

# Protective Orders in Virginia

If you are experiencing threatening or violent behaviors, a Protective Order is one tool that may be available to help you.



If you are experiencing acts and/or threats of violence, there are legal options to help you and/or your family.

These options help protect you from violence, force or threat that results in injury or places you in fear of death, sexual assault, or injury. This includes stalking.

## What is a Protective Order?

A protective order is a document issued by a court to help you protect yourself, your children and other family or household members from someone who is hurting you or causing you fear. A protective order can help to set clear limits with the person causing you harm and send a strong message that his/her behavior is wrong.

A protective order is a civil legal remedy for individuals experiencing acts and/or threats of violence. Protective orders are designed to prevent future violence or threats and can also provide a wide range of options to help protect you and/or your family. You can request one even if criminal charges haven't been filed.

## Who is eligible to ask for a Protective Order?

In order to be eligible for a protective order, you must have been subjected to an act or threat of violence that results in bodily injury or places you in reasonable fear of death, sexual assault or bodily injury.

This means that if you have been hit, kicked, punched, pushed, shoved, bitten, burned, sexually assaulted, held against your will, forcefully restrained, cut with an object, stalked, threatened with a gun, or other weapon and any of these things caused an injury to your body; or someone threatened to do any of these things and you are in fear of them, you may be eligible for a protective order.





Where you go to request a protective order depends on the kind of relationship you have (or have had) with the person who is harming or threatening you.

## Where to Request a Protective Order.

In Virginia, where you request a protective order depends on the type of relationship you have (or have had) with the person who is threatening or harming you. If your relationship with this person meets Virginia's legal definition of a family or household member (see below), you may be eligible for a **Family Abuse Protective Order** and your request should be made with the **Juvenile and Domestic Relations Court**.

All other requests for protective orders start with the **General District Court**.

If either the petitioner (the person asking for the protective order) or the respondent (the person who is committing acts of violence or threatening behavior) is under the age of 18, the request should begin with the **Juvenile and Domestic Relations Court**.

## Who is a family or household member?

To be eligible for a Family Abuse Protective Order, the person who is abusing you must be:

- your spouse (husband or wife),
  - your former spouse,
  - someone that you have a child in common with, or
  - someone you live with or used to live with as a boyfriend or girlfriend, in the past year.
- It could also be another family member such as your parents, grandparents, children, brother or sister whether or not you live together. In some cases it could be your in-laws that you live with. (VA Code §16.1-228, Family or Household Member)



You do not have to have an Emergency Protective Order to be eligible for a Preliminary or Permanent Protective Order.

## The three types of Protective Orders are:

### Emergency Protective Orders

This order is usually requested by a law enforcement officer (the police) if an arrest has been made, or if the officer believes there is a probability of further abuse. This order can only be issued by a Magistrate or a Judge and lasts only a short time (up to 72 hours or until court meets). A victim of abuse can also make an emergency request for this order at the magistrate's office even if an arrest hasn't happened.

### Preliminary Protective Orders

This order is issued only by a Judge when danger for further abuse exists but there isn't enough time for a full hearing with both parties. A Preliminary Protective Order generally only lasts 15 days. A Preliminary Order can be extended if the abuser/respondent can't be served.

### "Permanent" Protective Orders

An order that can be issued for up to two years. These orders are issued if there is enough evidence of an act or threat of violence and both parties are present at court. Then a judge decides whether or not to issue an order. Permanent protective orders can also be extended for an additional two years if the petitioner requests such an extension and a judge finds there is a need for extended protection. There is no limit on the number of extensions that can be granted.

## What can a Protective Order do to help prevent further violence?

All orders can state;

No contact from the respondent

No further acts of violence, force or threat; and

Other conditions the court deems necessary to protect you and/or your family members.

## Family Abuse Protective Orders can offer additional protections.

Family Abuse Preliminary orders can state the above and;

Require the abuser to maintain utility service for the household;

Grant temporary possession to a jointly owned car;

Require the abuser to provide suitable alternative housing; and

Any other relief necessary to protect the victim and other family or household members.

Family Abuse "Permanent" Protective Orders can state all the above and;

It can require the abuser to participate in treatment or counseling;

It can grant temporary custody and visitation for the children; and

It can grant temporary child support.



Think ahead about what you need to keep yourself and your family safe.

Ask to have those ideas included in the Protective Order.

To find a domestic and sexual violence advocate to talk to in your area, call the Virginia Family Violence & Sexual Assault Hotline anytime.



## Making decisions about Protective Orders

First you need to figure out if a protective order is the right option for you. You may want to get more information from a domestic and sexual violence advocate – (to find one in your area call 1-800-838-8238) or an attorney.

### Find out:

- what a protective order can and can't do for you;
- what procedure to follow for getting an order in your area,
- where you will have to go to file the forms,
- what you might expect in court; and
- how you can develop a plan for your safety.

You will be asked to describe the recent acts of violence and/or threats, why you need the order, and to think about what you need for your protection and the protection of your children and/or other family and household members.

## I need protection right away... How do I get an Emergency Protective Order?

If you feel you are in danger or you have been assaulted recently, call 911. You can also go to a magistrate's office and request an Emergency Protective Order. Remember, this order is only good for a short period of time.

(If the magistrate or law enforcement officer does not give you an emergency order, you can go to court to file a petition for a Preliminary Protective Order)

An Emergency Protective Order can order the respondent to stay away until you can get a preliminary or "permanent" Protective Order but if you are in danger, plan how to stay safe. **DO NOT RELY ON THE ORDER TO PROTECT YOU.** Get to a safe place where the respondent cannot find you. Remember, a protective order can send a message to the respondent that his/her behavior is wrong, it does not take the place of you acting to protect yourself from danger.

You can contact a domestic and sexual violence advocate to assist you with figuring out a way for you to be safe. Each situation is different and it is important to ask for help to make a plan.

Always make a backup safety plan.

Call the Virginia Family Violence and Sexual Assault Hotline at 1.800.838.8238 for information on a Domestic and Sexual Violence Program in your area.



For more information on how to petition for a Protective Order, call the Virginia Family Violence & Sexual Assault Hotline at 1.800.838.8238 (v/tty).

## **Where do I go to petition for a Family Abuse Protective Order (Juvenile and Domestic Relations Court)?**

To apply (petition) for a Protective Order you must go to the intake office of the Juvenile and Domestic Relations Court either where you live or where the abuse/violence took place.

To know what kind of questions the intake officer will ask you, go to the I-CAN website ([www.courts.state.va.us](http://www.courts.state.va.us)), scroll down to Programs and Services and click, and then scroll down to Assistance with Family Abuse Protective Orders and click. Click onto the words I-CAN. You will be asked to make a language choice, and then follow the directions.

If you do not have access to a computer or would prefer talking to someone, call the Virginia Family Violence & Sexual Assault Hotline at 1.800.838.8238 and you can find the closest Sexual and Domestic Violence Agency for help or you can ask for help from the Hotline Advocate. It can be helpful to talk with a trained advocate.

## **Where do I go to petition for a Protective Order (General District Court)?**

To apply (petition) for a Protective Order (General District Court), go to the Clerk's Office of the General District Court either where you live or where the violence took place.

The petition process may vary from jurisdiction to jurisdiction, but you will begin the process with the General District Court clerk. If you need help or would prefer to talk to someone call the Virginia Family Violence and Sexual Assault Hotline at 1-800-838-8238 to speak to an advocate and find the closest domestic and sexual violence agency.

## Now that I have a Protective Order, what do I need to know?

### All Protective Orders require enforcement.

Protective orders can only be enforced if the order has been served on the respondent. (This means that the respondent has received a copy of the order and knows that there is an order issued against him or her).

Once a protective order has been issued and served, it is entered into a law enforcement data base called VCIN (Virginia Criminal Information Network). Information about the order is available to law enforcement. Entry into the VCIN also prohibits the respondent from legally purchasing a firearm where a background check is required. Once the order is no longer in effect, it will be removed from VCIN.

It is the respondent's responsibility not to violate the terms of the protective order. A violation of certain terms in the order is a criminal offense. Any act of violence is a criminal violation. If the protective order states that the respondent may not contact you, then that violation is also a criminal offense. **Call the police immediately to report a criminal violation of a protective order.** Violations of other terms of the order are not criminal and must be enforced through a 'show cause' motion (going back to the court).

A criminal violation of a protective order may also be reported to the magistrate, who may issue a criminal misdemeanor charge of a violation of the protective order.

If the police do not arrest the respondent for a criminal violation, you may go to the Magistrate's office to request a warrant because the Protective Order was violated.

Take a copy of your order to the Magistrate's office with you.



## Make sure the order works for you.

While you are not responsible for enforcing it, there are things you can do to help make it work better for you and to help the police enforce your Protective Order.

- **Keep a copy of the order with you** if at all possible; it helps if you can get several copies of it from the courts. Let your friends and family, your employer, campus and school staff and anyone you feel like you can tell, know that you have a protective order. Tell them to call the police if they are aware that the respondent is near you.

- **If the respondent contacts you or assaults you, call the police (911) as soon as possible.** Let them know that you have a protective order. Police in Virginia are required to make an arrest if the respondent assaults you or contacts you (if there is a no-contact provision in the protective order). Contact may include communication in person, by phone, (calls or texts), by mail or by e-mail. This includes messages sent through other people (such as mutual friends).

If the contact is in person, try to give a description of what the respondent was wearing, the type of car, license plate and the direction he/she left the scene.

If the contact is by phone, give the time of the call, where the call was made from if you know (number from caller ID), tell them what was said, and if possible record the call. If the contact is in the form of a text message, do not respond but save the message and provide it to the police and courts.

If the contact is by mail or e-mail, save the mail or e-mail, do not respond but provide the content of the mail or e-mail to police and courts.

Remember: no one has the right to threaten or harm you. You deserve a life free from violence.

There are many people who care about you and will try to help you.

Call the Virginia Family Violence and Sexual Assault Hotline to speak with an advocate or visit [www.vsdvalliance.org](http://www.vsdvalliance.org) for more information on how to stay safe.



If getting a Protective Order seems overwhelming, break it down in steps, or talk to a domestic and sexual violence advocate or trusted friend or family member to help sort things out.

## The more information you can provide to the police or the courts, the better.

If the order is a no contact order, it is best for you to not contact the abuser for any reason. If you feel that you need to contact the respondent while the order is in effect, it's best that you inform the court that you need to make contact with the respondent and the reason for the contact.

If you decide you no longer need a protective order, or you want to change something about your order, you must go back to court. Only a Judge can modify (change) the Protective Order. Contact the Clerk of the Court that issued the order and ask for a modification to the order. Sometimes it helps to talk things over with a domestic and sexual violence advocate before making your final decision. However the decision is yours to make and you are the one who knows best how to protect yourself.

A "Permanent" Protective Order is subject to something called Full Faith and Credit. This means that your order is to be enforced everywhere in the U.S.A. This means that if you live in one county or city and work in another one, the order is good even if you are in another state. If you move, it helps if you register your order with the courts in your new location. (This is not required by law but may help with more effective enforcement). If your order is violated and law enforcement tells you that they cannot enforce it because it's from another state, contact the Commonwealths Attorneys Office and ask for assistance.

In Virginia, it is against the law for a respondent who is the subject of a protective order to purchase or transport a firearm/gun. If you are aware of the respondent violating this, contact law-enforcement immediately. Go to a safe place such as a domestic violence shelter. Protective orders and guns are a dangerous combination. Take the threat seriously and seek help!

## Protective Orders for Teen Dating Violence

If you are under the age of 18 and experiencing acts of violence, force or threat from a dating partner or someone else you know, you and your parents/guardian may request a protective order to help keep you safe. In Virginia, there are limits to what you can do without involving your parents or guardian unless you are an 'emancipated minor' (see below).

You may request an Emergency Protective Order without a parent or legal guardian. A law enforcement officer may also request an emergency protective order on your behalf without a parent or legal guardian. These requests are made through the local magistrate's office. However, an emergency protective order only lasts for 72 hours and it is important to have a safety plan in place before you request a protective order.

You may only seek a Preliminary or Permanent Protective Order if you meet the legal definition of an 'emancipated minor' (see below) or if a 'next friend' (most likely a parent or guardian) petitions on your behalf. If you or the respondent are under the age of 18, your request should start with the Juvenile and Domestic Relations Court. Since a protective order is just one tool to help you stay safe, it is important that you have caring adults in your life who know about the protective order and can help you develop a safety plan. If you need guidance or help creating a safety plan or telling an adult, please call the Virginia Family Violence and Sexual Assault hotline at 1.800.838.8238.

### What is an 'emancipated minor'?

Under Virginia law, an 'emancipated minor' is an individual under the age of 18 who a court has determined:

- is or has been a party to a valid marriage;
- is on active duty with any of the armed forces of the United States of America; or
- is willingly living separate and apart from his/her parents or guardian, with the consent of the parents or guardian, and is capable of supporting himself/herself and managing his own financial affairs.



## Guidance for the Lesbian / Gay / Bi-Sexual / Transgender (LGBT) Community

Under Virginia law, you may be eligible to seek a Family Abuse Protective Order through the Juvenile and Domestic Relations (J&DR) Court if the person who is harming or threatening you is a family or household member. This definition includes LGBT individuals who are living with a partner or who have lived with a partner in the last 12 months.

In order to meet the legal definition of 'family or household member', you may be asked to prove that you are co-habiting with your partner which may require disclosure of intimate and private information in court.

If you experience difficulty obtaining a protective order through the Juvenile and Domestic Relations Court or if you are in a relationship that does not meet the definition of 'family or household member', you may seek a Protective Order through the General District Court. Protective Orders may be issued in response to any act of violence or threat when there is continued concern for the safety of the victim by a known perpetrator--including acts of sexual or physical violence or threats that might be considered hate crimes. Obtaining this protection does not require proof of a relationship--only proof that an act of violence or a threat has occurred and is likely to occur again.

Despite the inclusiveness of Virginia's law and the options available to LGBT individuals, you may have valid safety concerns about sharing private information and details about your relationship in order to access protection and services. All people have the right to a safe, respectful relationship.

If you are unsure where to go for help, please call the Virginia Family Violence & Sexual Assault Hotline at 1.800.838.8238 for help and information on staying safe.

## Legal words you might need to know.

### (Civil) Protective Order

Legal document to protect against an abuser. It can require the abuser to stay away from the person being abused.

### Cohabitation

Living together as spouses but not married.

### Contempt of Court

Failure to obey a judge's order.

### Defendant

The person against whom a charge is brought. The abuser is the defendant in a protective order hearing. A Defendant is the same as the respondent.

### Evidence

Anything shown in court to support a case. It can include testimony by you or a witness, documents, photographs, items of clothing, weapons, and police or medical records.

### Ex Parte

Latin word that means "from one side". A preliminary protective order issued by a judge who hears only from the victim is an ex parte order.

### Full Faith and Credit

The responsibility of the court of one state to enforce the valid order of another state. In order to be enforced the order must have been issued by a court, after the respondent was notified of a hearing and was given the opportunity to be present and be heard.

### General District Court

A court where all misdemeanor cases not involving juveniles and family members are tried, including traffic cases. This court also conducts preliminary hearings in felony cases.

## Hearing

A meeting held at the courthouse where the judge listens to evidence from both sides and makes a legally binding decision.

## Juvenile & Domestic Relations Court

A court where all cases (including preliminary hearings) involving minors and family and household members are tried.

## Petitioner

The person who begins the case or asks for a case to be heard in the court by filing a petition. Same as applicant, plaintiff or complainant.

## Pro se

Acting as one's own lawyer. In Latin it means "for oneself".

## Respondent

Same as defendant. The person who must respond to the charges by the petitioner or complainant.

## Service

Delivering court documents to one of the parties. The abuser must be "served" with the document telling him/her why he/she must come to court and when he/she must appear.



## Resources in your community

County/city name: \_\_\_\_\_

Sexual/Domestic Violence 24 hour hotline:

\_\_\_\_\_

### Juvenile & Domestic Relations Court Services

Location: \_\_\_\_\_

Phone: \_\_\_\_\_

### General District Court

Location: \_\_\_\_\_

Phone: \_\_\_\_\_

### Legal Aid

Location: \_\_\_\_\_

Phone: \_\_\_\_\_

### Magistrate's Office

Location: \_\_\_\_\_

Phone: \_\_\_\_\_

To order more copies of this booklet, contact:  
Virginia Sexual & Domestic Violence Action Alliance  
5008 Monument Avenue, Suite A  
Richmond, VA 23230  
phone: 804.377.0335 e-mail: [info@vsdvalliance.org](mailto:info@vsdvalliance.org)  
web: [www.vsdvalliance.org](http://www.vsdvalliance.org)



**1.800.838.8238** V/TTY  
Free. Confidential. 24 hours a day.