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# The Illinois Domestic Violence Act of 1986: A Selective Critique

*Terrence J. Brady**

## I. INTRODUCTION

In 1982, Illinois joined a host of states in the enactment of legislation designed to protect battered victim spouses, principally women, from the throes of domestic violence.[1] The original legislation, entitled the Illinois Domestic Violence Act (the "1982 IDVA")[2] became effective March 1, 1982. Four years later, two prominent victim spousal protection organizations, the Illinois Coalition Against Domestic Violence and the Pro Bono Advocates,[3] issued clarion calls for comprehensive refinements. The Illinois legislature responded with the enactment of the Illinois Domestic Violence Act of 1986 (the "1986 IDVA").[4]

The 1986 IDVA amplifies and clarifies certain basic issues such as who is protected,[5] and what conduct constitutes harassment or abuse.[6] The new Act, however, contains certain provisions that raise problematic issues. Some of these provisions are the supplying of clerical assistance through the court to pro se persons seeking protection;[7] the need for detailed findings, either written or oral;[8] the choice of contempt or criminal remedies;[9] and, the strictness of jurisdictional requirements providing for the issuance of

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1. Illinois Domestic Violence Act, ILL. REV. STAT. ch. 40, paras. 2301-1 to 2305-1 (1985). Similar legislation exists in Pennsylvania, Kansas, Maine, Massachusetts, and New Hampshire. *See* Klages, *Outline of the Law Under the Illinois Domestic Violence Act of 1986*, 1987 ILL. FAM. L. REP. 158, 161 n.3.

2. ILL. REV. STAT. ch. 40, para. 2305-1 (1985).

3. The import and significance of these two organizations, actively seeking not only to help victims, but also to educate all components of the criminal justice system, cannot be overstated. Both were founded in 1978. The Pro Bono Advocates serves the Chicagoland area; the Illinois Coalition Against Domestic Violence serves all the downstate counties throughout Illinois.

4. ILL. REV. STAT. ch. 40, paras. 2311-1 to 2313-5 (1987).

5. *Id.* at para. 2312-1.

6. *Id.* at para. 2311-3.

7. *Id.* at para. 2312-2(d) (potentially running afoul of the separation-of-powers doctrine). *See infra* notes 42-48 and accompanying text.

8. *Id.* at para. 2312-14(c). *See infra* notes 52-56 and accompanying text.

9. *Id.* at para. 2312-2 (raising questions of double jeopardy). *See infra* notes 57-77 and accompanying text.

separate summons and service in every proceeding for an order of protection, whether instituted as an independent cause, or as part of an existing civil or criminal cause.[10] Several writings explain the basic revisions enacted in the 1986 IDVA, but none critique the clarification provisions or potential problem areas.[11] This Article seeks to address these considerations.

## II. Historical Perspective

The history of spousal abuse was synthesized acutely in the landmark decision of *Thurman v. City of Torrington.*[12] In *Thurman*, the plaintiff, Tracy Thurman, filed a complaint that basically alleged a section 1983[13] civil rights action for violation of her constitutional rights resulting from the nonperformance or malperformance of duties by a series of official defendants.[14] These defendants included the police of the City of Torrington and the City of Torrington itself. The plaintiff's essential premise was that the Torrington police violated her right to equal protection in that they rendered less attention or protection to battered women domestic victims than to anonymous non-related battered victims.[15] The court denied the defendants' motion to dismiss.[16] The *Thurman* court analyzed the plight of battered women in civilized society beginning with the English common law. The court stated:

> English common law during the eighteenth century recognized the right of husbands to physically discipline their wives. Subsequently, American common law in the early nineteenth century permitted a man to chastise his wife "without subjecting himself to vexatious prosecutions for assault and battery, resulting in the discredit and shame of all parties concerned." Some restrictions

10. *Id.* at para. 2312-10. *See infra* notes 78-88 and accompanying text.

11. *See, e.g.*, Klages, *supra* note 1; Hopkins, *The New Illinois Domestic Violence Act*, 1986 Ill. Fam. L. Rep. 182; Flaherty, *A Practical Guide to the Illinois Domestic Violence Act of 1986*, Pro Bono Advocates (1986); Parker, *Implementation Manual, Illinois Domestic Violence Act of 1986*, Illinois Coalition Against Domestic Violence (1987); Morgan, *The Illinois Domestic Violence Act of 1986*, Illinois Judicial Conference, 1987 Associate Judge Seminar Reading and Reference Materials (March 1987).

12. 595 F. Supp. 1521 (D. Conn. 1984). The *Thurman* case was the subject of wire service news articles and a feature presentation of the ABC television national broadcast of the news show, "20/20"; copies of the taped show and new articles are available through the Illinois Coalition Against Domestic Violence.

13. 42 U.S.C. § 1983 (1982).

14. *Thurman*, 595 F. Supp. at 1524.

15. *Id.* at 1526-27.

16. *Id.* at 1529.

> on the right of chastisement evolved through cases which defined the type, severity, and timing of permissible wife-beating . . . .
>
> In our own country, a husband was permitted to beat his wife so long as he didn't use a switch any bigger around than his thumb. In 1874 the Supreme Court of North Carolina nullified the husband's right to chastise his wife "under any circumstances." But the court's ruling became ambiguous when it added, "If no permanent injury has been inflicted, nor malice, cruelty, nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forgive and forget."[17]

By denying the defendant's motion to dismiss, the *Thurman* court indicated that judicial abstention from the domestic violence realm had ended.

An Illinois court faced a fact pattern comparable to that found in *Thurman* in the case of *Jane Doe v. City of Belleville, et al.*[18] In that case, several female domestic violence victims filed suit individually and as class representatives against three classes of defendants: the municipalities of Belleville and East St. Louis; the police departments of those municipalities; and, the St. Clair County State's Attorney.[19] The plaintiffs alleged violations of the fourteenth amendment equal protection clause[20] when the governmental, police, and prosecuting authorities had no policy, and took little or no action to protect these women from the violent acts of their husbands, ex-husbands, or boyfriends.[21] After the defendants' motions to dismiss were denied, the three classes of defendants entered into three separate consent decrees.[22] Each defendant class agreed to establish policies and agendas to deal promptly and effectively with the problems of domestic abuse.[23] The consent decrees specifically recognized the profound needs of domestic victims for protection and underscored the primary objectives of the 1982 IDVA, "for law enforcement . . . to provide immediate, effec-

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17. *Id.* at 1528 (citations omitted). Following the denial of the motions to dismiss, the *Thurman* case was tried to a jury verdict of 2.3 million dollars. The defendants' appeal from this verdict was dismissed after the case reportedly settled. U.S. Dist. Ct., Dist. of Conn., Cause No. 85-7762, appeal dismissed Dec. 16, 1985.

18. U.S. Dist. Ct., Southern Dist. of Ill., Civ. No. 81-5256.

19. *Id.*

20. The fourteenth amendment's equal protection clause states as follows: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend XIV § 1.

21. *City of Belleville*, U.S. Dist. Ct., Southern Dist. of Ill., Civ. No. 81-5256.

22. *Id.* The Consent Decrees were filed September 9, 1983.

23. *Id.*

tive assistance and protection to victims of domestic violence."[24]

It was in response to this type of litigation that domestic abuse legislation originally surfaced. Continued studies and government reports together with pressure from victim spousal protective groups brought about comprehensive amendments which resulted in the 1986 IDVA.[25]

## III. Overview of the 1986 IDVA

The 1982 and the 1986 versions of the IDVA are intertwined closely.[26] The 1982 IDVA launched the legislative effort needed to create statutory protection for domestic abuse victims; the 1986 IDVA principally expands upon its core provisions.[27]

The enhancing provisions of the 1986 IDVA were stated accurately and succinctly in the Implementation Manual published by the Illinois Coalition Against Domestic Violence (the "Manual").[28] The Manual indicates that the purpose of the new Act was to recognize domestic violence as a crime dealt with ineffectively in the past. Further, the Manual points out that the Act seeks to give support to victims, and to provide preventive measures for other victims. The new Act generally offers greater protection for victims; the 1986 IDVA covers more types of conduct and extends this coverage to more relationships.[29]

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24. *Id.* For an in depth analysis of the dynamics, and associated problems of domestic abuse, see U.S. Attorney General's Task Force on Family Violence: Final Report, Sept., 1984; Goolkasian, *Confronting Domestic Violence: The Role of Criminal Court Judges*, U.S. Dept. of Justice, National Institute of Justice (Publication of November, 1986).

25. Ill. Rev. Stat. ch. 40, paras. 2311-1 to 2315-5 (1987). For studies, reports, and groups, see the references cited *supra* notes 1, 3, 11, and 24.

26. Several writings compare and contrast the provisions of the 1982 IDVA and the 1986 IDVA. *See supra* note 11.

27. *See supra* note 11.

28. Parker, *supra* note 11.

29. Specifically, the Manual provides:

> The Illinois Domestic Violence Act of 1986 became effective in August of 1986 and replaces the previous Act of 1982. The stated purposes of the new Act, when paraphrased, are: to recognize that domestic violence is a crime which produces family disharmony, to recognize that past efforts to deal with the problems of domestic violence have been ineffective, to support the efforts of victims of domestic violence to prevent further abuse, to clarify the responsibilities of law enforcement officers in responding to domestic violence, and to expand the remedies available to victims of domestic violence.
>
> Under the 1986 IDVA, victims of domestic violence are afforded greater opportunities for meaningful legal protection than were previously available. The definition of abuse has been expanded to cover many types of defined conduct. Many relationships which were previously not covered are now, because the definition of "family or household member" has been expanded. The types of

## IV. THE 1986 IDVA—A SELECTIVE CRITIQUE

There should be no question that the constitutionality of the 1986 IDVA, if challenged, will be upheld. In a string of appellate decisions, Illinois reviewing courts uniformly have held the 1982 IDVA constitutionally firm against due process attacks of vagueness, indefiniteness, and uncertainty.[30] These decisions offer solid authority for the 1986 IDVA.

Unlike its predecessor, the 1986 IDVA carefully sets forth who is protected by an order of protection ("OP"),[31] and expansively defines what type of conduct fits within the stated categories of physical abuse, harassment, intimidation of a dependent, interference with personal liberty, and willful deprivation.[32] Such definitional expansiveness should quell the previous need under the 1982 IDVA for labored case-by-case analysis of conduct rising to the level of "abuse" or "harassment,"[33] which sometimes produced questionable results.

An example of one such questionable result is revealed by the unpublished rule 23[34] decision in *Elimon v. Geraci*.[35] In *Elimon*, the respondent ex-wife had filed fictitious police reports against her complainant ex-husband during the same time frame that her boy-

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relief available to victims who petition for Orders of Protection are also expanded. Courts now have specific guidelines to be used in deciding issues concerning the issuance of Orders of Protection. The types of assistance to be provided to victims of domestic violence by law enforcement officers are also specified in the new IDVA.

The new IDVA provides for relief from domestic violence in the form of an Order of Protection. That Order may be granted in civil or criminal court. If the Order is issued in civil court, it may be issued alone or in conjunction with another civil proceeding such as an action for dissolution of marriage, support, guardianship, involuntary commitment, or parentage. If issued in criminal court, it must be done in conjunction with a criminal proceeding, which may include a juvenile proceeding. In both civil and criminal court, the standard of proof for issuing an Order of Protection is civil; that is, the court must find by a preponderance of the evidence that the allegations of the petition are true.

Parker, *supra note 11*.

30. People v. Whitfield, 147 Ill. App. 3d 675, 498 N.E.2d 262 (4th Dist. 1986); People v. Blackwood, 131 Ill. App. 3d 1018, 476 N.E.2d 742 (3d Dist. 1985); *In re* Marriage of Hagaman, 123 Ill. App. 3d 549, 462 N.E.2d 1276 (4th Dist. 1984).

31. ILL. REV. STAT. ch. 40, para. 2312-1 (1987).

32. *Id.* at para. 2311-3.

33. *See, e.g.*, People v. Whitfield, 147 Ill. App. 3d 675, 498 N.E.2d 262; *In re* Marriage of Hagaman, 123 Ill. App. 3d 549, 462 N.E.2d 1276.

34. ILL. S. CT. R. 23, ILL. REV. STAT. ch. 110A, para. 23 (1987). For a general discussion of Rule 23 decisions, see Beylor & Britton, *Supreme Court Rule 23: An Empirical Study*, 76 ILL. B.J. 324 (1988).

35. Illinois Appellate Court, 1st Dist., 3d Div., Cause Consolidated Nos. 85-995 and 85-1794, Rule 23 Opin. (Sept., 1986) (Rizzi, J., dissenting).

friend had engaged in menacing surveillance of the ex-husband. Although the dissent essentially urged liberal interpretation of "abuse," the *Elimon* majority nonetheless reversed the trial court's finding that the ex-wife's conduct constituted "harassment."[36] It is the opinion of the author that judicial interpretation of new legislation should not be obscured in rule 23 opinions.

Aside from the issue of the conduct defined, there is the issue of the classes of persons protected. One puzzling exception to the comprehensive scheme of classes defined is the absence of explicit protection to the steady relationship of a boyfriend/girlfriend who may not have lived together.[37] When confronted with the boyfriend/girlfriend relationship, the trial court arguably can apply "liberal construction"[38] to the protective purposes of the 1986 IDVA, and find the offending party to be a *partial* "household member."[39] This interpretation will allow for the issuance of a fourteen day emergency OP,[40] bring the harassing party before the court,[41] and initiate a calm to the turbulence. Rather than stretch the limits of liberal construction, however, the author recommends an amendment to the 1986 IDVA containing express language to include the steady relationship of boyfriend/girlfriend.

Another weakness in the 1986 IDVA is the potential problem of having the judiciary act in a somewhat advocatory role. A novel constitutional attack based on the separation of powers doctrine[42] was mounted in, but met by, the Minnesota Supreme Court in *State of Minnesota v. Errington*.[43] Like the Illinois IDVA of 1986, Minnesota's domestic violence legislation required the court, "through the office of the clerk of the court,"[44] to provide forms

36. *Elimon*, Illinois Appellate Court, 1st Dist., 3d Div., Cause Consolidated Nos. 85-995 and 85-1794, Rule 23 Opin.

37. *See* ILL. REV. STAT. ch. 40, para. 2312-1 (1987). The author would empirically observe that it is not uncommon for the spurned party to become a harassing nuisance to the ex-steady victim and the victim's parents. This also may be true when one or both of the ex-courting parties are minors. It is noted that under the 1986 IDVA a petition for an OP shall not be denied because the petitioner or respondent is a minor. *Id.* at para. 2312-14(a).

38. *Id.* at para. 2311-2.

39. *Id.* at para. 2312-1.

40. *Id.* at paras. 2312-17 and 2312-20(a)(1).

41. *Id.* at para. 2310-10.

42. The separation-of-powers doctrine is implied in articles I, II, and III of the United States Constitution. *See* U.S. CONST. arts. I, II, and III. For a general discussion of the doctrine, see F. Frankfurter & J. Landis, *Power of Congress Over Procedure in Criminal Contempts in "Inferior" Federal Courts - A Study in Separation of Powers*, 37 HARV. L. REV. 1010, 1012-16 (1923).

43. 310 N.W.2d 681 (Minn. Ct. 1981).

44. MINN. STAT. ANN. § 518B.01, subd. 4(d) (West Supp. 1988).

and clerical assistance to the *pro se* abuse victims to help with the writing and filing of their petitions.[45]

In *Errington*, under a discretionary declaratory judgment type action, the parties disputed whether the noted provisions violated the separation-of-powers doctrine, by granting to the judiciary the power to exercise non-judicial functions of advocacy for the alleged abuse victims.[46] The Minnesota Supreme Court held that the "ministerial functions" of the court clerk were neither functions of advocacy, nor the practice of law.[47] The *Errington* court, however, cautioned that "judges, law clerks, and staff," not play a role in assisting victim-petitioners.[48]

The rationale of the *dictum caveat* may be questionable under the 1986 IDVA in view of the Act's introductory pronouncement for its provisions to be "liberally construed and applied,"[49] especially when read together with the trial court's obligation to make detailed findings.[50] It would seem proper, if not merited under the Act, for the trial court to lend clerical type assistance to the victim-applicants for the inscribing of supplemental fact allegations, if necessary, onto the petition for OP's.

The need for lengthy, detailed findings as required under the 1986 IDVA,[51] either written or by court reporter, presents a nettlesome to onerous issue. Requirements of voluminous, technical pleadings can bog down a high volume court engaged in the pressing activity of protecting victims by issuing OP's. The Illinois reviewing courts, in both *People v. Hazelwonder*[52] and *In Re Marriage of Hagaman*,[53] implicitly recognized how ponderous a task making detailed findings can become for a busy trial court.[54] In both cases, the trial court was affirmed when the record, absent explicit findings, otherwise supported the issuance of the OP's.

As a suggested procedure to safeguard the rights of the accused respondent, the requirement for findings could be satisfied by the trial judge's written verification on the petition itself. That is, the

45. *Compare* ILL. REV. STAT. ch. 40, para. 2312-2(d) (1987) *with* MINN. STAT. ANN. § 518B.01, subd. 4(d) (West Supp. 1988).
46. *Errington*, 310 N.W.2d at 682.
47. *Id.* at 683.
48. *Id.*
49. ILL. REV. STAT. ch. 40, para. 2311-2 (1987).
50. *Id.* at para. 2311-14(c).
51. *Id.*
52. 138 Ill. App. 3d 213, 485 N.E.2d 1211 (4th Dist. 1985).
53. 123 Ill. App. 3d 549, 462 N.E.2d 1276 (4th Dist. 1984).
54. *Hazelwonder*, 138 Ill. App. 3d at 217-18, 485 N.E.2d at 1214; *Hagaman*, 123 Ill. App. 3d at 554, 462 N.E.2d at 1280.

petitioner would appear before the trial judge and swear under oath to the truth of the allegations to which he subscribed. In this fashion, the OP would issue as would the equivalent of a warrant in a criminal misdemeanor complaint.[55]

Another issue, germane to criminal aspects of domestic violence legislation, which busied the reviewing courts under the 1982 IDVA, is the issue of double jeopardy.[56] When the respondent had violated an OP, the victim could have chosen between contempt remedies in civil, usually divorce, proceedings and criminal remedies in a criminal prosecution.[57] If the victim pursued contempt proceedings and the court imposed criminal type sanctions, double jeopardy proscriptions might bar subsequent criminal prosecutions essentially involving the same conduct.

Until recently, appellate courts in Illinois held that double jeopardy barred subsequent prosecutions.[58] These courts had applied the double jeopardy proscriptions announced in 1977 by the Illinois Supreme Court in *People v. Gray*.[59] *Gray* held that subsequent criminal prosecutions were barred by double jeopardy when essentially the "same conduct" had been punished in earlier indirect criminal contempt proceedings in a divorce action.[60]

Recently, in *People v. Totten*,[61] the Illinois Supreme Court overruled the *Gray* decision.[62] In *Totten*, the court held that because a violation of an OP required proof of facts and elements different than those required to be proven for a successful criminal prosecution for aggravated battery, double jeopardy presented no bar to subsequent criminal prosecution even though the same conduct was addressed in both proceedings.[63] The *Totten* court renounced the "same conduct" test of *Gray* in analyzing the question of

55. ILL. REV. STAT. ch. 38, para. 107-9 (1985).

56. *See, e.g.*, People v. Lucas, 146 Ill. App. 3d 5, 496 N.E.2d 525 (3d Dist. 1986); People v. Gartner, 143 Ill. App. 3d 113, 491 N.E.2d 927 (2d Dist. 1986). The *Lucas* case shows the physical extremes to which a violent abuser husband can go short of inflicting disabling injuries, or worse, upon the victim wife, compounded when the right hand Prosecutor in the criminal case does not know what the left hand divorce attorney is doing in the civil divorce case.

57. ILL. REV. STAT. ch. 40, para. 2312-2 (1987).

58. *See, e.g.*, *Lucas*, 146 Ill. App. 3d 5, 496 N.E.2d 525; *Gartner*, 143 Ill. App. 3d 113, 491 N.E.2d 927.

59. 69 Ill. 2d 44, 370 N.E.2d 797 (1977).

60. *Id.* at 52-53, 370 N.E.2d at 800.

61. 118 Ill. 2d 124, 514 N.E.2d 959 (1987) (consolidated with People v. Gartner, 143 Ill. App. 3d 113, 491 N.E.2d 927 (2d Dist. 1986)).

62. *Id.* at 139, 514 N.E.2d at 965. The *Totten* decision also reversed the *Gartner* decision.

63. *Id.* at 138, 514 N.E.2d at 965.

double jeopardy.[64] Instead, the court adopted the test articulated by the United States Supreme Court in *Blockburger v. United States*.[65] Stated simply, the test is whether the elements of each offense would require proof of a fact that the other did not.[66]

The difference between the double jeopardy analyses of *Gray* and *Totten* was given textbook illustration in the recent case of *People v. Rodriguez*.[67] In its original opinion, the reviewing court in *Rodriguez* affirmed the trial court's application of *Gray*, and found that the "same conduct" underlying earlier OP violations and contempt sanctions also underlay later criminal prosecutions of child abduction, residential burglary, and battery.[68] Accordingly, the reviewing court held that double jeopardy barred the criminal prosecutions.[69]

In its final opinion, however, the reviewing court in *Rodriguez* pointed out that *Totten* had adopted the *Blockburger* test just after the rendition of its original opinion.[70] Applying *Totten*, the *Rodriguez* court found that the elements for successive criminal prosecution of burglary and battery differed from the elements necessary to sustain earlier proven violations of the OP. In relation to the child abduction charge, however, the elements for criminal prosecution and OP violation were basically the same.[71] The court then held that double jeopardy barred criminal prosecution of child abduction, but not of burglary and battery.[72]

By express provisions in the 1986 IDVA, absent in the 1982 IDVA, no action for an OP shall be dismissed for the reason that the respondent is being prosecuted for a crime against the petitioner.[73] This provision may be read as allowing the issuance of an

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64. *Id.* at 137-38, 514 N.E.2d at 965.
65. *Id.* at 137, 514 N.E.2d at 965 (citing United States v. Blockburger, 284 U.S. 299 (1932)).
66. *Totten*, 118 Ill. 2d at 138, 514 N.E.2d at 965.
67. 162 Ill. App. 3d 149, 514 N.E.2d 1033 (2d Dist. 1987).
68. *Id.* at 154, 514 N.E.2d at 1037.
69. *Id.*
70. *Id.*
71. *Id.* at 155, 514 N.E.2d at 1037.
72. *Id.* at 155-56, 514 N.E.2d at 1037. The law on the subject of double jeopardy in child abduction cases is moving swiftly. Most recently, the Illinois Appellate Court for the Second District discussed three rationales in holding double jeopardy principles inapplicable. First, the court differentiated between civil contempt and indirect criminal contempt; second, the court applied the *Totten* (*Blockburger*) double jeopardy tests; and third, the court observed that successive prosecutions for greater and lesser individual offenses may be permitted when justified by public interest. People v. Doherty, 165 Ill. App. 3d 630, 518 N.E.2d 1303 (2d Dist. 1988).
73. ILL. REV. STAT. ch. 40, para. 2312-2(c) (1987). A conspicuous absence from the extensive list of crimes covered, ranging from murder to disorderly conduct, is the not

OP pending the outcome of a criminal prosecution involving essentially the same conduct. At the same time, the provision may be cited to support contentions that dual actions may be launched for violations of an OP in both contempt and criminal prosecutions.[74] Under *Totten*, it is clear that successive prosecutions are permissible provided the elements of the charged offenses are different.[75] It should be equally clear that the violation of an OP, per se, could not be prosecuted in contempt and simultaneously in a separate criminal prosecution, because each would require identical elements of proof.

Harkening to the epithet that the last shall be first, the fundamental issue of jurisdiction must be treated. Jurisdictional issues of the 1986 IDVA relate to both the issuance and the enforcement of OP's. Under the 1986 IDVA provisions, unlike the 1982 IDVA provisions, any action for an OP, whether independent or as part of an existing civil proceeding, is a distinct cause of action requiring the issuance and service of a separate summons of both the petition and the original OP.[76] Thereafter, for enforcement purposes, any modification or extension of the OP requires similar service if the respondent fails to appear in court,[77] as frequently happens.

Confusion initially can occur when a party formally appears in open court in a pending divorce case and is served with an original OP, but *without* the formal issuance of a separate summons. The trial court must decide whether it has jurisdiction to enforce the OP.

No case has been reported construing the 1986 IDVA language in a manner that would aid the trial courts in their decision. In construing the 1982 IDVA, the reviewing court in *Hazelwonder* held that an OP restricting visitation as part of a probation sentence was issued properly without the requirement of separate notice or summons.[78] But again, the 1982 IDVA had no express requirement for separate summons as does the 1986 IDVA.

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uncommon harassing activity covered by the Class B Misdemeanor of Harassment by Telephone. ILL. REV. STAT. ch. 40, para. 2312-2(a)(3)(i) (1987); ILL. REV. STAT. ch. 134, para. 16.4-1 (1987).

74. The violation of an OP can be prosecuted in contempt proceedings and/or as a separate criminal prosecution. *See* ILL. REV. STAT. ch. 40, para. 2312-23 (1987); ILL. REV. STAT. ch. 38, para. 12-30 (1987).

75. *Totten*, 118 Ill. 2d 124, 514 N.E.2d 959.

76. ILL. REV. STAT. ch. 40, para. 2312-10 (1987).

77. *Id.* at para. 2312-22.

78. *Hazelwonder*, 138 Ill. App. 3d at 216-17, 485 N.E.2d at 1213.

In construing statutory language of the Illinois Juvenile Act[79] that required the issuance of separate summons for a certain type of protective order, the reviewing court in *In re S.A.C.*[80] mandated strict adherence to the formal procedures of summons and service in order to establish a jurisdictional base.[81] In the *S.A.C.* case, and in a string of related juvenile cases, the reviewing courts consistently have voided the entirety of lengthy, protracted proceedings as jurisdictionally infirm.[82] These systematic holdings were supported on the grounds that technical statutory requirements of summons and service had not been met, although all affected parties had fully and actively participated in the proceedings.[83]

For enforcement purposes, the jurisdictional provisions requiring service for any modification or extension of the original OP[84] literally extend to each of the three stages of the OP process: the fourteen-day emergency OP; the thirty-day interim OP; and the two-year plenary OP.[85] Such rigorous, repetitive service require-

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79. ILL. REV. STAT. ch. 37, para. 705-5 (1985).

80. 147 Ill. App. 3d 656, 498 N.E.2d 285 (4th Dist. 1986).

81. *Id.* at 659, 498 N.E.2d at 286-87.

82. *Id. See also In re* Pronger, 148 Ill. App. 3d 311, 499 N.E.2d 155 (4th Dist. 1986), *rev'd,* 118 Ill. 2d 512, 517 N.E.2d 1076 (1987) (the Illinois Supreme Court retroactively applied the 1987 amendment to the statute authorizing service of process on the minor's legal guardian); *In re* K.C., 154 Ill. App. 3d 158, 506 N.E.2d 724 (4th Dist. 1987); *In re* Gonder, 149 Ill. App. 3d 627, 500 N.E.2d 1004 (4th Dist. 1986). *But see In re* T.W., 166 Ill. App. 3d 1022, 520 N.E.2d 1107 (4th Dist. 1988) (in distinguishing *S.A.C.*, the *T.W.* court held that the respondent, the boyfriend of the mother, could not complain of the absence of formal service of process when he appeared after mail notice and fully participated in the proceedings); *In re* R.A.B., 146 Ill. App. 3d 993, 497 N.E.2d 811 (4th Dist. 1986) (trial court's proceedings and jurisdiction affirmed when service was obtained as to an original petition but not as to a supplemental petition).

In reaction to the conservative interpretation of the appellate courts in *Pronger, K.C.*, and *Gonder,* mandating strict compliance with the service requirements on minors, the legislature enacted a statute allowing service of process on the minor's legal guardian or otherwise relieving service upon minors under the age of eight. *See* ILL. REV. STAT. ch. 37, paras. 802-15, 803-17, 804-14, 805-15 (1987). The Illinois Supreme Court then retroactively applied this statutory language to find jurisdiction proper in the *Pronger* case. *Pronger,* 118 Ill. 2d at 521, 517 N.E.2d at 1079. The point here is that a court reviewing a case involving an action applying the IDVA of 1986 could impose the same strict service requirements for OPs as the courts did in the setting of a juvenile proceeding prior to the *Pronger* supreme court decision. Accordingly, until the matter is clarified either by the legislature or by the judiciary, strict compliance with service requirements is recommended.

Recently, in *In re* D.S., 168 Ill. App. 3d 76 (1st Dist. 1988), the court held the proceedings jurisdictionally infirm where minors over eight years had not been formally served, although they were formally represented throughout by guardians ad litem.

83. *S.A.C.*, 147 Ill. App. 3d at 659, 498 N.E.2d at 287 (citations omitted).

84. ILL. REV. STAT. ch. 40, para. 2312-22 (1987).

85. *Id.* at paras. 2312-17, 2312-18, and 2312-19.

ments place unmanageable burdens on law enforcement personnel responsible for securing the service.

Apart from these rigors, the 1986 IDVA provisions engender confusion in that enforcement, for violations may be had only after the respondent has actual knowledge of the OP contents by "service or other means."[86] This could mean that absent issuance of summons and service, the OP may be enforced if the respondent can be shown to have actual knowledge "by other means." By what "other means?" The case law contains no ready answers.

The jurisdictional issues are discussed not to project labored, technical analysis, but rather, to sound a call for cleansing and facilitating revisions. In the meantime, suffice it to say, service is safest.

## V. Conclusion

The 1986 IDVA has clarified in express terms who is protected and what conduct is covered. Taken as a whole, the legislation meets the dual objectives of protecting victims and stopping violence. Certain issues await remediation. Continuing efforts of selective amendment will keep the 1986 IDVA at the forefront of protective legislation.

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86. *Id.* at para. 2312-23(d).