

- Domestic Violence: Protection Orders, Divorce/Custody, and Immigration
- Housing/Consumer Protection: Eviction, Habitability (fix & repair)
- Pro Bono Attorney Program

PREPARING FOR COURT

Court Hearings—A vital part of an advocate's job is to help victim-survivors prepare for court. Every court has expectations about how their court will run and how people in the

court will behave. Usually, these are unwritten rules that advocates will learn when they are accompanying victim-survivors.

Virtual Hearings – Litigants can attend many hearings by phone or video. This is becoming more standard court practice post-Covid, and may be how the judge prefers to handle hearings in general. If the victim-survivor is not comfortable being in a courtroom with the adverse / opposing party, they should contact the judicial staff and request to participate by phone or video instead if this is an option in that court.

Be on Time—Allow time for parking, traffic, or mishaps. If attending by phone / video, dial in or log in early to address any technical glitches that may occur. It might be helpful to do a practice run if there's time.

Dress for Court—First impressions matter very much in court, so victim-survivors should dress conservatively. While there usually isn't a "dress code," victim-survivors should not wear shorts, short/cut-off shirts, tank tops, hats, or sunglasses. If possible, slacks and a conservative button-up or pull-over shirt and a blazer or jacket are always good choices. Also, do not eat, chew gum, or read a book/newspaper. It is essential to turn off your cell phone.

Addressing the Court—Stand when the judge enters the room. Whenever a victim-survivor speaks to the judge, they should use "Your Honor" or "Judge." The victim-survivor should be prepared to introduce themselves and their relationship to the case (applicant/plaintiff or adverse party/defendant). Speak clearly and loud enough for the judge and the other side to hear. Always be respectful and never interrupt the judge or other party.

Being Prepared—An advocate should help a victim-survivor outline what they want to say. If this is an evidentiary hearing or a TPO hearing, the victim-survivor should bring their evidence and witnesses. The victim-survivor should have a note pad to take notes. Bring all the papers for the case organized so you can refer to them if necessary.

Friends and Family—Victim-survivors should not bring their children to court unless ordered to by the judge. While friends and family may wish to come and support a victim-survivor, it may make a tense situation worse. Keep the support persons to one or two and definitely people who can remain quiet, respectful and supportive.

DOMESTIC VIOLENCE PROTECTION ORDER APPLICATION

Victim-survivors and advocates can usually find the application for a DV TPO online on the site for their jurisdiction's court or at the court clerk's office. They can also be found on the website of the [Nevada Supreme Court](#). It is always recommended that advocates download copies and keep them in the office for walk-in clients and law enforcement requests for advocate services. All protection orders must be filed with the appropriate court. For a temporary order, the court rules on the application within 24 hrs. The court can also delay the ruling and order a hearing. If the applicant has filed for an extended order, the hearing must be held within 45 days.

In counties with more than 52,000 people, the court is required to provide 24-hour access to protection orders provided the adverse party has been arrested for domestic violence. Every jurisdiction has its own procedure. So, talk to your supervisor, local law enforcement, or the court clerk's office about how a victim-survivor can file an emergency temporary protection order in your community. The order will be served on the abusive party before they are released from custody. There is no cost for a DV TPO.

SPECIAL CONSIDERATIONS WHEN APPLYING FOR DV POS.

DV PO offers several options to help support victim-survivors who leave a violent situation, including the removal/prohibition to buy firearms, child custody, and monetary support. These supports are not available in other protection orders. While a victim-survivor can ask the court for each of these special considerations, advocates should have conversations with the victim-survivor to help them make an informed decision and manage expectations.

SEPARATION VIOLENCE

Leaving is often the most dangerous time for a victim-survivor of domestic violence. In fact, research shows that victim-survivors who separate from their abusive partner have an increased risk of being murdered.⁵⁶ Additionally, this risk increases if the victim-survivor is leaving for a new partner.⁵⁷

A protection order clearly signals to an abusive partner that a victim-survivor is taking their power back. It is common for abusive partners to increase their threats of violence, stalking, and other abusive behaviors when their partner leaves. The threats are not always against the victim-survivor. The threats can be against family, children, pets, and friends.

⁵⁶ Campbell, Jacquelyn C et al. "Risk factors for femicide in abusive relationships: results from a multisite case control study." *American journal of public health* vol. 93,7 (2003): 1089-97. doi:10.2105/ajph.93.7.1089

⁵⁷ *Ibid.*

Often threats are carried out, and the abusive partner physically attacks their partner. And in extreme cases, they kill their partner.

Domestic violence is one of the least reported crimes. According to local agencies, about 41% of domestic violence cases did not have law enforcement involvement. So, it is not surprising that law enforcement response to violations of a protection order isn't that high. There are many reasons why law enforcement statistics show low calls regarding violations, including victim-survivors' fear of the abusive partner, fear for family, friends, and children, and feelings of hopelessness that nothing will stop the abusive partner. This is why advocates need to work with victim-survivors about using protection orders. It is important to remember that not all victim-survivors will be in the place to push for enforcement. However, hopefully they will feel incrementally empowered to do so. It is important to encourage every step and listen as to why a victim-survivor is hesitant to enforce the order and help safety plan accordingly.

FIREARMS

As advocates should know, the presence of firearms increases the lethality risks in a violent relationship⁵⁸. As such, it makes sense that the removal of firearms from violent homes should be a part of protection order relief. Both Federal and Nevada laws provide this relief.

Nevada Revised Statutes prohibit a person who is subject to an extended protection order from buying or receiving a firearm while the order is in effect.⁵⁹ Additionally, a court *may* order the adverse party to surrender any firearms for the duration of the extended protection order.⁶⁰ This surrender is not automatic, the applicant must request it. The court must make a specific finding in the order because it is discretionary (up to the judge). Fellow staff should be able to tell you how your judges generally rule on firearms surrender requests.

If the court orders the surrender of firearms, the adverse party has 24 hours to comply and surrender the firearm to the ordered law enforcement agency or person designated by the court and file an affidavit and receipt of the sale or surrender with the court.⁶¹

If a judge does order the surrender of firearms to a particular person, this is often referred to as a "constructive" surrender. This means the adverse party must give the firearms to a third party to hold during the protection order period. Often, this third person is a family

⁵⁸ Campbell, Jacquelyn C et al. "Risk factors for femicide in abusive relationships: results from a multisite case control study." *American journal of public health* vol. 93,7 (2003): 1089-97. doi:10.2105/ajph.93.7.1089

⁵⁹ Nev. Rev. Stat. 33.0305

⁶⁰ Nev. Rev. Stat. 33.031

⁶¹ Nev. Rev. Stat. 33.033

member or friend of the adverse party. While this may meet the letter of the law, it doesn't necessarily create safety for the victim-survivor.

It is important that advocates have a conversation about the benefits and risks of making the request for firearm removal. Asking for firearm removal can also be empowering and a key point of safety for a victim-survivor. It can also be dangerous.

First, if your jurisdiction doesn't usually order this relief, asking for it may escalate the violence as the victim-survivor is attempting to "take away" the adverse party's property. If the surrender order is a "constructive" surrender, the court may order the firearms to be surrendered to the adverse party's best friend or a family member, and it may never actually happen. Finally, the adverse party has 24 hours to surrender the firearms; a lot can happen in 24 hours. The victim-survivor knows the adverse party best and what has kept them safe before.

TEENS

In Nevada, a minor cannot file for a DV PO. The parent/guardian of the minor can apply for the protection order on their behalf against the teen's violent dating partner. Advocates should reach out to the court clerks and ask in which court a DV PO against a minor adverse party should be filed. It can be Family Court, Juvenile Court, or Justice Court. All of the same information and evidence are needed to obtain the order for a teen as is needed for an adult.

HOW TO ASSIST WITH CLIENTS WITHOUT UPL

The revised applications are very easy to follow. However, clients may still be unsure about how they should answer and ask the advocate for help or support. Remember, while advocates may see this as a very easy form, victim-survivors may have concerns about the risk of applying, leaving, and worried about how to survive. So, the simplest question may seem overwhelming.

Following is a sample protection order application and the additional forms needed for when asking for different relief in the protection order.

SEXUAL ASSAULT PROTECTION ORDER APPLICATION (SA TPO)

As with DV TPOs victim-survivors and advocates can usually find the application for a SA TPO online on the site for their jurisdiction's court, at the court clerk's office, or on the website of the [Nevada Supreme Court](#). Advocates download copies and keep the applications in the office for walk-in clients and law enforcement requests for advocate services. All protection orders must be filed with the appropriate court.

Someone is eligible to file for a SA TPO if the applicant believes the [adverse party] subjects the applicant to sexual penetration, or forces another person to make a sexual penetration on him or herself or another, or on a beast, against the will of the victim or under conditions in which the [adverse party] knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct. (NRS 200.366(1)).

There is no cost to apply for a SA TPO. You are not required to file a police report or undergo a Sexual Assault Forensic Exam to file for a SA TPO. However, it may be difficult to receive the SA TPO without corroborating evidence. Corroborating evidence includes photos of property damage, bruises and injuries, messages, and statements from witnesses. If you have a statement from someone, try to have them available to come for the hearing.

Application

The applications for most protection orders, other than DV TPO, are on a combined form. This form includes—Stalking, Aggravated Stalking or Harassment; Protection of Children, and Sexual Assault orders.

The application is very easy to follow. However, victim-survivors who are dealing with the trauma of being sexually assault may need help organizing their thoughts. Remember, if someone is asking how to answer a question, be general, and provide answers that are applicable for anyone.

SAMPLE APPLICATION