

A Permanent Protective Order can provide for the following:

- prohibit acts of abuse;
- prohibit contacts with the victim or family or household members;
- grant the victim possession of a residence and exclude the abuser;
- grant the victim temporary possession of a jointly owned car and exclude the abuser;
- require the abuser to provide a suitable housing alternative to the victim and any other family member;
- order the abuser to participate in treatment, counseling or other program;
- any other relief necessary, including a provision for temporary custody and/or visitation of a minor child and temporary child support.

Do I Need a Lawyer?

Although the Court must follow legal procedures, the Juvenile and Domestic Relations Courts are prepared to help you. Many victims of family abuse go to court without a lawyer. In some cases, however, it may be in your best interest to have an attorney. For instance, if the abuser has a lawyer or if you do not feel comfortable speaking for yourself, you may be better off if you have a lawyer.

To obtain a legal services attorney, you can call the legal services office in your county or city to determine if you are financially eligible for free legal services. When you call the legal services office, have available information regarding your monthly income and number of dependents. If you are separated from your abuser, only your income is considered to determine your eligibility. Many victims who are financially eligible can receive free legal help obtaining a Protective Order.

If you are not financially eligible for legal services assistance, you can hire a private attorney. If you decide to hire a private attorney, you can call the Lawyer Referral Service for a referral to a private attorney with some experience in obtaining Protective Orders.

WHAT ELSE SHOULD I KNOW ABOUT PROTECTIVE ORDERS?

Enforcement and Violations

In virtually all jurisdictions, a violation of a civil Protective Order is a crime for which the offender may be arrested. In Virginia, a violation of certain provisions of your Protective Order is a Class 1 misdemeanor and/or constitutes contempt of court. Additionally, please be aware that Protective Orders remain valid until expiration or entry of a subsequent court order. Even if the parties get back together, the order remains in effect until its expiration date or the entry of another order voiding it.

Interstate Validity of Your Protective Order

Virginia courts and policy recognize and enforce Protective Orders issued from other states. If you have just moved to

Virginia, you should file a copy of your out-of-state Protective Order with the Juvenile and Domestic Relations Court in your city or county. Protective Orders issued by one state are enforceable in all jurisdictions nationwide. Please ensure that the following language appears in your "Permanent" Protective Order.

"Respondent was afforded both notice and opportunity to be heard in this matter. Pursuant to the Violence Against Women Act of 1984 (18 U.S.C. Section 2265) this Order is valid and enforceable in all fifty states, the District of Columbia, tribal lands and the United States territories."

Federal and State Laws Relating to Firearm Possession

It is a federal crime to possess or transport firearms if you are subject to a family abuse Protective Order or have been convicted of assault and battery for domestic violence/family abuse. Notify the U.S. Attorney's Office if this law is being violated. Virginia has a similar provision regarding firearms, making it a crime to purchase or transport firearms while subject to a family abuse or stalking Protective Order. You should contact your magistrate or local police department if this provision is being violated. Also, a person subject to a Protective Order may not carry a concealed firearm and must surrender his/her concealed handgun permit to the court issuing the Protective Order. You may request that the Judge include a firearms restriction provision in your Permanent Protective Order.

Divorce, Child Support and Custody

Temporary custody and/or visitation of minor children may be granted to a victim of family abuse in the Permanent Protective Order. You should discuss with an attorney when and how divorce, custody and support proceedings should be initiated.

RESOURCES

Virginia Family Violence and Sexual Assault Statewide Hotline: 1-800-838-8238

Virginia LAWYER
Referral Service:
1-800-552-7977

We would like to recognize the following sources from which we drew in creating this pamphlet:

Understanding your Domestic Relations Rights in Virginia,
The Metropolitan Richmond Women's Bar Association, 1994.

Domestic Violence Safety Project

The Virginia State Bar Young Lawyers
Conference

KNOW YOUR RIGHTS

PROTECTIVE ORDERS FOR VICTIMS OF DOMESTIC VIOLENCE

You are not alone. Millions of people live in fear of being battered or abused. People of every age, race, education and income suffer from domestic violence/family abuse.

You do not deserve to be abused and you are not the one causing it. Many people who have been abused have changed their lives and escaped the abuse. There are people in your community willing and able to help you. This pamphlet was written to inform you about the legal remedies and legal services available to victims of domestic violence/family abuse. Reading this pamphlet is a good start for you to change your life and escape the abuse.

What is Domestic Violence/ Family Abuse?

Family abuse, which is often known as domestic violence, is a pattern of controlling behaviors used by one individual to control or exert power over another individual in the context of an intimate relationship. The abuser may be a friend, relative, or current or former spouse, boyfriend or girlfriend. The abuse may be emotional or physical, involving slapping, shoving, pushing, pinching, pulling hair, kicking, punching, choking, beating with a weapon, stabbing or shooting. It also may include forced or unwanted sexual contact, name calling, degrading remarks, continuous criticism, or threats to you, your family, or household members. It may involve holding you against your will, not letting you contact family or friends, or not allowing you to use a telephone or vehicle.

Virginia's legal definition of family abuse is: any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. It includes acts committed against:

- An abuser's spouse or former spouse, parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents, and grandchildren, even if they do not live in the abuser's home;
- An abuser's mother in-law, father in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law who reside in the abuser's home;
- Any individual who lives with or who, within the previous 12 months, lived with the abuser, and any children of either of them then residing in the same house with the abuser

REMEDIES

Criminal Remedies

Many acts of domestic violence are criminal acts and can be punished accordingly. A criminal arrest warrant can be issued when assault, battery, public cursing, stalking, phone threats, strangulation and, in some cases, trespassing has occurred.

Assault: You were threatened with bodily injury and believed you would be hurt.

Battery: You were touched without your permission. Battery is a misdemeanor which is punishable up to a year in jail. If the offender used a weapon, or if the offender has been convicted of assault, or any kind of battery twice in the past, the offense may constitute a felony. Depending upon the offender's intent and your injuries the offender could face up to life in prison.

Cursing/Abusing: Things were said to you in public or in front of another person concerning you or your relatives with the intention of provoking you or making you react violently. The offender can face up to a \$500 fine.

Marital Sexual Assault: An unwanted, forced (or with the present threat of force) sexual contact, even between spouses, can be a crime. Both marital sexual assault and marital rape are felonies and may carry a prison term. Depending upon the charge, the offender can face between five years to life in prison.

Stalking: A distinct form of criminal activity focusing on a pattern of behavior rather than a single incident. If an individual engages on more than one occasion in conduct directed at another person and intends, knows, or reasonably should know that this behavior places that other person or that person's family or household member in reasonable fear of death, criminal sexual assault or bodily injury, this behavior may constitute stalking. A victim of stalking may seek an Emergency, Preliminary or Permanent Protective Order if a warrant for stalking has been issued. Stalking is punishable by up to 5 years in prison upon a third conviction. The victim of a stalking offense may make a written request that the Department of Corrections notify them upon the parole, release or escape of the person who stalked them. Make sure to document the date, time, and location of the stalking incidents.

Strangulation: If the offender applies pressure to your neck with his or her hands, or other object, and the pressure impedes your blood circulation or breathing, the offender can face up to 5 years in prison if you are injured as a result. The injury could consist of swelling around the neck, bruises or cuts.

In 1996, Virginia passed the Family Violence Prevention Bill, strengthening Virginia's arrest policy in cases of family assault and battery. Under the Bill, if an officer has probable cause to believe that an assault and battery occurred, the officer must arrest the abuser unless there are special circumstances suggesting another course of action.

You should contact the police in cases of abuse. You do not have to be physically injured to be a victim of family abuse and to seek a warrant. To apply for an arrest warrant, the police will direct you to an officer of the court called a magistrate, who is available 24 hours a day, 7 days a week. In an emergency, the police will contact the magistrate. Be prepared to tell the magistrate exactly what happened and why you seek assistance. Bringing a friend or witness familiar with the facts may help. The magistrate may then issue an arrest warrant for assault and battery of a family or household member and an Emergency Protective Order. The abuser will be arrested and bond will be set or the abuser may be released on his/her own personal recognizance. If you have filed criminal charges, you will be notified of the hearing date by the Commonwealth's Attorney's office, who, in most jurisdictions, will prosecute the warrant.

Civil Remedies

A Protective Order is a legal document issued by a court to protect the health and safety of a victim of family abuse or any family or household member of the victim. Protective Orders may be used with arrest and criminal charges or they may be used alone. The abuser, though, is not arrested, fined, or jailed when you petition for a civil Protective Order. A Protective Order tells the abuser you will not tolerate the abusive situation and gives you the protection and force of the Court without having to bring a criminal action against the abuser. If the abuser violates certain provisions of a Protective Order, he/she is guilty of a Class 1 misdemeanor, and/or can be found in contempt of court. If the abuser causes you serious bodily injury during the course of such a violation, he/she may be guilty of a felony.

Emergency Protective Order

In emergency situations, a law enforcement officer may request an Emergency Protective Order immediately. A judge or magistrate may also issue an Emergency Protective Order when an assault and battery warrant has been issued and there is a probable danger of further abuse, or if reasonable grounds exist to believe family abuse occurred and there is a probably danger of further abuse. An Emergency Protective Order expires 72 hours after its issuance or, if the Court is not then in session, at 5:00 p.m. on the next business day that the Court is in session. If you want a protective order that lasts longer, you must file a separate petition for a Preliminary Protective Order.

An emergency protective order can provide for the following:

- prohibit acts of abuse;
- prohibit contact with family or household members; and/or
- grant possession of the premises occupied by the parties to the victim and exclude the abuser.

Preliminary Protective Order

You can obtain a Preliminary Protective Order if you were recently subjected to family abuse or are in immediate and present danger of family abuse. To start the process, you must go to the intake office at the Juvenile and Domestic Relations Court in your county or city and file a written petition for a Protective Order. Petitions filed in the Juvenile and Domestic Relations Court do not require a fee and can be done with or without an attorney. The intake worker should assist you in filing your petition. The intake worker will ask you to write down a description of the abuse and threats that you have been subjected to. The intake worker will prepare an affidavit containing the list of past abuses and threats and will ask you to sign it under oath. Your affidavit will be presented to a judge, who will decide whether to issue the order.

A Preliminary Protective Order lasts for 15 days and is effective after personal service on the abuser. After issuing the Preliminary Protective Order, the court will set a date for a full hearing to be held within 15 days. This hearing is held to allow the abuser the opportunity to respond to your petition in Court and allow the Court to decide whether to issue a Permanent Protective Order. After your Preliminary Protective Order is served on the abuser, it will be forwarded to the local police department to be included in the Virginia Criminal Information Network. Keep a copy of the Order with you at all times and provide a copy to your employer.

A Preliminary Protective Order can provide for the following:

- prohibit acts of abuse;
- prohibit contact between the parties;
- prohibit contact between the abuser and family or household members;
- grant the victim possession of the premises and exclude the abuser;
- grant the victim sole temporary possession of a jointly owned car and exclude the abuser; and/or
- require the abuser to provide a suitable housing alternative to the victim and any other family member.

Permanent Protective Order

A Court will issue a Permanent Protective Order if the Court finds that the victim has proven his/her allegation of family abuse. On the date of the Permanent Protective Order hearing, if possible, you should bring to Court witnesses, pictures of injuries, and copies of police and medical records, which can be obtained from the local police station and the hospital or doctor that treated you. A Permanent Protective Order will be valid for a specific amount of time up to 2 years. The Order is effective once it is served on the abuser. Once it is served, it will be forwarded to the sheriff's department to be placed in the Virginia Criminal Information Network. Keep a copy of the Order with you at all times and provide a copy to your employer.