

Domestic Violence: How the Legal System Can Help Protect You

What is domestic violence?

Domestic violence is a pattern of physically and/or emotionally abusive behavior used to control another person with whom the abusive person has an intimate or family relationship.

What is the legal definition of domestic violence?

Washington law says that domestic violence exists when a person:

- Hits you, assaults you (including sexual assault), or harms you physically in any way; or
- Causes you to fear immediate physical harm, assault or injury.

The person causing the harm or threatening you must be:

- A family member and/or
- Someone you live with or lived with in the past and/or
- Someone with whom you currently have or have had a dating relationship and/or
- Someone you have a child with.

Restraining your freedom of movement, stalking you, destroying your property, or making verbal threats about hurting you are examples of incidents that can cause you to fear immediate harm.

◆ It doesn't matter that the person is related to you, or lives with you, or even has a child with you. No one has the right to threaten or hurt you.

How can I protect myself and/or my children from domestic violence?

Both the criminal legal system and the civil legal system can help you protect yourself and your children from domestic violence. This publication and the attached table explain how to get help through the legal system. If you're currently a victim of domestic violence, you should also seek help from your local domestic violence shelter. Shelters provide services such as safety planning, temporary shelter, legal advocacy, and counseling. To find the program nearest you, call: Domestic Violence Hotline 1-800-562-6025.

How can I get help through the civil legal system?

There are several types of court orders that may help protect you and your children from domestic violence. The attached table explains the types of orders available, who may get them, how to get them, how much they cost, and other important information.

A. Orders for Protection

If you've been assaulted or threatened by a family member, someone you live with, a spouse or ex-spouse, or someone you're dating, you can get an Order for Protection. When you request an Order for Protection, you're called "the Petitioner." The person you want to have restrained is called "the Respondent."

B. How do I get an Order for Protection?

You don't need a lawyer to get an Order for Protection. You don't have to pay a fee to file a petition for an Order for Protection. The forms are available in the District, Municipal, and Superior Courts throughout the state. You can also download the forms you need from the state courts website: <http://www.courts.wa.gov/forms/index.cfm?fa=forms.contribute&formID=16>. When you fill out a Petition for an Order for Protection you must write down specific facts under oath that support the existence of domestic violence. The acts that you describe don't have to be recent acts of domestic violence if you're still afraid because of the past acts of domestic violence.

1. What if I need the Order immediately?

A Temporary Order for Protection will be issued immediately when you fill out the petition and a judge approves it. The sheriff will then give a copy of the Order to the Respondent. You'll have a hearing for a permanent order two weeks later (sometimes called a "return hearing"). You can request a Temporary Protection Order in Municipal, District, or Superior court. The clerk of the court where you file will tell you where the return hearing will be held. The Respondent can attend the hearing to give his or her side of the story. **If the Respondent doesn't attend the hearing, and you can't prove that s/he got enough notice of the hearing, be sure to ask the judge to extend the emergency order until the Respondent can be notified and another hearing scheduled.** Otherwise, the order won't be effective, and you won't be protected until another order is entered.

2. How can an Order for Protection help me?

An Order for Protection can help you in many ways. It can order the Respondent to stop having any contact with you at all. It can order him/her to stop threatening, harassing, stalking or molesting you or your children, and prohibit harassment in person, by telephone or mail. The order can also exclude him/her from your home, work, school, or the school or daycare of your children. If you have children and/or pets together, it can also prohibit the Respondent from having any contact with the children and/or pets or set a visitation schedule for his/her contact with the children. The Respondent can be ordered to attend counseling or have a drug/alcohol evaluation. The order can also grant you the use or possession of essential personal effects or a vehicle.

3. How do I use the Order for Protection?

You should carry a certified copy of your order with you at all times. Your order can only be enforced if you **call the police** to report a violation.

4. Will the Order protect me outside of my county?

Your Order for Protection will be entered in a statewide computer system and is enforceable throughout the state and in other states.

5. When will the Order for Protection expire?

It will be entered for a fixed period or permanently. However, orders that protect children can only be entered for one year or less. You can ask the court to renew the order before it expires. The court must renew your order unless the Respondent

proves that s/he's no longer a risk to you and/or your children.

6. What will happen if the Respondent violates the Order?

It's a crime to violate an Order for Protection. If the Respondent violates the order, the police must enforce your order and arrest the Respondent.

C. Restraining Orders

If you've filed a family law action such as a divorce, paternity, legal separation, non-parental custody petition, petition for a parenting plan, or a parenting plan modification, you may request a Restraining Order. Restraining Orders are entered at first on a temporary basis, but may be made permanent at the end of the case. A Restraining Order may order the Respondent to stay away from you and the children and exclude him/her from your home, workplace, daycare, or school. The Respondent can also be ordered not to remove the children from the jurisdiction of the court. Other restraints may be added if appropriate.

The Restraining Order can be enforced in the same way as an Order for Protection. If you report that the Respondent violates the order, the police must enforce the order by arresting the Respondent.

D. Anti-Harassment Orders

This order applies when a person's been seriously alarmed, annoyed, harassed. Parties involved are generally not married, have not lived together, and have no children in common. You must prove that the other person's conduct was such that it would cause any reasonable person to suffer serious emotional distress, and that the other

person's conduct was intentional or willful and didn't serve any legitimate or legal purpose. This is different from the definition of domestic violence and may not involve the same penalties for violations. A petition for an Anti-Harassment Order is typically filed in district court.

How Can I get Help Through the Criminal Justice System?

A. Call the Police

If you've been hit or hurt, physically assaulted, sexually assaulted, if your property's been damaged or destroyed, if you've been threatened with a weapon, or someone is stalking you, you're the victim of a crime. It's also a crime for someone who doesn't live with you to force his/her way into your home. As a victim, you should call the police. The police are there for your protection. They must make a report, inform you in writing of your rights as a domestic violence victim, and make sure you're not in continuing danger. When you're the victim of a crime, the person who hurt you is called "the perpetrator."

The perpetrator can be arrested. The police **must** arrest the perpetrator if:

1. S/he's your spouse or former spouse, someone you live with or have lived with, someone you're related to by blood or marriage, or someone with whom you have a child in common, and
2. There's reason to believe the perpetrator has assaulted you within the last four hours and you were hurt by that assault.

The police may arrest the perpetrator even if the assault happened more than four hours ago if they have evidence that an assault occurred. If an arrest is made, the

perpetrator may be out of jail in a few hours, so you still need to take steps to protect your safety, such as having someone come to stay with you or taking your family to a friend's home or a domestic violence shelter. Note: the police must arrest the perpetrator even if you don't have an Order for Protection or restraining order against him/her.

B. Press Criminal Charges

If you didn't call the police at the time of the incident, you may do so later. Ask them to take a report and have charges filed.

Generally, police reports are sent to your City Attorney or Prosecuting Attorney, who decides whether or not to file criminal charges. If no charges are filed, you're entitled to written notice and information on how to ask that charges be filed.

C. Testifying in a Criminal Trial

If charges are filed, you'll probably have to go to court to testify about what happened. The prosecuting attorney or city attorney doesn't represent you. They represent the "State." You participate in the criminal case as a witness for the State. The prosecuting attorney or city attorney should spend some time with you before trial discussing your testimony. Call them if you have any questions. Many offices will give you an advocate to help you through the process. You should request an advocate if you will have to testify in a criminal case. Sometimes it takes several weeks or even months before a case comes to trial.

D. Ask for a No-Contact Order

If you're afraid that the perpetrator might hurt you again, tell the advocate or the prosecuting attorney or city attorney that you want a No-Contact Order. This is a court order prohibiting the perpetrator from

having any contact with you before the trial. If you report a violation of the order, the police must immediately arrest the perpetrator. (It's a bad idea for you to contact the perpetrator at all when you have a no-contact order, because the police may not enforce it as well if you do.) A no-contact order is different from the other orders discussed above, and is described in the attached table.

E. The Perpetrator Can be ordered Into Treatment

If the judge finds the perpetrator guilty of a crime of domestic violence, the judge can require him/her to do several things. For example, the judge may continue the No-Contact Order for a period of time. The judge may order counseling or alcoholism treatment. The perpetrator can also be required to pay you for your medical expenses and property destruction, and may be placed on probation. In addition, if the assault was severe or the perpetrator has a criminal record, the court may order jail time.

F. Victim's Compensation

If your injuries from the abuse required medical care or made you unable to work, you may be entitled to money from the Crime Victims' Compensation program. The Crime Victims Compensation program requires that the victim report to law enforcement within 1 year of the crime. The victim has 2 years from reporting to law enforcement to file an application for benefits with the Crime Victims Compensation program. The state doesn't have to file charges or successfully convict the perpetrator of the crime for you to qualify for victim compensation. Law enforcement officials are required to inform you about this law, or you can ask them

about it. You may qualify for benefits even if you're still living with the perpetrator.

Important Information

This publication provides general education, not legal advice. If you think that you might need a lawyer and your local legal services office can't help you, you may be able to find a lawyer who'll charge a reduced fee for your first appointment by checking the yellow pages of your phone directory under "Attorneys." There may also be a listing for a referral program operated by your local bar association. If you're low-income and live in Washington state outside of King

County, you can get legal advice by calling CLEAR at 1-888-201-1014, between the hours of 9:15 AM and 12:15 PM, Monday through Friday. Whether or not you're low-income, you can call the Legal Voice's Information and Referral Line for more legal information, at (206) 621-7691.

The information in this publication is current as of the date of its printing. Laws change as the result of legislative action and court decisions. Consult a lawyer if you need to be sure that the information in this publication is correct.

Domestic Violence Hotline is 1-800-562-6025

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

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	RESTRAINING ORDER	DOMESTIC VIOLENCE PROTECTION ORDER	DOMESTIC VIOLENCE NO CONTACT ORDER	ANTI-HARASSMENT ORDER	ANTI-HARASSMENT NO CONTACT ORDER	ELDER ABUSE PROTECTION ORDER
Who may get the order?	A party to a court action where the other party is the spouse or is the parent of a child in common.	Victims 16 or older who were physically abused or threatened with harm by a person with whom the victim has or had a dating relationship, a marital relationship, or a child in common. Victims 18 or older can also get orders against family members or roommates, but people under 18 years of age cannot get those orders unless a parent or legal guardian files on their behalf. In all cases, a parent or legal guardian must file on behalf of a minor under age 16.	Victims of abuse related to abuser (as in protection order column) where abuser is formally charged with domestic violence against victim.	Victims of behavior aimed directly at them with the intent of seriously alarming, annoying, or harassing the victim without a legitimate purpose. Abuser can be a stranger.	Victim of harassment or the victim's family or household member where abuser is formally charged with a crime involving harassment (including stalking, threats, and other).	Victim age 60+ w/out the functional, mental, or physical ability to care for self who is a victim of actual or threatened abuse, neglect, or exploitation (improper use of victim's property or resources).

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How do you get the order?	Filing for or responding to an action for divorce, paternity, or child custody modification.	Must file in county where victim lives or has fled to avoid abuse. Follow clerk's instructions.	Obtained as part of criminal prosecution for domestic violence. Victim should contact prosecutor to ask for order.	Must file in county where victim lives or has fled to avoid abuse. Follow clerk's instructions.	Obtained as part of criminal prosecution for crime of harassment. Victim should contact prosecutor to ask for order.	File at the court following the clerk's instructions.
Where do you get the order?	Superior Court.	Emergency: Superior, Municipal, or District Court Permanent: Superior, Municipal, or District Court	Municipal, District, or Superior Court.	District or Superior Court.	Municipal, District, or Superior Court.	Superior Court.

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What can the order do?	Restrain abuser from: entering a residence; harming or harassing victim or any child; contacting victim or any child; removing child from jurisdiction of court; disposing of property; and can award temporary custody.	Restrain abuser from: entering a residence; threatening or harming victim and any child; order abuser to leave shared home; attend treatment/counseling ; award temporary custody. Award the use of essential personal effects and use of a vehicle.	Restrain the abuser from any contact with the victim, including phone calls or letters.	Restrain the abuser from any contact with the victim; keeping the victim under surveillance; or coming within a certain distance of victim's home or workplace.	Restrain the abuser from any contact with the victim, including phone calls or letters.	Restrain the abuser from more abuse or exploitation; entering victim's home; contacting victim; selling or transferring victim's property; or can require an accounting of victim's income/assets.
How much does it cost?	No fee after the underlying action is filed (with filing fee for that action paid or waived).	No fee.	No fee.	Superior Court \$41 District Court \$51; Waived for low income.	No fee.	\$110 - \$120, - can be waived for low income victim.

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How long does it last?	Emergency: 14 days Temporary: Until final hearing. Final hearing Permanent until changed by the court.	Emergency: 14 days. Final: 1 year (renewable) if a child is protected, permanent or for any fixed term if only protects an adult.	At least one year, and longer if the court orders. Usually until trial and sentencing are concluded. Post-sentencing provisions last for up to the time the sentence and probation are over.	Temporary: 14 days Full: Up to one year, renewable.	Court can order permanent if abuser is found guilty.	Up to one year.
Who represents the victim?	Victim or an attorney.	Victim or an attorney.	Prosecuting attorney.	Victim or an attorney	Prosecuting attorney.	Victim or an attorney
What if the order is violated?	After abuser and police get order, mandatory arrest if order so states, plus possible criminal and contempt charges.	After abuser and police get order, mandatory arrest plus possible contempt and criminal charges.	After abuser and police get order, mandatory arrest and a separate criminal charge.	After abuser and police get order, possible arrest for misdemeanor, plus possible contempt charges.	After abuser and police get order, violation is a misdemeanor for which abuser may be arrested.	After abuser and police get order, possible contempt of court.

*All orders are confirmed by the police by entry into Washington State Criminal Information Computer (WACIC), done automatically when the court clerk sends the police a copy of any order signed by a judge/commissioner along with a Law Enforcement Information Sheet (LEIS). The court clerk will ask the victim to complete the LEIS at the time she or he gets their order.