

The Standards and Procedures For Obtaining a Domestic Violence Civil Protection Order, a Civil Stalking or Sexually Oriented Offense Protection Order and Juvenile Protection Order as it Relates to Family Law Clients

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When dealing with clients that have family law issues, spotting the need for a protection order is not always as simple, straightforward or easy as one may think. In order to identify whether and what type of protection order is appropriate, it is important to understand the standards and procedures for obtaining those various orders.

Domestic Violence Civil Protection Order (DVCPO)

Before issuing a DVCPO, a court must find that the petitioner (victim) has shown by a preponderance of the evidence that the petitioner (and/or family or household member) is in danger of domestic violence from the respondent (alleged perpetrator). *Felton v. Felton*, 79 Ohio St.3d 34, 679 N.E.2d 672, paragraph two of the syllabus (1997); see also R.C. 3113.31.

Only a family or household member of the respondent, as defined by statute, may seek a DVCPO. A family or household member can be any of the following: spouse, former spouse or child of respondent, natural or foster parent of respondent, natural parent of respondent's child, other relative by blood or marriage of petitioner or respondent who has lived with respondent at any time, or a person living as a spouse of respondent (now cohabitating or cohabitated with within five years before alleged act of domestic violence). R.C. 3113.31(A)(3).

When there is (1) an attempt to cause bodily injury, (2) reckless causing of bodily injury, (3) threat of force placing petitioner in fear of imminent serious physical harm, (4) menacing by stalking as defined by statute, (5) aggravated trespass as defined by statute, (6) a sexually oriented offense or (7) any act with respect of a child that would result in the child

being adjudicated as an abused child, domestic violence has occurred. R.C. 3113.31(A)(1).

Immediate and present danger of domestic violence, including threats by respondent of bodily harm or sexually oriented offense, or where respondent has been convicted of, pleaded guilty to, or adjudicated a delinquent child for a domestic violence offense against the victim, constitutes good cause for an ex parte DVCPO. Establishing fear of imminent serious physical harm does have a subjective element to it, so a court must determine if the petitioner's fear is reasonable under the circumstances. A victim's history of past physical and verbal abuse with the perpetrator may cause the victim to experience reasonable fear of the perpetrator's threats of domestic violence. *Eichenberger v. Eichenberger*, 82 Ohio App.3d 809, 613 N.E.2d 678 (10th Dist.1992); see also R.C. 3113.31(D)(1).

To seek relief, a victim must file a petition with the domestic relations court in the county where they reside, which alleges domestic violence, including a description of the nature and extent of the alleged domestic violence, the relationship of the respondent to the petitioner or victim, and a request for relief. The petitioner must also prepare the other mandatory forms provided. If the petitioner seeks an ex parte order, the court is required to hold an ex parte hearing the same day that the petition is filed. For good cause shown, the court may enter any temporary orders it finds necessary to protect against domestic violence. R.C. 3113.31(C), (D).

After issuing an ex parte order, the court must hold a full hearing, with notice to respondent and an opportunity to be heard, within seven to ten days. R.C. 3113.31(D)(2). A DVCPO is valid until a date certain, not later than five years from the date of issuance. A temporary protection order (TPO) issued by a criminal court in a domestic violence action is generally only effective until the disposition of the criminal proceeding. R.C. 2919.26(E). So

a DVCPO is usually recommended in addition to the TPO in the criminal matter.

Civil Stalking Protection Order (CSPO) or Sexually Oriented Offense Protection Order (SOPO)

For a CSPO/SOPO, the petitioner must show that, by a preponderance of the evidence, the respondent engaged in menacing by stalking or committed a sexually oriented offense against the person(s) to be protected by the order. R.C. 2903.214.

A person seeking a CSPO/SOPO must file a petition for relief in the common pleas court of the county where the person to be protected resides. R.C. 2903.214(A)(1). Nothing precludes a party from seeking a CSPO/SOPO in the general division of a court while an action is also pending in the domestic relations division. *Wildi v. Wildi*, 159 Ohio App.3d 568, 824 N.E.2d 1011 (10th Dist.2005).

The family and household member definition is the same for a CSPO/SOPO as for a DVCPO. R.C. 2903.214(A)(3). Victims can seek protection for themselves or on behalf of another family or household member against any other person. R.C. 2903.214(C). For example, a CSPO/SOPO can be issued against an ex-spouse (*Tuuri v. Snyder*, 11th Dist. No. 2000-G-2325, 2002-Ohio-2107), an ex-boyfriend (*Guthrie v. Long*, 10th Dist. No. 04AP-913, 2005-Ohio-1541), a neighbor (*Rausser v. Ghaster*, 8th Dist. No. 92699, 2009-Ohio-5698), a father (*Cooper v. Manta*, 11th Dist. No. 2011-L-035, 2012-Ohio-691547), or a postal carrier's customer (*Strausser*, 2009-Ohio-3597).

A petition for CSPO/SOPO must allege that respondent is at least 18 years of age and engaged in menacing by stalking or committed a sexually oriented offense against the person(s) to be protected by the order, including a description of the nature and extent of the violation, and a request for relief. Additional

allegations must be included if electronic monitoring of the respondent is requested. R.C. 2903.214(C). The menacing by stalking statute states that no person shall engage in a pattern of conduct which knowingly causes another person to believe the offender will cause physical harm or mental distress to the other person. R.C. 2903.211.

Mental distress is defined as either mental illness/condition that involves some temporary substantial incapacity or any mental illness/condition would normally require treatment, whether or not any person requested or received treatment. R.C. 2903.211(D)(2). Expert testimony is not required to establish mental distress, and the court “may rely on its knowledge and experience in determining whether mental distress has been caused.” *Smith v. Wunsch*, 162 Ohio App.3d 21, 2005-Ohio-3498, 832 N.E.2d 757 (4th Dist.). Additionally, the testimony of the victim as to his/her fear is sufficient by itself to establish mental distress. *Strausser v. White*, 8th Dist. No. 92091, 2009-Ohio-3597.

Pattern of conduct means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incident. R.C. 2903.211(D)(1). In determining what constitutes a pattern of conduct, courts must take every action and prior history into consideration “even if some of the person’s actions may not, in isolation, seem particularly threatening.” *Guthrie v. Long*, 10th Dist. No. 04AP-913, 2005-Ohio-1541.

If an ex parte order is requested, the court must hold a hearing as soon as possible after the petition is filed, but no later than the next day that the court is in session. Good cause for the issuance of temporary orders is the same as for a DVCPO. Likewise, immediate and present danger is the same, including the conviction of pleading guilty to menacing by stalking or a sexually oriented offense against the person(s) to be protected by the order. If an ex parte order is issued, the court must hold a full hearing within ten days, with notice to respondent and an opportunity to be heard. R.C. 2903.214(D). There must be clear and convincing evidence at the full hearing to permit the court to issue orders for electronic monitoring. R.C. 2903.214(E)(1)(b). A CSPO/SOPO shall be valid until a date certain, but not later than five years from the date it was issued, and can be renewed in the same manner as the original was issued. R.C. 2903.214(E)(2).

Juvenile Civil Protection Order (JCPO) or Juvenile Domestic Violence Civil Protection Order (JDVCPO)

The JCPO/JDVCPO are very similar to



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the aforementioned protection orders but are issued against a juvenile offender, i.e., when the respondent is under the age of 18. R.C. 2151.34(A)(6). Family and household members have the same statutory definition as defined for a DVCPO. A person may seek a JCPO/JDVCPO by filing a petition with the juvenile court division. R.C. 2151.34(A)(1). A parent or adult family or household member can file a petition on behalf of another family or household member. R.C. 2151.34(C).

The petition filed in juvenile court must allege respondent engaged in a statutory violation of felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, aggravated trespass or any substantially similar municipal ordinance, or committed a sexually oriented offense against the person(s) to be protected, including a description and nature of the extent of the violation, a request for relief and, where requested, the necessary allegation for electronic monitoring. R.C. 2151.34(C).

Good cause and immediate and present danger have the same definition as that for CSPO, with the addition that any prior adjudication as a delinquent child for any of the statutory violations that give rise for relief under this section are also included. R.C.

2151.34(D). Similarly, the standards and procedures for ex parte and full hearings are the same as for a CSPO, with the exception that a JCPO/JDVCPO must be issued until a date certain but no later than the date the respondent reaches the age of 19. R.C. 2154.34(D), (E)

The Ohio Supreme Court has forms located directly on their website at <http://www.supremecourt.ohio.gov/JCS/domesticViolence/default.asp>.



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