THINGS YOU SHOULD KNOW ABOUT PROTECTIVE ORDERS

IN AN EMERGENCY CALL: 911

NOTE: This booklet is intended to provide general information about protective orders. It is not a complete nor authoritative review of this subject and reflects the laws of the State of Arizona only as of the date of its publication. The booklet is not intended to be a complete guide to obtaining a Protective Order. Domestic Violence often involves many important issues about the legal rights of the people involved and of any children as well. Questions about specific situations should be discussed with an attorney.

Words which are included in the "Words & Definitions" section will be bolded, italicized and underlined in the text.

When you are in a relationship with someone who uses threats, harasses, molests, stalks, attacks, batters or strikes you, your family or your children, that person is committing Domestic Violence. You are not alone. People from all ethnic, educational, and socioeconomic backgrounds experience domestic violence.

If you are experiencing Domestic Violence, you have a legal right to seek relief from the courts by getting a protective order.

In the State of Arizona, Domestic Violence includes a variety of abusive acts. You must be able to show the court that the person from whom you want protection has committed or may commit an act of Domestic Violence. You do not have to be physically injured or hurt to be a victim of Domestic Violence. Domestic violence occurs if the other person has done or attempts to:

- endanger you
- threaten, intimidate, or harass you
- interfere with the custody of your children
- trespass on or damage your property
- restrain you, kidnap, or hold you prisoner
- assault you with his/her body or with a weapon
- display a deadly weapon or threaten you with a deadly weapon
- surreptitiously (without your knowledge) photograph, videotape, film or record you

The person only needs to threaten harm or abuse you once for the act to be considered Domestic Violence.

Other acts of disorderly conduct and crimes such as stalking and disobeying a court order are also considered Domestic Violence.

QUESTIONS AND ANSWERS

What types of protective orders are available in Arizona?

A Protective Order is a document obtained from a court, to order the abusive person not to contact you and to prevent abusive behavior. In Arizona there are five types of protective orders:

1. Order of Protection
2. Emergency Order of Protection
3. Release Order
4. Injunction Against Harassment
5. Injunction Against Workplace Harassment

What is an Order of Protection?

A person who believes her/his safety is in danger due to domestic violence or harassment can ask the court for an Order of Protection or an Injunction Against Harassment.

An Order of Protection is a legal restraint used to prohibit a person from committing acts of domestic violence or from contacting people protected by the order. It also provides several kinds of protective relief, such as removing firearms from the home, adding other people to the protective order, and exclusive use of the home. However, it is only a piece of paper. You must also take steps to insure your safety.

What is an Emergency Order of Protection?

An Emergency Order of Protection is also a legal restraint to prevent domestic violence. An Emergency Order may be granted by an authorized judicial officer in writing, verbally or by telephone for the protection of a person in "imminent and present danger of domestic violence."

An Emergency Order may be used to order a person not to commit acts of domestic violence or contact people protected by the order. Similar to the Order of Protection, it also provides protective relief, such as exclusive use of the home and removing firearms from an abuser.

Unless continued by the court, an Emergency Order is valid only until the close of the next day of judicial business following the day that the Emergency Order was issued.

In counties with a population of 150,000 persons or more, the presiding judge of the Superior Court must make available, on a rotating basis, a judicial officer to issue Emergency Orders during the hours that the courts are closed. There is no similar requirement for counties having a smaller population. However, in smaller counties, a judge, justice of the peace or magistrate may issue an Emergency Order of Protection.

What is a Release Order?

In rural counties where it is not required that a judicial officer be designated to issue Emergency Orders when the courts are closed, emergency protection is available through a registered Release Order. Arizona law provides that, when a person arrested for an act of domestic violence is released from custody, any Release Order shall include pretrial release conditions necessary to protect the alleged victim and other specifically designated persons.

Within twenty-four hours after a defendant is arrested for an act of domestic violence, the court must forward a certified copy of the Release Order to the sheriff of the county in which the Order was issued for registration. The sheriff must maintain a central repository for Release Orders so the existence and validity of the Release Order may be easily verified.

Law enforcement agencies are required to advise domestic violence victims where registration and the conditions of a Release Order may be verified. Faced with a violation of a Release Order, a victim may summon a peace officer to enforce the conditions of the Order against the defendant.

What is an Injunction Against Harassment?

The Injunction Against Harassment orders a person to stop harassing, annoying or alarming another person. Injunctions can be used for disputes against neighbors, strangers, and people who are or were dating. Harassment is defined as: "a series of acts over any period of time that is directed at a specific person...." The relationship between you and the other person determines which protective order will be used for your situation. The Injunction Against Harassment differs from the Order of Protection in that exclusive use of the home cannot be ordered and the police are not mandated to serve the Injunction.

Your employer may ask the court for an Injunction Against Workplace Harassment to deal with harassing behavior which takes place at your workplace.

What is the Injunction Against Workplace Harassment?

The Injunction Against Workplace Harassment is the newest protective order available in Arizona. It allows an employer or an agent of an employer to file for relief on behalf of all employees at the workplace, any person who enters the employer's property and any person who is performing official work duties.

This allows the inclusion of numerous people under the protective umbrella of this Injunction, whereas the "personal" Injunction Against Harassment is usually between two people.

Harassment for this injunction is defined as: "a single threat or act of physical harm or damage or a series of acts over a period of time that would cause a reasonable person to be seriously alarmed or annoyed."

A qualification was included which ensures that the employer may not seek an injunction primarily to accomplish a purpose for which it was not designed (i.e. prohibit free speech or other activities that are constitutionally or otherwise protected by law.)

What is the relationship test?

When seeking relief from domestic violence, the relationship test determines if you need an Order of Protection or an Injunction Against Harassment. To obtain an Order of Protection, the abusive party (the defendant) MUST be one of the following:

- A spouse or former spouse
- A parent of your child (either born or pregnant with)
- Lives or has lived with you in the same household
- Related by blood or court order as your parent, grandparent, child, grandchild, brother, or sister
- Related by marriage as your parent-in-law, grandparent-in-law, stepchild, step-grandchild, brother-in-law, sister-in-law, stepparent or step-grandparent
- A person who resides or who has resided in the same household with a child. The child must be related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.

For an Injunction Against Harassment, there is no relationship requirement between you (the plaintiff) and the abusive party (the defendant). If you and the defendant do not meet any of the above relationships required for an Order of Protection, then you will need to apply for an Injunction Against Harassment.

How and where can I get an Order of Protection or an Injunction Against Harassment?

You may file a petition for an Order of Protection or Injunction Against Harassment in any superior, municipal or justice court regardless of where you live in Arizona. When you enter the court, go to the Clerk of the Court's counter, Self Service Center, or protection order window and tell the clerk you are requesting an Order of Protection or an Injunction Against Harassment. The clerk will give you the proper Petition forms.

Any court in the state is able to issue an Order of Protection or Injunction Against Harassment with three exceptions:

1. If two courts are located within a one mile distance, then one court can be designated as the court which issues protective orders.
2. If you have filed an action for divorce, separation, paternity or annulment with the Superior Court (involving the same person from whom you want protection), then you need to return to the Superior Court to request an Order of Protection.
3. If the defendant is less than 12 years of age only the Juvenile Division of the Superior court may issue the order or injunction.

COMMON PLAINTIFFS' QUESTIONS

What information do I need in order to obtain an Order of Protection or Injunction Against Harassment?

To obtain an Order of Protection or Injunction Against Harassment you will need:

- The name, date of birth and address, if known of the person from whom you are requesting protection (the defendant) and, if possible, any other address where that person can be reached.
- The dates and facts of the domestic violence or harassing acts, or why you believe that domestic violence or harm may occur without protection.
- A safe address and phone number where you may be contacted so the court can notify you if a hearing is scheduled or if there is a change of the hearing date.
- Additional helpful information includes a physical description, Social Security Number, and aliases.

Do I have to put my address on the Petition to get an Order of Protection or Injunction Against Harassment?

No. If the defendant does not already know your address, you can request that your address be kept confidential by the court. The court should provide you with a separate form to maintain your address in its files in the event they need to contact you concerning your protective order.

Do I have to be an adult to get an Order of Protection or an Injunction Against Harassment?

Unless the court determines otherwise, if a person seeking protection is a minor, then a parent, legal guardian or the person who has legal custody shall request the order. However, the judicial officer has discretion to allow a minor to request an order in cases where a parent or guardian is missing or not available, or where the minor is seeking relief from the parent.

Can I include my children or other family members?

Yes. Children, family members or friends can be included in your Order of Protection or Injunction Against Harassment, if the judge determines it is appropriate. If your family or friend is an adult, the judge may require that this person be present when requesting the protective order.

Note: A protective order DOES NOT determine custody and cannot address parenting time issues. These matters must be handled separately by filing an action in the Superior Court as a domestic relations matter.

How much does it cost to get an Order of Protection or Injunction Against Harassment?

By law, there are NO authorized filing fees and NO authorized fees to have the Order of Protection served.

Additionally, by law there are NO filing fees for an Injunction Against Harassment and, if there is a dating relationship involved, there are NO authorized fees to have the Injunction Against Harrassment served.

There may be a fee charged for an employer to have and Injunction Against Workplace Harassment served on the defendant. If the employer cannot afford the service fees, the employer can request the court waive or defer these fees.

How long does the Order of Protection or Injunction Against Harassment last?

An Order of Protection or Injunction Against Harassment must be served within one year of the date it is issued. It is good for one year from the date of service on the defendant.

Where and how can I get an Order of Protection when the Courts are closed?

In counties with a population of 150,000 persons or more, you may request any law enforcement officer to call the Sheriff's Office to request contact with the judicial officer designated for the day to issue an Emergency Order of Protection.* The law enforcement officer must have reasonable belief that you are in immediate and present danger of Domestic Violence based on a recent incident of actual Domestic Violence. The Emergency Order of Protection may be authorized in writing or verbally and must be served on the defendant to be effective.

If the emergency order is verbally authorized, the law enforcement officer completes the Emergency Order of Protection form and notes both the name of the judicial officer and that the order was verbally issued. See Section 13-3624(A), Arizona Revised Statutes.

Note: You should file a petition for an Order of Protection before the close of the following business day.

What happens if the defendant violates the Order of Protection or Injunction Against Harassment?

IN AN EMERGENCY CALL 9-1-1

If the order has NOT been served, the defendant is not legally in violation of the order. Once the Order of Protection is served on the defendant, a violation of the court order is a criminal act. If the defendant does not follow the terms in the Order of Protection or Injunction Against Harassment, then the police should be notified of a violation.

Note: You are advised NOT to contact the defendant or invite the defendant to visit you.

Note: The decision to file criminal charges for violation of an Order of Protection or Injunction Against Harassment is made by the Prosecutor's Office, NOT by the victim or the court.

What if I get an Order of Protection or Injunction Against Harassment but the defendant has not yet been served and comes near me or commits another abusive act against me?

When you see the defendant is approaching you, CALL 9-1-1. Explain that you have a protective order and the defendant is approaching you but has not yet been served. If you cannot call the police before the defendant contacts you, report the incident to the police as soon as you are able.

Keep a copy of the petition and the order with you at all times! Any Arizona law enforcement agent can serve the Order of Protection or Injunction Against Harassment, if you provide them with a copy. This is your proof to law enforcement that a protective order has been issued against the defendant.

Can an Order of Protection or Injunction Against Harassment be changed or modified?

Yes. The petitioner or the defendant may file a petition to request that the order or injunction be modified or dismissed. At the hearing, the court may modify, quash or continue the order or injunction. A modified order or injunction must be served on the defendant to be in effect. A modified order or injunction is good for one year from the date of service of the original order.

Can I get an Order removing the abuser from my home?

Yes. If the judicial officer determines that there is reasonable cause to believe physical harm may result, you may be granted exclusive use of the residence in an Order of Protection. However, this order does not affect third parties, such as landlords. The landlord does not have to allow you to stay in the residence if you are not on the lease.

Note: The court may allow the defendant to return one time to the residence with law enforcement officer accompaniment, to retrieve personal belongings.

COMMON DEFENDANTS' QUESTIONS

How can I get an Order of Protection or Injunction Against Harassment issued against me dismissed, changed or modified?

The order/injunction is valid for one year after it is served. During this year, the defendant is entitled to one hearing on the order. The defendant must file a written request for a hearing in the same Court that issued the Order of Protection or Injunction Against Harassment.

If the order is modified, the modified order has to be re-served and is effective for one year from the date of service of the original order. If the defendant does not accept the order while in the court, the judicial officer may detain the defendant until a law enforcement officer is summoned to serve the defendant the order.

I have been ordered to surrender my firearms. When can I get them back?

The judge may order a defendant to turn over ALL firearms if the judge finds that the defendant is a credible threat. If such an order is issued, you must turn over all of the firearms in your possession to the local law enforcement agency. When the order expires (one year) you may request the return of your firearms from the law enforcement agency that is holding them. You may request a hearing to modify the order to return your firearms.

I have been ordered to stay away from my house. How do I collect my belongings?

If you need to get personal items and clothing, you may return one time with a law enforcement officer accompanying you. Contact the local law enforcement agency to make the arrangements. Law enforcement CANNOT resolve disputes regarding what belongings belong to whom. You may file a civil action in the Justice Court to recover property in the residence that you believe is being wrongfully denied to you.

What can I do if I believe this order stops me from seeing my children?

An order of protection does not determine custody and cannot address parenting time issues. The order only addresses safety issues. You have three options:

1. Ask for a hearing to modify the protective order in the Court that issued it.
2. If the order does not prohibit contact with children, arrange for parenting time through a neutral third party (a friend or relative) not involved with the order of protection.
3. File an action in Superior Court, as part of a domestic relations case, to clarify your custody rights or parenting time schedule.

Note: If you were never married or never established paternity through an action in Superior Court, you have no legal right to the children. These rights must be established by filing an action in the Superior Court as a domestic relations matter.

WORDS AND DEFINITIONS

Continue: The case which was heard by the judicial officer has not been finalized. A case can be extended for a variety of reasons and the judicial officer will reschedule the case to be heard again at later time

Defendant: The party the order is against is called the "Defendant" because that person may file a response and ask for a hearing in order to defend himself or herself.

Dismissed: The judicial officer removes the Order of Protection or Injunction Against Harassment. Note: Only the court can dismiss, modify, or change an order.

Harassment - personal: A series of acts over any period of time that is directed at a specific person and would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct seriously alarms, annoys or harasses the person and serves no ligitimate purpose.

Harassment - workplace: A single threat or act of physical harm or damage or a series of acts over any period of time that would cause a reasonable person to be seriously alarmed or annoyed.

Judicial business: The official working hours in which the court is open for business. Weekends and holidays are not included. If an Emergency Order of Protection was issued on Friday night, the next judicial business day would be Monday.

Judicial officer: An elected or appointed Judge, Commissioner, Justice of the Peace or Magistrate.

Legal restraint: A court order issued by a Judge, Commissioner, Justice of the Peace or Magistrate which prohibits a defendant from doing certain acts.

Modify: The plaintiff or the defendant may request specific changes be made to the Order of Protection or Injunction Against Harassment. If the judicial officer agrees and makes the change at a hearing, the Order of Protection or Injunction Against Harassment is considered "modified." A modified Order of Protection or Injunction Against Harassment must be served upon the defendant again.

Plaintiff: The person who files the request (Petition) with the court for an order or injunction.

Quash: The judicial officer stops the Order of Protection or Injunction Against Harassment. Note: Nothing the plaintiff does can stop, change or undo the order.

Served: "Service" or "served" means that the defendant is provided with a copy of the petition that you filled out along with the Order of Protection or Injunction Against Harassment. Once an Order of Protection or Injunction Against Harassment is issued by the judge, the person seeking protection (Petitioner) needs to request that it be served on the defendant. Legal papers must be served by certain people in a particular way according to court rules (Rules 4.1 and 4.2 of the Arizona Rules of Civil Procedure). You may not serve the papers yourself. A private process server or a law enforcement agency can perform the service.

NOTE: Remember, the order or injunction is not effective until it is served on the defendant.

RESOURCES

National Domestic Violence Hotline
(800)799-7233, (800)787-3224 (TDD)

AZ Coalition Against Domestic Violence
Legal Advocacy Program
(800)782-6400
(602)279-2900

Attorney General's Office of Victim Services
(602) 542-4911

Arizona Supreme Court
Domestic Violence Web Page:
www.supreme.state.az.us/dr/dv/dv.htm