

# INFORMATION FOR WHEN SOMEONE GETS A DOMESTIC VIOLENCE PROTECTIVE ORDER AGAINST YOU

**You must follow the order or you could be arrested and charged with a crime.**

Follow the order even if

- the petitioner says it is okay to ignore the order and wants to have contact with you,
- the petitioner lied to get the order,
- the judge made a mistake on the order, or
- you are the victim of domestic violence.

If you would like to file for your own protective order, read *Instructions: How to Get a Domestic Violence Protective Order* (form [DV-150](#)), available at [ak-courts.info/dv150](#).

More information: [ak-courts.info/pub23](#)

If you have questions or if you need an interpreter, ask your local court for help.

## What is a domestic violence protective order?

A protective order is signed by a judge and orders you to do or not to do certain things. For example, protective orders usually tell someone to stay away from someone else and not to contact them.

Asking for a protective order is **not** the same as reporting a crime to the police. Protective orders are civil cases.

You may also have a criminal case related to the same incident that the protective order is based on. If your criminal case has a "no contact" order, you must follow **both** the criminal order and the civil protective order. If one order is more restrictive than the other, follow the more restrictive order. **Do not have contact with the other person unless there are no more orders.**

## What terms do I need to know?

**Petitioner.** The person who asked the court for a protective order. A parent or legal guardian may file the petition on behalf of a minor child. A legal guardian may file the petition on behalf of an incapacitated adult.

**Respondent.** The person that the petitioner asked to be protected from. If you were served with the protective order, then you are the respondent.

**Petition.** The document the petitioner filed with the court to ask for a protective order. It states why the petitioner believes they need the protective order.

## What are the different types of domestic violence protective orders?

**A Short-Term Protective Order** (also called an "ex parte" order) lasts for up to 20 days. The judge may extend it for another 20 days if (1) you did not get a copy of the order during the first 20 days, and law enforcement needs more time to give it to you; or (2) you agree to extend it; or (3) the judge finds good reason to extend it after hearing from both you and the petitioner. The judge grants the order based on what the petitioner wrote in the petition and what the petitioner testified about at the hearing, if there was a hearing.

**A Long-Term Protective Order** can last up to one year. A judge can only grant a long-term order after a court hearing. You must get at least 10 days' notice of this hearing and have a chance to speak at the hearing and tell the judge your side. If you do not go to the hearing, the judge can grant the order without hearing from you. Law enforcement is responsible for notifying you about the hearing.

**Both a Short-Term and a Long-Term Protective Order.** If the petitioner asked for both types of orders, the judge will review the petition the same day it is filed and will decide whether or not to grant the short-term order. If the judge grants the short-term order, the court will schedule a hearing in about 2-3 weeks to decide whether or not to grant the long-term order (see paragraph above). If the judge denies the short-term order, the court may or may not schedule a long-term hearing.

**NOTE:** There is also a type of order called an **Emergency Protective Order** that lasts for 72 hours. It can only be filed by law enforcement and is based on what the petitioner tells law enforcement. Neither the petitioner nor law enforcement can extend an emergency order longer than 72 hours. You do not need to do anything in response to an emergency order other than follow it. This type of order is fairly rare and is not discussed further on this form.

### **What does the petitioner need to prove to get a protective order?**

There are two elements of "domestic violence" that the petitioner needs to prove:

1. The petitioner has a certain type of **relationship** with you. These relationships are called "household members" in the law, but you do not necessarily have to live together to qualify. There is a list of qualifying relationships on page 5 of this form.
2. You committed a **crime** against the petitioner. Only some crimes (called "crimes of domestic violence" in the law) qualify for a domestic violence protective order. The petitioner does not need to name the crime. The judge will decide whether a crime occurred based on what the petitioner said happened. There is a list of domestic violence crimes at the end of this form.

### **How will I find out if someone gets a short-term protective order or asks for a long-term protective order against me?**

If the court grants a short-term protective order, law enforcement (local police, state troopers, VPSO, etc.) should give you a copy of the order and explain it to you. This is called "service." Read and follow everything in the order. If you do not, you could be arrested and charged with a crime.

If the court schedules a long-term protective order hearing, law enforcement should give you:

- a copy of the petition that the petitioner filed. This will help you understand what the petitioner says happened, so you can prepare for the long-term hearing.
- a notice with the date, time, and location for a future court hearing. Sometimes this notice will be part of the protective order, and sometimes it will be on a separate document. The hearing is your chance to tell the judge your side of the story. If you receive the notice and do not attend the hearing, the judge will decide whether to grant the protective order without hearing from you. If you get the notice less than 10 days before the hearing, you can ask the court to reschedule the hearing to give you more time to prepare.

If you found out about the protective order or the court hearing some other way than law enforcement serving you, contact your local law enforcement to get a written copy of the order. You can also contact the court that granted the order for more information. Even if you have not been served with the order yet, it is a good idea to avoid contact with the petitioner.

## **Can I be criminally punished if someone gets a protective order against me?**

A civil protective order is not a criminal case. The judge in your protective order case cannot send you to jail or order you to pay a fine. However, you can be criminally punished if

- the police or prosecutor file a criminal case against you for the same incident that is related to the protective order, and you are convicted of that crime. You will get notice of any criminal charges separately. You can contest them the same as any other criminal charge.
- you do not follow the protective order. You could be charged with a crime called "violating a protective order." If you are found guilty, this crime has a maximum jail sentence of one year and a maximum fine of \$25,000.

**Important:** You can be charged with violating a short-term protective order, even if the petitioner does not prove that the incident happened at the long-term protective order hearing. For example, the court grants the petitioner a short-term order against you. You violate the order and are charged with violating a protective order. You attend the long-term protective order hearing and tell the judge your side of the story. The judge does not grant the long-term order. You can still be found guilty of violating the short-term order when it was in effect.

## **What happens if I have children?**

**If you have children with the petitioner.** The protective order may have orders that relate to a custody schedule, supervised visitation or exchanges, or child support.

If you have a separate custody, divorce, dissolution, or other civil case involving the children, the orders in your protective order case may be different than the orders in your other case. You must follow the orders in the protective order case. They **override** any orders in custody, divorce, dissolution, or other civil cases.

If the judge grants a long-term protective order, the judge in your custody, divorce, dissolution, or other civil case may require supervised visitation with your children. The judge will tell you how you get unsupervised visitation. It usually requires participating in a program.

**If you have children with someone else.** Under Alaska law, if you have a long-term protective order granted against you, you may not be allowed to have custody or unsupervised visitation with your children, even if the petitioner is not a parent or guardian of those children. If this happens, the judge in the other case involving your children will explain what you must do to end this restriction. It usually requires participating in a program.

## **What happens to my things or the things I share with the petitioner?**

The protective order may temporarily give the petitioner your shared home, pets, vehicle, and other personal belongings. The protective order has a "Writ of Assistance" section. In this section, the judge may order law enforcement to

- help the petitioner get the items listed in the protective order. You are required to turn them over to the petitioner until the protective order ends or is changed. It does not matter who owns them.
- help you get your things from the shared home. It is best to contact law enforcement for help during the daytime, when officers are usually less busy. You will only get about 15 minutes, so think about the most important things that you need before you go. If the petitioner is present, do not speak to them. If you have questions, ask the officer. The officer will not allow you to take anything that the petitioner objects to you taking.

If the judge did not already order law enforcement to help you get your things (or you need to go back a second time), you can ask the judge to add this to the order. See the question below about how to change the order.

### **How do I explain to the court that I disagree with the protective order?**

If there is a short-term (20-day) protective order against you, you have two options:

1. Ask to change or end the short-term protective order. See the next question.
2. If there is a long-term hearing scheduled, follow the terms of the short-term protective order until the hearing, and then tell the judge your side at the long-term hearing.

If there is a long-term (one-year) order against you, you can ask to change or end the long-term protective order. See the next question.

### **How do I ask the court to change or end the protective order?**

After the judge grants the protective order, you can ask the judge to

- change (modify) the order. This means the order will remain in place, but you would like to change some of the terms. For example, you want a different visitation schedule with the children or you need some limited communication with the petitioner to discuss financial matters. Use *Request to Modify Protective Order* (form [DV-131](#) or [DV-131M](#)).
- end (dissolve) the order. This means that the order would go away completely. If the petitioner does not agree to this, you would have to prove that something significant has changed since the judge granted the order. The court will not redo the same hearing. Use *Request to Dissolve Protective Order* (form [DV-133](#) or [DV-133M](#)).

Forms are available in paper copy at the court clerk's office, and they are available online at [ak-courts.info/dvforms](http://ak-courts.info/dvforms).

If you ask to change or end a short-term order, the court will usually hold a hearing within 72 hours. If you ask to change or end a long-term order, the court will usually hold a hearing within 2-4 weeks. You must go to the hearing or your request will be denied.

Keep your contact information (especially telephone numbers and email addresses) current so that the court can give you notice of the hearing. If you want your contact information to be kept confidential from the petitioner, ask the court clerk how to do this.

**Important:** Continue to follow the protective order unless the judge changes or ends it in writing. If the order changes or ends in the civil protective order case, it does **not** change the orders in any criminal case related to the same incident. Similarly, if the criminal case is dismissed or the criminal no contact orders are changed, it does **not** change the civil protective order. Even if one order changes or ends, you must still follow the other order. **Do not have contact with the other person unless there are no more orders.**

### **Are there any federal laws I should know about?**

Under 18 USC § 922(g)(8), you may not be allowed to own or possess a firearm if you have ever had a long-term domestic violence protective order granted against you. This law may or may not apply in your case, depending on the type of relationship you have with the petitioner and the specific findings that the judge made in the protective order. This law does **not** apply to emergency or short-term protective orders.

## CRIMES INVOLVING DOMESTIC VIOLENCE

### **To qualify as a domestic violence crime:**

- A crime must be committed or attempted; and
- The crime must have been committed by one household member against another household member; and
- The crime must be one of the crimes listed in the Alaska statute, or a violation of a similar law of another city or state.

### **Definition of "household members" under the Alaska domestic violence laws:**

(1) Adults or minor children who are one or more of these:

- current or former spouses
- live together or have lived together in the past
- are in a dating or sexual relationship (or have been in the past)
- are related by blood or adoption up to the "fourth degree of consanguinity"
- are related or formerly related by marriage
- have a child together

(2) Minor children of a person in any of the relationships in section (1).

### **List of crimes that qualify for a domestic violence protective order:**

**Assault** is when one person physically injures another person, or when one person threatens to physically injure another person and could immediately carry out the threat. If there was a threat, you may be able to get a protective order even if the respondent did not physically injure you.

**Arson or Criminally Negligent Burning** is when a person damages another person's property by starting a fire or explosion. It is also arson to damage your own property by fire or explosion if it places another person in danger of serious physical injury.

**Burglary** is when someone enters or remains unlawfully in a building planning to commit a crime in the building.

**Criminal mischief** is when one person purposefully damages another person's property. Criminal mischief may still occur if the person jointly owns the property that was damaged.

**Criminal trespass** is when someone enters or remains unlawfully on land, in a home, or in a vehicle.

**Cruelty to pet** is when someone knowingly kills or injures an animal that is a pet, with the intent to intimidate, threaten, or terrorize another person.

**Custodial interference** is when a family member takes and keeps a child without any legal right to do so, **and** the person intends to keep the child from the lawful guardian for an extended period of time. An example is a parent who takes a child out of state to keep the child away from the other parent for a long time, with no legal right to do so. It is **not** custodial interference when a parent fails to return the child at the agreed-upon time.

**Extortion and coercion** are crimes that are commonly called "blackmail." They involve someone causing or threatening physical injury or other types of harm to get another person's property, or to make another person do something they do not want to do. An example is someone threatening to post something embarrassing about you on the internet unless you give the person money.

**Harassment** is when someone, with the intent to harass or annoy another person:

- calls on the phone and will not hang up, so that the other person cannot make or receive calls; or
- makes repeated telephone calls at extremely inconvenient hours; or
- makes a call or electronic communication that is anonymous or obscene, or that threatens physical injury or sexual contact; or
- publishes or distributes photos, pictures, or videos that show the other person's genitals, anus, or female breast, or that show the other person doing a sexual act.

**Interfering with a report of a crime involving domestic violence** is when a person tries to stop someone else from telling law enforcement about the domestic violence crime that the person committed. An example is someone hiding your cell phone so you cannot call 911 to report that you were assaulted.

**Kidnapping** is when a person holds another person against that person's will. Usually, it also means the person is planning to physically or sexually assault the other person, creates a significant risk that the other person will be seriously injured, or conceals the other person so that there is a significant risk that the other person will not be found.

**Reckless endangerment** is when a person's actions create a **high risk** of **serious** physical injury to another person. An example is when you are driving down the highway and the passenger grabs the steering wheel, trying to force you off the road and making it likely that you will get in a serious car accident.

**Robbery** is when a person uses force, or threatens to use force, to take money or property from another person. The money or property must be physically on or very near the other person when the force is used or the threat is made.

**Sexual crimes** include all forms of sexual assault, sexual abuse of a minor, incest, and indecent exposure. Sexual assault can occur even if the parties are married. Crimes involving making pornography with minors are included, but other pornography-related crimes generally are not.

**Stalking** is when someone repeatedly contacts another person without that person's consent, **and** the contacts would reasonably make the other person afraid of physical injury or death.

**Terroristic threatening** is when someone claims that a life-threatening situation exists that places another person in fear of physical injury. An example is calling you on the phone and threatening to shoot you when you leave the house. It is also a crime if the threat causes evacuation of a building or similar serious inconvenience to a group of people.

**Unlawful contact** is when one of the following things is true:

- A person contacts or tries to contact a **victim or witness** of a crime when there is a **court order** prohibiting that contact. The court order must be part of a criminal judgment (sentencing after a conviction), a condition of release for bail, or a condition of probation or parole.
- A person is **arrested** for a crime of domestic violence, contacts the **victim** of the crime, **and** this contact happens before the arrested person has a hearing with a judge.

**Violating a protective order** is when a person does something that the person was prohibited from doing by a domestic violence, stalking, or sexual assault protective order.