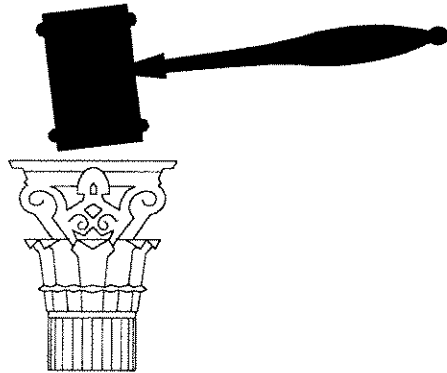


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PROTECTION FROM ABUSE

# REQUESTING A COURT ORDER



This booklet provides information for victims of domestic violence or abuse to assist them in understanding the Protection From Abuse Act, the remedies provided by it and the procedure for securing a court order for protection. It also includes limitations of the justice system in providing protection along with actions that victims of domestic violence or abuse must take to ensure their safety.

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## PROTECTION FROM ABUSE

# REQUESTING A COURT ORDER

### WHAT IS A PROTECTION ORDER?

A “Protection Order,” sometimes referred to as a “Restraining Order,” is a court order issued under the Protection from Abuse Act (PFA) which provides limited protection for people who have been threatened, harassed, or physically abused. It can be sought against the victim’s spouse, former spouse, common-law or former common-law spouse, parent, child, blood relative, person with whom the victim has a child, or a present or former household member.

A Protection Order may be sought by the victim, if 19 years of age or older, or by a legally-responsible person on behalf of a minor or incapacitated adult. The person seeking the Protection Order will be referred to as **“the plaintiff”** throughout this brochure. While it is not necessary to have the assistance of an attorney, obtaining a Protection Order can have significant legal consequences, especially involving issues such as custody of children and property division. It is recommended that the plaintiff seek legal counsel to assist in this matter.

### WHO IS COVERED BY A PROTECTION ORDER?

Persons covered by a Protection Order include the victim, minor children of the victim, and designated household or family members. These persons will be referred to as **“the victim”** throughout this brochure. The alleged abuser will be referred to as **“the defendant.”**

If the victim lives in Alabama, even if he or she has just moved here, he or she can petition the court for a Protection Order. A Protection Order is effective throughout the State as well as in other states. It is effective for one year, unless the judge specifies a longer or shorter time period. Also, any Protection Order issued by the court of another state shall be enforced as if it were an order of this state.

Generally, protection orders may be issued only if there have been one or more *recent* acts of abuse or threatened abuse. A judge may dismiss your petition if you claim that the abuse or threat occurred many months ago, or if you only think that something might happen in the future.

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## WHAT CAN A PROTECTION ORDER INCLUDE?

TEMPORARY PROTECTION ORDERS. After the Petition is filed, the judge must decide whether to issue a “Temporary Protection Order” based on the Petition. This Temporary Protection Order may be issued by the judge without notice to the defendant and without a hearing. If an order is issued, it *may* include some or all of the following:

- *Order the victim’s home or work address, the phone number, or other related information deleted from all records filed with the court concerning the Protection Order.*
- *Restrain the defendant from committing or threatening to commit acts of abuse, or from harassing, annoying, telephoning, contacting, or otherwise communicating directly or indirectly with the victim, victim’s minor children, or any other designated family or household member.*
- *Order the defendant to stay away from the victim’s residence and place of work, school or day care or any other specific place frequented by the victim or victim’s minor children or by any other designated family or household member.*
- *Award the victim temporary custody of any minor children and restrain the abuser from removing the children from the victim’s custody. The order may be used to require law enforcement personnel to accompany the victim to get the children to protect the victim or the children from harm.*
- *Remove the defendant from the residence, regardless of who owns the residence.*
- *Prohibit the defendant from selling, disposing, destroying, hiding or mortgaging mutually owned or leased real estate or personal property.*
- *Order other relief as necessary to provide for the safety and protection of the victim, minor children and other designated family or household members.*

FINAL PROTECTION ORDERS. After a Petition for a Protection Order is filed, a hearing will be held at which the plaintiff will need to prove, through testimony and evidence, that the abuse occurred. The defendant is allowed to be present and offer evidence against the allegations in the petition. The defendant may be represented by an attorney. After that hearing, the judge must decide whether to issue a Final Protection Order. If a Final Order is issued, it may contain any or all of the provisions in the Temporary Protection Order, and may also include:

- *Order specific child visitation for the defendant, which may include supervised visitation in the presence of a third party or withholding visitation completely, if necessary.*

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- *Order the defendant to pay the plaintiff's attorney's fees and court costs.*
  - *Order the defendant to pay child support for children the defendant has a legal obligation to support.*
  - *Order the defendant to provide temporary support for the victim/spouse and grant the victim possession (not ownership) of the residence or household.*
  - *Order the defendant to provide the victim temporarily with a vehicle if the victim has no other means of transportation and the defendant has control of more than one vehicle or alternate means of transportation.*

**WHILE THE ABOVE RELIEF IS AVAILABLE, THE COURT IS NOT REQUIRED TO ORDER ALL OF IT IN EACH CASE. WHETHER THE JUDGE ENTERS AN ORDER, AND WHAT IS INCLUDED IN THE ORDER, WILL DEPEND UPON THE FACTS AND CIRCUMSTANCES OF EACH CASE. EVEN WITH A PROTECTION ORDER, THE VICTIM MAY STILL NEED TO FIND A SAFE PLACE TO LIVE. IF THE DEFENDANT VIOLATES THE TERMS OF THE PROTECTION ORDER, THE DEFENDANT MAY BE ARRESTED AND BROUGHT TO COURT.**

#### **WHAT DOES A PROTECTION ORDER NOT DO?**

It may not fix the problem. Although a Protection Order can be an important tool in helping the police and courts to discourage abuse, **IT MAY NOT COMPLETELY STOP THE DEFENDANT FROM TRYING TO HURT THE VICTIM.** The Protection Order can result in the appropriate punishment of the person against whom the order was issued if he or she violates the order.

It is not a decree of divorce, but the victim should be prepared to live apart from the abuser, at least for a time. If the victim is unsure about taking this action, he or she may wish to consult an attorney, domestic violence shelter, trusted friend, or a family member before filing a Petition.

While the judge may allow the victim to use or possess certain property, a Protection Order cannot be used to make permanent property divisions.

It is not to be used solely for custody matters, although the judge may determine and award temporary custody.

It should not be used to "scare" someone to improve his or her behavior. If a petition is filed, the plaintiff should be prepared to proceed in court.

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## WHERE CAN I GET A PROTECTION ORDER?

Protection Orders may be obtained at the county courthouse, normally located in the County Seat. The plaintiff must ask the court for a Protection Order either in the county where the victim lives or in the county where the victim has temporarily relocated to avoid further abuse. A Protection Order may be issued even if the victim does not have an ongoing court case against the defendant or the defendant does not have pending criminal charges arising from the abuse in the county where the victim lived. If there is a pending case, then the plaintiff must file for protection in the county in which the case is pending. It is recommended that the plaintiff file in the county in which the victim resides, if possible.

## HOW CAN I ASK THE COURT FOR A PROTECTION ORDER?

Standard court forms (Petitions) must be filed with the clerk to ask for a Protection Order. These forms are available in the clerk's office in each county courthouse. Neither the clerk nor members of a judge's staff are required to provide assistance in completing the forms. They are not permitted to give legal advice. An attorney may be sought for assistance, or the plaintiff may contact the nearest domestic violence shelter.

It may be difficult for the plaintiff to provide written details of the abuse the victim has suffered, but it is important to answer the questions in the Petition and to provide as much detail as possible. If the defendant owns a firearm or other weapon and has threatened to use it to harm the victim, the court should be made aware of this fact. Additional paper may be used.

The completed Petition and the filing fee (or approved Affidavit of Substantial Hardship) should be taken to the clerk's office. The judge may or may not issue a Protection Order and set a date for a hearing before the plaintiff leaves the courthouse. If any temporary orders are signed by the judge, they are good only until the final hearing unless otherwise extended by the judge. They are not permanent orders!

## IS THERE A CHARGE FOR A PROTECTION ORDER?

~~Yes. A fee is required to file a Petition with the court for a Protection Order. The fee amount varies from county to county. If the victim already has a court case pending against the defendant (for example, if a Criminal Complaint or Divorce Petition has been filed), the plaintiff may ask for the Protection Order to be issued in that case without paying an additional filing fee.~~

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~~If the plaintiff cannot afford to pay the filing fee or the charge for issuing subpoenas to witnesses, the plaintiff may file with the court, at no cost, an Affidavit of Substantial Hardship (a form available at the clerk's office in the county courthouse). This form may be completed, notarized and returned to the clerk's office. After reviewing the Affidavit and determining that the plaintiff cannot afford to pay, the judge may allow the Petition to be filed without prepayment of the filing fee or any witness subpoena fee; however, the judge may order that the fees be paid by the plaintiff or the defendant at the conclusion of the case. If the judge finds that the plaintiff can afford to pay, the plaintiff must pay the fees before the Petition for a Temporary Protection Order can be filed.~~

### **WHAT HAPPENS AFTER THE JUDGE SIGNS THE PROTECTION ORDER?**

After the judge signs a Temporary Protection Order, a date is set for a court hearing. The clerk's office will give to the Sheriff's Department a copy of the order signed by the judge, a copy of the PFA Petition, and a notice of the date of the court hearing for the Final Protection Order. The Sheriff's Department will attempt to serve copies of these papers on the defendant. The plaintiff should ensure that the Sheriff has the defendant's work and home, day and night addresses, physical description, vehicle description, tag number of any vehicles owned by the defendant and any other information that may be helpful in locating the defendant. It is crucial that the defendant be served with the court order **before** the court date. If not, the hearing will be postponed because the judge cannot take testimony from the plaintiff and the plaintiff's witnesses until the defendant is officially served.

If the plaintiff does not receive an order or notice of a court date within several days after filing the Petition he or she should, call the clerk's office. The plaintiff/victim must appear for the hearing or face potential consequences which may include, but are not limited to, dismissal of the case, being responsible for court costs, or loss of child custody. Failure to appear for the hearing does not automatically result in dismissal. Only the court may dismiss the case.

### **WHAT SHOULD I EXPECT AT THE HEARING?**

The defendant may appear and be represented by an attorney. If the plaintiff does not have an attorney, the plaintiff should be prepared to proceed with the case without one. Some judges may not delay the hearing to allow time for the plaintiff to hire an attorney. All parties and witnesses should arrive at the courthouse early and make sure they are in the right place. Since other cases may be set for that day, the plaintiff's case may not be called immediately.

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### **SHOULD I BRING THE CHILDREN?**

Children should not be brought to the hearing unless they will testify. Since children may be a distraction, it is preferable to find someone to keep them, or, if necessary, the plaintiff should bring a friend or family member to court who can help watch them.

### **WHAT ABOUT WITNESSES/EVIDENCE?**

Any person who witnessed the abuse may be called to testify at the hearing. If the witness agrees to come, it is not necessary for the court to issue a subpoena (an order by the court to appear and testify). If a witness will not come voluntarily, the plaintiff may ask the clerk how to subpoena the witness. If the defendant requests custody, witnesses may be needed to testify regarding the defendant, victim and children and provide information that will help the court to make its decision. For this reason, the plaintiff may wish to contact an attorney for assistance. In any case, the law allows the victim to bring a friend or family member to court for support.

Evidence that the plaintiff may wish the court to consider, including pictures, witnesses, police reports, hospital records, expenses incurred as a result of the abuse, etc., may be brought to the hearing. The victim may be the most important witness and what he or she tells the judge is very important to the court's decision. Also, the court may need additional information, such as current pay stubs of both the defendant and victim, a list of furniture, or other personal property in the defendant's possession.

### **WILL I SEE THE DEFENDANT?**

The defendant will probably be in court and may be waiting in the same general area. If the plaintiff/victim does not feel safe, or if anyone tries to interfere with him or her while waiting for the hearing, the plaintiff should bring this matter to the attention of the judge's staff, law enforcement officer, or someone who works in the courthouse. Once notified, the court staff may be able to find another waiting area until the hearing begins.

### **SHOULD I TALK TO THE DEFENDANT?**

The plaintiff/victim is not required to talk to or sit with the defendant unless instructed by the judge. If the plaintiff/victim is afraid or uncomfortable, the judge should be informed of this fact. Because of the stress of the situation, it may not be a good time to communicate effectively without the court's involvement.

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## WILL I HAVE TO TESTIFY IN COURT?

Yes. The defendant or the defendant's attorney can ask the plaintiff and witnesses questions. The plaintiff or the plaintiff's attorney can ask the defendant or the defendant's witnesses questions. Statements and answers to questions asked of witnesses in the hearing should be made loudly and clearly and are always made to the judge. The judge may allow notes, photos, or other evidence to be used to help witnesses recall specific details. All questions should be answered truthfully. If a witness does not know an answer, he or she should say so. If an incorrect answer is mistakenly given, it can later be corrected.

Persons involved in the case should always remain calm and never argue with or show disrespect for the judge, any attorney, or the other party. Witnesses may say things that are not true or are intentionally upsetting. The plaintiff can ask to testify again to clear up anything that was said.

## WHEN WILL I LEARN HOW THE JUDGE RULED?

The judge may not make a ruling in court but may issue a decision later. Before leaving the courthouse, the plaintiff should ensure that the court has a current address so that a copy of the decision can be mailed to the plaintiff. The victim may request that the address be kept confidential by the court.

The plaintiff will receive a copy of the court's order for protection, as will the defendant and law enforcement officials in your county. The plaintiff may wish to follow up with the local police and sheriff's departments to ensure that they have a copy of the order on file. If not, the plaintiff should request that a copy be sent to them or should provide them a copy. It is very important that the victim keep this order with him or her at all times. Copies should be provided to every place listed on the order, including the children's school, the victim's place of employment, etc. The plaintiff/victim should take responsibility for being sure this is done.

## WHAT HAPPENS IF THE DEFENDANT VIOLATES THE PROTECTION ORDER?

Violations of a Protection Order may be punished as contempt of court and may be charged as a Class A misdemeanor for which the abuser may be arrested with or without a warrant.

**CIVIL:** The defendant may be held in contempt of court for violating the Protection Order. A form (Contempt Petition) is used to notify the court of the violation and may be obtained



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from the clerk's office. After the Contempt Petition is filed, a hearing may be held where the plaintiff and defendant can present their sides of the case. If the judge finds that the defendant violated the protection order, the judge may order the defendant jailed for up to 5 days and fined up to \$100.00 for each violation. The judge may also modify the protection order.

**CRIMINAL:** If the judge in a case finds that a defendant violated a Protection Order, the first violation is a Class A misdemeanor punishable by up to a year in jail and a fine of up to \$2,000.00.

A finding of a second violation of a protection order requires, in addition to any fine and sentence imposed, a minimum of 48 hours in jail. On a finding of a third violation, the defendant must spend 30 days in jail. Required jail time cannot be suspended.

A law enforcement officer may arrest the violator of a protection order without a warrant at any time of the day or night when the officer has probable cause to believe that an act has been committed in violation of a valid protection order, even if the officer did not personally see the violation. The plaintiff may also request that a warrant be issued against the defendant by a judge or magistrate for violation of the protection order in either the district court of the county where the offense occurred or in the municipal court if within a municipal police jurisdiction.

**I'M NOT SURE I COMPLETELY UNDERSTAND THIS PROCEDURE.  
WHERE CAN I GO TO GET ADDITIONAL HELP?**

While the plaintiff is not required to have the assistance of an attorney, obtaining a Protection Order can have significant legal consequences especially involving issues such as custody of children and property division. It is recommended that the plaintiff seek legal counsel to assist in this matter. The Alabama State Bar Referral Service is available at 1-800-392-5660 for the names and phone numbers of attorneys who practice in the area of domestic relations. If the plaintiff cannot afford an attorney, the nearest Legal Services Office may be contacted:

Anniston 256-237-3615	Monroeville 334-743-3234
Birmingham 205-328-3540	Montgomery 334-832-4570
Dothan 334-793-7932	Opelika 334-749-5011
Florence 256-767-2020	Selma 334-875-3770
Gadsden 256-543-2435	Troy 334-566-6100
Huntsville 256-536-9645	Tuscaloosa 205-758-7503
Mobile 334-433-6560	

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Although a Protection Order can be an important tool in helping the police and the courts discourage incidences of domestic violence, it is a judicial order recorded on a piece of paper and not a shield which will stop bullets, knives or fists. **Often when a defendant first gets a copy of the Protection Order, he or she may seek to increase the pressure, threats, and violence.** It may therefore be necessary for the victim to seek shelter and safety immediately and call the police. Local domestic violence shelters are available to offer assistance, especially in developing a safety plan for the victim and children and in planning to leave a violent relationship, if necessary.

Alabama's 18 domestic violence shelter programs throughout the state can provide immediate and safe refuge from violent attacks. A phone call to the 24-hour crisis line number listed below can make a difference and will connect the caller to the shelter program in their area. At the shelter, the victim and children can receive safe, temporary housing, food, clothing, and the counseling and assistance needed to establish the groundwork for providing a stable and nonviolent environment. For immediate, 24-hour access to the shelter program in your area, call the following number: **1-800-650-6522.**

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(This section left blank for agency-specific information)

This booklet is a joint project by several agencies, including the Alabama Judicial System Study Commission, Alabama Coalition Against Domestic Violence, Legal Services Corporations of Alabama, Montgomery Area Domestic Violence Task Force and Administrative Office of Courts. Appreciation is extended to the judges, clerks, prosecutors, victim shelters and advocates, and others throughout the state who reviewed the drafts and provided suggestions. For additional information or suggestions regarding this booklet or its contents, contact the Judicial System Study Commission at 300 Dexter Avenue, Montgomery, AL 36104-3741, or at 1-800-392-8077.

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