

CENTRAL VIRGINIA LEGAL AID SOCIETY, INC.



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Domestic Violence

If your spouse, family member, or household member abuses you, it is not your fault. You have a legal right to live in peace and safety. If this right is violated, the law should protect you.

What is spouse abuse or family abuse?

Spouse abuse or family abuse is any act or threat that results in injury or reasonable fear of injury done by a family or household member. This includes these people.

- Your spouse or your former spouse.
- Your parents, stepparents, children, stepchildren, brothers, sisters, grandparents, and grandchildren.
- If they live in your home, your father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.
- The other parent of your child.
- Anyone who lives in your home.
- Anyone who has lived in your home in the last year.

What is the first thing I should do?

You should leave. If you don't have friends or relatives who will take you in, you can go to a shelter for abused spouses or family members. To find a shelter, you may call toll-free 1-800-838-8238. This is the Virginia Family Violence and Sexual Assault Hotline. You can find more information at their web site: <http://www.vadv.org>. (In the future, this web site will be: <http://www.vsdvalliance.org>.)

If you have children and decide to leave, you should take your children with you. Unless this will put you or the children in danger, you should do this if at all possible. If you leave without your children, you may have trouble getting custody of them later.

What things can I do in the criminal law?

You can ask for a criminal warrant. It is a crime to beat or injure you. It is a crime even to touch or hold you against your will. It also is a crime to threaten to beat or injure you if that would put you in reasonable fear of harm.

To file a criminal warrant, you should go either to the nearest magistrate or to the Commonwealth Attorney's office in your city or county. The abuser may be arrested and put in jail until bail can be made. You will be told the date, time and place of the trial. You should go to the trial and tell the Judge what happened. If you ask for a criminal warrant and don't follow it through, the Judge may not think the problem is serious if you ask for a criminal warrant in the future.

What things can I do in the civil (non-criminal) law?

You can petition the Juvenile and Domestic Relations (J&DR) Court for a protective Order. To do this, you should go to the Court Service Unit of the J&DR Court in the city or county where the abuse took place. You can do this by yourself, without an attorney, and without a filing fee. Generally, it is best to do this within 72 hours of the abuse.

An Emergency Protective Order (EPO) can be issued right away. An EPO is good for 72 hours. A Preliminary Protective Order (PPO) can be issued after the court gives the abuser notice and a chance for a hearing. A PPO is good for 15 days. The court also can issue a Permanent Protective Order (PO) after giving the abuser notice and a chance for a hearing. A PO is good for up to two years.

What else can I do?

You can and should do all of these things. You don't have to choose between asking for a criminal warrant and filing for a protective order. You may do both.

How do I get an Emergency Protective Order?

An EPO can be issued either by a Magistrate or a Judge. The Judge may be from J&DR Court, General District Court, or Circuit Court. A Judge may issue any type of protective order. A Magistrate may issue only an Emergency Protective Order.

An EPO from a Magistrate ends on the date shown on the order. If you want to keep a protective order in effect, you must go to the Court Services Unit of the J&DR Court before the Emergency Protective Order ends, and apply for a Preliminary Protective Order.

What can an Emergency Protective Order do?

An EPO can order the following things.

- Forbid further acts of family abuse.
- Forbid further contacts with family or household members.
- Give you temporary possession of your home.
- Forbid the abuser from coming to your home.

As with any protective order, an Emergency Protective Order is good and takes effect only after it has been personally served on the abuser.

How do I get a Preliminary Protective Order and a Permanent Protective Order?

If you want to keep a protective order in effect, you must go to the Court Services Unit of the J&DR Court before the Emergency Protective Order ends, and apply for a Preliminary Protective Order and a Permanent Protective Order. You can do this by yourself, without an attorney, and without a filing fee. You will be told the date, time and place of the hearing. You should go to the hearing and tell the Judge what happened. If you file for a protective order and don't follow it through, the Judge may not think the problem is serious if you file for a protective order in the future.

If you don't apply for a protective order from the Court Services Unit, or don't appear in J&DR Court at your hearing, no protective order will be in effect after your EPO ends.

What can a Preliminary Protective Order do?

A Preliminary Protective Order can order the following things.

- Forbid further acts of family abuse.
- Forbid further contacts with family or household members.
- Give you temporary possession of your home.
- Forbid the abuser from coming to your home.
- Order the abuser to provide different housing for you and your children.
- Give you temporary possession of a motor vehicle.
- Forbid the abuser from using a motor vehicle.
- Make the abuser post a cash or property bond that may be lost if the order is disobeyed.
- Give the abuser a jail sentence, which may be suspended (put off) as long as the abuser behaves.

As with any protective order, a Preliminary Protective Order is good and takes effect only after it has been personally served on the abuser.

What can a Permanent Protective Order do?

A Permanent Protective Order can do all of the things that a Preliminary Protective Order can do. It also can do these things.

- Give you temporary child custody.
- Give the abuser temporary child visitation.
- Order the abuser into counseling.
- Order anything else needed to protect you and your children.

As with any protective order, a Permanent Protective Order is good and takes effect only after it has been personally served on the abuser.

If I get child custody in the Permanent Protective Order, do I need another child custody order?

Yes. Child custody awarded in a Permanent Protective Order lasts only as long as the order is in effect. This can be no longer than two years. Once the order is over, the child custody award also is over. This would mean the abuser would have the same child custody rights as you.

If you want a child custody order that lasts longer than the Permanent Protective Order, you must file a Petition for Custody. You file with the Court Services Unit of the Juvenile and Domestic Relations (J&DR) Court. You should file in the county (and state) where the child last lived for at least six consecutive months. You may file a petition for custody in the J&DR Court by yourself, without an attorney, and without a filing fee if the Judge allows it.

The filing fee is \$25 per petition per child. The \$25 filing fee may be paid by personal check, money order, cash, or credit card. The fee may not be paid in installments. If you can't afford the filing fee, ask for the "Affidavit in Support of Application for Proceeding in Custody or Visitation Cases without Payment of Filing Fees." This also is called "Form DC-606."

What should I do if the abuser disobeys the Protective Order?

If the abuser disobeys a protective order, you should notify the J&DR Court right away by filing a motion for a show cause summons. The court will issue a show cause summons. At the Show Cause hearing, you should tell the Judge what happened. If the Judge decides the protective order was violated, the abuser may be fined and/or put in jail for contempt of court.

What is the difference between a Protective Order and a Restraining Order?

A protective order is similar to a restraining order. The main difference is the court that issues the order. The Circuit Court issues restraining orders, usually as part of a divorce. The J&DR Court issues protective orders. Usually a protective order is better because you can get a hearing faster in the J&DR Court.

Can I get a Peace Bond?

A peace bond usually is not used in a civil (non-criminal) case such as a protective order. A peace bond occasionally is used in a criminal case.