



tennessee
coalition
to end domestic & sexual violence

ORDER OF PROTECTION

CLERK OF THE COURT CARD

TNCOALITION.ORG | 615.386.9406 | 800.289.9018

I. LEGISLATIVE PURPOSE OF THE ORDER OF PROTECTION ACT (T.C.A. § 36-3-618)

- Recognize the seriousness of domestic abuse as a crime to ensure that the law provides a victim of domestic abuse protection from domestic abuse.
- Recognize that in the past law enforcement agencies have treated domestic abuse crimes differently than crimes resulting in the same harm but occurring between strangers.
- Official response shall stress enforcing laws to protect the victim and prevent further harm to the victim, and the official response shall communicate the attitude that violent behavior is not excused or tolerated.

II. EX PARTE ORDERS: ORDER WITHOUT RESPONDENT PRESENT

STOP!

- There is no statute of limitations on the abuse for filing an order of protection, and there is no requirement to file a police report or other criminal charges to obtain order of protection relief. Venue is waived unless the respondent appears in court and objects to the venue.
- A named respondent may also file a petition for an order of protection. Cross petitions are allowed and must be decided based upon the appropriate standard of review.

Relationship Categories:

Clerk's Card 2013

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- (T.C.A. § 36-3-601/T.C.A. § 36-3-602)

Is the petitioner a domestic abuse victim? (Relationship required)

- Adults or minors who are current or former spouses;
 - Adults or minors who live together or who have lived together;
 - Adults or minors who are dating or who have dated or who have had a sexual relationship;
 - Adults or minors related by blood or adoption;
 - Adult or minor children of a person in a relationship described above.
- Has the petitioner been subjected to, threatened with, or placed in fear of any form of sexual assault as defined by the following sexual assault crimes? (No relationship requirement)
 - Aggravated rape;
 - Rape;
 - Statutory Rape;
 - Rape of a Child;
 - Aggravated Sexual Battery;
 - Sexual Battery;
 - Sexual Battery by an Authority Figure.
- Has the petitioner been subjected to, threatened with, or placed in fear of the offense of stalking? Stalking means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested. (No relationship requirement)
- The petitioner and the respondent can be adults or minors.
- If the petitioner is a minor, the statute provides that the following may sign the petition:
 - One of the person's parents or that person's guardian;
 - The caseworker at a not-for-profit organization receiving funding for family violence and child abuse prevention and shelters;
 - The guardian ad litem if the court has appointed one;
 - The Department of Children's Services if the child is in state custody.

Venue

- Venue for a petition for an order of protection, and all other matters relating to orders of protection, shall be
 - in the county where the respondent resides or
 - the county in which the domestic abuse, stalking or sexual assault occurred.
- If the respondent is not a resident of Tennessee, the petition may be filed in the county where the petitioner resides
- Venue is waived unless the respondent appears in court and objects to the venue.

FORMS (T.C.A. § 36-3-604)

The office of the clerk of court shall provide forms that may be necessary to seek a protection order under this part. These forms shall be limited to use in causes filed under this part and they shall be made available to all who request assistance in filing a petition. The clerk may obtain the most current forms by printing them from the web site of the administrative office of the courts. <http://www.tsc.state.tn.us/forms-publications>

The office of the clerk shall also assist a person who is not represented by counsel by filling in the name of the court on the petition, by indicating where the petitioner's name shall be filled in, by reading through the petition form with the petitioner, and by rendering any other assistance that is necessary for the filing of the petition.

All such petitions that are filed pro se shall be liberally construed procedurally in favor of the petitioner.

Order of Protection Forms promulgated by the Administrative Office of the Courts SHALL be used exclusively in all courts exercising jurisdiction over orders of protection.

STOP!

- If a petitioner does not provide you with an Administrative Office of the Courts' promulgated form, you must file the pleading in whatever form provided.

COURT COSTS (T.C.A. § 36-3-617)

Notwithstanding any other provision of law to the contrary, no victim shall be required to bear any costs associated with the enforcement of an ex parte order of protection, order of protection, or a petition for either such order, including any court costs, filing fees, litigation taxes or any other costs associated with the following:

- Filing
- Issuance
- Registration
- Service
- Dismissal
- Nonsuit
- Appeal

STOP!

- There is no initial fee for a petition to the court for any action on an order of protection.
- Look at the order to make sure that the judge has assessed fees.
- A Clerk cannot prevent any petitioner from filing a petition for an order of protection even if there are outstanding fees from prior petitions. This means the clerk cannot require the petitioner to pay off any fees to file the order of protection.
- A Clerk cannot charge a petitioner for copy requests of the ex parte order or any of the pleadings related to the order of protection.
- There is no initial fee for a petition to the court for any action on an order of protection.

Service (T.C.A. § 36-3-605):

- The court shall cause a copy of the petition and notice of the date set for the hearing on such petition, as well as a copy of any ex parte order of protection, to be served upon the respondent at least 5 days prior to such hearing. An ex parte order issued pursuant to this part shall be PERSONALLY served upon the respondent.
- If the respondent is not a resident of Tennessee, the ex parte order shall be served pursuant to T.C.A. §§ 20-2-215 and 20-2-216. Such notice shall advise the respondent that the respondent may be represented by counsel.
- In every case, unless the court finds that the action would create a threat of serious harm to the minor, when a petitioner is under eighteen (18) years of age, a copy of the petition, notice of hearing and any ex parte order of protection shall also be served on the parents of the minor child, or in the event that the parents are not living together and jointly caring for the child, upon the primary residential parent.-

STOP!

- In the case of an order of protection against a minor, the best practice is to serve the minor and the parent or legal guardian of the minor.

Ex Parte Determination and Relief:

If you are responsible for issuing the order of protection, you should consider these factors to determine immediate danger or harm (T.C.A. § 36-3-605):

- A history of violence;
- Respondent's pattern of conduct;
- Petitioner's injuries;
- Petitioner's fear of retaliation;
- Respondent's access to weapons;
- Respondent's history of stalking;
- Respondent's criminal record;
- Respondent's use of drugs or alcohol;
- Respondent's threats of suicide;
- Respondent's history of mental illness;
- Threats to attack the petitioner, the children, or other family members;
- Threats to animals (pets);
- Threats or attacks on family or household members.

Ex Parte Relief Available

- Directing the respondent to refrain from committing or threatening additional acts of abuse, including domestic abuse, sexual assault, and stalking against the petitioner and the minor children;
- Prohibiting the defendant from coming about the petitioner for any purpose, from telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly.
- Ordering the respondent to leave the shared residence while the order of protection petition is pending a hearing.

STOP!

- If the ex parte order is not issued, you must still set the petition for a hearing and there must be service on the petition.

- Ex parte orders stay in effect until the time of the hearing on the matter. (T.C.A. § 36-3-605).
- If the ex parte order is dismissed, the judge must hear the pending petition.

WEAPONS

- A person under an order of protection cannot possess, purchase, receive, or transport a firearm. (18 U.S.C.S. § 922 (g)(8), T.C.A. § 36-3-625). As a requirement of disposing of the firearm, the respondent must file an Affidavit of Firearm Dispossession with the Clerk's Office.

IV. ENFORCEMENT AND FINANCIAL PENALTIES

The petitioner has the right to request relief if the respondent has violated the ex parte order of protection or the final order of protection, and such request can be made through filings with the clerk's office.

Financial Penalties (T.C.A. § 36-3-610)

- A fifty dollar fine related to the violation of the order of protection.
- A financial penalty bond related to the violation of the order of protection.

Fifty-Dollar Fine (T.C.A. § 36-3-610(b) (1))

- A person who violates an order of protection must pay a \$50 fine related to the violation of the order protection.
- The clerk must send these collected fines, on a monthly basis, to the state treasurer who must deposit it in the domestic violence community fund.

Financial Penalty (T.C.A. § 36-3-610 (b)(2))

- In the event of a conviction on an order of protection violation, the Court shall require a financial penalty bond (not appearance bond) of respondent until the order of protection expires.
- The financial penalty bond shall not be less than \$2,500 and shall be set at whatever figure the court determines necessary to reasonably assure the safety of the petitioner.

- Bond shall be payable upon forfeit (non-compliance with terms of bond).
- Respondent may deposit with clerk a sum of money in cash equal to amount of bond.
- Clerk may put monies received for bond or forfeiture of bond in interest bearing account.
- Interest received is payable to the clerk's office.
- Failure to comply with ordered bond shall be punished as contempt of court pursuant to title 29, chapter 9.
- If respondent doesn't comply with the conditions of bond, the court shall enter an order forfeiting the bond.
- Clerk mails notice to respondent of forfeiture.
- If within 30 days of the date of forfeiture, the respondent doesn't satisfy the court that compliance with conditions was met, the court enters judgment for the state against respondent for the amount of bond and costs of court proceedings.
- Judgment and costs can be collected in the same manner as judgment entered in a civil action.
- Amounts collected for judgment of the amount of bond shall be paid quarterly to the AOC and allocated equally by AOC to:
 - Provide legal representation to low income Tennesseans per 16-3-308
 - Domestic violence state coordinating council
 - Tennessee Court Appointed Special Advocates Association (CASA)
 - Childhelp

V. EXTENSIONS OF THE ORDER OF PROTECTION (T.C.A. § 36-3-608)

- Orders of Protection are issued for a definite period of time not to exceed one (1) year. However, orders can be extended upon motion for an additional year.
- An order of protection can be extended if there is a conviction for a violation for up to five (5) years or ten (10) years on the second or subsequent violation.

STOP!

- If a divorce complaint is filed, the order of protection shall remain in effect until the court in which the divorce action lies modifies or dissolves the order. (T.C.A. §36-3-603).
- If the defendant is convicted of an order of protection violation, the order can be extended upon the petitioner's motion or the judge's own motion. (T.C.A. § 36-3-605(d)).

V. APPEALS

- If the respondent appeals the grant of the order of protection, the order of protection remains in effect until further findings have been made on the order.

VI. FULL FAITH AND CREDIT (T.C.A. § 36-3-622)

- An order of protection issued pursuant to this part shall be valid and enforceable in any county of the state.
- Any valid order of protection from another state shall be afforded full faith and credit.
- For foreign orders to be valid, the respondent must have had notice and an opportunity to be heard.
- Regardless of whether a foreign order of protection has been filed in this state pursuant to this section, a law enforcement officer may rely upon a copy of any such protection order and may also rely upon the statement of any person protected by the order that the order remains in effect.
- Mutual orders shall not be enforceable against the petitioner unless the respondent filed a cross or counter petition, and the court made specific findings against the petitioner.