



An Informational Guide for

DOMESTIC VIOLENCE VICTIMS IN VIRGINIA

**UNDERSTANDING THE LEGAL PROCESS
FOR VICTIMS OF FAMILY ABUSE**

Virginia Department of Criminal Justice Services
www.dcjs.virginia.gov

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ABOUT DCJS

The Virginia Department of Criminal Justice Services (DCJS) is a state agency whose mission is to improve the criminal justice system in Virginia's communities through effective training, partnerships, research, regulation, and support. DCJS develops, coordinates and funds victim/witness programs, sexual assault programs, domestic violence programs and other programs that address violence against women and children throughout the state and is committed to addressing innovative ways to support programs serving victims of family abuse. This brochure was originally printed in October 1994. It was most recently revised and updated in January 2017.

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INTRODUCTION

This brochure has been prepared to assist victims of family abuse in understanding the legal process and to provide information about going to court. It includes information about obtaining protective orders and criminal warrants. Information is also provided on safety planning and available resources. The final section defines commonly used terms.

If you have been a victim of a crime, you may experience conflicting feelings and thoughts. The criminal justice system may also seem confusing and difficult to understand. This brochure should provide you with basic information and definitions to assist you in understanding the process. Definitions of words in **bold** can be found at the back of the brochure.

DOMESTIC VIOLENCE DEFINED

Domestic violence is a pattern of physically, sexually, and/or emotionally abusive behaviors used by one individual to assert power or maintain control over another in the context of an intimate or family relationship.

PLAN FOR YOUR SAFETY

It is important to plan for your safety and the safety of your children. Do as many of the following as possible. Remember, *your safety comes first*:

- Plan for a quick escape. Know where to go and how to get there, any time of the day or night. Think this through now, before an attack. Consider going to a **domestic violence shelter** or the home of a family member or friend. If that is not possible, try a public place such as a library, hospital, shopping center, police or fire station. Know where each is located.
- If you believe you are about to be assaulted, stay out of rooms where there are weapons such as guns or knives. Do not attempt to threaten the **abuser** with a weapon, as it may put you in an even more dangerous situation.
- Keep telephone numbers of family, friends, doctors, safe shelter, etc. in a safe place or where it is easily accessible and make sure your **abuser** does not have access to this information.
- Gather important documents such as:
 - birth certificates
 - passports
 - prescriptions
 - social security numbers
 - copies of any protective orders
 - records of the **abuser's** prior convictions (if any)
 - marriage license
 - insurance information
 - children's school records
 - immunization (shot) records
 - medical records
 - information about bank accounts
 - any other information you feel is necessary

Consider giving these important documents to a trusted friend or neighbor to keep for you so your **abuser** does not try to take or destroy them.

- Put aside emergency money.
- Hide an extra set of car keys.
- Keep an extra set of clothes and shoes for you and your children with a trusted friend or neighbor.
- Take a special toy for your child(ren).
- Let the people that you trust know about your situation and the violence you are experiencing.
- Trust yourself and your decisions. You are the one who can best determine how to stay safe.

WARNING: Abusers try to control their victims' lives. When abusers feel a loss of control—like when victims try to leave them—the abuse often gets worse. Take special care if you leave. Continue to be careful, even after you have left.

ASSISTANCE AVAILABLE TO YOU

In addition to the police department or sheriff's office and the **prosecutor's** office, there are others who may be able to assist you with information, referrals or support. A local **domestic violence program** can provide you with support, information, and/or safe shelter for you and your children.

The **domestic violence program** may also provide an **advocate** to go with you to court.

A **victim/witness program** in your community can answer your questions about court procedures. The **victim/witness program** can assist you in making arrangements to attend court and/or meet with a **prosecutor**. Not all jurisdictions in Virginia have a **victim/witness program**. However, if yours does, it will usually be located in the **Commonwealth's Attorney's** Office, local police department, or local sheriff's office.

If you cannot afford a lawyer, please contact the Legal Aid Hotline at 1-866-534-5243. They may be able to offer you legal assistance or information on protective orders, custody, divorce or visitation.

An intake officer associated with the **Juvenile and Domestic Relations District Court Service Unit** can assist you in better understanding the procedures of the court and about the types of protections that may be available to you.

TOLL-FREE NUMBERS

Virginia Family Violence and Sexual Assault Hotline

The Virginia Family Violence and Sexual Assault Hotline number is 1-800-838-8238 (V/TTY). The hotline staff can put you in touch with a **domestic violence program**, local **victim/witness program**, and/or **court service unit**. Hotline staff are there to answer your questions 24-hours a day.

Victim Assist Virginia Helpline

The Victim Assist Virginia Helpline number is 1-888-887-3418 (TTY/TDD). The staff can:

- Provide information and referral services to **victims**
- Inform **victims** of their rights under *Virginia's Crime Victim and Witness Rights Act*
- Provide crisis intervention, as needed

PROTECTIVE ORDERS

You may request a protective order if you have reason to fear bodily injury, sexual assault or death by a **family or household member** or have been the **victim** of an assault where you experienced bodily injury by a **family or household member** (see page 16 for the legal definition of “family abuse” and “family or household member”). In Virginia, “family abuse” is how we define **domestic violence** in the protective order and criminal contexts. A **family or household member** includes: spouse (regardless of whether you live together); ex-spouse (regardless of whether you live together); parents, children, stepparents and step-children, brothers and sisters, half brothers and half sisters, grandparents and grandchildren (regardless of whether you live together); in-laws (who reside in the same home); cohabitants (those who live in an intimate partner relationship) and those who cohabited in the past year, and their children; and persons who have a child in common (even if you have never lived together). In some parts of Virginia, if you are in a same-sex relationship and are experiencing **family abuse**, you may be able to seek protection in **Juvenile and Domestic Relations District Court**. In other parts of Virginia, you would have to seek protection in General District Court. It is important to check with your local **domestic violence program** to determine which court you would have to go to if you are in a same-sex relationship.

A protective order involves civil law, not criminal law. This means that the **abuser** will not receive any jail time as a result of the order being issued. The order is not effective until the **abuser** receives a copy. However, if the order is violated, the **abuser** can be charged with violation of a protective order, which, if successfully prosecuted, may result in jail time. (*Code of Virginia* §16.1-253.2) If an **abuser** is convicted of violating the protective order, a new protective order is automatically issued that expires up to two years from the date of the conviction of this offense. Two-year Protective Orders may be extended.

An **Emergency Protective Order (EPO)** (*Code of Virginia* §16.1-253.4) may prohibit the **abuser** from contacting you, entering your home or apartment, or abusing you or your property in the future. It can be obtained

through a **law enforcement officer** responding to the scene who can request the order from a **judge** or **magistrate** by telephone or in person. You may also go to a **magistrate** and request an **EPO** on your own. This order lasts until 11:59 p.m. on the third day after it was issued, unless that day is a day that the **Juvenile and Domestic Relations District Court** is not in session. In that case, the order is extended until 11:59 p.m. on the next business day the **Juvenile and Domestic Relations District Court** is in session.

If you are a minor, you may seek an **EPO** on your own behalf without a parent or legal guardian. A **law enforcement officer** may also request an **EPO** on your behalf without a parent or legal guardian. Additionally, if you are a minor, you may only seek a **Preliminary Protective Order (PPO)** or a “full” (up to two years) **Protective Order (PO)** if you meet the legal definition of an “emancipated minor” (see below) or if a “next friend” (most likely a parent or guardian) petition on your behalf. Your request should start in the **Juvenile and Domestic Relations District Court**.

Under Virginia law, an “emancipated minor” is a person under the age of 18 who a court has determined:

- is or has been a party to a valid marriage;
- is on active duty with any of the armed forces of the United States of America, or
- is willingly living separate and apart from his/her parents or guardian, with the consent of the parents or guardian, and is capable of supporting himself/herself and managing his/her own financial affairs.

A **Preliminary Protective Order (PPO)** (*Code of Virginia* §16.1-253.1) is similar to an **EPO**, but it generally lasts up to fifteen days and must be obtained through the **Juvenile and Domestic Relations District Court** from a **judge**. You are not required to obtain an attorney for this process; however, if you wish to have an attorney assist you, you may retain one on your own or contact your local **legal aid society**.

A “full” (up to two years) **Protective Order (PO)** (*Code of Virginia* §16.1-279.1) may prohibit the **abuser** from contacting you, entering your home or apartment, or attempting to cause you or your property harm, among other things. This order may also require the **abuser** to

provide for your housing or to attend counseling. You may also request to have temporary use of a motor vehicle that is jointly owned by you and the **abuser** or that you may own by yourself. The **judge** may also include in the **PO** a provision for temporary custody or visitation of a minor child. The order lasts up to two years, but may be extended. It must be obtained through a **judge** from the **Juvenile and Domestic Relations District Court**. You are not required to obtain an attorney for this process; however, if you wish to have an attorney assist you, you may retain one on your own or contact your local **legal aid society** if you cannot afford to hire a private attorney.

You may request a protective order, even if the **abuser** is not arrested or charged with a crime. If you have questions about protective orders and whether a protective order is the right option to make you feel safe, you may wish to contact your local **domestic violence program** or the Virginia Family Violence and Sexual Assault Hotline at 1-800-838-8238. If you have determined that a protective order will help you feel safer, you may wish to contact the **Juvenile and Domestic Relations District Court Service Unit** to start the process. An intake officer at the **Juvenile and Domestic Relations District Court Service Unit** will help you complete the paperwork to request a protective order. You may also wish to contact the Victim Assist Virginia Helpline at 1-888-887-3418, the local **victim/witness program**, the police department, or sheriff's office. Keep a copy of the protective order with you at all times. Keep copies of any of the **abuser's** criminal convictions. Show these to the **law enforcement officer, magistrate, prosecutor, or judge**, if the order is violated.

Remember that a protective order does not guarantee your safety. You know best if a protective order will help you or aggravate your **abuser**. If you do get a protective order and it is violated, notify the police or sheriff's office and/or the court; so the **abuser** can be charged or arrested.

FAMILY ABUSE PERMANENT PROTECTIVE ORDER: NEW FIREARM PROHIBITION

A person subject to a **family abuse** protective order, issued since July 1, 2016, is *prohibited from possessing a firearm*. The *Code of Virginia* does allow the person

to possess and transport a firearm for 24-hours from the time the order is served, *solely* for the purpose of transferring or selling the firearm to another person who is not prohibited by law from possessing it.

Virginia's firearm possession prohibition applies only to family abuse permanent protective orders issued pursuant to Code of Virginia §16.1-279.1. It does not apply to emergency, preliminary, or other protective orders.

For more information, please see the DCJS Brochure: *Family Abuse Permanent Protective Order: New Firearm Prohibition* at www.dcss.virginia.gov/sites/dcjs.virginia.gov/files/publications/victims/brochure-family-abuse-permanent-protective-order-new-firearm-prohibition.pdf

There are no fees charged for filing or serving any petition or order.

For more information regarding Protective Orders, please see the DCJS brochure, *Protective Orders in Virginia—A Guide for Victims* at www.dcss.virginia.gov/sites/dcjs.virginia.gov/files/publications/victims/protective-orders-virginia-guide-victims-english.pdf

CRIMINAL WARRANTS

In Virginia, a **law enforcement officer** has the authority to arrest, without a **warrant**, if there is **probable cause** that **assault and battery against a family or household member** has occurred (*Code of Virginia* §18.2-57.2). Each law enforcement agency is required to have a policy describing its local procedures for handling arrests.

You may want to file for an arrest **warrant** by contacting a **magistrate** yourself. A **magistrate** can issue a **warrant** based on your sworn statement or on other evidence such as **witnesses**, photographs, or physical injuries.

GOING TO COURT IN A CRIMINAL CASE

Appearing in court may be a frightening or intimidating experience. Facing the person who committed a crime of **family abuse** against you may be difficult. It is important to speak to an **advocate** to prepare for this experience. **Advocates** are available through your local **domestic violence program** and local **victim/witness program**.

The Office of the **Commonwealth’s Attorney** prosecutes crimes on behalf of the community. When an individual is violent with a **family or household member**, the **Commonwealth’s Attorney** or **Assistant Commonwealth’s Attorney** may prosecute the case. The **Commonwealth’s Attorney** or **Assistant Commonwealth’s Attorney** is sometimes referred to as the **prosecutor**. When a **prosecutor** presents a criminal case, he or she represents the state (Commonwealth of Virginia). Therefore, a criminal case is referred to as the “Commonwealth of Virginia v. **Defendant’s Name**.” The person who has been abused is considered a **witness** in the case. That person is frequently the most important **witness**. You do not need an attorney of your own if you are asked to testify (you will usually receive a summons to appear in court as a **witness** or a **subpoena**) in this criminal prosecution. You may wish to contact an attorney if you are taking other civil actions, such as petitioning for custody, visitation, support or divorce.

The **abuser** is considered the **defendant** in the criminal case. As the **defendant**, the **abuser** has the right to an attorney (sometimes referred to as a **defense attorney**). The **defendant** can privately obtain an attorney or have one appointed by the court (if he/she cannot afford to hire a private attorney, often called a public defender) during a “**counsel determination**” hearing. You do not have to be present at this hearing.

Do not be afraid to ask for support. If you do not know your local program number, you can call the Virginia Family Violence and Sexual Assault Hotline at 1-800-838-8238 or the Victim Assist Virginia Helpline at 1-888-887-3418.

PREPARING FOR COURT WHEN A PROSECUTOR WILL NOT BE PRESENT

Some communities may not have a **prosecutor** available to present the criminal case to the court. If this is the practice in your jurisdiction, you will be summoned to court as a **witness** and the **judge** will ask you and the **defendant** questions.

You may **subpoena** other **witnesses** through the **Clerk of Court**, and you may bring evidence with you to court.

As soon as the trial date is scheduled, give the **Clerk of Court** the names and addresses of any **witnesses** that you want **subpoenaed**.

You may wish to ask the **prosecutor**, **victim/witness program staff**, or **advocate** about how to select **witnesses** to **subpoena** and what evidence to bring to court.

The **defendant**, or the **defendant’s** lawyer (if your **abuser** has an attorney), will have the opportunity to ask you questions.

The **judge** will ask you questions to provide you with the opportunity to tell what happened. Be sure to tell the **judge** if there have been threats or additional abuse since the violent incident for which the **defendant** is charged.

A **victim/witness program** staff member, an **advocate** from the local **domestic violence program**, a friend, or a relative may be able to accompany you to court.

The **judge** can consider sentencing alternatives to jail, such as counseling and/or no contact with you. If you are interested in an alternative, tell the **judge** what you have in mind. Remember that the **judge** makes the final decision.

Sometimes, a suspended jail sentence can assure that the **defendant** obeys the court orders.

PREPARING FOR COURT WHEN A PROSECUTOR IS PRESENT

If you have been a **victim of domestic violence** (referred to as “**family abuse**” in protective order and criminal cases in Virginia) and you are going to be a **witness** in court, contact the **Commonwealth’s Attorney’s** office prior to your court date. Ask to speak to the person handling your case. Ask the following questions:

- What do I need to do to prepare for court?
- Is there anything I should bring with me to court?
- What should I do if I am threatened or abused again before I go to court?
- What should I do if the **defendant** pressures me to have the charges dropped?
- What if I am afraid to testify in court?
- What will happen if the **judge** finds the **defendant** guilty?
- What should I do if my **abuser** violates any orders of the court?
- Is there anything else I should know?

Questions the Prosecutor may ask you:

- Are you (and your children) safe?
- Were the police called at the time of the abuse?
- Were there any other **witnesses** to the abuse?
- Is there any evidence of the abuse, such as pictures or hospital/medical records? Do you have any hospital or medical bills?
- Have there been previous episodes of violence? Has the **defendant** been criminally charged before? If so, has the **defendant** been found guilty of these charges?
- Has a **protective order** been issued?
- What alternatives would you like the court to consider in sentencing?
- How can we contact you prior to court?
- Has the **defendant** threatened or hurt you or your children since the incident?
- What is your relationship with the **defendant** like now?
- Do you have any other questions?

WHEN YOU GO TO COURT

Have a plan for your safety when going to and from court. You may have to wait in the same room or hallway with the **abuser's** family members and friends. Ask the **bailiff**, **victim advocate**, or **prosecutor** if there is a separate area where you can wait.

Dress in neat, simple clothing. Your appearance will make an immediate impression on the court (**judge**).

When you testify, take your time responding to questions. Try to picture exactly what happened, and tell the truth about what you remember. If you do not understand a question, ask that it be worded differently. It is okay to say that you do not know the answer to a question.

Remember that the **judge** will be most interested in the events charged in the **warrant** and that you may not be allowed to testify about past assaults.

Speak clearly, and address your answers to the **judge** or jury. If your injuries make it difficult for you to speak or to hear, let the **judge** know this. Be polite, firm and clear in your answers, even if the questions seem hostile.

Do not interrupt when the **judge**, attorney or **defendant** is speaking. Stop talking if an objection is made by one of the attorneys, or if the **judge** interrupts. The **judge** will tell you if you can finish your answer. If you have forgotten the question you were answering, ask to have it repeated.

COMPENSATION FOR VICTIMS OF CRIME

If you are the **victim** of a crime in Virginia and if you were physically injured during the crime, or injured trying to stop a crime or an attempted crime, or injured trying to catch a person who committed a crime in your presence, or you are the surviving spouse, parent, grandparent, sibling, child, or legal dependent of a **victim** who was killed because of a crime or attempting to stop a crime, then you may be compensated for certain unreimbursed losses such as:

- Loss of earnings due to crime-related injuries
- Unreimbursed medical expenses
- Mental health counseling
- Funeral expenses, up to \$5,000
- Crime scene clean-up expenses
- Reasonable and necessary moving expenses, up to \$2,000
- Expenses attributable to pregnancy resulting from rape
- Counseling expenses for children who **witness** violence against their primary caregiver
- Loss of support if the offender is removed from the household due to a violent crime
- Other reasonable and necessary expenses resulting from your injury or from the death of a crime **victim**

You must:

- Report the crime to a law enforcement agency within 120 hours (or show good cause for not doing so).
- Cooperate with law enforcement agencies and the courts/prosecution.

- File a compensation claim within one year from the date of the crime (or show good cause for not doing so).
- File an application for payment of medical expenses through your insurance and other available sources, such as Medicare, Medicaid, hospital financial assistance programs, or other providers.
- The **prosecutor** and/or **victim/witness program** staff can advise you on how to apply for **victims'** compensation and, if necessary, assist you with the application. With your signed authorization, the **victim/witness program** staff may contact staff of the Virginia Victims Fund to follow up on your claim.

The Virginia Workers' Compensation Commission administers the Fund. For more information or for an application, call the Virginia Victims Fund at 1-800-552-4007 (toll-free statewide) or e-mail the Fund at info@viriniavictimsfund.org

Or write:

Virginia Victims Fund
(Officially the Criminal Injuries Compensation Fund)
 P. O. Box 26927
 Richmond, VA 23261

Additional information on the Fund can also be found at www.viriniavictimsfund.org

DEFINITIONS

- **Abuser**—A person who harms or threatens to harm another by physical, emotional, sexual or verbal abuse.
- **Advocate**—A person who assists crime victims by providing emotional support, counseling, referrals and/or an explanation of the services available to them.
- **Assault and battery against a family or household member**—An act of physical violence committed by one family or household member against another.
- **Assistant Commonwealth's Attorney**—A lawyer who works for the commonwealth's attorney to assist him/her in prosecuting criminal and traffic cases; also called a prosecutor.
- **Bailiff**—A sheriff's deputy assigned to the courtroom to keep order and provide security and safety.
- **Clerk of Court**—A court official who keeps records and office files, and who swears in jurors and witnesses.
- **Commonwealth's Attorney**—A lawyer elected by the people and employed by the state to prosecute criminal and traffic cases; also called a prosecutor.
- **Counsel determination**—A court hearing held before a judge to inform the defendant about the charges against him/her, and his/her rights to have a lawyer, and a trial. If necessary, a lawyer is appointed to represent the defendant. This proceeding is sometimes called an arraignment.
- **Defendant**—A person accused of committing a crime in a criminal case.
- **Defense Attorney**—The lawyer for the defendant.
- **Domestic violence**—A pattern of physically, sexually, and/or emotionally abusive behaviors used by one individual to assert power or maintain control over another in the context of an intimate or family relationship.

- **Domestic violence program**—A program which offers services (usually 24-hours a day) for victims of domestic violence and their children who have been physically or emotionally abused, or who have been threatened with abuse by their spouses or partners. Services may include crisis intervention, counseling, shelter, escort to court, food, clothing and transportation.
- **Domestic violence shelter**—A “safe house” where victims of domestic violence and their children can stay for a limited period of time. A shelter usually is operated in conjunction with a domestic violence program, which offers other support services. (see also definition of domestic violence program)
- **Emergency Protective Order (EPO)**—(*Code of Virginia* §16.1-253.4) May prohibit the abuser from contacting you, entering your home, or abusing you or your property in the future. This order lasts until 11:59 p.m., on the third day after it was issued, unless that day is a day that the Juvenile and Domestic Relations Court is not in session. In that case, the order is extended until 11:59 p.m. on the next business day the Juvenile and Domestic Relations Court is in session.
- **Family abuse**—Any act involving violence, force or threat, including but not limited to any forceful detention, stalking, sexual assault, or any criminal offense which results in bodily injury or places one in reasonable fear of bodily injury, sexual assault or death, which is committed by a person against a family or household member.
- **Family or household member**—(*Code of Virginia* §16.1-228) Includes: spouse (regardless of whether you live together); ex-spouse (regardless of whether you live together); parents, children, stepparents and stepchildren, brothers and sisters, half brothers and half sisters, grandparents, grandchildren (regardless of whether you live together); in-laws (if you live in the same house); cohabitants (those who live together) and those who cohabited in the past year and their children; and persons who have a child in common (even if you have never lived together).
- **Judge**—A court official who listens to the case, decides if the defendant is guilty or not, and determines the appropriate punishment.

- **Juvenile and Domestic Relations District Court**—The court that handles cases involving persons accused of committing offenses against family or household members. This court does not conduct jury trials. A judge hears all cases.
- **Juvenile and Domestic Relations District Court Service Unit**—The court service unit serves the court by carrying out the judge’s orders and facilitating the supervision and rehabilitation or treatment of youth, families and adults who come before the court.
- **Law enforcement officer**—A police officer or sheriff’s deputy.
- **Legal aid society**—A nonprofit law firm established to provide free civil legal services to income-eligible low-income individuals.
- **Magistrate**—A court official having the authority to bring criminal charges for acts of violence based on the sworn testimony of an individual or a law enforcement officer.
- **Protective Order (PO) “full” protective order (up to two years)**—(*Code of Virginia* §16.1-279.1) May prohibit the abuser from contacting you, entering your home or apartment, or abusing you or your property in the future. This order may also require the abuser to provide for your housing or to attend counseling. You may also ask to have temporary use of a motor vehicle jointly owned by you and the abuser. The judge may also include in the protective order a provision for temporary custody or visitation of a minor child. The order typically lasts up to two years, however it may be extended. It must be obtained through the Juvenile and Domestic Relations District Court.
- **Preliminary Protective Order (PPO)**—(*Code of Virginia* §16.1-253.1) Is similar to an emergency protective order, generally lasts up to fifteen days, and must be obtained through the Juvenile and domestic Relations District Court Service Unit.
- **Probable cause**—Reasonable grounds to believe that an accused person is guilty as charged.
- **Prosecute**—To bring criminal action against a defendant.



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