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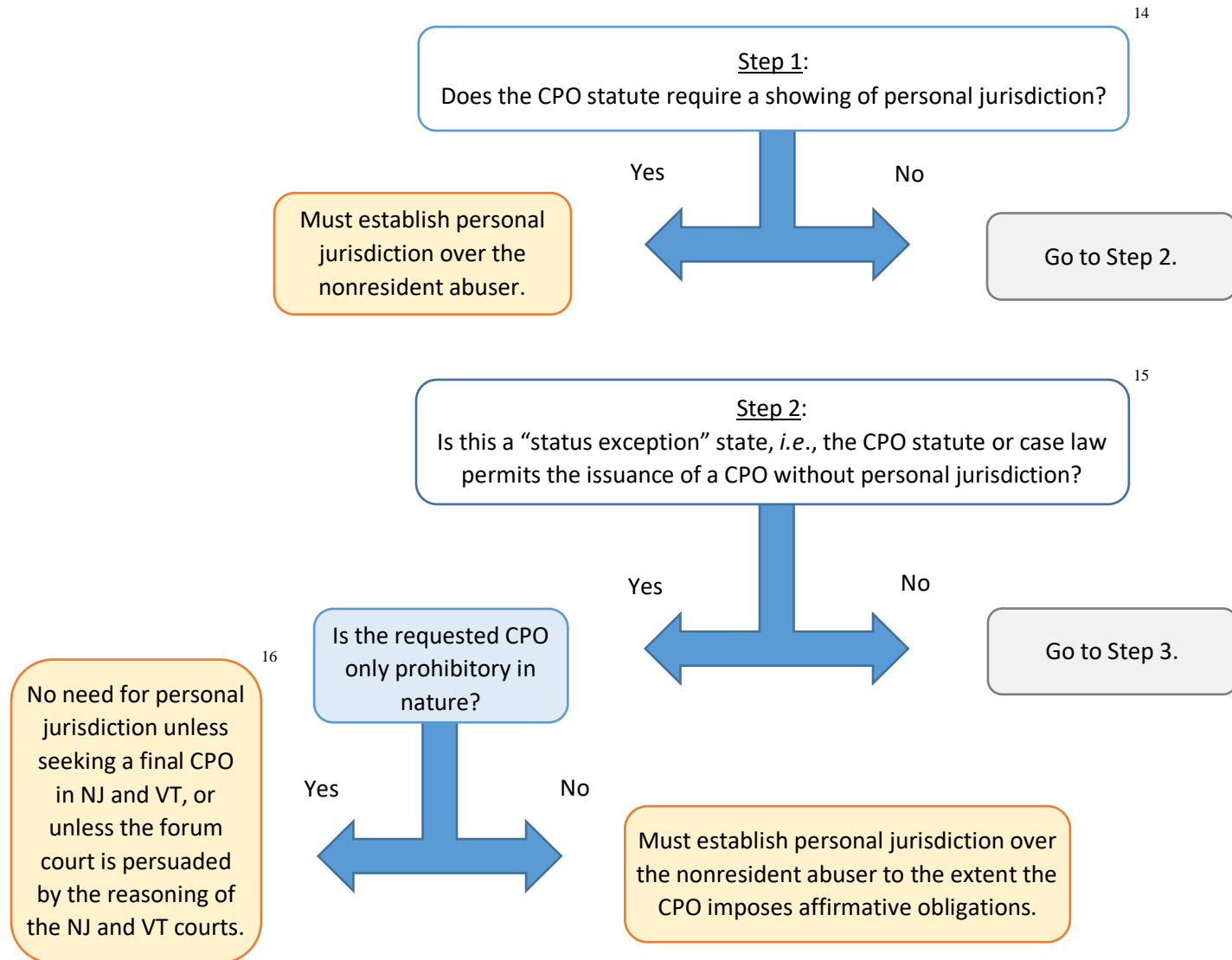
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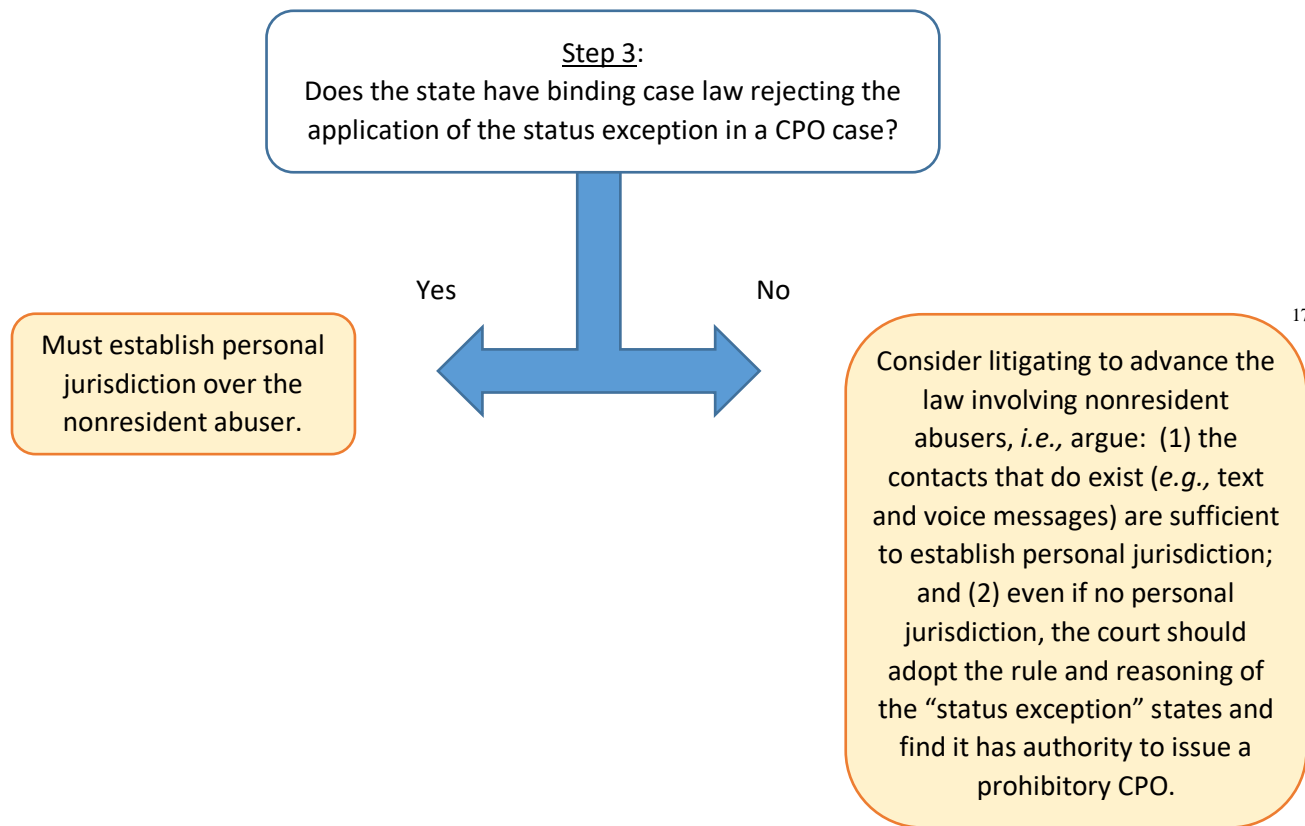
COURT AUTHORITY TO ISSUE A VALID DOMESTIC VIOLENCE¹ CIVIL PROTECTION ORDER AGAINST A NONRESIDENT ABUSER: A TOOL FOR ANALYZING PERSONAL JURISDICTION AND THE STATUS EXCEPTION

All states and the District of Columbia have statutes that allow domestic violence victims to obtain civil protection orders (CPOs) against their abusers.² When a victim moves to another state to flee their abuser, and they seek the new resident state court's protection via a CPO, the court must consider whether it has the power to make a decision affecting the nonresident party; this issue is typically framed as an inquiry into whether the court has personal jurisdiction over the nonresident abuser.^{3,4} When a nonresident abuser does not consent to personal jurisdiction, a court may exercise personal jurisdiction only if such exercise is permitted by statute—also known as a long-arm statute⁵—and it meets the constitutional requirement that “minimum contacts” exist between defendant and the forum state “such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.”^{6,7} Personal jurisdiction over nonresident abusers has been found where the abuser communicated with the victim while the victim was present in the forum state, and those communications could be deemed tortious acts that caused injury to the victim in the forum state.⁸

An exception to the personal jurisdiction requirement is the “status exception”—where a court finds it has the power to determine a person's legal “status” even though that determination may result in an order that affects a nonresident party over whom the court cannot exercise personal jurisdiction.⁹ This status exception is the basis for court authority to issue orders granting divorces to residents whose spouses are nonresidents who have no contacts with the forum state.¹⁰ In the context of domestic violence CPOs, some courts have interpreted the status exception to permit the issuance of a CPO against a nonresident abuser when personal jurisdiction does not exist, adopting the view that the court is only determining the plaintiff's status as a protected person under the state CPO statutes.¹¹ Courts that have extended the status exception to domestic violence CPO cases have recognized that this type of CPO may only be prohibitive in nature (*e.g.*, prohibits future abuse/contact); it cannot affirmatively impose obligations on the nonresident abuser (*e.g.*, require the abuser to surrender firearms).¹² To the extent that a final (rather than temporary) CPO is statutorily required to include affirmative obligations such as the surrender of firearm and payment of a civil penalty, a few courts have limited the application of the status exception further, determining that a state court has the power to enter a prohibitory and temporary CPO without personal jurisdiction over the nonresident abuser; but the same court does not have the power to enter a final CPO when personal jurisdiction is lacking.¹³

Attorneys who are helping victims request domestic violence CPOs against a nonresident abuser need to address some threshold inquiries concerning the extent of the nonresident abusers' contacts with the forum state, the nature of relief sought in the CPO, and whether the victim must allege facts that establish the court has personal jurisdiction over the nonresident abuser. The following flowchart is designed to help guide attorneys with these inquiries.





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¹ The term “domestic violence” is used here to refer generally to all forms of family/intimate partner violence that may be addressed by the civil protection laws in this country. This term is not universally used in each jurisdiction, and it does not capture the wide range of conduct that may be covered by the categories of behavior addressed in each jurisdiction’s family/intimate partner violence prevention statutes. This tool does not specifically address CPOs outside the family/intimate partner violence context—e.g., CPOs intended to prevent sexual abuse, stalking, and elder abuse outside the scope of a jurisdiction’s family/intimate partner violence statutes—because the CPOs at issue in current case law that address personal jurisdiction and the status exception involve family/intimate partner violence CPOs; but the legal analysis for personal jurisdiction and the status exception in those cases should be similar to the ones discussed here.

² See, e.g., ABA Comm’n on Domestic & Sexual Violence, Statutory Summary Chart, Domestic Violence Civil Protection Orders, https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Charts/migrated_charts/2016%20CPO%20Availability%20Chart.pdf.

³ See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) (“The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid personal judgment against a nonresident abuser”).

⁴ In a civil protection proceeding, the victim is commonly referred to as the “petitioner” and the abuser is commonly referred to as the “respondent.” When researching the issue of personal jurisdiction outside the context of civil protection proceedings, “plaintiff” and “defendant” are most commonly used in case law.

⁵ See, e.g., Alaska Stat. Ann. § 09.05.015; Colo. Rev. Stat. Ann. § 13-1-124; N.Y. C.P.L.R. 302 (McKinney); Or. R. Civ. P. 4.

⁶ See *World-Wide Volkswagen Corp.* at 292 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)) (internal quotations omitted).

⁷ See, e.g., *Parocha v. Parocha*, 418 P.3d 523, 526 (Colo. 2018) (explaining that before a state court can exercise personal jurisdiction over a nonresident, it must find jurisdiction is proper under the state’s long-arm statute and it must satisfy constitutional due process requirement); *Hughs on Behalf of Praul v. Cole*, 572 N.W.2d 747, 750 (Minn. Ct. App. 1997) (same); see also *Matter of Marriage of Albar & Najjar*, 424 P.3d 774, 777–78 (Or. Ct. App. 2018) (same in the context of a non CPO divorce case).

⁸ See, e.g., *Parocha*, 418 P.3d at 529 (“Here, Husband, repeatedly contacted Wife by FaceTime and text when he knew she was in Colorado, pressuring her to return to New Jersey, and, in so doing, caused her to reasonably fear for her safety because of the cycle of domestic abuse in their relationship. The cause of action—a request for a civil protection order—flowed directly from those consequences. And, in light of Colorado’s strong interest in protecting victims of domestic abuse in the state, the consequences of Husband’s actions are certainly substantial enough such that exercising jurisdiction to enter the protection order was reasonable.”). But see *Becker v. Johnson*, 937 So. 2d 1128, 1131–32 (Fla. Dist. Ct. App. 2006) (explaining that the nonresident husband’s contacts with Florida—voice and text messages left on the wife’s cell phone while she was in Florida—were insufficient to establish minimum contacts because “nothing in the petition . . . allege[d] that [the husband] knew appellee was present in Florida at the time he left the messages” and the husband’s uncontested affidavit stated that he was unaware she was in Florida at the time of the contacts); *T.L. v. W.L.*, 820 A.2d 506, 515 (Del. Fam. Ct. 2003) (explaining Delaware law requires “the tortious injury caused in the state be caused by an act or omission, also caused within the state” and finding insufficient contacts by nonresident husband for personal jurisdiction).

⁹ See generally Cody J. Jacobs, *The Stream of Violence: A New Approach to Domestic Violence Personal Jurisdiction*, 64 UCLA L. Rev. 684, 688-93 (2017) (discussing the status exception’s historical origins, justifications and limitations).

¹⁰ See *id.*

¹¹ See, e.g., *Bartsch v. Bartsch*, 636 N.W.2d 3, 6 (Iowa 2001) (finding the nonresident husband has insufficient contacts with Iowa to establish personal jurisdiction but concluding that “personal jurisdiction over a nonresident abuser is not required for a court to enter an order preserving the protected status of Iowa residents” under the state Domestic Abuse Act). But see *Mannise v. Harrell*, 791 S.E.2d 653, 660 (N.C. Ct. App. 2016) (expressly “declin[ing] to adopt the rule or reasoning of the New Jersey and Kentucky courts”; observing that the entry of a domestic violence CPO “involves both legal and non-legal collateral

consequences” including the “consideration of the order by the trial court in any custody action involving [d]efendant” and the possibility that the existence of a CPO may be the subject of inquiry by a prospective employer, academic institution or professional licensing board; and concluding that a court must have personal jurisdiction over the nonresident to impose a CPO) (citing *Shah v. Shah*, 875 A.2d 931 (N.J. 2005) and *Spencer v. Spencer*, 191 S.W.3d 14 (Ky. Ct. App. 2006)).

¹² See, e.g., *Hemenway v. Hemenway*, 992 A.2d 575, 581-82 (N.H. 2010) (finding evidence insufficient to support personal jurisdiction; affirming the CPO to the extent that it protects the plaintiff from further abuse on the basis that such order “serves a role analogous to custody or marital determinations, except that the order focuses on the plaintiff’s protected status rather than [the plaintiff’s] marital or parental status”; but reversing the CPO “to the extent that the order requires affirmative action from the defendant,” including the surrender of all weapons); *Caplan v. Donovan*, 879 N.E.2d 117, 119 (Mass. 2008) (concluding “that a court may issue . . . an [civil domestic violence] order of prevention and protection even without personal jurisdiction over the defendant, but may not impose affirmative obligations on the defendant if there is no personal jurisdiction”); *Spencer v. Spencer*, 191 S.W.3d 14, 18–19 (Ky. Ct. App. 2006) (adopting the view that a prohibitory domestic violence CPO is valid against a nonresident abuser over whom the court cannot exercise personal jurisdiction because it “does not implicate any of defendant’s substantive rights” but merely “provides the victim the very protection the law specifically allows” and “prohibits the defendant from engaging in behavior already specifically outlawed,” whereas an affirmative order “involves the court attempting to exercise its coercive power to compel action by a defendant over whom the court lacks personal jurisdiction”); *Shah v. Shah*, 875 A.2d 931, 939-40 (N.J. 2005) (concluding that a New Jersey court has authority to enter a temporary restraining order to protect the domestic violence victim to “the extent it prohibited certain actions by [the nonresident] defendant” but “lack the power to enter an order requiring the performance of any affirmative act by a defendant over whom in personam jurisdiction cannot be asserted”); see also *Bartsch*, 636 N.W.2d at 6–8 (upholding a domestic violence CPO against a nonresident abuser where insufficient contacts existed for personal jurisdiction; and, while not explicitly addressing the prohibitive vs affirmative obligation distinction, observing in *dicta* that “[t]he order here does not attempt to impose a personal judgment against the defendant . . . [as] [t]he district court merely ordered the defendant to ‘stay away from the protected party’ and not assault or communicate with here”).

¹³ See, e.g., *Shah v. Shah*, 875 A.2d at 933, 940–41; see also *Fox v. Fox*, 106 A.3d 919, 922, 926 (Vt. 2014) (explaining the issue on appeal concerns “whether the trial court must have personal jurisdiction over a nonresident abuser in order to issue a final [relief from abuse] order”; finding “[w]e need not determine whether, as the New Jersey Supreme Court concluded, a court may issue a temporary abuse prevention order without personal jurisdiction on the theory that such an order is merely prohibitory” presumably because the issue was not before the court; and concluding that “we agree with the New Jersey court that a court cannot issue a final abuse prevention order without personal jurisdiction over a defendant”).

¹⁴ At least two states’ domestic violence CPO statutes explicitly require personal jurisdiction over a nonresident abuser. See, e.g., Ga. Code Ann. § 19-13-2(b) (“For proceedings under this article involving a nonresident respondent, the superior court where the petitioner resides or the superior court where an act involving family violence allegedly occurred shall have jurisdiction, where the act involving family violence meets the elements for personal jurisdiction provided for under paragraph (2) or (3) of Code Section 9-10-91[, the long-arm statute].”); 750 Ill. Comp. Stat. Ann. 60/208 (“In child custody proceedings, the court’s personal jurisdiction is determined by this State’s Uniform Child-Custody Jurisdiction and Enforcement Act.1 Otherwise, the courts of this State have jurisdiction to bind (i) State residents and (ii) non-residents having minimum contacts with this State, to the extent permitted by the long-arm statute, Section 2-209 of the Code of Civil Procedure,2 as now or hereafter amended.”).

¹⁵ See, e.g., cases cited *supra* note 11.

¹⁶ See, e.g., cases cited *supra* notes 12 and 13.

¹⁷ Be prepared to address the temporary/final CPO distinction made by the New Jersey and Vermont courts if defendant raises the issue. See cases cited *supra* note 13.