



Sexual Violence Injunctions
Webinar (3/18/2019)

**Post-Webinar Questions and
Answers**

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Additional Practice Questions

Dear colleagues,

Below, please find the questions submitted following the March 18, 2019 webinar on sexual violence injunctions, as well as additional practice questions. The webinar recording is available on the Florida Council Against Sexual Violence's website (www.fcasv.org). Additional questions can be submitted to FCASV at legal@fcasv.org.

Non-lawyers should ***never*** provide legal advice. This document, as well as the webinar, is provided for information purposes so advocates can understand the injunction process with regard to sexual violence injunctions. Victims and survivors should seek the assistance of a lawyer with regard to the injunction process.

- **Can you have Lewd and Lascivious with an adult?**
 - No. By definition lewd and lascivious applies to minors 16 and under only (unfortunately). This is why sometimes you can get an SVI for something that happened to a child, when you wouldn't be able to get an injunction for the same thing happening to an adult.
 - However, unwanted contact on an adult is still considered battery, though the current criminal code will not capture the sexual nature of a crime similar to lewd and lascivious behavior.
- **If offender has an attorney can they be served through their attorney?**
 - No, not for the petition. Petitions must be served by law enforcement on the R (respondent/perpetrator).
 - Subsequent motions and documents will be served either by mail, email or through the attorney. But that initial petition must be served by law enforcement.
 - If you know R has an attorney, it may not be a bad idea to give them the petition because they might tell R to show up for the hearing. But if the R doesn't show up, that doesn't "count" for them being served.
- **If the client can't write then can it be recorded or written by someone else?**
 - Yes, absolutely.
 - There's nothing wrong with an advocate or someone else writing the petition for someone else who is unable to do so themselves, due to language, reading, or other barriers. The important part is that the person writing it not put words in the petitioner's mouth or tells them what to say. There is a spot on the paperwork to indicate that they filled out the petition for someone else. This must be signed every time a non-lawyer assists a petitioner with completing the petition.
- **What about child on child injunctions; can a parent testify on their behalf?**
 - Yes. Child hearsay is only prohibited when the R is a parent, step-parent, or guardian.
- **What would be a situation where there were allegations of child sexual abuse that would warrant a domestic violence injunction rather than a sexual violence injunction? Would age be a factor to get a domestic violence injunction on behalf of a child rather than a sexual violence injunction on behalf of a child?**
 - If the child doesn't want to report the assault to LE and the R has a relationship with the child that is "domestic" this may be a better option. Reporting to and cooperation with law enforcement is not a requirement for obtaining a DV injunction, unlike with SVIs.

- Another example would be if the assault that doesn't fit the sexual battery or lewd and lascivious definitions. An example might be fondling, rubbing or touching of the buttocks that happens over the clothing. Even though that's not a sexual battery or an act of lewd and lascivious, the petitioner can argue it's still unwanted touching (or battery) and try to get a DV injunction if they have a qualifying relationship with the R.
- Also, an award of attorney's fees is prohibited in DV injunctions, where it's a possibility (albeit, very slight) in a SVI.
- Age is a factor if the child is over 16, then lewd and lascivious behavior does not apply.
 - Example, 17 yr. old is sexually assaulted (no penetration), then an SVI based on lewd and lascivious does not apply because of the child's age. But depending on the relationship to the R, the child can pursue a DV injunction.
- **Does being denied a temporary injunction mean you will automatically be denied a permanent injunction? And is an injunction a final judgment?**
 - **How long does the injunction remain in effect?**
 - No, it doesn't automatically mean the permanent will be denied. There are two outcomes here:
 - 1- The temporary is denied and no hearing was granted. Either the client indicated on the petition that they don't want to come back for a hearing if it was denied, OR the Court doesn't feel like the allegations come close enough to meeting the legal criteria for the injunction (exs: petition says they aren't cooperating with law enforcement, no alleged act of sexual battery, etc.).
 - 2- The temporary is denied but they still get a hearing. The Court reviewed the petition and is on the fence about whether the legal criteria for an injunction were met, so the client now has a chance to convince the Court at a hearing.
 - Remember, the petitioner can always supplement the petition if the temporary is denied and add additional facts for the judge to reconsider.
 - After a hearing, hopefully your client gets a final judgment of injunction. The length of time for the injunction really varies from judge to judge; there are no set of rules on how long they should be. Judges may base it on how long the Respondent was in the petitioner's life, how severe the assault was, how much of an ongoing danger the Judge thinks they are to the petitioner, etc. "Permanent" or "injunctions for life" are rare.
 - Remember, the client can always file a motion to extend it, BEFORE it is set to expire.
- **Could electronic participation by adolescent victims be utilized as Respondents have opportunity to intimidate victims in the courtroom and the experience is generally traumatic?**
 - Yes. The petitioner can request for Minor Child victims to be allowed to testify via closed circuit television. That means everyone can see them, but the child is in another room on TV and cannot see (and probably not hear) the R so R should

be less able to intimidate. But the Court and everyone else present has to be able to observe the witness testify in some form or another.

- There will need to be actual testimony; the court clerks can make exceptions victims needing accommodations for barriers to providing spoken testimony.
- The petitioner can ask for a victim advocate to be allowed to sit in the separate room with the child. They can also request use of facility dogs.
- **What is a key factor for having a sexual violence injunction granted?**
 - The granting of a sexual violence injunction is subjective based on who your judge is, BUT you have to have a sexual act (battery, lewd and lascivious, or one of the other less common ones), AND the client has to have reported it to law enforcement and be cooperating with the investigation. However, as mentioned during the training, realistically the judges are going to also want to hear about why the client needs the protection and is still afraid.

- **Undocumented survivors are afraid to release information, is there a law that protects them?**
 - Unfortunately, no. There is no law that says law enforcement can't pick up your undocumented client when they show up for Court. Recently some counties have been feeling empowered to pick up undocumented victims, while other counties specifically make it a practice not to. You are going to have to work with your local community law enforcement agencies and other participants to get a feel on what is going on in that County and what they are likely to do.
 - It is good practice to advise clients this could happen and never promise them they are safe to come to court.
- **Please provide more information on what can be done if one part of an injunction is granted but others aren't. For example, the injunction for protection is granted but the child support and/or spousal support is denied. What other options should the survivor look into in order to challenge the denials?**
 - If the injunction is granted, but child support/alimony are not, the client can file a motion in family law court to address this. Some injunction judges don't like to get into this because they feel it's more of a family law issue and they have limited information at the time of hearing the argument for issuance of the injunction.
- **Many times (in our county) the parent is not informed as to the extent of the assault. This makes it difficult to obtain an injunction at times, especially a temporary. What can we do to improve our outcomes for this?**
 - One problem could be that the parent/guardian can't get their hands on the police report to find out the details of what happened until the investigation is closed, which can take a long time. Once the investigation is closed the parent/guardian absolutely has a right to obtain that police report and use it to learn the details of the assault to put in a petition.
 - If the parent/guardian doesn't know the details, but law enforcement or a child protective investigator does because they interviewed the child, the parent or guardian can just ask the investigator and see what they will tell them. The client

needs to be able to put something in the petition to get a hearing. If they can say “R sexually assaulted my child on this date and I reported it to LE”... theoretically that should be enough to get them the hearing. Then the parent could subpoena LE/CPI to come to the hearing and then they have no choice but to testify (remember even pro se clients can subpoena witnesses - have them ask the clerk how). It’s always risky to ask for testimony without knowing what the witness is going to say, but this is an option.

- Have the conversation with LE and/or CPI. If there was a sexual assault, that officer probably wants to help the client get the injunction. There may be strategic reasons for them to prolong an investigation.
- **I really would like examples of the narratives that FCASV attorneys have turned in. Like the narrative part of the injunction where the pt. tells their story. NOT to copy by any means, but SV is difficult and clients tend to elaborate in ways that are not effective. What are you writing? What IS effective? I am visual and need to read it for myself.**

- Examples include (these are not from actual client petitions and are fictitious, though representative of the narratives we see):

- A) On March 4, I went out clubbing with my friends in downtown St. Pete. On the way there R texted and said he wanted to meet up. I told him where we were going and around 11:00 he met up with us at McDintons. I had only had one drink by this point, I was not intoxicated. Not too long after R got there, he offered to go get me a drink. He came back with two beers. I remember very little after that. The last thing I remember at McDintons was the band taking a break and we all started to walk out of McDintons. I don’t know where we went. The next thing I remember is waking up to him in my bed next to me around 7 am the next morning. We were both naked. I asked him if we had sex that night and he said yes and how great it was. I told him that was NOT okay, that I did not consent and asked him if he put anything in my drink. He got really angry and called me a B** and got his stuff and left.

I found his condom in my bathroom trash, and I could tell by the way my body was reacting that we did in fact have sex. I was bleeding a little and it was not time for my period.

I texted my friend and asked what happened. She said after McDintons, R and I got in an uber and she didn’t know where I went. She said R was all over me that night and she was surprised I went with him. I have told her many times that R and I are just friends. I asked how many drinks she saw me have, and she said not many at all. She convinced me to report to law enforcement.

I called the police that afternoon and then went to the rape crisis center and had an exam. The nurse told me I had some tears on the inner wall of my vagina. The SANE nurse collected my clothes and those and the condom were given to law enforcement.

Law enforcement had me do a controlled call with R. I again asked him if we had sex and this time he said no. I asked him then why did he say that we did, and he said he was just joking, we were only friends. I asked him why we were both undressed and he said he didn't know why I was but that he always sleeps naked.

I have known R since college, we were just friends. He had asked me out in the past but I declined and said that was not going to happen. He didn't speak to me for a little while, but eventually we resumed our friendship. I can't believe he did this to me. He obviously knows where I live and has been there many times. My lease is not up for another few months and I asked the landlord to let me break my lease but cannot afford the fee. We also run in the same circle of friends. I'm scared I might run into him. Thinking about that night gives me panic attacks. I couldn't handle having to know he could have access to me. Please grant me this injunction.

A few practice tips for this hypo:

- If possible, let law enforcement know you are going to file with information about the controlled call. They may want to attempt to interview the perpetrator first.
- The client can subpoena LE to testify about the controlled call.
- The SANE can/ probably should testify about the exam and what they observed.
- The friend can testify about what she witnessed between R and the client at the club and the limited number of drinks she saw client have.
- If the client wants to wait they can ask the court for continuances for the SAVE exam results to come back.

▪ B) (With a minor child)

Last Sunday, March 31, when I picked up Sally (age 5) from her dad's house, I noticed she was very quiet and not acting like herself at all. When we got home and I went to undress her for her bath, she pointed at her vagina and said it hurt. I asked her "what hurt" and she said "my pee pee." I asked her why it hurt, and she said "daddy." I kept asking her more what did daddy do, and she just started to cry.

I called law enforcement, and CPIs came and interviewed Sally and then took her for a medical exam. They told me that Sally disclosed that her father penetrated her, and the exam results confirmed this.

I have Sally in counseling, but she is not doing well. She cries every night before bed unless I let her sleep in my bed (never did this before). She's having accidents all the time. Her father is set to visit this Friday. He has sent me text messages saying he's her father and he's entitled to see her, and how dare I do this to him. He says I'm a lying b***. He told me "not to make him come get her himself" and that "it won't be pretty if he has to."

Practice tips for this one:

- Sally is probably going to have to testify. This petition is against a parent so the child hearsay rules don't easily apply.
- The client should ask the court to allow Sally to testify in another room outside the presence of her father with an advocate or facility dog, to make her more comfortable.
 - In some circuits, you can ask the court to have a trained forensic interviewer come question the child for testimony.
- The practitioner who conducted the medical exam can testify about the fact that there were signs of penetration.
- The mom and therapist can each testify about how Sally is acting now and how it's affected her.
- The mom can testify about the threats dad made, bringing copies of the texts to show the court.
- There may be ways to get the court to hear Sally's statements that she made to the CPI and her mom (attorneys can file a child hearsay motion), but this is something with which a non-lawyer will need legal assistance.
- If law enforcement interviewed dad, the investigator can testify about what he said during the interview.
- The mom may want to come prepared to suggest a third party supervisor for visits if the Court decides to allow dad supervised visits. She may also want to be prepared to ask for a new child support amount if the injunction is granted.

Additional

Practice Questions and Answers

- Jessica believes she was date raped on her fourth date with the respondent. She has filed a police report and is cooperating. Does she qualify for a SVI? **yes**
 - Bonus- Does Jessica qualify for any other type of injunction? **She can probably file for a dating violence injunction (if they were dating within the last 6 months); the benefit of a dating violence injunction is that she would not have to file a police report and show cooperation with law enforcement.**
- Tony lives in a home with his “adoptive family.” They are not his actual family, but his best friend's family with whom he moved in when his family kicked him out when he was a teenager. The best friend's brother, who also lives in the home, raped Tony. Can Tony file for an SVI? **yes**

- Bonus- Does Tony qualify for any other type of injunction? **Yes, he should qualify for a DV injunction as well. They were living together and “holding themselves out as if a family.”**

The benefit of DV injunction is that no police report/cooperation is required.

- Mary is a nurse at a hospital. One day she was working a shift and the doctor cornered her in a room and exposed himself to her. Does Mary qualify for an SVI?

Probably not; if there were multiple instances of the doctor exposing himself, she may be eligible for a repeat violence injunction. Otherwise, from these facts it does not look like Mary qualifies for any form of injunctive relief. (A criminal court can still enter a no contact order if he is charged/convicted of a crime).

- Kelly just learned that her daughter has been molested by her daughter’s father. Her daughter is too terrified to testify. Can Kelly file for an injunction and testify on her daughter’s behalf?

She can file for her daughter, but her daughter will have to testify. Because this is against a parent, child hearsay (her testifying as to what her daughter told her), will not be admissible.

In the unlikely event that there were other witnesses, they could testify as to what they saw and possibly she could still get the injunction without the daughter testifying.

Hypo #1

- Dina is 17. She was raped by her stepfather, and her mom wants to file an injunction for her. She says she will be able to testify, but you have your doubts based on how much she shuts down when discussing the assault. Step dad is represented by an attorney.
 - What type of injunctions is Dina eligible to file? **SVI and DV**
 - What options would you let Dina know are available to her, when it comes to testifying? **She can ask for accommodations, such as the presence of a facility dog and ask to testify outside the presence of her stepfather (on closed circuit television is the most common).**
 - Can mom testify for Dina? **No, a step parent is treated the same as an actual parent, so child hearsay is not admissible.**
 - What can you tell her to expect in terms of what dad’s attorney will likely do at the first hearing? **The attorney might request a continuance saying they need more time to collect additional evidence, bring witnesses, etc.**

Hypo #2

- Sally was raped by her roommate. When law enforcement interviewed her at the hospital she declined to press charges. She filed for a sexual violence injunction and included the police report with it. It was denied. After she gets out of the hospital, she tells LE she wants to press charges. She filed a second sexual violence injunction and it was also denied.
 - Why was Sally’s first injunction likely denied? **It is possible the injunction was denied because she filed the police report that said she didn’t want to press charges, ie she indicated she’s not cooperating with LE.**
 - What reason(s) was Sally’s second injunction likely denied? **It is possible she didn’t correct the defect and the Court still thinks she’s not cooperating with law enforcement. A new police report and/or statement from LE that shows she is now cooperating should be included, or at a minimum she should at least say she is now seeking to press charges and is cooperating in her new petition.**

Hypo #3

- Juan woke up groggy and in pain. He had gotten in a fight with his boyfriend of a year, the night before, and is worried that his boyfriend raped him. But Juan wasn’t sure. When Juan got home, he texted his boyfriend to try to get clues as to if something happened, and at one point his boyfriend made a comment about how Juan “seemed to enjoy it last night.” When pried further, Juan realized that his boyfriend did penetrate him with a foreign object, but he doesn’t remember it. He goes and gets a SAVE exam. The nurse documents injury, and collects the evidence. Juan calls him, records the call, and the boyfriend makes more incriminating statements. Once he reports to law enforcement, they make a controlled call. This time the boyfriend only says that he is sorry for last night, but makes no other incriminating statements.
 - Does Juan qualify for an injunction? If so, what kind? **Yes, an SVI and Dating Violence.**
(He doesn’t qualify for a DV injunction because the relationship doesn’t qualify. He doesn’t qualify for a repeat violence injunction based on this one act.)
 - What evidence should Juan bring? **He should probably bring the SAVE results that document injury as well as the texts messages. He SHOULD NOT bring the secret recording without seeking the advice of an attorney.**
 - What witnesses? **He will likely need the SANE nurse to come and “authenticate” the SAVE report. He can also ask the police officer who conducted the controlled call to come and testify about it.**

Note- clients without attorneys can subpoena witnesses. The clerk can assist them with the necessary forms. There will be a fee.

Hypo #4

- Lisa tells you she was raped by a group of men. She knows one of their names and begins describing the details of the rape. As she continues to describe it, she mentions things like how they used light sabers and that she saw Obi One while the assault was occurring. She is adamant she wants to pursue an injunction. It's after 5pm however, so it's too late for her to go to the clerk's office that day. She wants you to meet her at the courthouse the next day to file. While the two of you are waiting she starts talking about the perpetrators, and how one of them is from a well-known wealthy family, and how she knows this would be super embarrassing for him. She mentions that maybe he would pay her off to drop it.
 - What might you warn Lisa of possible consequences if she goes forward with the injunction? **If the Court finds that this is a “baseless claim” she could end up owing attorney’s fees.**
 - **As an advocate, it would be important to refer Lisa to mental health services immediately.**

Hypos #5

- Ruth tells you she was raped by a random student at school. She didn't know who he was at the time, and doesn't believe he knew who she was either. Since then, she noticed his face in another friend's Facebook picture, figured out who he was and got his contact information. She reported it to law enforcement but he has not yet been charged or interviewed.
 - What advice would you give Ruth before she files for an injunction? **At a minimum, once he is served he is going to know Ruth's identity. He may also have some information on where she lives. She may want to consider waiting to file until after law enforcement has interviewed him. If R is served with the injunction, and therefore alerted to the allegations of the case, before being interviewed by law enforcement, he may be less likely to cooperate as opposed to if law enforcement can catch him off guard.**

Hypo #6

- Gary was raped by a football player (“rapist”) at a party. As the rapist was trying to exit the party, Gary yelled after him, “hey that guy just assaulted me!” Immediately Gary was tackled by a fellow football player. Gary fought back and the football player fell and broke a bone. Football player reported it to police and Gary is facing battery charges.
 - Gary wants to file for an injunction against the football player and the rapist. What can he do? **He can file an SVI against the rapist. As to the football player, he does not appear to have any basis to pursue an injunction because it was just one time and their lack of relationship. He of course can still report all of it to LE, but it would be advisable to have the help of an**

attorney so that he can have criminal legal representation for defending himself against the football player.

- The football player also filed for an injunction against Gary, what should Gary do? **Again, he should seek legal advice to avoid incriminating himself by testifying. An attorney could also help insure he is beyond the risk of being charged for the battery before he testifies to defend against the injunction.**