

# DOMESTIC VIOLENCE PROTECTIVE ORDERS

A protective order case is a non-criminal, two-step proceeding.

**Stage One** is the Emergency Protective Order hearing in **Magistrate Court**.

**Stage Two** is the Domestic Violence Protective Order hearing in **Family Court**.

## RESOURCES

**National Domestic Violence Hotline**  
1 (800) 799-SAFE

**West Virginia Coalition Against Domestic Violence**  
1 (304) 965-3552 or [www.wvcadv.org](http://www.wvcadv.org)

**West Virginia Foundation for Rape Information and Services**  
1 (304) 366-9500 or [www.FRIS.org](http://www.FRIS.org)

**Domestic Violence Benchbook**  
[www.state.wv.us/wvsca/DVBenBook/DVcover.htm](http://www.state.wv.us/wvsca/DVBenBook/DVcover.htm)

**Lawyer Information Service Hotline**  
Tuesdays 6 - 8 p.m. 1-800-642-3617

**Lawyer Referral Service**  
1-304-558-7991 or [www.wvbar.org](http://www.wvbar.org)

**Legal Aid of West Virginia**  
1-800-642-8279

## Stage One:

## Magistrate Court

### Step 1. Filing a Protective Order Petition

A protective order case starts with filing a petition in magistrate court. The **petition** is a form available at the magistrate's office. The person who is seeking protection and files the petition is called the **petitioner**. The person who is required to respond to the petition is called the **respondent**. The petitioner and respondent are called the **parties** to the case.

When filling out the petition, the petitioner should describe what happened as clearly as possible. The petitioner should also include the dates when incidents occurred.

A **domestic violence advocate** may help a petitioner complete the petition and understand his or her rights. To find a domestic violence advocate in your area, call **1 (800) 799-SAFE (7233)**.

#### Who May Ask for a Protective Order?

A petition may be filed by

- A person seeking protection from domestic violence or abuse; or
- An adult family or household member on behalf of a child or an adult who is physically or mentally unable to file; or
- Someone who saw or reported domestic violence and, as a result, has been abused, threatened or intimidated.

To get a protective order, the petitioner and respondent must be **family** or **household members**, which include persons with (a) current or past partner relationships (married, dating, living together, parents of a child, roommates, etc.); (b) close family relationships (parents, grandparents, siblings, aunts, uncles, etc.); or (c) a combination of family and partner relationships.

The petitioner must state in the petition that the respondent committed **domestic violence** or **abuse**.

#### Domestic violence or abuse is

- Causing or attempting to cause physical harm to another;
- Placing another in fear of physical harm;
- Creating fear of physical harm by harassment, psychological abuse or threatening acts;
- Committing sexual assault or sexual abuse as defined by West Virginia law; or
- Holding, confining, detaining or abducting another person against that person's will.

#### Where to File the Petition

A petition may be filed in the county where

- The domestic violence occurred; or
- Either the petitioner or respondent is living, temporarily or permanently; or
- The parties last lived together, if the parties are married to each other.

### Step 2. The Emergency Hearing

Once the petition is filed, the magistrate will hold an emergency hearing. Magistrates are available to hear domestic violence petitions 24 hours a day. A domestic violence advocate may attend the hearing with a petitioner. However, the advocate may not speak for the petitioner in court. At the hearing, the magistrate will ask the petitioner questions. If the magistrate finds evidence of immediate and present danger of abuse to the petitioner or minor children, the magistrate will give the petitioner an Emergency Protective Order. The Emergency Protective Order is in effect until the Family Court enters an order in the case.

### Step 3. The Emergency Protective Order

The Emergency Protective Order will require the respondent to stop abusing, harassing, stalking, threatening or otherwise intimidating the petitioner. The order may also grant other requests made by the petitioner. At the end of the hearing, the Magistrate will do the following:

- Give a copy of the Emergency Protective Order to the petitioner,
- Have law enforcement serve (notify) the respondent by delivering a copy of the petition and the Emergency Protective Order to the respondent, and
- Deliver a copy of the order to all local law enforcement agencies.

**The date and time of the Domestic Violence Protective Order hearing in family court will be listed on the first page of the Emergency Protective Order.**

If the magistrate does **not** give the petitioner an Emergency Protective Order, the petitioner may **appeal to family court**. Appeal forms are available at the magistrate's office. The appeal must be filed in the magistrate's office no later than five days after the magistrate denied the protective order. The family court will hold a hearing on the appeal within two weeks. The respondent may not appeal the issuance of an Emergency Protective Order.

#### Temporary Emergency Protection Order

**If** a divorce is pending between the parties **and** a temporary divorce order is in effect when the domestic violence petition is filed, **then** the magistrate may **only** consider incidents that happened **after** the entry of the family court temporary divorce order. In these cases, the protective order is called a **Temporary Emergency Protective Order**. The Temporary Emergency Protective Order is in effect until the Family Court enters an order in the case.

#### Court Fees

When a Protective Order is **granted**, the petitioner will **never** be asked to pay any fees or costs. When a Emergency Protective Order is **denied**, the petitioner will be charged a \$25 fee **unless** the petitioner

- Has an approved fee waiver, or
- Files an appeal. In this case, the petitioner is **not** required to pay any fees until the family court hears the appeal.

# Stage Two:

# Family Court

## Step 1. The Family Court Hearing

### Service of Process (Notifying the Respondent)

If law enforcement does not serve (notify) the respondent with the Emergency Protective Order by the family court hearing date, the judge will continue (reschedule) the hearing until a later date so that law enforcement may try to serve the respondent again. If the hearing is rescheduled, the Emergency Protective Order will remain in effect until the judge hears the case.

If law enforcement cannot serve the respondent in person, the family court may ask the petitioner to publish a notice of the family court hearing in a local newspaper. The circuit clerk will help a petitioner with the publication process. Once the judge tells the petitioner that the respondent cannot be served by law enforcement, the petitioner should go to the circuit clerk's office to complete two forms: (1) the **Affidavit: Attempt at Service and Delivery** and (2) the **Request for Publication**. Once the notice has been published, the judge will hear the case. The petitioner will not be required to pay any publication costs.

### Final Hearing

At the final hearing, the judge will ask the petitioner to tell what happened. Then the respondent may testify. The petitioner or respondent may bring any witnesses (best to limit to two or three) or evidence (pictures, medical or police records, etc.) to the final hearing.

### Lawyers and Advocates

Lawyers are often hired to represent parties in domestic violence cases. However, no one is required to hire a lawyer and many people represent themselves in court. Domestic violence advocates or other support persons may accompany a party to the hearing. However, if the support person who comes to the hearing is also a witness, the witness may be asked to wait outside the courtroom until it is time to testify.

### If the Respondent Does Not Attend

If the respondent is served, but does not attend the family court hearing, the judge will hold the hearing without

the respondent and may enter a Domestic Violence Protective Order against the respondent. If the judge grants a Domestic Violence Protective Order and the respondent is not in court, the court will have law enforcement officers serve (deliver) a copy of the Domestic Violence Protective Order on the respondent.

### If the Petitioner Does Not Attend

If the petitioner does not attend the family court hearing, the judge may dismiss the petition.

## Step 2. Domestic Violence Protective Order

### When the Family Court Gives the Petitioner a Domestic Violence Protective Order

If the judge finds that the claims in the petition were proven, the judge will give the petitioner a Domestic Violence Protective Order, effective for 90 or 180 days. The Domestic Violence Protective Order will require the respondent not to abuse, harass, stalk, threaten or intimidate the petitioner. The Judge may also (1) give a party temporary possession of a car and/or a home, (2) decide who will have temporary custody of, or visitation with, the parties' children, and/or (3) order a party to pay child support or other support payments. In addition, the respondent will be ordered to pay court costs (\$50 plus service fees) at the circuit clerk's office.

### Extending the Effective Dates of the Domestic Violence Protective Order

If the Domestic Violence Protective Order lasts ninety days, the petitioner may have it extended for another ninety days without going back to court. To extend the Domestic Violence Protective Order, the petitioner must go to the circuit clerk's office and fill out a **Request to Extend Protective Order** before the first ninety days are over.

**If** the parties have a protective order in effect, **and** one of the parties files another family court case involving the same parties, **then** the protective order may be automatically extended by filing a **Notice of Automatic Extension of Protective Order** at the circuit clerk's office. The protective order will be extended until the judge enters another order.

### When the Judge Does Not Give the Petitioner a Domestic Violence Protective Order

If the judge does not give the petitioner a Domestic Violence Protective Order, the case is over unless the petitioner files an appeal.

### Right to Appeal

Either party may appeal the family court's decision to the circuit court. The appeal must be filed in the circuit clerk's office within ten days from the date the judge heard the case. Appeal forms are available at the circuit clerk's office.

## Applies to both Magistrate Court and Family Court

### Dismissing the Protective Order

The petitioner may file a motion to dismiss the protective order at the circuit clerk's office (for example, if the petitioner wishes to resume a relationship with the respondent while a protective order is in effect). The judge will then decide whether or not to dismiss the protective order. As part of the decision-making process, the judge may hold a hearing on the motion to dismiss the protective order.

It is the respondent's responsibility to follow the order. Only the Judge may allow the respondent to have any contact with the petitioner if the protective order forbids the respondent from contacting the petitioner. Unless the family court dismisses the protective order, the respondent is in violation if the respondent knowingly and willfully contacts the petitioner.

### State and Federal Laws Prohibiting Firearms

If the respondent possesses a firearm while a protective order is in effect, the respondent may be convicted of a crime under West Virginia and federal law.

### Enforcement of a Protective Order

Protective orders are enforceable in every county in West Virginia and in every state and territory of the United States.

**A PETITIONER SHOULD ALWAYS CARRY A COPY OF THE PROTECTIVE ORDER.**

### Violations of the Protective Order

The petitioner should call 911, or law enforcement, if the respondent violates the protective order. If the petitioner believes that the respondent has violated the protective order, the petitioner may file (1) a civil contempt petition at the circuit clerk's office, and/or (2) a criminal complaint in the magistrate clerk's office. Both criminal and civil cases may be filed against a respondent.

### Civil Contempt Petition in Family Court

If a judge finds the respondent in civil contempt of a protective order, the judge will order the respondent to follow the protective order and may require the respondent to post a cash bond and/or pay a fine.

### Misdemeanor Complaint in Magistrate Court

A petitioner who has a protective order may file a criminal complaint in magistrate court if the respondent (a) abuses the petitioner, or (b) is at a location in "knowing and willful" violation of the protective order. If the magistrate believes the respondent has violated the protective order, the respondent will be arrested and tried for the violation. If the respondent is found guilty, the respondent will be sent to jail for up to one year and will be fined up to \$2,000.

### Supreme Court of Appeals of West Virginia

Building One, Room E-100 1 (304) 558-0145  
1900 Kanawha Blvd., E. Fax: 1 (304) 558-1212  
Charleston, WV 25305 www.state.wv.us/wvsc



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