

ORDERS OF PROTECTION AND VULNERABLE ADULTS

Frequently Asked Questions

DISCLAIMER: This information is not legal advice. It is for informational purposes only. You should consult a lawyer for legal advice specific to your situation as each case is different.

1. Can I file an order of protection on behalf of another adult?

Yes. A relative of an adult who because of mental or physical dysfunctioning or advanced age is unable to manage his or her own resources, carry out the activities of daily living, or protect him- or herself from neglect, hazardous or abusive situations without assistance from others, can file a petition for an order of protection on the adult's behalf if the adult is the victim of willful abuse, neglect or exploitation,. This does not include an adult while in the custody of intermediate care facilities for persons with mental retardation (ICFs/MR) and a person while receiving residential services or other services from a community provider through contracts with the division of intellectual disability services, department of finance and administration. The relative must have personal knowledge that the adult is threatened with or placed in fear of abuse as defined T.C.A. § 71-6-117.

2. Who is a relative?

The relative filing the petition for an order of protection must be a spouse, child, including stepchild, adopted child or foster child; parents (including stepparents, adoptive parents or foster parents); siblings of the whole or half-blood; step-siblings, grandparents or grandchildren of any degree, and aunts, uncles, nieces and nephews.

3. Where do I file my request?

Your request may be filed in the county where the abuser resides, where the violation occurred, or in the county where the adult resides if the abuser is not a Tennessee resident.

4. What happens after I file the order of protection?

The court may enter an ex parte order of protection if the allegations show that the adult lacks capacity to consent and is in immediate danger of abuse, neglect or exploitation, or the adult's property is being, is in immediate danger of being, or has been misappropriated by the abuser.

5. How does the abuser become aware that I have filed this order of protection?

The petition and ex parte order must be personally served upon the abuser. If the abuser is not a resident of the state, the petition and ex parte order of protection will be served through the Secretary of State's Office by mail. The abuser must be served at least 5 days prior to the hearing date.

6. Do I also need to file a formal complaint with Adult Protective Services?

No. The court will send a certified copy of the filing and a copy of the ex parte order of protection to Adult Protective Services in the county where the petition is filed. Adult Protective Services may decide to intervene and bring additional charges.

7. How long does the ex parte order of protection last?

The ex parte order of protection lasts until the judge hears the facts in your request. A court hearing will be held within 15 days of service of the order on the abuser. You must go to the hearing.

8. What happens at the hearing?

At the hearing, the judge will either dissolve any ex parte order that has been issued, or shall, if the petitioner has proven that the adult lacks capacity to consent and the allegations of abuse, neglect, or exploitation are true, shall extend the order of protection for a definite period of time, not to exceed one hundred twenty days.

9. When does the order begin?

The order becomes effective once it is entered by the court.

10. Can the judge appoint a guardian ad litem for the adult?

Yes. The court has the discretion to appoint a guardian ad litem, or a person who has no personal interest in the case to look after the best interest of the adult .

11. Can the court change the order?

The court may modify the order while it is in effect if any party in the case makes a request. There must be sworn testimony attached to the request to support that the order needs changing.

12. If the abuser does not show up to the hearing, will the abuser have to obey the order?

Yes. As long as the abuser received notice and had an opportunity to be heard, the court can enter the order of protection and it will still go into effect even if the abuser did not show up at the hearing.

13. Who else will receive a copy of the order of protection?

Local law enforcement agencies will receive a copy of the order of protection and enter it into the state and national databases.

14. What can the court tell the abuser to do or not to do?

The court may order the abuser to:

- refrain from committing a violation against the adult;
- refrain from threatening to misappropriate or further misappropriating any monies, state or federal benefits, retirement funds or any other personal or real property belonging to the adult;
- order the return to the adult or the adult's caretaker or conservator or to the fiduciary any monies or benefits misappropriated from the adult;
- stop the abuser from providing care for an adult on a temporary or permanent basis;
- prohibit the abuser from telephoning, contacting, or otherwise communicating with the adult, directly or indirectly, and any other necessary relief to protect the adult.

15. What will happen if the abuser violates the order of protection?

If the abuser does not obey the ex parte order of protection, the abuser will be charged with contempt of court and may face up to 10 days in jail and a fine of up to \$50.00.

The law also allows the officer to arrest the abuser for a misdemeanor charge in addition to other penalties available for orders of protection issued under the Order of Protection Act. This includes contempt and the misdemeanor violation of the order of protection. The judge could also make the defendant post a bond of no less than \$2500.00.

16. Can I extend the order of protection?

Yes. The order can be extended beyond the 120 days. If the circumstances still exist after the 120 days, the judge may appoint a fiduciary.

17. Would the abuser be allowed to possess a firearm?

The Tennessee firearms prohibition may apply depending on the relationship between the abuser and the adult. Please see the TN firearms benchcard for further information.

18. Where do I get the form for an order of protection for an adult?

Most courts should have the forms or you may use the current order of protection forms found at www.tncourts.gov or have an attorney to draft forms to support your action.