

Protective Orders in Virginia— A Guide for Victims



Virginia Department of Criminal Justice Services
www.dcjs.virginia.gov

This brochure is intended to provide summary information regarding family abuse protective orders and protective orders covering other non-family abuse circumstances.

What is a Protective Order?

It is a legal order issued by a magistrate or judge to protect the health and safety of an abused person and his/her family or household members. The person filing for a protective order is called the “petitioner” and the person the protective order is filed against is called the “respondent”.

Who is eligible to ask for a Protective Order?

In order to be eligible for a protective order, you must have been, within a reasonable period of time, subjected to an act involving violence, force, or threat that results in bodily injury or places you in reasonable fear of death, sexual assault, or bodily injury. (See *Code of Virginia* § 19.2-152.10).

Is a Protective Order right for you?

Each situation is different. Protective orders can provide you with legal protection, but they cannot necessarily protect you from violence. In order to help protect yourself from a violent act, you can contact a domestic and sexual violence advocate to assist you with figuring out what you need to stay safe and to develop a plan. It is important to get further information from local resources, such as your local victim/witness program, domestic violence service agency, sexual assault crisis center, Juvenile and Domestic Relations District Court Intake Office, and/or the General District Court.

Where do I go to request a Protective Order? It depends.

The type of relationship you have (or had) with the person who is harming or threatening you determines where you can request a protective order. If that person is a family or household member (defined on the following page) you can request a family abuse protective order through your local intake office for the Juvenile and Domestic Relations District Court. You can also request a protective order via the Juvenile and Domestic Relations District Court if either the petitioner (person requesting the protective order) or the respondent (person committing acts of violence or threatening behavior) is under the age of 18. Staff in the intake office can provide additional information.

All other requests for protective orders that do not meet the definition of family or household member (including but not limited to dating or same-sex partners who do not live together) are made through the General District Court. The General District Court Clerk's Office can provide additional information about local procedures.

Definition of Family Abuse and Family or Household Member (§ 16.1-228)

Family abuse is any act involving violence, force or threat that results in bodily injury or places one in reasonable fear of death, sexual assault, or bodily injury and that is committed by a person against a family/household member. This includes, but is not limited to, any forceful detention, stalking, or criminal sexual assault.

Family or household members include the following: Spouse, ex-spouse, parents, children, step-parents and step-children, siblings, half-siblings, grandparents, grandchildren, persons who have a child in common, and legal custodians of a juvenile, regardless of residence; in-laws who live in the same home; and co-habitants and those who have co-habited in the past year and their children.

There are three types of Protective Orders

Emergency Protective Orders (EPO)

A law enforcement officer or the abused person may petition for (request) an EPO. This order will most likely be requested by a law enforcement officer if an arrest has been made or if the officer finds that there is probable danger of further acts of family abuse, or violence, force or threat. An EPO can only be issued by a magistrate or a judge. The person being abused can also petition for an EPO at the magistrate's office, even if an arrest has not been made. An EPO lasts for 72 hours or until the next session of court, whichever is later. The date and time the EPO ends can be found on the order.

In order to protect your health and safety, an EPO, *in all cases*, can impose the following conditions on the respondent (abuser):

- ◆ Prohibiting all contacts by the respondent with the victim or the victim's family or household members;
- ◆ Prohibiting acts of violence, force, or threat or criminal offenses resulting in injury to person or property;

- ◆ Possession of a companion animal if the petitioner meets the definition of owner (See *Code of Virginia* § 3.2-6500) and;
- ◆ Other conditions the judge or magistrate deems necessary to protect you and family/household members.

In cases of family abuse, an EPO can also:

- ◆ Grant temporary possession of the residence to family/household members.

Preliminary Protective Orders (PPO)

Only a judge can issue a PPO. You must obtain a PPO within a short time after you have been the victim of family abuse or other acts of violence, force or threat. A judge will decide if the PPO will be granted, based on your sworn statement. You do not have to have an EPO to get a PPO, and the respondent (abuser) does not have to be at the hearing. If a PPO is granted, it will last 15 days, or until the final Protective Order hearing. The judge will give you the date for the final hearing and it will also be included on the PPO.

In order to protect your health and safety, a PPO, *in all cases*, can impose the following conditions on the respondent (abuser):

- ◆ Prohibiting all contacts by the respondent with the victim or the victim's family or household members;
- ◆ Prohibiting acts of violence, force, or threat or criminal offenses resulting in injury to person or property;
- ◆ Possession of a companion animal if the petitioner meets the definition of owner (See *Code of Virginia* § 3.2-6500) and;
- ◆ Other conditions the judge deems necessary to protect you and family/household members.

In cases of family abuse, a PPO can also:

- ◆ Grant temporary possession of the residence to family/household members.
- ◆ Require that the respondent maintain utility services for the household, or if appropriate, order respondent to restore such services.
- ◆ Grant temporary possession of a jointly owned vehicle.
- ◆ Require the respondent to provide suitable alternative housing for the family/household members.

- ◆ Require any other relief necessary for the protection of the victim and family/household members of the victim.

“Permanent” Protective Order (PO)

A judge can grant a PO that lasts for up to two years. In order to obtain this PO, you must attend the final Protective Order hearing, which is scheduled at the time of your PPO hearing. The judge will subpoena the respondent (abuser) to be at the PO hearing. Both you and the respondent will be asked to describe what happened. This PO can also be extended for an additional two years, if the petitioner requests an extension, and a judge finds that there is a need to extend protection. There is no limit to the number of protective order extensions that can be granted by a judge.

In order to protect your health and safety, a PO can impose all of the same conditions on the respondent (abuser) as are detailed in the PPO section, for a period of up to two years at a time.

In addition, in cases of family abuse, a PO can:

- ◆ Require respondents to participate in treatment, counseling, or other programs required by the court.
- ◆ Provide for temporary custody or visitation of a minor child.

Protective Orders: Firearm Possession Prohibition (§ 18.2-308.1:4)

A person subject to an emergency or preliminary protective order may not purchase or transport firearms, but they may keep the firearms they already own, if applicable. If a permanent or final protective order is issued by the court, the person subject to the order will be required to surrender his/her firearms. Any person with a concealed handgun permit will also be prohibited from carrying any concealed firearm, and must surrender his/her permit to the court that issued the protective order, for the full duration of the order in question. The *Code of Virginia* does allow the respondent to possess and transport a firearm for 24 hours from the time the order is served, solely for the purpose of transferring or selling the firearm to another person who is not prohibited by law from possessing it, including a dealer and/or law enforcement agency.

Protective Orders are free

There is no charge for petitioning for a protective order, filing copies of a protective order, or having the order served on the respondent.

Do I need legal representation for a Protective Order?

No. You do not need an attorney to file for a protective order. However, there are often free legal services available for low income victims who would like to obtain a protective order. Many area domestic violence service agencies have free attorneys and victim advocates available to assist victims who would like a protective order. Local Legal Aid offices also assist victims in obtaining protective orders. All local Juvenile and Domestic Relations District Courts have court services units to assist victims in obtaining protective orders. To find out more about the services available in your area, please call the toll-free Virginia Victim Assist Helpline at 1-855-443-5782 or the toll-free Virginia Family Violence and Sexual Assault Hotline at 1-800-838-8238.

Do I have to press charges to get a Protective Order?

No. A protective order is a civil order, and is not the same as pressing criminal charges. You may press criminal charges against the abuser, in addition to petitioning for a protective order, but you do not have to press charges in order to get a protective order.

Once a protective order has been served on the respondent (abuser) it can be enforced. It is the respondent's responsibility not to violate the terms of the protective order. Violation of certain protective order conditions by the respondent is a crime. If the respondent is convicted of violating a protective order, he or she must serve some time in jail. Additionally, the court must issue a new protective order.

Is a Protective Order from another state valid in Virginia?

If I go to another state, will my Virginia Protective Order be valid in that state?

The answer to both questions is yes. Federal law requires states to enforce each other's protective orders. To prevent confusion or delay in enforcing the order by law enforcement, you can register a certified copy of your order with the Juvenile and Domestic Relations District Court or

the General District Court in the city or county where you will be visiting or residing.

How to make sure Protective Orders work for you

- ◆ Follow all the conditions and terms stated in your protective order.
- ◆ Go to all the scheduled hearings.
- ◆ Report any violations of the protective order to law enforcement immediately.
- ◆ Carry a copy of the protective order with you at all times and show it to law enforcement, if it is violated.
- ◆ Avoid deliberate contact with the respondent (abuser).
- ◆ Develop a safety plan with your victim/witness program or domestic violence or sexual assault agency (if applicable).

Resources that may be helpful to you:

I-CAN! Virginia

Virginia has an Online Forms Completion Program for protective orders called I-CAN! Virginia. It is a free online program that helps individuals complete the forms necessary to ask the courts for protective orders. I-CAN! Virginia is available on Virginia's Judicial System Website at the following link:

www.courts.state.va.us/courtadmin/aoc/judpln/programs/afapo/home.html

For additional information, assistance, and referrals you may call the following statewide toll-free numbers and/or view the listed websites:

Virginia Victim Assistance Network

www.vanetwork.org

Victim Assist Helpline

1-855-443-5782 (855-4-HELP-VA)

Virginia Sexual and Domestic Violence Action Alliance

www.vsdvalliance.org

Statewide Hotline

1-800-838-8238

Virginia Legal Aid

www.valegalaid.org

1-866-534-5243

Virginia Poverty Law Center (Family & Sexual Violence)

www.vplc.org

1-800-868-8752

Virginia State Bar Lawyer Referral Service

www.vsb.org/vlrs/index.php/public/vlrs

1-800-552-7977

Virginia Victims Fund

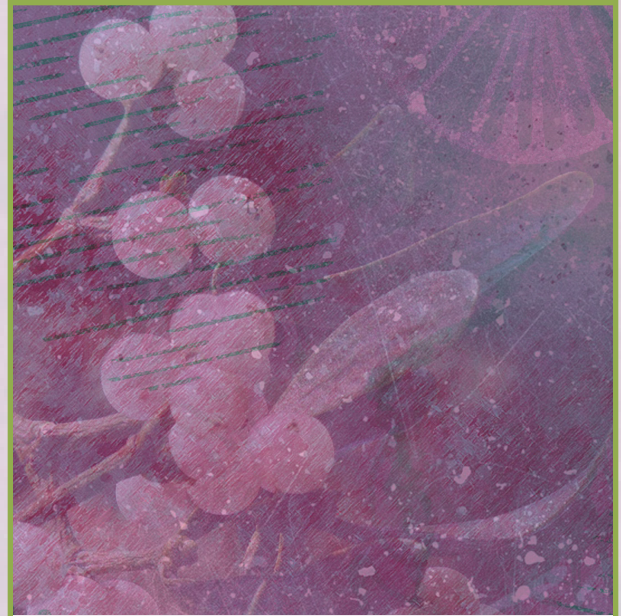
(Officially the Criminal Injuries Compensation Fund)

www.virginiavictimsfund.org

1-800-552-4007

NOTES

The information from this brochure is available on the internet. You may download it from the Virginia Department of Criminal Justice Services website at: www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/victims/protective-orders-virginia-guide-victims-english.pdf



The artwork for this brochure was inspired by Floriography

“Floriography” is the *Language of Flowers*. In traditional cultures throughout Europe, Asia, and Africa, plants and flowers were used as symbols, allowing people to express feelings which otherwise could not be spoken.

The plant in this brochure is Mistletoe. In the *Language of Flowers* it represents a meeting place where no violence can take place.