

# CENTRAL VIRGINIA LEGAL AID SOCIETY, INC.



1000 Preston Ave, Suite B 101 W Broad, Ste 101 2006 Wakefield Street  
Charlottesville, VA 22903 Richmond, VA 23241 Petersburg, VA 23805  
434-296-8851 (Voice) 804-648-1012 (Voice) 804-862-1100 (Voice)  
434-296-5731 (Fax) 804-649-8794 (Fax) 804-861-4311 (Fax)



## Protective Orders – Family Abuse & Non-Family Abuse

If your spouse, family member, household member or anyone else 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 a protective order?

A protective order is a civil (non-criminal) legal document issued by a court to protect a victim of violence, threats and abuse. However, a protective order is only a piece of paper. It cannot protect you unless your abuser respects it. **If you feel you are in danger, call the police (911).** Call the local Victim / Witness Assistance Program, or shelter for abused spouses or family members, for help in an emergency to assist you in making a personal safety plan.

### When can a protective order be issued?

A protective order can be issued whenever there is any act involving violence, force or threat that results in bodily injury or places you in reasonable fear of death, sexual assault or bodily injury. This includes, but is not limited to, any forceful detention, stalking, criminal sexual assault or any criminal offense that results in bodily injury or places you in reasonable fear of death, sexual assault or bodily injury.

### What is the difference between a Family Abuse Protective Order and a Non-Family Abuse Protective Order?

A Family Abuse Protective Order can be issued when there is an act or threat that results in injury or reasonable fear of injury done by a family or household member. A “family or household member” 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 in a partner relationship.
- Anyone who has lived in your home in the last year in a partner relationship.

A Non-Family Abuse Protective Order can be issued when there is an act or threat that results in injury or reasonable fear of injury done by anyone else. This includes, but is not limited to, victims of dating violence, sexual assault and stalking, no matter if there is any relationship between the victim and the abuser.

### **Do I have to take out a criminal warrant to get a protective order?**

No. Both types of protective orders – for family abuse and for non-family abuse – do not require a criminal warrant. The standard for issuing both types of protective orders is the same. The test is whether you recently have been subjected to an act or threat that results in injury or reasonable fear of injury.

### **What is the first thing I should do?**

You should leave. If you don't have friends or relatives who will take you in and you are a victim of family abuse, 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>.

If you don't have friends or relatives who will take you in and you are a victim of non-family abuse, you can contact the Victim / Witness Assistance Program of the Virginia Department of Criminal Justice Services. You may call toll-free at 1-888-887-3418. You can find more information at their web site: <http://www.dcjs.virginia.gov/victims>.

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?**

Although you are not required to, 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 file a petition in the proper court for a protective order. If you are a victim of family abuse, you 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.

If you are a victim of non-family abuse, you petition the General District Court for a protective order. To do this, you should go to the Clerk's Office of the General District Court in the city or county where the abuse took place.

In either court, 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 information will I need to file a petition for a protective order?**

- A brief description of when and how you were threatened and/or abused.
- The name of the abuser.
- If you know it, the Social Security number and date of birth of the abuser.
- A physical description of the abuser.
- An address where the abuser can be found.

### **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. The Magistrate's Office is open and available to do this 24 hours a day, and may do this with or without assistance from law enforcement.

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 (in a family abuse case), or to the Clerk's Office of the General District Court (in a non-family abuse case), before the Emergency Protective Order ends, and apply for a Preliminary Protective Order.

### **What can an Emergency Protective Order do?**

A family abuse Emergency Protective Order can do the following things.

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

A non-family abuse Emergency Protective Order can do the following things.

- Forbid further acts of violence, force or threat, or criminal offenses resulting in injury to person or property.
- Forbid further contacts with the victim, the victim's family or household members.

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, petition for a Preliminary Protective Order and a Permanent Protective Order before the Emergency Protective Order ends. In a family abuse case, you must go to the Court Services Unit of the J&DR Court. If a non-family abuse case, you must go to the Clerk's Office of the General District Court. 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, or don't appear in court at your hearing, no protective order will be in effect after your Emergency Protective Order ends.

### **What should I expect at a protective order hearing?**

You will go before a judge and under sworn testimony, describe the abuse, verbal threats and/or injury as specifically as possible. You may show the judge any photographs of injuries or property damage. You may have witnesses to the abuse testify. The abuser also is allowed to appear and testify at the hearing. You will be allowed to ask questions of the abuser, if you wish.

### **What should I expect when I leave court?**

If a protective order is granted, get a copy of the order and make sure it says what you thought it would say. Ask a court clerk or bailiff for help if the protective order appears incorrect, is not signed, is not dated, or if boxes you thought would be checked are not checked. You should keep your copy of the protective order with you at all times. Give a copy to your supervisor at work. If children are included, make sure anyone responsible for them has a copy, including the children's schools. If you are planning or considering leaving the state, make sure you get a certified copy of your protective order from the Clerk's Office.

## **What can a Preliminary Protective Order do?**

A family abuse Preliminary Protective Order can order the following things.

- Forbid further acts of family abuse.
- Forbid further contacts with the victim, the victim's 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.
- Order the abuser to pay for, or refrain from terminating, certain utilities.
- Give you temporary possession of a motor vehicle.
- Forbid the abuser from using a motor vehicle.

A non-family abuse Preliminary Protective Order can order the following things.

- Forbid further acts of violence, force or threat, or criminal offenses resulting in injury to person or property.
- Forbid further contacts with the victim, the victim's family or household members.

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

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

A non-family abuse Permanent Protective Order can do all of the things that a non-family abuse Preliminary Protective Order can do.

As with any protective order, a Permanent Protective Order is good and takes effect only after it has been personally served on the abuser. A Permanent Protective Order can be extended for good cause shown after the initial two-year term.

## **If I get child custody in a Family Abuse Permanent Protective Order, do I need another child custody order?**

Yes. Child custody awarded in a Family Abuse Permanent Protective Order lasts only as long as the order is in effect. Usually, this is 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 than lasts longer than the Family Abuse 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.

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 a Protective Order?**

If the abuser disobeys a protective order, **you should call the police (911) right away if the violation places you in immediate danger.** Otherwise, you should report a violation involving force, threat or trespass to the Magistrate and have warrants for violation of a protective order issued against the abuser. A violation of a protective order is a crime that will be prosecuted by the Commonwealth's Attorney. If your abuser is convicted of violation of protective order, the abuser can be imprisoned. Upon conviction, a new two-year protective order is issued by the court.

If the violation involves the monetary terms of the protective order, you immediately should notify the court which issued the protective order and file 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 family abuse protective orders, and the General District Court issues non-family abuse protective orders. Usually a protective order is better because you can get a hearing faster in the J&DR Court and in General District 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.