

Title 47

DOMESTIC AND FAMILY VIOLENCE

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Chapter 01

GENERAL PROVISIONS.

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47.0101 Purpose.

The purpose of this title is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. It is the intent of the Legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated. Furthermore, it is the intent of the Legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.

History: 2004, PL 28-16.

47.0102 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

(1) "Domestic or family violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:

(A) Attempting to cause or causing physical harm to another family or household member:

(B) Placing a family or household member in fear of physical harm; or

(C) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.

(2) "Family or household members" include:

(A) Adults or minors who are current or former spouses;

(B) Adults or minors who live together or who have lived together;

(C) Adults or minors who are dating or who have dated;

- (D) Adults or minors who are engaged in or who have engaged in a sexual relationship;
- (E) Adults or minors who are related by blood or adoption;
- (F) Adults or minors who are related or formerly related by marriage;
- (G) Persons who have a child in common; and
- (H) Minor children of a person in a relationship that is described in paragraphs (A) through (H).

History: 2004, PL 28-16.

Chapter 02

CIVIL ORDERS FOR PROTECTION

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- 47.0207** Registration and enforcement of foreign orders for protection—Duties of court clerk.

47.0201 Eligible petitioners for order.

- (a) A person who is or has been a victim of domestic or family violence may file a petition for an order for protection against a family or household member who commits an act of domestic or family violence.
- (b) A parent, guardian, or other representative may file a petition for an order for protection on behalf of a child against a family or household member who commits an act of domestic or family violence.
- (c) There is no minimum requirement of residency to petition for an order for protection.

History: 2004, PL 28-16.

47.0202 Uniform form required for petitions and orders—Required statements in petitions and orders—Duty of clerk to provide petitions and clerical assistance.

- (a) The Attorney General's Office shall:
 - (1) Develop and adopt uniform form

GENERAL INFORMATION ABOUT DOMESTIC VIOLENCE PROTECTION ORDERS

DEFINITIONS YOU NEED TO KNOW

- In a civil domestic violence case:

Petition for a Civil Protection Order ("CPO") is the document that must be filed with the domestic relations court if a victim of domestic violence or a parent or adult household member of a victim of domestic violence wishes to obtain a civil protection order against a domestic violence offender.

Ex Parte Civil Protection Order ("CPO") is an emergency court order issued in response to the Petition for a Civil Protection Order after an ex parte hearing (see below).

Full Hearing Civil Protection Order ("CPO") is the final court order issued after a full hearing (see below). When issued, the Full Hearing CPO replaces the Ex Parte CPO.

Petitioner is the person asking the court for protection in the Petition for a CPO.

Respondent is the domestic violence offender and the person against whom the Petition for a CPO is filed.

CIVIL PROTECTION ORDERS

- **What is a Civil Protection Order?**

A CPO is granted by a domestic relations court to protect a victim of domestic violence. A CPO is intended to prevent further domestic violence. It orders someone who has been abusive to do or not to do certain things in the future. You should try to get a CPO even the respondent is subject to bail or release conditions by a criminal court because a CPO lasts longer and provides more benefits (such as custody and support orders).

Violation of a CPO is a crime. If the Respondent violates the CPO, he or she may be arrested, jailed, and fined for disobeying the CPO. If you get a CPO, it can remain in effect for up to five years. If the Respondent violates the CPO during the time it is in effect, you can go back to the domestic relations court or to the prosecutor's office to have the Respondent charged.

- **Why get a Civil Protection Order?**

A CPO may be very helpful if you are a victim of domestic violence. First, once domestic violence starts, the violence often happens more often and gets increasingly severe. A CPO may stop this cycle of violence by ordering the Respondent to stop hurling or threatening you and/or your children, and to stay away from you for up to five years. This can give you time to "sort things out" and decide what you want to do next without having to be afraid all of the time. Also, if your children have seen incidents of domestic violence, it may give all of you a chance to get some help so that you and your children are healthy and safe.

Second, domestic violence is a crime. A CPO lets the Respondent know how serious you and the court are about requiring the Respondent to change his or her behavior and not hurt or threaten you again.

Third, a CPO sets some "rules" that the Respondent will have to obey while the CPO is in effect. These rules may require the Respondent to pay child or spousal support; give up possession of a home or vehicle; and/or obey the court's orders about visitation.

- **Who can get a Civil Protection Order?**

You can apply for a CPO if: 1) you are related to the Respondent by blood or marriage; 2) you are living with or have lived with the Respondent during the past five years; 3) you used to be married to the Respondent; or 4) you have a child with the Respondent, whether or not you ever married or lived together. You can also get a CPO for any children who have lived with the Respondent, even if they are not children that you had with the Respondent. (For example, your children or stepchildren from another relationship.)

- **Is legal representation necessary to obtain a Civil Protection Order?**

No, but you will usually be better off having legal representation in your CPO proceeding, especially when your case involves contested custody and visitation and/or the Respondent is represented by an attorney. If you cannot afford an attorney, contact your local legal aid office or bar association for information on low cost or free legal representation.

- **Is a court hearing necessary to obtain a Civil Protection Order?**

Yes. There are two hearings involved in a CPO case: the ex parte hearing and the full hearing.

Ex Parte Hearing: (Only you are present. The Respondent will not be present.)

If a Petition for a CPO is filed early enough in the day, an ex parte hearing will be held before the court that day. If the Petition for a CPO is filed too late in the day for such a hearing, a hearing will be scheduled for the following business day. At the ex parte hearing, a judge or magistrate will hear your statement of the facts under oath. If the judge or magistrate finds that the facts meet the requirements of the law, the court will issue an Ex Parte CPO and schedule a full hearing which must be held within 3 business days after the Respondent has been served with the Ex Parte CPO. (See service information below.)

Full (Final) Hearing:

At this hearing, both you and the respondent have the opportunity to testify. You must be present at the full hearing. You should bring any witnesses who can support your case. If the court issues a Full Hearing CPO, it will file the CPO with the clerk of court. The clerk will serve the appropriate parties with certified copies of the CPO. The CPO is valid until the date indicated in the CPO but no longer than five years.

If the Respondent does not show up for the full hearing, you can still obtain a final CPO. However, if the Respondent is not served with the Ex Parte CPO before the date of the full hearing, the court will postpone the hearing until another date so the Respondent can be served. If this happens, the law requires the Ex Parte CPO to remain in effect until the full hearing is held.

- **What does it mean to be served with protection order papers?**

To be served means that the marshal or other law enforcement officer gives a copy to the Respondent. Any Ex Parte CPO issued by a court must be served on the Respondent and on the Department of Public Safety and the Attorney General's Office before the full hearing. Without service of the Ex Parte CPO on the Respondent the court cannot hold a full hearing. The clerk of court's office will give you forms to fill out for service.

PROCEDURES FOR OBTAINING A DOMESTIC VIOLENCE CIVIL PROTECTION ORDER ("CPO")
Which forms to fill out, where to go to get a CPO, and what to expect in court.

Preparing the Documents for a Domestic Violence CPO

- To obtain a CPO, you will need the following documents (all of these are available from the clerk of court's office):
 1. Petition for a Domestic Violence Civil Protection Order form
 2. Ex Parte Civil Protection Order form
 3. If you will be requesting temporary custody of a child, a Parenting Proceeding Affidavit form
 4. If you will be requesting financial support, you may also be required to fill out a financial affidavit. The clerk's office can provide you with this form if the court requires it.
- Complete the Petition for CPO form. Complete the Parenting Proceeding Affidavit and financial affidavit forms if applicable. Take these documents to the clerk of court's office.

Filing the Petition for a Domestic Violence CPO

- Present your completed Petition for a CPO form and, if applicable, your completed Parenting Proceeding Affidavit and financial affidavit forms, to the filing window/counter of the clerk of court's office for filing. Do not file the Ex Parte CPO form at this time.
- An employee of the clerk of court's office will help you file your documents. There is no fee for filing the Petition for a CPO form.
- Ask an employee of the clerk of court's office or your local domestic violence assistance group about your local court procedures.

Attending the Ex Parte Court Hearing

- Bring the Ex Parte CPO form to the ex parte hearing.
- You must appear in front of a judge or magistrate for the ex parte hearing, where the judge or magistrate will listen to your testimony.
- You should tell the judge or magistrate what the Respondent did to make you fear that you (or another family member) may be in danger. Tell the judge or magistrate if the Respondent injured you, attempted to injure you, or threatened you.
- Tell the judge or magistrate what you would like the Court to do to help keep you and other family members safe and to protect the best interests of any children. For example:
 1. Order the Respondent to stay away from you;
 2. Order the Respondent to be removed from your home;
 3. Order the Respondent to get counselling;
 4. Award custody of any children to you;
 5. Order the Respondent to have visitation only under conditions that will keep you and the children safe;
 6. Order the Respondent to pay you child support and/or spousal support (alimony);
 7. Order the Respondent to be prohibited from having any weapons;
 8. Award possession of a car for your use;
 9. Award possession of your personal property and the children's personal property.

[Reverse from 10/01-B]

- If you have told the judge or magistrate reasons why you should get a CPO, and the judge or magistrate determines that you or your family or household members are in danger of domestic violence, they will sign an Ex Parte CPO at the hearing. Give the judge or magistrate the Ex Parte CPO form. The judge or magistrate may sign your form or prepare their own form.
- The judge or magistrate will set a second hearing (called a "full hearing") in 3 business days to give the Respondent a chance to be heard. You must also appear at the full hearing. Some issues, such as support, may be postponed until this second hearing.
- Take the Ex Parte CPO signed by the judge or magistrate to the clerk of court's office and have it filed. You will also need to tell the clerk's office where law enforcement officers can find the Respondent to serve him or her with the Ex Parte CPO and other necessary papers.

Attending the Full Hearing

- The full hearing on the Petition for CPO will be set in 3 business days after the ex parte hearing. You must attend the full hearing.
- At the full hearing you must tell your story again, this time in more detail. Bring with you any witnesses, photos, or papers that will help you prove that the Respondent injured you (or another family member), attempted to injure you, or threatened you. Tell the judge or magistrate why you fear the Respondent. You may call the Respondent as a witness to help you prove your case. Tell the judge or magistrate again what you want the court to do to help keep you and other family members safe.
- The Respondent may also present evidence. The Respondent may call you as a witness and ask you questions.
- After the hearing, if the judge or magistrate decides you are entitled to a CPO, they will issue a new CPO called a "Full Hearing CPO." This CPO is usually more detailed than the Ex Parte CPO issued after the first hearing. The judge or magistrate could also dismiss your Petition for CPO if they decide you are not entitled to a CPO. By law, the court may not issue any orders against you unless the Respondent has filed a separate action against you.
- At the full hearing, you and the Respondent can decide to enter into a Consent Agreement instead of having a hearing in front of the judge or magistrate. If this happens, present the Consent Agreement form contained in this packet. The court should also have a Consent Agreement for you to use.

Criminal Court

- In addition to the ex parte hearing and full hearing in domestic relations court, you should attend all meetings and hearings as requested by the prosecutor and the court in any criminal case filed against the Respondent.
- Tell the domestic relations court about any pending criminal cases. Tell the criminal court about any pending domestic relations court cases.
- Because any conditions on the release of a person awaiting trial issued by a criminal court expire when the criminal case is over (dismissal, plea, conviction), it is important to ask the domestic relations court for a CPO even if a criminal court has established conditions on the respondent's release from jail.

Enforcement of Your CPO

- **Your CPO remains in effect for five years, unless the court sets a different expiration date.**
- **Violation of a CPO is a crime. If the Respondent violates the CPO, contact the police to make a report and notify the prosecutor.**
- **Certain violations of CPOs may be grounds for a contempt action against the Respondent in domestic relations court. There is a contempt motion form in the forms packet available from your local domestic violence program. You must complete and file the contempt motion form with the clerk of court's office to begin a contempt action against the Respondent.**

INSTRUCTIONS FOR COMPLETING THE PETITION FOR A DOMESTIC VIOLENCE CIVIL PROTECTION ORDER

These instructions are intended to assist you in preparing the Petition for Domestic Violence Civil Protection Order, which can only be heard by the domestic relations court in your county. Throughout the petition you are called Petitioner and the person who you are filing this against (the domestic violence offender) is called Respondent.

SOME HINTS BEFORE YOU BEGIN

- Type or print **ONLY** on the Petition.
- Write your name on the Petition the way it appears on your signature.
- Write your name and Respondent's name the same way throughout the Petition.
- Fill out the Petition as completely and accurately as possible.
- If you have any questions about completing the Petition, ask the clerk of court's office for assistance.

FILLING OUT THE PETITION: MARK EACH INSTRUCTION BELOW AFTER YOU READ AND COMPLETE IT.

- On the front page, leave the "Case No." line and "Judge" lines blank. The clerk of court's office will fill in this information.
- On the top left-hand side of the front page, fill in the requested information about yourself. If you do not want your present address to be known, write "confidential" in the space for your address.
- Also on the top left-hand side of the front page, fill in the requested information about Respondent as best you can. You may use Respondent's work address if you do not know Respondent's home address. If you do not know Respondent's date of birth or social security number, leave those lines blank. Do not attempt to obtain this information unless it is safe to do so.
- Paragraph 1: If you are filing the Petition on behalf of a family or household member, mark the box and the box that describes your relationship to Respondent.
- Paragraph 2: If you are filing the Petition on behalf of a family or household member, mark the box and fill in their name(s) and the other information requested in the chart. You may attach additional pages if necessary.
- Paragraph 3: State the date(s) of the incident(s) that brought you to file the Petition and provide a brief description of what happened. You may attach additional pages if necessary to complete your description.
- Paragraph 4: Indicate the action you want the court to take by marking the boxes next to the numbered paragraphs that apply to your situation, including those not referred to below.
- Paragraph 4(b): Provide the address or location of the residence that you want Respondent to stay away from. If you do not want your present address known, write "address confidential."
- Paragraph (d) and (e): If you want temporary custody of your minor children, or want the court to establish temporary visitation rights, list the names and birth dates of the children. If you have children whose custody or visitation will be at issue in this domestic violence case, you must also complete and file a Parenting Proceeding Affidavit (see separate form and instructions).
- Paragraph 4(i): If you want the court to grant you use of a motor vehicle, describe that vehicle.
- Paragraph 4(k): Write any special court orders you believe would help ensure the safety and protection of you and your family or household members.
- Paragraph 5: Be sure to mark the box next to Paragraph 5 if you need an emergency ("ex parte") protection order.
- Paragraph 9: List ALL present or past court cases or investigations that involve you, Respondent, both of you, or your family or household members. This includes all criminal, divorce, custody, visitation, bankruptcy cases, and any other case that may have a bearing on the safety of you, your children, or your family or household members. Write the case name, the court, and the case number, if known. You may attach additional pages if necessary.

SIGNING THE PETITION: Try to fill out the Petition before you go the courthouse. AFTER YOU HAVE FILLED OUT THE PETITION, TAKE IT TO THE CLERK OF COURT'S OFFICE OR TO A NOTARY PUBLIC TO HAVE YOUR SIGNATURE NOTARIZED. **DO NOT SIGN THE PETITION UNLESS YOU ARE IN FRONT OF A NOTARY PUBLIC OR CLERK OF COURTS.**

FILING THE PETITION: After you have your signature notarized, file your Petition at the clerk of court's office. The clerk of court's office will tell you when and where your ex parte hearing will take place. There is no filing fee for a Petition for a CPO.

**FAMILY, DRUG, and ALCOHOL COURT DIVISION
HIGH COURT**

Petitioner

: Case No. _____

Address

: Judge _____

City, State, Zip Code

: **PETITION FOR DOMESTIC VIOLENCE
CIVIL PROTECTION ORDER**

v.

Respondent

: Notice to Petitioner: Throughout this form,
Mark every that applies.

Address

City, State, Zip Code

SS# _____ DOB _____

1. Petitioner is a family or household member of Respondent and a victim of domestic violence and seeks relief on Petitioner's own behalf. The relationship of Petitioner to Respondent is that of:

- Spouse of Respondent
 Former spouse of Respondent
 Child of Respondent
 Parent of Respondent
 The natural parent of Respondent's child
 Person "living as a spouse of Respondent"
 Other relative (by blood or marriage) of Respondent
 (now cohabiting or cohabited within five years
 prior to the alleged act of domestic violence)

2. Petitioner seeks relief on behalf of the following family or household members who are victims of domestic violence:

NAME WITH	AGE/DOB	HOW RELATED TO PETITIONER	RESPONDENT	RESIDES

3. Respondent has engaged in the following act(s) of domestic violence (describe the nature and extent of the act(s)):

4. Petitioner requests that the Court grant relief to bring about a cessation of domestic violence against Petitioner and the family or household members named in this Petition by granting a civil protection order that:

- (a) Directs Respondent not to abuse Petitioner and the family or household members named in this Petition by harming, attempting to harm, threatening, molesting, following, stalking, bothering, harassing, annoying, contacting, or forcing sexual relations upon them.

[Reverse of Form 10/01-D]

(b) Requires Respondent to vacate and refrain from entering the following residence and grants Petitioner exclusive possession of the residence: _____

(c) Apportions household and family personal property and directs Respondent not to remove, damage, hide, or dispose of any property or funds that Petitioner owns or possesses.

(d) Temporarily allocates parental rights and responsibilities for the care of the following minor children and suspends Respondent's visitation rights until a full hearing is held on this Petition (include names and birth dates of the minor children):

(e) Establishes temporary visitation rights with regard to the following minor children and requires visitation to be supervised or occur under such conditions that the Court determines will insure the safety of Petitioner and the minor children (include names and birth dates of the minor children):

(f) Requires Respondent to maintain financial support of Petitioner and the other family or household members named in this Petition.

(g) Requires Respondent to complete batterer counseling, substance abuse counseling, or other counseling as determined necessary by the Court.

(h) Requires Respondent to refrain from entering, approaching, or contacting (including contact by telephone, fax, e-mail, and voice mail) the residence, school, business, and place of employment of Petitioner and the family or household members named in this Petition.

(i) Requires Respondent to permit Petitioner or other family or household member to have exclusive use of the following motor vehicle:

(j) Requires Respondent to pay all costs of this action.

(k) Includes the following additional provisions:

5. Petitioner further requests that the Court issue an ex parte (emergency) protection order in accordance with this Petition.

6. Petitioner further requests that the Court grant such other relief as the Court considers equitable and fair.

7. Petitioner states that the following is a list of all present and past court cases that Petitioner has knowledge of and that involve Petitioner, Respondent, or any of their family or household members.

CASE NAME				
CASE NUMBER				
COURT/COUNTY				

I hereby swear or affirm that the answers above are true, complete and accurate. I understand that falsification of this document may result in a contempt of court finding against me which could result in a jail sentence and fine, and that falsification of this document may also subject me to criminal penalties for perjury.

Sworn to and subscribed before me on this _____ day
of _____, _____.

NOTARY PUBLIC/CLERK OF COURTS

INSTRUCTIONS FOR COMPLETING THE INFORMATION FOR PARENTING PROCEEDING AFFIDAVIT

These instructions are to assist you in preparing the Information For Parenting Proceeding Affidavit, which must be filed if you are requesting a parenting (custody) order in a Petition for a Domestic Violence Civil Protection Order. IF YOU ALREADY HAVE A DIVORCE OR DISSOLUTION CASE FILED, CUSTODY ISSUES WILL BE HANDLED IN THAT CASE, NOT THE DOMESTIC VIOLENCE CASE, SO YOU DO NOT NEED TO FILE THIS AFFIDAVIT FORM IN THE DOMESTIC VIOLENCE CASE.

FILLING OUT THE FORM: Mark each instruction below after you read and complete it.

- Print or type only. Attach an additional page to the Affidavit for your answers if necessary.
- At the top of the front page, fill in the names. YOU are the "Petitioner." The person you want protection from is the "Respondent." Leave the Case No. and Judge lines blank for the clerk of court to complete. Fill in your name again as the "Affiant."
- Paragraph 1: Fill in the names and other information requested about the children involved in this action.
- Paragraph 2: Write the address where the children are living now. If you do not want to have this address known, write "address confidential."
- Paragraph 3: Write the names of all adults that the children are now living with.
- Paragraph 4: List every address where the children have lived in the past 5 years. Also list the names of all adults who lived with the children at each address. Attach an additional page if you run out of room to complete this answer.
- Paragraph 5: List the current address of every adult whose name appears in your answers to Questions 3 and 4.
- Paragraph 6: Answer "YES" or "NO." If you answer "YES", then write the details at Question 7.
- Paragraph 7: If now or at any time in the past there has been a court case concerning the custody, visitation, or care of the children, write as many details as you know. If you know of no other cases, write "NONE".
- Paragraph 8: List the name and address of anyone who is not a party to this case who might have some claim to custody or visitation. If none, write "NONE".
- Paragraph 9: State whether you or any other party of this case has been involved in any other case where child abuse, child neglect, or domestic violence was an issue. Fill in as many details as you know. If you are aware of no such cases, write "NONE".
- Paragraph 10: State whether you have any domestic violence protection orders or any other court restraining orders in effect now, either against you or on your behalf. Fill in as many details as you know. If you are aware of no such cases, write "NONE".

SIGNING THE FORM: Try to fill out this form before you go to the courthouse. AFTER YOU HAVE FILLED OUT THE FORM, TAKE THE FORM TO THE CLERK OF COURT'S OFFICE OR TO A NOTARY PUBLIC TO HAVE YOUR SIGNATURE NOTARIZED. DO NOT SIGN THE FORM UNLESS YOU ARE IN FRONT OF A NOTARY PUBLIC OR CLERK OF COURTS.

**FAMILY, DRUG, and ALCOHOL COURT DIVISION
HIGH COURT**

Petitioner _____ : Case No. _____

: Judge _____

v. _____ : **INFORMATION FOR PARENTING
PROCEEDING AFFIDAVIT**

Respondent _____
: (Filed with Petition for Domestic
Violence Civil Protection Order)

NOTE: This affidavit must be filed and served with the first pleading filed by each party in every parenting (custody/visitation) proceeding in this Court, including a Petition for a Domestic Violence Civil Protection Order. Each party has a continuing duty while this case is pending to inform the Court of any parenting proceeding concerning the child(ren) in any other court in this or any other state. If more space is needed, attach an additional page.

Affiant, _____, states as follows:

1. The name, birth date, and Social Security Number [if any] of each child whose custody/visitation is at issue in the case is:

2. The present home address of the child(ren) is:

3. The child(ren) currently reside(s) with what adult(s)?

4. All other places and dates where the child(ren) have lived during the last 5 years, and the names of all adult(s) with whom they lived at each address, are as follows:

5. The name(s) and current address of all adults listed above are:

6. Do you know of any litigation anywhere, past or present, which concerns the custody, visitation, or care of the child(ren)?

7. If the answer to #6 is "yes", state any other information you have about any parenting proceeding concerning the child(ren) now pending in a court of this or any other state. Include the case number, the name of the court and the address of the court.

8. State the name and address of any person who is not a party to this proceeding: (A) who has physical possession of the child(ren) or (B) who claims to be a parent of the child(ren) and is either the residential parent and legal custodian, or has visitation rights with the child, or C who is a person other than a parent of the child(ren) who has custody or visitation rights.

9. Are you now, or have you ever been, a party to any civil or criminal case or any investigation concerning child abuse, child neglect, or domestic violence? If so, state each court, case name, case number, date and nature and outcome of the case:

10. Do you have any domestic violence protection orders or any other restraining orders issued against you, or on your behalf against any other person? If so, state each court, case name, case number, date and nature and outcome of the case:

OATH OF AFFIANT

I hereby swear or affirm that the answers above are true, complete and accurate. I understand that falsification of this document may result in a contempt of court finding against me which could result in a jail sentence and fine, and that falsification of this document may also subject me to criminal penalties for perjury.

AFFIANT

Sworn to and subscribed before me on this _____ day of _____, _____

NOTARY PUBLIC/CLERK OF COURTS