

Orders of Protection

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What is an Order of Protection?

An Order of Protection is a civil legal document given by the court, which helps protect you from physical violence, threats, destruction of property, being held hostage, and being put in fear of bodily harm. It can last for one year.

What can an Order of Protection do?

It orders your batterer not to bother you; make your batterer move to or pay for another place for you and your children to live; give you temporary custody of your children; give you support money for yourself and/or the minor children you have together, and order your batterer into counseling.

What are the two types of Orders?

The two types of Orders are a "No Contact" Order of Protection and a "Social Contact" Order of Protection:

- A "No Contact Order" orders your batterer not to telephone, contact, or otherwise communicate with you directly or indirectly. Indirectly means your batterer can not beep you, write you letters, contact your work, use a third party to send you messages, etc.
- A "Social Contact Order" states that you can communicate with your batterer, and even live with your batterer, but your batterer may not hurt you, attempt to hurt you, or threaten to cause you harm.

What is an Ex Parte Order of Protection?

When you file for your Order of Protection, and after the judge signs it, the clerk will give you two certified copies of an "Ex Parte" Order of Protection. This order tells your batterer to stop hurting and threatening you. You should keep a copy of this Order with you at all times. It will be given to the court's process servers to be served on your batterer so it is very important that you provide the best information possible as to where your batterer is so he can be served quickly. An Order of Protection can not be made permanent for one year without the "Ex Parte" Order being served on the batterer in person. During this time, if you are hurt or threatened, call the police, make a report, and contact your advocate or the court about what to do.

What if my batterer is not served with the Ex Parte Order?

If your batterer has not been served by the process servers, you can ask a uniformed officer to serve one of your certified copies of the Order on your batterer. If your batterer should come to your home or you see your batterer call the police and ask them to serve your papers. Be sure the uniformed officer understands a notice must go back to the court when, where and who served the Order. If this notice doesn't appear in your court file, you may not be able to go forward with your permanent Order of Protection. Be sure you know the officer's name, badge number, when, and where the Order was served and let the court know.

Do I have to go to court?

YES! When you file for your Order of Protection you will receive a court date for approximately two weeks. You must attend your court date to obtain your Order. On your court day, you will meet with an advocate who will assist you and your batterer. There are two types of Orders - an Agreed Order and a Contested Order.

- An Agreed Order means you and your batterer have agreed to everything on the Order before going to see the Judge. 98% of the Orders are resolved by agreement. If you don't come to an agreement, you will still see the Judge.
- A Contested Order means that you and your batterer are not able to agree on some of the conditions of the Order. In this case the Judge hears both sides of the story and then makes a decision.
- You can have witnesses or other proof of the abuse. If the Judge feels that you have not proved your case, he can dismiss your Order and you will have to pay all court costs.

What do I do if my batterer breaks the Order of Protection?

Call the police and tell them about the Order of Protection and try to have a copy ready to show them. Make a report. The police can arrest your batterer without a warrant if they find probable cause that the Order has been violated. You also have the right to file a Show Cause in the court where you were granted the Order. A Show Cause tells the Judge that the Order has been violated. You will be given a court date in which you will need to prove beyond a reasonable doubt that the Order was broken. It is important to bring any witnesses, medical records, taped messages, written notes, caller ID box, etc. If the Judge finds that the Order of Protection was violated, your batterer can get up to ten days for each violation.

How do I get an Order of Protection?

An Order of Protection is free to file and you do not need an attorney to obtain an Order of Protection. In Knox county you have two choices. You can either go to the Fourth Circuit Court in the City County Building (215-2404) and file or, if you live in the city you can go to the Knoxville Police Department (215-7385), or if you live in the county, you can go to the Knox County Sheriff's Department Family Crisis Unit (215-2455). Both the Knoxville Police Department and the Knox County Sheriff's Department have a counselor or advocate who can assist you with the Order of Protection.

Hints for Court Day

Be at 4th Circuit Court at 9:00 AM, and plan to stay all day

Bring your Order of Protection and any other court papers with you

Everyone should attend Judge Swann's talk. Many of your questions will be answered and instructions will be given.

Bring money for parking and lunch.

Court will be in recess from 12 to 1:30 for lunch

Please do not bring your children to court. Children are not allowed in the courtroom, and there is no one available to watch them.

Please remember to be courteous in the courtroom. Whisper quietly when waiting for your case to be heard. Food, drinks, gum, or hats are not permitted in the courtroom. Address the Judge as "Your Honor".

It is your responsibility to be sure that your final order of protection (If a No Contact Order) includes no contact by telephone, fax, email, pager, US mail, or third parties. Discuss this with your advocate or attorney.

What to expect when going to criminal court

Be in court at 9:00 am. Bring your subpoena with you. It will have information to help you find the proper courtroom.

If you do not receive a subpoena within 5 days of the arrest, call the District Attorney's office (215-2515) and tell them you need to know when you are scheduled for court.

Once in the courtroom you need to check in with the District Attorney. They are the people that are on the right side of the courtroom. Make sure they know you are in court. If you are late it is ok to go to the table and tell them you are present in the courtroom. You are not required to speak to the attorney for the defendant. Don't let them intimidate you.

An Assistant District Attorney will interview you about the case. The Assistant District Attorney is a lawyer who represents the State of Tennessee. Once your case is in criminal court you are no longer the person pressing charges the State is pressing charges. You will be interviewed and the Assistant District Attorney will make a decision based on the interview.

The Assistant District Attorney may decide to plead the case based on the interview. What this means is the Defendant (person charged) is going to say he is guilty of something. Most times the person will be put on probation. There will be conditions on his probation, and if these conditions are not complied with the Assistant District Attorney or the Probation office may file a Violation of Probation putting the Defendant in jail to serve his sentence.

The Assistant District Attorney may decide to take the case to a preliminary hearing. This will mean that the victim will get on the stand and testify about the incident that brought them into court.

The Judge who hears the preliminary hearing will not decide the guilt or innocence of the Defendant. Under the Constitution of the United States every person charged with a crime has the right to be convicted by a jury of his or her peers. The Judge will decide if there is probable cause to send the case on to the Grand Jury. Probable cause means it is more likely than not that the incident occurred.

If the Judge sends the case on to the Grand Jury you will have to appear again in about 90 days in front of the Grand Jury. If you move during that time or your phone number changes you need to contact the District Attorney.

The Grand Jury is a group of citizens who will decide if your case will go on to Criminal Court. Again, they will not decide the guilt or innocence of the Defendant, they will decide probable cause.

The Grand Jury will either "True Bill" or "No True Bill" the case. If the case is "True Billed" then it will go on to a jury trial in front of a Judge and Jury. If it is "No True Billed" then the Grand Jury did not find probable cause and the case will not proceed.

Once the case has been sent to Criminal Court the Defendant will be arraigned and a court date will be set. You will have to come back and testify in front of a Judge and Jury on the day of the trial. You need to remain in contact with the District Attorney's office.

If you have any questions about Criminal Court or your case you need to contact the District Attorney's office. It is important that you make your wishes known to the Prosecutor who is handling your case. If you move or change phone numbers you need to inform the District Attorney's Office.