

# Frequently Asked Questions About Protection Orders

**Please note:** Both women and men can be and are victims of domestic or dating abuse and violence. However, the reality is that these types of abuse and violence are unequal crimes and women are statistically more likely to be the victims of abuse and violence committed by male intimates or dating partners. The FBI estimates that 82% of partner violence victims are female. Other data collected by the National Crime Victimization Survey indicates that no matter what the rate of violence by gender, or who initiates it, women are 7 to 10 times more likely than men to be injured. Based on these data, in our materials we often refer to victims as female and perpetrators as male.

## 1. What is a protection order?

Protective order, restraining order, injunction against abuse, peace bond, or criminal order of protection - these are all terms used generally to refer to court orders that require one person to stay away from another person. The intention of such orders is to prevent abuse and enhance safety for the person who is seeking the court's protection. These orders may be issued by a civil court, a juvenile court, a family court, or a criminal court.

Although anyone can ask the court to issue an order restraining someone else in order to prevent behavior that is potentially harmful, only those orders issued to prevent domestic abuse, dating violence, stalking or sexual assault are included in the Louisiana Protective Order Registry.

The terms for court orders of protection are often used interchangeably, but there are some distinctions.

- **Temporary Restraining Orders (TROs).** This term refers to an order that is issued in response to a petition to the court for protection and prior to a hearing by the court. It may also be called an *ex parte* order. Temporary orders generally expire on the date of the hearing.
- **Protective Orders (POs).** Although all orders granting protection are frequently referred to as protective orders, more specifically, a protective order is an order that is granted under Louisiana's Domestic Abuse Assistance Act, Protection from Dating Violence Act, Children's Code Domestic Abuse Assistance Act, Protection from Stalking Act, or Protection for Victims of Sexual Assault Act, after the court hearing.
- **Injunctions Against Abuse.** An injunction is also a kind of order of protection and refers to an order issued after a hearing under the Post-Separation Family Violence Relief Act or Code of Civil Procedure Articles, or in conjunction with a divorce proceeding. A **Preliminary Injunction** is a court order issued after a court hearing and a **Permanent Injunction** is a court order issued after a trial on the merits.
- **Criminal Orders of Protection.** A criminal court may issue an abuse prevention order in conjunction with a criminal charge brought before that court. When the defendant charged with a crime is ordered to stay away from the victim, this order is referred to as a criminal order of protection. Depending upon the stage in the court process at which this order is issued, the order may contain conditions of release, bail restrictions, sentencing orders, probation conditions, or conditions of parole. Not all criminal orders of protection are sent to the Louisiana Protective Order Registry, only those involving a domestic or dating relationship between the parties or stalking or sexual assault by a stranger or acquaintance of the victim.

Louisiana has 12 statutes and articles under which a person can seek court protection through the issuance of an order that protects them by restraining someone else's behavior. The circumstances under which protection may be granted, the type of protective measures available, the length or duration of the protection and the type of punishment for violation of the order may vary according to law.

Many orders include the opportunity to address property use, custody of children, and financial matters, when relevant to the petitioner's safety. For some types of orders, a person seeking protection can initiate the action by filing a petition on her/his own behalf. For other types of orders, an attorney is needed to initiate the request to the court for protection. Criminal orders of protection are usually initiated by the prosecutor or the judge, but sometimes are issued at the request of the victim.

Louisiana law requires judges to ensure that orders designed to prevent domestic abuse, dating violence, stalking, or sexual assault are issued on LPOR forms and sent to the clerk of court's office. Clerks of court are required by Louisiana law to transmit such orders to the registry.

## **2. Why do victims seek orders of protection?**

Several studies indicate that most victims who seek such orders do so not as an early intervention strategy, but rather as an act of desperation following an extensive period of abuse. Almost one quarter of abused women surveyed in one multi-city study had experienced abuse for five years prior to seeking a protection order.

## **3. Is it just a piece of paper?**

According to research, while most abusers do violate protective orders in some way, these orders generally deter repeated incidents of physical abuse. In 40% of the cases surveyed in one study, there were no reported violations in the year after the order was issued. However, in 60% of these cases, violations were reported in that same period. In 29% of the cases in which a violation occurred, the victim indicated that the violation involved one or more acts of severe violence.

## **4. Do protection orders work in other ways?**

Even in those cases in which an order is violated, the order itself provides other benefits. As an official legal intervention, such orders send a strong message to the victim, the abuser or stalker, and the community that the court takes such behavior seriously and considers it in the best interests of society to intervene to protect the victim and children, while holding the abuser accountable. In addition, orders of protection can provide material resources that the victim needs to remain safe, such as use of the family home to the exclusion of the abuser, interim financial support, or the use of a vehicle. In many instances, the existence of an order expedites and enhances law enforcement response to a call for help. Protection orders can also aid the victim in enlisting the support of friends and family, employer, landlord, and school officials. Most victims who seek protection orders report feeling safer and experiencing improved self-esteem, as a result of having taken action to stop the violence and protect themselves and their children. Lastly, protection orders create a record of the abusive behavior which may be considered in other matters that come before the court, such as determining permanent custody and visitation arrangements, or the disposition of a criminal case.

## **5. What makes an order of protection work?**

First, the order should clearly spell out the relief provided to the victim and the consequences for any violation. Numerous studies have demonstrated that the more specific and detailed the order, the greater the likelihood that it will be enforced by police. Equally as important as the order is the opportunity provided during the protection order process to assist the victim in developing a safety plan and to connect to community resources that offer additional services. This requires coordination between the court and those community agencies that assist victims of domestic violence, stalking and sexual assault. Even if the order is specific and detailed, and there is coordination among all who play a role in assisting victims and their children, the primary measure of an order's effectiveness is swift and decisive enforcement of its terms and conditions.

## **6. Why don't victims follow through in obtaining a protective order after they receive an *ex parte* (temporary) restraining order?**

There is a perception that victims who file protective order petitions frequently do not follow through to obtain the order after being granted an *ex parte* temporary restraining order. In fact, each year thousands of protective orders are granted to victims who do follow through. There are a number of reasons a victim may not appear for the contradictory hearing at which the TRO would be converted to a protective order if the court makes a finding that the defendant poses a credible threat to the victim. For example, if the abuse abated after obtaining the temporary order, s/he may believe it is not necessary to pursue the protective order. It is also likely, though, that the victim does not follow through after obtaining the temporary order for one of the following reasons: the abuser's threats and violence increased after the

initial petition and the victim is too frightened to follow through with the process to obtain the protective order; the abuser has threatened to retaliate against the victim for following through; s/he is not aware of how the process works and believes that the temporary order is the protective order; or s/he is intimidated by the court system and is too afraid to return for the contradictory hearing. Studies have shown that a victim's likelihood of following through to obtain the protective order is in direct proportion to the quality of information and assistance received at the time the victim applied for the initial order.

## **7. Is the court doing all that it should to aid the victim?**

The following questions should be answered by every court to determine whether it is doing all that it should to aid the victim:

- How easily can a victim obtain a temporary restraining order?
- Does the court have a procedure that allows the victim to obtain an *ex parte* order during non-business hours, on weekends and holidays?
- During court proceedings, is there a safe place (i.e., one where the abuser does not have access to the victim) where s/he can wait for the case to be called?
- If the victim fears retaliation by the abuser upon entering and/or leaving the courthouse, will a law enforcement officer be available to provide escort?
- Does the court prohibit the use of mediation in cases where there is a threat to harm or a prior history of abuse by the defendant?
- Is the victim given adequate information and assistance to utilize the court's resources?
- Does the court adequately explain the order process and its procedures to minimize the victim's discomfort and fear?
- If a victim has previously sought an order of protection and did not at that time follow through, is any subsequent request for assistance refused?

## **8. What's wrong with issuing mutual restraining orders?**

In a 2001 La. Supreme Court opinion (*Bays v. Bays*, 779 So.2d 754), the court found that a protective order under the state domestic violence statutes may not issue without the filing of a petition. In other words, mutual or reciprocal orders of protection should not be issued, except in those instances where each of the parties has formally petitioned the court for relief and there is a finding that each poses a credible threat to the safety of the other.

Furthermore, mutual or reciprocal orders of protection undermine the victim's safety, increasing the risk of additional violence, and creating confusion for the officials who are expected to enforce the orders. A victim who petitions the court for a restraining order, then becomes the subject of a mutual or reciprocal order when no counter petition has been filed, may lose faith in the justice system.

## **9. Can a victim "violate" or "nullify" an order of protection if s/he agrees to speak to or meet with the defendant during the period of the order?**

It is a common misconception that if the victim agrees to speak to or meet with the abuser during the period of the order, that s/he has violated the terms and conditions of the order, thereby nullifying it. The order, unless it is a mutual order obtained in the legal manner described above, does not address or proscribe behavior on the victim's part. If the abuser, who is the subject of the order, is invited by the victim to engage in behavior that is prohibited by the court, only the subject of the order can be held accountable. The order remains in effect unless and until the court convenes a contradictory hearing and makes a different finding. It is also important to be aware that abusers frequently claim that they are in the victim's presence (and in violation of the order) at the victim's invitation when this is not the case.

## **10. How are orders of protection enforced?**

Violation of a protective order can be addressed through both civil and criminal action. In civil court, the defendant who violates a protective order can be ruled back into court on an allegation of contempt of court. In addition, violation of certain orders of protection is a crime in Louisiana and the defendant can be arrested for the violation (see La. R.S. 14:79, Violation of protective orders). If found guilty, the defendant can be incarcerated and/or fined.

## **11. What works best to ensure that orders are enforced?**

Creating a seamless network among the courts, law enforcement officials, prosecutors, legal service providers, victim advocates and the victim is the most effective way to ensure that orders of protection are enforced. This requires ongoing communication, a shared belief that violence against an intimate partner or family member, stalking or sexual assault is a serious matter that is not to be tolerated, a commitment to protect the victim, and a willingness to create consequences for the abuser.