

YOUR GUIDE TO THE LEGAL SYSTEM AND DOMESTIC ABUSE

We offer answers below to the following questions:

- How can the courts protect me from domestic abuse?
- What is an Order of Protection?
- Do I need a lawyer to seek an Order of Protection?
- Must I pay court costs if I seek an Order of Protection?
- Which courts can issue an Order of Protection?
- What is Juvenile Court?
- Who are Magistrates?
- What is Sessions Court?
- What is Criminal Court?
- What is Circuit Court?
- What does the District Attorney do?
- What is a No-Contact Order?
- What is a Restraining Order?
- Who can seek an Order of Protection?
- What is a domestic relationship?
- What is abuse?
- How does the Order of Protection process work?
- What must the court clerk do?
- What must the court clerk not do?
- How does the process work after the Petition is filed?
- What is an Ex Parte Order of Protection?
- What happens if an Ex Parte Order is granted?
- What happens if no Ex Parte Order is granted?
- What happens at the hearing?
- What should I do before the hearing to prepare my case?
- What should I do on the day of the hearing?
- What is the order of events in the courtroom?
- What should I do when I leave the courthouse?
- What can an Order of Protection give me if the Judge grants the Order?
- What happens if the Judge denies my request for an Order of Protection?
- How do I change or extend the Order of Protection?
- Can my employer get a Restraining Order?
- What is a Mutual Restraining Order?
- What happens if the abuser knowingly violates the Order of Protection?
- What if the abuser has already been arrested for assault or domestic abuse?
- If I move to another county or to another state, does it have to enforce the Order of Protection?
- Can I get an advocate to help me with obtaining an Order of Protection?
- Can I get legal assistance to help with an Order of Protection?

For a separate video on Orders of Protection provided by the Tennessee Supreme Court, go to <http://tscvid.tsc.state.tn.us/>. Your system must be equipped with either [Windows Media Player](#)® or [RealOne Player](#)® to view the video.

How can the courts protect me from domestic abuse?

Courts can do the following:

- Issue "Orders of Protection"
- Issue "Restraining Orders"
- Issue "No-Contact" Orders if the abuser is arrested
- Give you legal custody of your children
- Award exclusive possession of the residence to you or order that you be provided suitable alternate housing
- Prohibit the abuser from disconnecting utilities for a residence the two of you have shared
- Order the other parent to pay child support
- Order your spouse to provide financial support to you
- Order the abuser to complete a counseling program regarding violence and control issues
- Prohibit the abuser from possessing, shipping, receiving or transporting a firearm or ammunition while an Order of Protection is in effect.

What is an Order of Protection?

An Order of Protection is an order of the court that abusers, law enforcement personnel, and other courts must honor. There are two types of Order of Protection -- Ex Parte Orders and a full Order of Protection. In order to receive an Order of Protection, you must file a petition for an Order of Protection with the Court. You can file a petition at the court clerk's office. The Court can grant you immediate help in the form of an Ex Parte Order of Protection. An Ex Parte Order of Protection usually lasts about 15 days. The Court sets a date for a hearing on the full Order of Protection. The date of the hearing is usually before the Ex Parte Order runs out. The full Order of Protection can last for a full year. Violating an Order of Protection is a crime.

Which courts can issue an Order of Protection?

In most counties, Circuit and Chancery Courts issue them. In other counties, Sessions Courts do, but cannot address the issues of child custody or child support. Circuit Court and Chancery Court can issue an Ex Parte Order of Protection, a one-year Order of Protection, and can grant legal custody of your children to you.

Do I need a lawyer to seek an Order of Protection?

No, but one is advisable if your abuser has a lawyer, if you are not confident without one, or if your case may be difficult to prove because, for example, you

have no photograph of and no witness to the abuse. Our organization and others in Tennessee can help you at no cost.

Must I pay court costs if I seek an Order of Protection?

No. If you later drop the case or the judge dismisses it, you may be ordered to pay court costs. BUT don't ever let worries about court costs deter you from seeking protection from abuse. Your safety is more important.

What is Juvenile Court?

Juvenile Court hears all cases involving children whose parents are not married as well as all cases where there is a claim that a child has been either abused or neglected. Juvenile Court has the power to issue an Order of Protection to a mother as part of any Paternity Order. The Juvenile Court can also protect children if they have been the victim of abuse.

Who are Magistrates?

When people are arrested, Magistrates determine whether they can be released from jail. If they can be released from jail, then the Magistrates decide what the conditions of release are. The bond, or "Conditions of Release," usually includes a "No Contact" Order. In counties where Sessions Courts handle Orders of Protection, magistrates often have the power to issue Ex Parte Orders of Protection, as well. Importantly, Magistrates are available when the normal courts are closed – after hours and on the weekends.

What is Sessions Court?

Sessions Court can issue an Order of Protection in some counties, though Circuit Court and Chancery Court handle most of them. Most domestic assault and other criminal cases start out in Sessions Court. If your partner is arrested, then you may be asked to testify in Sessions Court. Sessions Court can revoke the bond of any defendant if they fail to meet their "Conditions of Release," which may include a no-contact order. Sessions Court also has the power to order the abuser to pay money to the victim if he is found guilty of abuse. Even if there is no criminal case, Sessions Court can also hear small claims, including any civil claim for damages less than \$15,000. Sessions Court does not decide issues of child custody or child support.

What is Criminal Court?

Criminal Court hears criminal cases after the Grand Jury indicts a defendant. If your spouse or partner is arrested for abuse or other criminal acts against you, then you may be asked to testify in Criminal Court. It also has the power to order the abuser to pay money to the victim if he is found guilty of abuse.

What are Circuit Court and Chancery Court?

Circuit Court and Chancery Court are trial courts for civil cases. They do not hear criminal matters. They are where most Orders of Protection are determined. (In some counties, Sessions Court handles Orders of Protection.) If Circuit Court or Chancery Court issued an Order of Protection, it has the full authority to enforce all parts of the Order of Protection, including the authority to give you custody of

your children and the authority to place the abuser in jail for contempt should he or she violate the Order of Protection.

What does the District Attorney do?

The District Attorney prosecutes all crimes in the county. As a victim of a crime, you have the following rights: the right to be informed of all proceedings; the right to be informed of the release of a person arrested; the right to be present at criminal hearings; the right to be heard at certain stages of the criminal process; the right to confer with the District Attorney on your case; and the right to have the abuser pay money to you. You also have the right to contact the District Attorney. The District Attorney's office should stay in contact with you, keep you informed of all proceedings, and permit you to speak at the sentencing of the defendant. The District Attorney's office should never harass you or make you feel unwelcome.

What is a No-Contact Order?

If the abuser is arrested for domestic violence, then the Judge may place a "No-Contact" order on them as part of their "conditions of release" from jail. This order requires that the person arrested make no contact with you or with your home. If they violate the No Contact-Order, then they can be arrested for bail jumping. The court can also place a No-Contact Order against them as part of probation, should they be convicted of the crime. If they violate the No-Contact Order, then the Judge can revoke their probation and place them in jail for the full term of their sentence. However, the process for determining a violation of a No Contact Order is tedious:

- A detective or other officer must obtain a copy of the Conditions of Release from the clerk's office.
- The detective must have proof of a violation of the Conditions of Release that contain the No Contact Order.
- The detective must present the evidence to the District Attorney for review.
- The District Attorney must file a petition with the court for revocation of parole.
- The Judge must review the petition.
- The Judge must hold a revocation hearing.
- The Judge must then revoke the bond and issue a warrant for arrest.

What is a Restraining Order?

A Restraining Order can be issued by a civil court, prohibiting someone from coming around you, contacting you, or coming near your place of work or home. If someone violates an Order of Protection, the police can make an immediate arrest. That is not the case with a Restraining Order. You can only enforce the Restraining Order in court.

Who can seek an Order of Protection?

Anyone who has:

- Been the victim of abuse in a domestic relationship OR
- Threatened with abuse in a domestic relationship OR
- Placed in fear of abuse in a domestic relationship

If your child is afraid of being hurt, you can seek an order to protect the child as well. But be careful. It is not clear whether you must take out a separate Petition for a child or, instead, seek protection for the child as well as yourself in the same Petition. Our advice is to file a separate Petition for a child if there are independent reasons for a child to be in fear. Example: if an abuser assaults you and your child at the same time, file two Petitions. But if the abuser assaults you in front of the child, file a single Petition naming the child on the first page of the Petition, as well as yourself.

What is a domestic relationship?

It includes any of the following:

- Married currently OR been married previously
- Living together OR lived together previously
- Dating OR dated in the past
- Related by blood or adoption -- adult children, for example
- Related by marriage -- adult stepchildren, for example
- Any minor child of a person in any of the above relationships

What is abuse?

It includes ANY of the following:

- **Physical injury or the attempt to inflict physical injury**

Examples: hitting, scratching, pulling, punching, sexual assault, or any kind of unwanted physical contact that causes you pain or fear

- **Physical restraint**

Examples: holding you; blocking you; locking you in; taking away keys to your car or your house; or any action that limits your freedom of movement

- **Malicious damage to personal property**

Examples: throwing objects at you or in your presence; destroying or throwing away property that had a special meaning to you; malicious damage to your car or home.

- **Placing you in fear of physical harm**

Examples: screaming or behaving in a manner that causes you to be afraid he may try to hurt you; or hurting you in a way that made the kids afraid he would hurt them

- **Threatening to cause you physical injury**

- **Threatening to physically restrain you**

- **Threatening to damage your personal property in a malicious way**

- **Placing you in fear of physical restraint**

Examples: stalking behavior, such as following you around, monitoring your whereabouts, and calling you at unwanted times, as a way of making you afraid to go where you want or to make you feel “locked up.”

Actual physical injury is NOT required under the law.

How does the Order of Protection process work?

First, you file a Petition for an Order of Protection with the court clerk. A Judge, or a magistrate, decides whether or not to give you an Ex Parte Order. The court clerk also gives you a court date for a hearing on a full, one-year Order of Protection. After the hearing, the Judge decides whether or not to give the Order of Protection. The Judge can give you an Order of Protection for any length of time up to a full year.

What must the court clerk do?

- Provide state-issued Order of Protection forms for you
- Render any assistance necessary to helping you fill out the forms
- Accept anything that is “legally sufficient” that you give them
- Ask, but not require, that you provide information identifying the abuser
- Never require that you pay fees or give a bond to file a petition. Such fees can be imposed AFTER a hearing ONLY if the Judge denies your request for an Order.
- File the Petition and present it to a Judge, who can issue a Show Cause notice to the abuser and give you a hearing date, regardless of whether an Ex Parte Order is given.

What must the court clerk not do?

- The court clerk cannot make a decision on your request for an Order of Protection.
- The court clerk must not discourage you in any way from filing for the Order of Protection.
- The court clerk cannot refuse to file your request for an order of protection because of any other criminal case.
- The court clerk cannot refuse to file your request for an order of protection because you have a no-contact order.
- The court clerk cannot require you to use the state-provided forms for Orders of Protection.

How does the process work after the Petition is filed?

First, the Judge decides whether to issue an immediate Ex Parte Order. Secondly, a hearing is scheduled on your petition. At the hearing, you can testify. Third, at

the hearing, the Judge decides whether to issue an Order of Protection. Finally, if you disagree with the Judge's ruling, you can appeal it.

What is an Ex Parte Order of Protection?

If there is "an immediate and present danger" of any kind of abuse, then the Judge can issue an Ex Parte Order the same day you file your petition. "Ex Parte" means that the legal hearing occurs outside the presence of the other party. In other words, the Court grants an "ex Parte" Order without the abuser being present. This Order requires the abuser to avoid making any kind of contact with you for a short period of time, usually two weeks. This Order does not deal with child custody, child support, spousal support, or housing issues. If you requested an Order to protect your children because they were in fear of abuse, then the order may also temporarily require that the abuser make no contact with the children. You have to specifically list the children as needing an Order of Protection. You can do this by marking the "by next friend" provision in the caption of the state-provided forms for Orders of Protection.

What happens if an Ex Parte Order is granted?

The court clerk must serve the defendant with a copy of the petition and a notice of the date set for the hearing. The notice must be served on the defendant five days prior to the date of the hearing. The hearing on the Ex Parte Order should be within fifteen days of the date the petition is served on the defendant. This normally means that a hearing on an Order of Protection should be scheduled within fifteen days of the date you file your petition. The court clerk must also issue copies of the Ex Parte Order to you, to the defendant, and to the local law enforcement agencies having jurisdiction in the area where you reside. Keep a copy of the Ex Parte Order on you at all times.

What happens if no Ex Parte Order is granted?

The court clerk still must schedule a hearing date on the petition. The hearing date should be set within fifteen days of the date the petition is filed. The hearing must be before a Judge. A Magistrate can rule on an Ex Parte Order of Protection. However, they CANNOT rule on a one-year Order of Protection. The Magistrate can only decide whether to issue the ex Parte part of an Order of Protection. The ruling on the full Order of Protection can only be decided by a Judge. The decision on the Ex Parte Order has no bearing on the ultimate decision for an Order of Protection.

What happens at the hearing?

You can testify and tell the Judge what happened. You can also ask others to testify and bring medical records with you to show the Judge. The Judge, after the hearing, will make a ruling on your petition for an Order of Protection.

What should I do before the hearing to prepare my case?

Contact witnesses who saw the abuse or your injuries

Anyone can be a witness – a friend, family member, children, emergency room nurse, doctor, a stranger who saw or heard the abuse, law enforcement officer, etc. Some witnesses may not come to court unless they are given a subpoena which commands them to appear and testify. Ask the court clerk about the

subpoena process. If the people you subpoenaed do not come to the hearing, let the judge know.

Get evidence and documentation to help you prove your case

Evidence can include:

- medical reports
- police reports
- dated pictures of your injuries
- household objects torn or broken by your abuser
- tapes of calls you may have made to 911
- certified copies of the abuser's criminal record
- anything else to help you convince the judge you have suffered acts of domestic violence and need protection

The more evidence you have, the greater your chances of being granted a protection order; however, a judge will listen to your story even if you have no evidence or witnesses.

Practice telling your story

You may want to make an outline or notes of the history of violence between you and the abuser. You may take notes to court with you to look at if you forget something, but if you read from them, the judge may order that the abuser be allowed to see them.

Tell your story in your own words, but leave out details that have nothing to do with the physical violence or threats of violence. Also, rather than saying "He hit me," tell the judge how you were hit, where on your body you were hit, and how many times. Be specific.

Be sure to mention:

- The most recent two incidents of violence,
- The worst two incidents of violence,
- Whether the defendant has a gun or other weapons, and
- Whether the defendant has threatened to physically hurt or kill you.

What should I do on the day of the hearing?

- Be on time.
- Have your witnesses there and ready. If you have subpoenaed witnesses and they are not present you should inform the judge.
- Dress neatly.
- Speak directly to the judge; he or she will understand if you feel nervous.

- Always address the judge as “Your Honor.”
- Be prepared to spend all day in court (There may be hearings before yours).
- If your abuser comes to court with a lawyer and you are not represented, ask the judge for a “continuance” to push the hearing date back so you can look for a lawyer.
- Once your case is called, enter the courtroom and find a seat. If the abuser sits next to you, it is your right to take another seat and to receive help from court staff in keeping the abuser away from you.
- Stand when the judge enters and sit when the judge or bailiff asks you to.
- Relax and remain calm. Take deep breaths if you feel yourself getting tense. Never lose your temper in the courtroom.
- Always tell the truth.
- If you don’t understand a question, just say so.
- If you don’t know the answer to a question, just say so. Never make up an answer.

What is the order of events in the courtroom?

- At the hearing, everyone who will testify will swear to tell the truth.
- You will tell your side of the story first.
- The judge and the abuser may ask you questions. If you are afraid to answer any of them, tell the judge.
- When you are done, your witnesses will be questioned. You may ask them questions, and then the judge and the abuser will have a turn to ask them questions.
- The abuser will tell his or her side of the story. It may be very different from yours. The judge will ask the abuser questions, and you may also ask the abuser questions.
- The judge will make a decision after hearing both sides and considering the evidence.

What should I do when I leave the courthouse?

- Review the order before you leave the courthouse. If something is wrong or missing, ask the clerk to correct the order before you leave.
- Make several copies of the protection order as soon as possible.
- Keep a copy of the order with you at all times.

- Leave copies of the order at your work place, at your home, at your children's school or daycare, in your car, with a sympathetic neighbor, and so on.
- Give a copy to the security guard or person at the front desk where you live and/or work.
- Give a copy of the order to anyone who is named in and protected by the order.
- If the court has not given you an extra copy for your local police, take one of your extra copies and deliver it to them.
- You may wish to consider changing your locks and your phone number.

What can an Order of Protection give me if the Judge grants the Order?

- Require the abuser to not contact you for up to one year
- Give you temporary custody of your children
- Require the abuser to pay child support
- Require the abuser to provide financial support to you
- Require the abuser to move out of your house
- Require the abuser to help you with alternative housing
- Prohibit the abuser from disconnecting utilities for a residence the two of you have shared
- Require the abuser to attend counseling programs for violence issues
- Require the abuser to attend counseling programs for control issues
- Require the abuser to attend counseling programs for substance abuse problems
- Require the abuser to pay your court costs and attorney's fees

What happens if the Judge grants the Order of Protection?

The court clerk must issue copies of the Order to you, to the abuser, and to the local law enforcement agencies having jurisdiction in the area where you reside. That includes both the city and county police, if you reside within a city providing its own police services. When a local law enforcement agency receives a copy of the Order, it must immediately enter the Order in the Tennessee statewide crime information system and transmit it to the national crime information center. By putting this Order in these databases, this helps law enforcement in other counties and other states enforce the order.

What happens if the Judge denies my request for an Order of Protection?

Then that ruling can be appealed. If the Sessions Court Judge made the ruling, then that decision can be appealed to the Circuit Court. You need to give a notice

of the appeal within ten days. If the Circuit or Chancery Court Judge made the ruling, then it can be appealed to the Court of Appeals. If no Judge ever issues an Order of Protection, then the costs of the petition can be taxed against you. These costs are usually around \$100, though the amount varies in different counties.

How do I change or extend the Order of Protection?

You can extend a protection order for one year by filing another petition. After filing for an extension, the process is very similar to getting your first protection order. It is important that you file for an extension before your first protection order expires, or else you may have to start over. A hearing must be scheduled within 15 days of your filing the petition to extend your order for another year. The judge may issue a temporary order to protect you until the time of the hearing if he or she believes you are at risk. At that hearing the judge will decide whether or not to grant the extension based on the facts of the case.

Can my employer get a Restraining Order?

Your employer can get a Restraining Order whenever there is reason to believe someone is a threat to commit violence against you. Inform your employer immediately if you are in danger. If you inform your employer of the need to protect you and the employer subsequently fails to protect you, the employer may be liable for civil damages in court.

What is a Mutual Restraining Order?

A Mutual Restraining Order is issued against both you and the abuser. It should not be issued unless the Judge finds direct and convincing evidence that you are a threat to the other person. Even then, as long as there is evidence that you have been the victim of abuse; the Judge can still issue an Order of Protection for you.

What happens if the abuser knowingly violates the Order of Protection?

The police can make an immediate arrest. Whenever a police officer has reasonable cause to believe the abuser has violated an Order of Protection, the police officer **MUST** arrest the person. If the police fail to make an arrest when they had reasonable cause to know a abuser violated an Order of Protection, then the city or county can be sued in court for failure to protect. You can also take the abuser back to court for contempt and the Judge can order the abuser to serve time in jail.

What if the abuser has already been arrested for assault or domestic abuse?

You can still get an Order of Protection. An Order of Protection is separate from criminal proceedings. Criminal proceedings do **NOT** bar you from receiving an Order of Protection. Criminal proceedings do **NOT** bar the police from arresting the abuser for violating an Order of Protection. Criminal proceedings do **NOT** bar a Judge from holding a defendant in contempt.

If I move to another county or to another state, does it have to enforce the Order of Protection?

Yes.

Can I get an advocate to help me with obtaining an Order of Protection?

Yes. Contact your local domestic violence hotline. Here are some hotline numbers:

800-641-3434 (Bledsoe and Rhea Counties)

423-745-5289 (McMinn and Meigs Counties)

423-982-1087 (Monroe County)

800-675-0766 (Sequatchie County)

423-755-2700 (Hamilton and Marion Counties)

423-476-9339 (Bradley and Polk Counties)

Can I get legal assistance to help with an Order of Protection?

Yes. If you live in any of the following counties -- Bradley, Bledsoe, Hamilton, Marion, McMinn, Meigs, Monroe, Polk, Rhea, or Sequatchie County, then Southeast Tennessee Legal Services may be of assistance. You can contact us at 423-756-0128, ext. 112.

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