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Domestic Violence and Protective Orders

Domestic violence (also called family violence) is a pattern of behavior and a method of control which results in physical injury or places one in reasonable apprehension of serious bodily injury and which is committed by a person against such person's family or household member. One person dominates other household members by violence and/or psychological abuse.

If you can answer "yes" to any of the questions below, you may be in an abusive relationship which would qualify as "Domestic Violence." Does your partner:

- Hit, slap, choke, kick, bite or push? Use, or threaten to use a weapon? Prevent you from leaving?
- Call you degrading names? Threaten to harm you or your family? Torture your pet? Destroy your property?
- Keep you from seeing your friends or family? Prohibit you from using a vehicle?
- Force you to engage in sexual acts against your will?
- Discourage or forbid you to work? Withhold the family's financial information from you?
- Control all the family finances and accounts?
- Fail to provide care or medical treatment that results in injury or damages your health and safety?

Safety for yourself and your children must be your primary concern when you are experiencing violence in your home. Develop a plan. Figure out the best way to get yourself and your children to safety. Ask for help. Keep some money, an extra set of keys, identification records (birth certificates, social security cards) and other important documents and telephone numbers with a trusted friend. Let your neighbors know your situation. Ask them to call the police if they hear suspicious noises from your house. Teach your children how to use the telephone and how to contact the police or other help in an emergency.

If you are being abused by someone in your family or by a partner, **CALL 911**. The police are required to:

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- Respond to your call.
- Make an arrest if there is probable cause that an assault has occurred.
- Write a report of the incident and give you a summary of the report.

The police are also required to request an Emergency Protective Order if they believe you are in further danger. This will order the abuser to:

- Stop abusing you.
- Stay away from you.

If family abuse has occurred recently or is continuing to occur, you may request a protective order against members of your family or household, former spouse, or persons with whom you have a child in common. A protective order is a legal order prohibiting further acts of abuse. The abuser will not be arrested or charged with a crime if you only request a protective order. However, you can also request a Criminal Assault and Battery Warrant from your local magistrate. You do not need an attorney to request a warrant or to petition for a Protective Order, and there is no charge for either.

In Virginia there are three kinds of Protective Orders that can protect you and others in your family or home:

- Emergency Protective Order
- Preliminary Protective Order
- Protective Order

EMERGENCY PROTECTIVE ORDER

A law-enforcement officer or victim of family abuse may request an Emergency Protective Order (EPO) from a judge or magistrate when:

- A warrant for assault and battery against a family or household member has been issued and there is probable danger of further acts of family abuse; or
- Reasonable grounds exist to believe that the abuser has committed family abuse and there is probable danger of a further such offense against a family or household member.

An Emergency Protective Order (EPO) expires at 11:59 p.m. on the third day after it was issued. If the expiration date occurs on a day that the court is not in session, then the order is extended until 11:59 p.m. on the next day that the Juvenile and Domestic Relations District Court (J&DR) is in session. To continue the protection of a protective order, you must seek a Preliminary Protective Order.

The judge or magistrate may impose one or more of the following conditions on the abuser under an EPO:

- Prohibit acts of domestic abuse;
- Prohibit further contact by the abuser with you, or your family or household members; and

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- Grant the victim exclusive possession of the residence, though this will not affect title to the real estate.

The judge or magistrate must also provide the forms for petitioning for a Preliminary Protective Order.

PRELIMINARY PROTECTIVE ORDER

A victim of domestic abuse begins the proceeding to get a Preliminary Protective Order (PPO) by filing a petition with the J&DR Court. There is no filing fee, but you must sign an affidavit or state in sworn testimony that there is an immediate and present danger of domestic abuse or that domestic abuse has recently occurred. You must provide the court with a physical address of the person from whom you are seeking protection and a full description of the event that led you to seek a protective order. Bring your copy of the Emergency Protective Order as well.

The PPO is not effective until it is personally served on the abuser. Once the abuser has been served, the PPO may be valid for up to fifteen days. The PPO will specify a date for a full hearing which will be held within fifteen days and may result in the issuance of a Protective Order. If the abuser does not appear at the hearing because he was not served with the notice, then the PPO may be extended for up to 6 months.

The judge or magistrate may impose one or more of the following conditions on the abuser in a preliminary protective order:

- Prohibit further acts of domestic abuse;
- Prohibit further contact by the abuser with you, or your family or household members;
- Grant the victim exclusive possession of the residence, though this will not affect title to the real estate;
- Grant the victim temporary exclusive use or possession of a jointly titled motor vehicle, though this will not affect title to the vehicle; and
- Order the abuser to provide suitable alternative housing for the victim and, if appropriate, any other family or household member.

PROTECTIVE ORDER

A Protective Order may be issued by a J&DR Court after a full adversary hearing in which both the victim and the abuser have the opportunity to be present. The victim must show evidence that he or she has been subjected to family abuse by a family or household member. A protective order may be issued for a specific period, not to exceed two years. If you do not go to the hearing the Preliminary Protective Order ends in 15 days, or the date of the hearing. The court may assess costs and attorney's fees against either party regardless of whether a PO has been issued as a result of a full hearing.

The judge or magistrate may impose one or more of the following conditions on the abuser in a protective order following a full hearing:

- Prohibit further acts of family abuse;
- Prohibit further contact by the abuser with you, or your family or household members;

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- Grant the victim exclusive possession of the residence, though this will not affect title to the real estate;
- Grant the victim temporary exclusive use or possession of a motor vehicle owned by the victim alone or jointly by the parties, though this will not affect title to the vehicle; the court can also prohibit the abuser from terminating the registration, insurance, and taxes on the vehicle, and can require the abuser to maintain the registration, insurance, and taxes;
- Order the abuser to provide suitable alternative housing for the victim and, if appropriate, any other family or household member;
- Order the abuser to participate in treatment, counseling or other program; and
- Order any other relief necessary to protect the victim and household members including a provision for temporary custody, visitation and temporary support of a minor child.

Prior to the expiration of the protective order, a petitioner may file a motion requesting that the order be extended for up to two years. There is no limit as to how many times the order may be extended.

Either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion is given precedence on the court docket.

If after receiving a protective order, you are concerned for your safety or the safety of your family, you should contact a law enforcement officer for assistance. You should keep a certified copy of the protective order with you to present to a law enforcement officer, if necessary. You should also consider providing a certified copy of the protective order or injunction to your employer and child(ren)'s daycare or school.

All Protective Orders, including Emergency and Preliminary Protective Orders, must be sent electronically by court personnel to the Virginia Criminal Information Network by the end of the day on which it was issued. The court must also send all PO's directly to the primary responsible local law enforcement agency. This is important because if the victim needs to report a violation of the PO, law enforcement will have immediate access to the records.

APPEALS FROM PROTECTIVE ORDER

If the judge denies you a Protective Order, and you disagree, you can appeal to the Circuit Court within 10 days. You can also appeal within 10 days if the judge grants a Protective Order, but you disagree with the terms. See the clerk of court.

ADDRESS CONFIDENTIALITY PROGRAM

The Address Confidentiality Program (ACP) is a service provided by the Virginia Attorney General's office that allows victims of domestic violence or stalking to keep their new location unknown to their abuser. Participants in the program all use the ACP's post office box number as their substitute address, and are assigned an individual authorization code. The ACP receives, sorts, repackages, and forwards all first class mail to the participant's actual address, which is kept confidential, as the name of the program implies.

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The Attorney General's office will also serve as an agent for participants for the purpose of receiving legal papers directed to the ACP participant. This avoids having to disclose the victim's actual location to the abuser, which is where legal papers would normally be served. The ACP will immediately notify the victim of the receipt of any legal papers.

Victims can apply for participation in the ACP through the local domestic violence program. To locate such a program near you, call the Virginia Family Violence and Sexual Assault Hotline, 1-800-838-8238.

You may learn more about the ACP at:

http://www.ag.virginia.gov/Programs%20and%20Resources/Domestic%20Violence/DV_2012/OAG_ACP%20Brochure_6299.pdf

Frequently Asked Questions

Should I take the children?

You should make every attempt to take the children if you want to get custody of them. This is not kidnapping. Unless there is court-ordered custody, both parents have legal rights to the children and are free to take them. It is easier to get court-ordered custody if the children are already with you.

The children do not want to leave. Should I?

It's important to trust your own judgment. Sometimes after being in an abusive relationship for a long time, victims begin to rely on their children to make the decisions. Remember you are the parent. You must make the decisions. Your children may be unhappy for a while, but think of the long term effects of watching domestic violence. Your children will have more problems later because of abuse they witness.

What if I am locked out or am afraid the abuser may be home? How do I get things I left behind?

If you can't get into your home to get your personal belongings, you may need to file a "Warrant in Detinue." This is only for property which belongs to you alone. The court will not divide marital property in a Warrant in Detinue. To file, you must bring a complete list of your belongings to the General District Court Clerk's office and pay a filing fee. If you win, the abuser must return your property and repay the filing fee to you.

I have a lease agreement that I need to get out of so I can move to a safer place. Can I terminate that lease even if it has several months left?

Yes. A tenant may terminate a rental agreement if they are a victim of family abuse, sexual abuse, or other criminal sexual assault. This is allowed by state law, even if it's not stated in the lease. In order to use this early termination right, you must either have a "permanent" protective order (lasting for up to two years) that is currently in effect, or an order convicting the abuser of a crime of family abuse, sexual abuse, or other criminal sexual assault. You need to give at least 30 days' written notice to your landlord, and you must include with your notice a copy of the protective order or conviction order. You can use the same conviction order to terminate the lease in effect at the time of the conviction, and one more new lease after that.

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When do protective orders take effect?

A law enforcement officer or court official must give the protective order to the person from whom you want protection. A protective order is not valid until that person gets a copy. This is called “personal service.”

How do I know if the person against whom the order was issued has been served?

Call law enforcement and ask if the person has been served.

What if the person against whom the order was entered does not obey the order?

Notify law enforcement. They can arrest the person and file criminal charges.

What if the person comes to my house or workplace?

You should call law enforcement and tell them you have a protective order against the person and they are violating the order.

What if I need to change part of the Protective Order?

You must fill out and file new court forms.

What is a “no contact” provision in a protective order?

No contact means the other person cannot contact you directly or indirectly except as authorized by the court.

What if I must sometimes contact the other person?

Tell the judge at the hearing.

If I go to another state, will my protective order be valid in the other state?

Federal law requires all states to enforce each others' valid protective orders. Contact the nearest court in that state for more information.

What if I need help filling out the forms?

If you have access to the internet, you can go to www.courts.state.va.us, click Programs, then Family Abuse Protective Orders for help with the forms. You may use I-CAN!, a free internet-based service that provides assistance with preparing family abuse protective order petition forms. I-CAN! is available in Spanish and offers step by step instructions to ensure the forms are completed properly. Once you complete the forms you must print them and take them to your Juvenile and Domestic Relations Court so the forms can be processed and filed.

Where can I go if I am still not safe?

- Police – call 911
- Local domestic violence or sexual assault programs
- Department of Social Services
- Homeless shelters
- Churches in your community
- Victim-Witness Program

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- Virginia Family Violence/Sexual Assault Hotline (toll free 24-hour) – (800) 838-8238

Domestic Violence Safety Tips

Whether or not you feel safe to leave an abuser, there are things you can do to make yourself and your family safer.

IN AN EMERGENCY

- Stay away from the kitchen (the abuser can find weapons, such as knives, there)
- Stay away from bathrooms, closets, or small spaces where the abuser can trap you
- Get to a room with a door or window to escape
- Get to a room with a phone to call for help; lock the abuser outside if you can
- Call 911 right away for help; get the dispatcher's name
- Think about a neighbor or friend you can run to for help
- If a police officer comes, stay calm; tell him/her what happened; get his/her name & badge number
- Get medical help if you are hurt
- Take pictures of bruises or injuries
- Call a domestic violence program or shelter

HOW TO PROTECT YOURSELF AT HOME

- Learn where to get help; memorize emergency phone numbers
- Keep a phone in a room you can lock from the inside; if you can, get a cellular phone that you can keep with you at all times
- If the abuser has moved out, change the locks on your doors; get locks on the windows
- Plan an escape route out of your home; teach it to your children
- Think about where you would go if you need to escape
- Pack a bag with important things you'd need if you had to leave quickly; put it in a safe place, or give it to a friend or relative you trust
- Include cash, car keys & important information such as: court papers, passport or birth certificates, medical records & medicines, immigration papers
- Get an unlisted phone number
- Block caller ID
- Use an answering machine; screen the calls
- Take a good self-defense course

HOW TO MAKE YOUR CHILDREN SAFER

- Teach them not to get in the middle of a fight, even if they want to help

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- Teach them how to get to safety, to call 911, to give your address & phone number to the police
- Teach them who to call for help
- Tell them to stay out of the kitchen
- Give the principal at school or the daycare center a copy of your court order; tell them not to release your children to anyone without talking to you first; use a password so they can be sure it is you on the phone; give them a photo of the abuser
- Make sure the children know who to tell at school if they see the abuser
- Make sure that the school knows not to give your address or phone number to ANYONE

HOW TO PROTECT YOURSELF OUTSIDE THE HOME

- Change your regular travel habits
- Try to get rides with different people
- Shop and bank in a different place
- Cancel any bank accounts or credit cards you shared; open new accounts at a different bank
- Keep your court order and emergency numbers with you at all times
- Keep a cell phone and program it to 911 (or other emergency number)

HOW TO MAKE YOURSELF SAFER AT WORK

- Keep a copy of your court order at work
- Give a picture of the abuser to security and friends at work
- Tell your supervisors – see if they can make it harder for the abuser to find you
- Don't go to lunch alone
- Ask a security guard to walk you to your car or to the bus
- If the abuser contacts you at work, save voice mail and save email
- Your employer may be able to help you find community resources

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Free Legal information by Web and Phone: www.vlas.org and
1-866-LeglAid (534-5243)

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