

Domestic Violence Protective Orders

What is domestic violence?

Causing physical harm, attempting to cause physical harm, or threatening physical harm to someone who is a family or household member. It can include harassment, psychological abuse, sexual assault, sexual abuse, holding someone against their will, and abduction. Household members have

- a) A close family relationship;
- b) A combination of family and partner relationship; or
- c) A current or past partner relationship. Partners are people who are or were married, living together, sexually intimate, dating, or have a child in common even if they have not married or lived together.

What is a protective order?

A Protective Order identifies who needs to be protected, who is accused of domestic violence, and what the accused person can and cannot do.

Who can get a protective order?

Adults and children who are the victim of domestic violence. A relative may go to court on behalf of a victim if the victim is mentally or physically unable to seek help. Witnesses to domestic violence also can seek protection if they are being abused, threatened or intimidated because of what they saw.

If an order is violated, contact law enforcement immediately

Step 1: File an Emergency Protective Order Petition in Magistrate Court

All Magistrate Offices in West Virginia have forms for an **Emergency Protective Order**. The form is called a **petition**. The person who files it is called the **petitioner**. **The petitioner is always allowed to file a petition**. The person who is accused of domestic violence is called a **respondent** and will have an opportunity to respond to the petition. Petitioners and respondents are **parties** to the case.

Officers can transport victims to Magistrate Court, but people can go to court on their own. Magistrates are on call 24 hours a day, seven days a week, to review petitions and issue Emergency Protective Orders immediately.

Petitions can be filed in any county, no matter where the parties live. Magistrates can transfer a case to the petitioner's home county if necessary.

Petitioners **must** include on the form the most recent events of domestic violence, but past events **can** be included. Petitioners **must** provide the name and address of the respondent and any children involved. Petitioners also **must** provide their own name and address, but **anyone seeking a protective order can request that their own address be kept confidential**.

Resources

West Virginia Coalition Against Domestic Violence

1-304-965-3552 or www.wvcadv.org

National Domestic Violence Hotline

1-800-799-SAFE

Legal Aid of West Virginia

1-866-255-4370

Magistrate Court Hearing

Once a petition is filed, a Magistrate will hold an **emergency hearing** and will ask the petitioner questions. If there is evidence of an immediate and present danger, the Magistrate will issue an Emergency Protective Order. Orders are temporary. The Magistrate will schedule a hearing in Family Court, and the Magistrate's order will last only until that hearing. Magistrates send copies of orders electronically to law enforcement agencies.

If the Magistrate denies the petition, the petitioner can appeal the order denying protection to Family Court. The forms are located in Magistrate Clerk Offices.

Emergency Protective Orders are effective statewide and in other states. All orders tell respondents not to abuse, harass, stalk, threaten, intimidate, or cause fear of bodily injury to those named in the orders. Emergency Protective Orders can include other stipulations if they are necessary to protect someone's safety. Orders can direct who can live in or be near a home or whether a respondent can go near a business or school. Orders also can establish financial support of and visitation with children, grant temporary custody of children, force someone to attend treatment, and deal with property.

West Virginia Foundation for Rape Information and Services

1-304-366-9500 or www.FRIS.org

Tuesday Legal Connect

<https://wvbar.org/public-information/tuesday-legal-connect/>

Lawyer hotline Tuesdays 6 p.m. to 8 p.m.

1-800-642-3617

Respondents' Rights

Respondents have a right to know what they are being accused of doing. They have a right to know they will have an opportunity to respond at a Family Court hearing. They have a right to know the time, date, and location of the hearing. They need to understand what they can and cannot do while an Emergency Protective Order is in place.

Law enforcement officers **hand deliver** Emergency Protective Orders to respondents within 72 hours of the time orders are issued. Petitioners should provide as much information as possible about respondents on petitions so law enforcement officers can find them. If an address is a post office box, a petitioner must provide directions to the respondent's home.

Each violation of a protective order is a criminal offense punishable by up to a year in jail and a fine of up to \$2,000.

Weapons

It is very important to say in the petition whether a respondent has access to firearms or ammunition. While a protective order is in effect, a respondent MUST NOT have access to weapons or ammunition or have them anywhere on the respondent's property, even if the respondent has a license.

Published by the Supreme Court of Appeals of West Virginia. For a video about the Domestic Violence Petition Process see:
www.youtube.com/c/wvsupremecourt

Step 2: Family Court Hearing and Domestic Violence Protective Order

Both parties should attend the Family Court hearing unless they are notified by court personnel that the hearing has been postponed.

If the petitioner does not attend, the Family Court Judge may dismiss the case. The Emergency Protective Order will no longer be in effect. If the respondent has received notice of the hearing but does not attend, the hearing can be held anyway. If the respondent has **not** received notice of the hearing by the time it is set, the hearing can be rescheduled and the Emergency Protective Order will remain in effect. If law enforcement officers cannot find the respondent, a Family Court Judge may ask the petitioner to publish a notice of the hearing in a newspaper, at no cost. Circuit Clerk Offices have these forms.

At the hearing, the petitioner must prove by a preponderance of the evidence the allegation of domestic violence. Preponderance of the evidence means the greater weight of the evidence is enough to make a fair and impartial person believe it.

No one is required to have a lawyer. However, people who do not have attorneys must present all their evidence themselves.

Both the petitioner and the respondent can testify and call witnesses. Witnesses can be subpoenaed with forms available in Circuit Clerks Offices. Petitioners and respondents also should gather evidence like police or medical reports, text messages, or photographs, and bring any evidence to court.

If a Family Court Judge determines the claims in the domestic violence petition have been proven by a preponderance of the evidence, the judge will grant a **Domestic Violence Protective Order**.

If the respondent did not attend the hearing, law enforcement officers will hand-deliver a copy of the Domestic Violence Protective Order to the respondent.

The Family Court Judge's Domestic Violence Protective Order may provide for child custody, payments, and temporary possession of property.

If the Family Court Judge does **not** issue a Domestic Violence Protective Order, the case is over and the Emergency Protective Order is no longer in effect.

The Family Court Judge will determine how long a Domestic Violence Protective Order will be in effect. The person who is protected by the order can ask that it be extended for 90 days. Extension forms are available in Circuit Clerk Offices and must be filed before the Domestic Violence Protective Order expires. If there is a protective order in effect, and one of the parties files another Family Court case involving the same people, the protective order may be automatically extended until a judge enters another order.

Appeals

If either party is not happy with the decision the Family Court Judge makes, that party can file an appeal to Circuit Court. A Circuit Judge will decide if the Family Court Judge made the right decision. An appeal to Circuit Court must be filed within ten days of the date the Family Court order is issued. A Circuit Court hearing on the appeal will be held within ten days of the date the appeal is filed. If either side is not happy with the Circuit Court decision, that party can appeal to the Supreme Court of Appeals of West Virginia. The Supreme Court's decision is final.