
The Case against Campus-Issued Mutual No Contact Directives

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*-- Campus Sexual Assault Prevention
Coordinator Listserv member*

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NATIONAL POLL

I conducted an informal poll by sending an email to the Campus Sexual Assault Prevention Coordinator Listserv (SAPC) (sapc@list.mail.virginia.edu), a nationwide listserv. I asked the following question:

“I wonder if your institutions issue no contact directives after reports of sexual assault or domestic violence. If they do are those orders mutual? Do you have concerns about no contact orders being issued against students/ survivors who have not been accused of any policy violation?”

Representatives from 20 institutions responded.

Nineteen of the campus representatives who answered were opposed to mutual directives

18 said that their institutions did not issue them.

The campus representative who supported mutual orders said, “If the abuse is serious then the university must do something for the students' own good”.

FEEDBACK FROM SAPC LISTSERV MEMBERS:

- My biggest concern is that [a mutual no contact directive] becomes one more reason **victims of relationship violence would choose not to report the abuse.**
- Our institution will never issue mutual orders. We **don't want our complainants to feel like by using the campus system they are in some way in trouble as well.**
- I do believe [a mutual order] **discourages reporting** and I do believe there is a significant **emotional impact on some survivors**
- Mutual directives are very **difficult if not impossible to enforce.** Respondents can and do exploit them and they are confusing for law enforcement.
- **The effect could be to discipline a victim/survivor** if she violates the no-contact order. Have you found a way around that problematic outcome? This could be retaliatory.
- I think it is really important to recognize what we've learned in the criminal justice system, which is how abusers manipulate the system. It is not unusual for abusers to set up the victim so that she will get a violation of the no-contact order. It just **becomes one more tool in the pattern of the behaviors abusers use.**

SYNOPSIS OF FEEDBACK:

- *Discourages reporting
- *Complainants feel penalized
- *Difficult to enforce
- *Respondents can exploit them
- *Could result in discipline of survivor
- * Retaliatory

*Can be perceived as or can in fact be retaliatory

Excerpts from “The Challenge of Title IX Responses to Campus Relationship and Intimate Partner Violence”

The 2015 Whitepaper

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“Our general advice about these orders is to decide on their value and scope on a case-by-case basis. We are reluctant to see campuses use generic or templated NCO’s, and are **hesitant to implement mutual NCO’s unless a victim specifically wishes to be restricted**. Our concerns exist on several levels. **If a campus imposes restrictions on victims, it has to be willing to sanction them for violating the terms of the NCO. Not only are campuses hesitant to sanction victims, but we fear that doing so will often be seen to be — or in fact will be — retaliatory.**”

“[The Office of Civil Rights] seems to favor NCOs in sexual violence cases, but has **cautioned that unduly restricting victims could create a retaliatory effect, and/or could result in the victims being deprived of access to campus programs and facilities, thus compounding the discriminatory effects of the underlying violence.**”

Campus No Contact Directives are not court orders, but there are similarities, and we can learn from precedent and guidance about civil restraining orders.

[California Family Code](#) § 6305. Conditions for issuance of mutual order: The court may not issue a mutual order enjoining the parties from specific acts of abuse unless (a) both parties personally appear and each party presents written evidence of abuse or domestic violence and (b) the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense

AMERICAN BAR ASSOCIATION

[Best Practices for Lawyers Assisting Pro Se Victims of Domestic Violence, Sexual Assault and Stalking With Civil Protection Cases](#)

“Some jurisdictions permit the court to enter either mutual protection orders or “criss-cross” protection orders. A mutual order is an order issued against both parties (i.e., both the victim and the abuser) on the basis of only the victim’s petition. Many jurisdictions statutorily prohibit mutual orders, because they establish that the abuser is entitled to protection despite the fact that the abuser did not file a petition requesting protection. Mutual orders are also discouraged because they lack a finding of the predominant aggressor, and frequently lead to unfair mutual arrests in any future incidents of abuse. Other courts may enter “criss-cross” civil protection orders, in which each party petitions for, and receives, a separate civil protection order against the other. Often, a criss-cross or counter-petition is filed by an abuser as a form of retaliation or intimidation toward a victim of domestic violence, sexual assault or stalking.”