

OFFICE HOURS AND LOCATION

Legal Aid of East Tennessee offices are open from 8:30 A.M. to 5:00 P.M.
Monday through Friday.

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No person in the United States shall, on the grounds of race, color or national origin, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

This pamphlet is intended for general information only. The circumstances of every case are different and need to be dealt with on a case-by-case basis. This is not a substitute for the advice of a lawyer. Also, the law may change and may be different from county to county.



FL 7/07



ORDER OF PROTECTION

LEGAL ASSISTANCE
FOR VICTIMS
OF
DOMESTIC VIOLENCE



Serving Bledsoe, Bradley, Blount, Carter, Cocke, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Polk, Rhea, Sequatchie, Sevier, Sullivan, Unicoi and Washington Counties.

WHAT TO EXPECT FROM THE POLICE

If a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic abuse, whether the crime is a misdemeanor or felony, or was committed within or without the presence of the officer, the preferred response of the office is arrest.

If a law enforcement officer has probable cause to believe that two (2) or more persons committed a misdemeanor or felony, or if two (2) or more persons make complaints to the officer, the officer shall try to determine who the primary aggressor was. The officer shall presume that arrest is not the appropriate response for the person or persons who were not the primary aggressor. If the officer believes that all parties are equally responsible, arrest is not the preferred response for any party, and the officer shall exercise his or her best judgment in determining whether to arrest any parties.

To determine who the primary aggressor is, the officer shall consider:

- (1) The history of domestic abuse between the parties;
- (2) The relative severity of the injuries inflicted on each person;
- (3) Evidence from the persons involved in the domestic abuse;
- (4) The likelihood of future injury to each person;
- (5) Whether one of the persons acted in self defense; and
- (6) Evidence from witnesses of the domestic abuse.

When a law enforcement officer investigates an allegation that domestic abuse occurred, the officer shall make a complete report and file the report with the officer's supervisor in a manner that will permit data on domestic abuse cases to be compiled.

When a law enforcement officer responds to a domestic call, the officer shall:

1. Offer to transport the victim to a place of safety such as a shelter or similar location, or the residence of a friend or relative, unless it is impracticable for the officer to transport the victim, in which case the officer shall offer to arrange for transportation as soon as practicable;
2. Advise the victim of a shelter or other service in the community; and
3. Give the victim notice of the legal rights available.

If this order is not approved you still can proceed with your petition for an order of protection. **BUT YOU MUST GO TO COURT THE DAY THE HEARING IS SET TO GET THE ADDITIONAL RELIEF AVAILABLE** under the order of protection.

WHAT HAPPENS AFTER I FILE FOR THE ORDER OF PROTECTION?

The abuser will be served a copy of the petition for the order of protection and the ex-parte order by deputies of the sheriff's department. The abuser will also receive notice of the date and time of the hearing. The hearing is usually within 15 days after you have filed the petition. However, if the abuser has not yet been served with notice of the hearing date, the hearing date can be changed. He/she must receive the notice so as to have an opportunity to tell his/her side. You may call the clerk's office or the sheriff's department to find out if the abuser has been served. If the abuser has not been served with the petition for order of protection, the clerk can tell you if the case has been set for another date. If the clerk does not give you this information, then you need to appear in court at the date and time you were given and let the judge continue the matter.

WAITING FOR THE HEARING

DO YOU NEED ALTERNATIVE SHELTER UNTIL THE HEARING?

The ex parte order of protection does not order the abuser out of the home. The abuser is usually not forced to do this until the hearing. In some cases the abuser will leave the home after being served with the ex parte order of protection. If the abuser does not leave the home, the best thing to do is seek alternative shelter for yourself and your children to avoid further abuse. The alternative shelter may be friends, relatives, or a local shelter for abused women and their children. There are several shelters for abused women. Some of local shelters and the area they serve are listed in the back of this brochure.

The shelters receive victims of domestic violence twenty-four hours a day. The staff at each shelter is very helpful in giving support and advice during your crisis. The police will escort you to the shelter.

HOW AM I PROTECTED DURING THIS TIME?

If the court approved your ex-parte order of protection, the abuser once served with the ex-parte order, or having actual knowledge of ex-parte order of protection must not contact or come around you. If the abuser violates the ex-parte order you need to call the police.

EX PARTE ORDER OF PROTECTION

The ex parte order of protection does not give you custody of your children. During the fifteen day waiting period you must use your own judgment for allowing visitation between the abuser and the children. Please keep in mind that if custody and visitation have not been set prior to this action, and you are married to the abuser, both parties have equal rights to the children until the matter has been decided by the court. For example, if the abuser fails to return the children after visitation with them, and there is no court order regarding the custody of the children, then he/she is not violating any laws at this time.

UNTIL THE HEARING. . .

During the days leading up the hearing it is important for you to start preparing yourself mentally and physically for what will happen at the hearing. At this point the abuser may be very angry, so it is very important not to confront him/her with any situations which may lead into a fight. Keep in mind that a lot of abusers will seek reconciliation before the hearing so you will drop the order of protection and then return to the abuser after you have done so. If, during this time, you do reconcile with the abuser the best course of action is for you and the abuser to attend the hearing as scheduled and explain to the Judge that you have reconciled.

If the abuser remains in the home during this time, do not worry about removing all of your belongings. Only take items that you will need while you are away. In getting these items out of the home, it would be best to wait until the abuser is away at work, etc., or ask for a policeman to be present while you do so.

THE DAY OF THE HEARING

On the day of the hearing it is important to arrive at the courthouse on time. Allow yourself time to find the appropriate courtroom and time to sit and relax. Remember to stay calm and try not to get too upset at the time.

If you have small children or your children are not in school at the time of the hearing you need to leave them with a babysitter. The judge will not allow the children in the courtroom.

WHAT DO I NEED TO TAKE WITH ME?

Take only the things that you feel will help you prove your case. Any evidence of the abuse such as: photos, hospital reports, and police reports should be taken. Let the judge know that you have these with you so that the judge may review them.

WITNESSES

Witnesses can be a very important part of the evidence of abuse. Witness is defined as "one who saw, or can give a first hand account of something". If someone witnessed you being abused or immediately after the abuse, it would be important to take them to court with you. Make arrangements several days prior to the hearing so that they can make the necessary arrangements to be there. The person who has not witnessed the abuse or saw you after the abuse would not have sufficient credibility for testimony. The judge may or may not choose to listen to the testimony of the witnesses. This depends on whether or not the judge feels he/she already has the information he/she needs to help him/her decide the case.

WHAT DO I NEED TO TELL THE JUDGE?

You may want to write down what you want to say to the judge so that you do not forget when it is time for the hearing. In telling the judge about the incidents of abuse the judge will want to hear about the abuse or threats. If it is threats which make you take action, give incidents and reasons why you feel the abuser will carry through with them.

Remember, the judge will do everything possible to make this process easy for you but you must present your case (evidence) and you **MUST ASK** for the relief that you want (stopping the abuse, child support, specific visitation, housing, etc.). The judge may also include in the order such things as your need for the family car and the need of a police officer to go with you to get your belongings.

WHAT HAPPENS NOW?

IF YOU WERE AWARDED THE ORDER OF PROTECTION

If you are granted the order of protection, the judge will tell you what types of relief you are awarded. At this point you will need to go to the court clerk's office where you initially filed the order of protection and get a certified copy of the order. It is important to keep this copy of the order of protection with you at all times. The copy will tell you what forms of relief you were awarded and the specifics of such things as child support and visitation. If you are granted the order of protection then the court cost will be charged to the abuser.

IF YOU WERE NOT AWARDED THE ORDER OF PROTECTION

The judge will also tell you if you are not granted the order of protection and the reason the judge is not granting it to you. If you are not granted the order of protection you will receive the bill for the court cost. Even if you do not agree with this decision it is best not to argue with the judge. You will have to take a different course of action in protecting yourself from further abuse. You may file an appeal and have another court hear your case. You do not have to pay any costs at this time for appeal. There are alternatives to the order of protection. Some of these alternatives are a divorce, restraining order and assault warrant.

VIOLATION OF THE ORDER OF PROTECTION

Hopefully, when you are awarded the order of protection, the abuser will follow the order given to him by the judge to stop any further abuse or threats of abuse to you. However, sometimes this action is not enough and the abuser may continue to harass and threaten you in violation of the order of protection. If the abuser violates the order you can call the law enforcement authorities in your area and tell them that the order is being violated, and the abuser can be arrested without a warrant. The clerk is required to give a copy of the order of protection to the sheriff and police departments to keep on record. If the abuser is arrested, the abuser will have to appear in court. This hearing is usually the following day. You will be required to be present to testify to the violation. You may call the law enforcement authorities that arrested the abuser or the clerk's office in which you filed the order of protection and they will be able to tell you when and where the hearing will take place. You do not need an attorney. You simply tell the Judge why you had to call the police and how the abuser violated the order. This course of action is necessary in order for the order of protection to be effective. If you fail to do any of this the abuser will probably continue to threaten you. It is understandable that at this point you may not wish to go back into court. However, the abuser cannot be punished for the violation unless you enforce the order and appear at another court hearing. It is important that you call the law enforcement immediately or shortly after the order was violated. Violating the order of protection may occur in any form that was stated in the order of protection (abuse, threats, visitation, etc.). If the violation is child support, you may be able to contact the Child Support Enforcement Office in your area and get help.

WHAT IS AN ORDER OF PROTECTION?

An order of protection is an order of the court, signed by the judge, ordering the abuser to stop abusing or threatening to abuse you and your minor children.

An order of protection is not limited to only protection for you. It may also provide such services as:

1. Ordering the abuser to leave the home or to provide you with another home.
2. Awarding temporary custody of the children.
3. Awarding temporary visitation rights with your children.
4. Awarding temporary support for you and your children.

There are just a few reliefs that may be granted in the order of protection. There are more types of relief which may be asked for depending on each individual case. Please keep in mind that none of these will be granted until the hearing; only protection against physical violence will be given at the time of the initial application for order of protection.

WHO IS ELIGIBLE TO GET ONE?

1. A “victim” or persons eligible to get an order of protection as set out in the statute include the following:

- A. Adults or minors who are current or former spouses;
- B. Adults or minors who live together or who have lived together;
- C. Adults or minors who are dating or who have dated or who have or had a sexual relationship, (as used herein “dating” and “dated” do not include fraternization between two (2) individuals in a business or social context);
- D. Adults or minors who are related by blood or adoption;
- E. Adults or minors who are related or were formerly related by marriage; or
- F. Adult or minor children of a person in a relationship that is described in Sub items (A) through (E) above.

2. Sexual assault victim – any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of any form of rape or sexual battery.

3. Stalking victim – any person regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of offense of stalking.

The Legislature passed a law that makes order of protection enforceable from county-to-county and enforceable in any county of this State. Orders of protection obtained in other states are enforceable in Tennessee.

WHO DO I NEED TO SEE TO GET ONE?

In order to file for an order of protection you must go to the court clerk’s office at the courthouse where the abuse took place or where the abuser lives. The clerks in Circuit, Chancery and General Sessions courts of each county are required by law to have the order of protection forms and to help you fill them out. In the petition for the order of protection you must write down what happened, when it happened, and where it happened. After you have filled out the necessary information the forms will be given to the judge for approval of an ex-parte order. This order is given without the abuser present to tell his/her side of what happened. It provides you with protection from further abuse.

DEFINITIONS

1. **Abuse** – Inflicting or attempting to inflict personal injury on an adult or minor by other than accidental means, placing an adult or minor in fear of physical harm, physical restraint, or malicious damage to the personal property of the abused party.
2. **Adult** – Any person eighteen (18) years of age or older, or who is otherwise emancipated.
3. **Victim** – Any person who falls within following categories:
 - A. Adults or minors who are current or former spouses;
 - B. Adults or minors who live together or who have lived together;
 - C. Adults or minors who are dating or who have dated or who have or had a Sexual relationship, (as used herein “dating” and “dated” do not include fraternization between two (2) individuals in a business or social context);
 - D. Adults or minors related by blood or adoption;
 - E. Adults or minors who are related or were formerly related by marriage; or
 - F. Adult or minor children of a person in a relationship that is described in Sub items (A) through (E) above.
4. **Petitioner** – Person alleging domestic abuse, sexual assault or stalking in a petition for an Order of protection.
5. **Preferred Response** – Means law enforcement officers shall arrest a person committing domestic abuse unless there is a clear and compelling reason not to arrest.
6. **Respondent** – Person alleged to have abused, sexually assaulted or stalked another in a petition for an Order of Protection.
7. **Sexual Assault Victim** – Any person regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of any form of rape, or sexual battery.
8. **Stalking Victim** – Any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of stalking.

SHELTERS

Abuse Alternatives, Bristol	423-764-2287
CEASE, Hamblen County	423-586-0692
CHIPS, Unicoi, Carter & Greene Counties	423-735-0023
Family Crisis Center, Knox County	865-637-8000
Haven House, Blount County	865-982-1087
Harbor Safe House, Bradley County	423-476-3886
Iva’s Place, Loudon County	865-988-7867
Partnership for Families, Children and Adults, Hamilton County	423-755-2700
Safe House, Sullivan County and Kingsport	423-246-2273
Safe Haven, Johnson County	423-727-1914
Safe Passage, Washington County	423-232-8920
Safe Space, Sevier County	800-244-5968
Serenity Shelter, Knox County	865-673-6551
H.O.P.E. Center, McMinn County	423-745-5289
Salvation Army, Knox County	865-525-9401