






# Orders of Protection

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The Honorable Barry R. Tidwell

## IN GENERAL




Tennessee law provides protection for anyone who has been subjected to or threatened with abuse by:

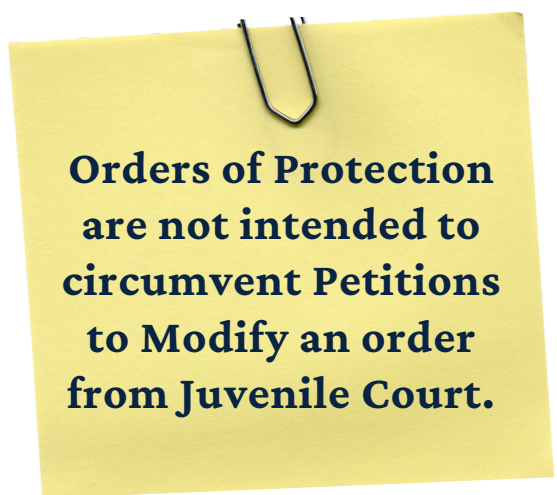
-  a present or former spouse, someone with whom he/she has lived;
-  an adult family or household member;
-  someone he/she is dating or whom he/she has dated;
-  someone to whom he/she is related by blood or marriage or was formerly related by marriage; or
-  someone with whom he/she has or had a sexual relationship.

Protection is also provided for anyone who has been subject to sexual assault or stalking.

## MINORS

A minor can also file an order of protection with the help of the following people or entities:

-  A parent or guardian of the minor;
-  A caseworker at a not-for-profit domestic violence shelter or child abuse agency; or
-  The Department of Children's Services or the minor's guardian ad litem if the minor is in foster care.



**Orders of Protection are not intended to circumvent Petitions to Modify an order from Juvenile Court.**

**Petitioner:** means the person alleging domestic abuse, sexual assault, or stalking in a petition for an order of protection.

**Respondent:** means a person alleged to have abused, stalked, or sexually assaulted another in a petition for an order of protection.

**Abuse:** includes inflicting or attempting to inflict physical injury, other than by accidental means, placing one in fear of physical harm or physical restraint, or malicious damage to the personal property of an abused person (property includes an animal owned, possessed, leased, kept, or held by an adult or minor).

**Good Cause:** a finding of immediate and present danger of abuse.

**See Tenn. Code Ann. § 36-3-601**

### STATUTES

Tenn. Code Ann. § 36-3-601

Tenn. Code Ann. § 36-3-605

Tenn. Code Ann. § 36-3-609

Tenn. Code Ann. § 36-3-610

Tenn. Code Ann. § 36-3-622

Tenn. Code Ann. § 36-3-625

**\*statutes are included in  
pages to follow.**



Petitioner **must** file a sworn petition alleging abuse.

If **good cause** is shown, the court may issue an *ex parte* order of protection.

A copy of the petition, notice of the date set for hearing, and a copy of the *ex parte* order **must** be served on the respondent.

### **SERVICE ON MINORS:**

When a petitioner is under eighteen (18) years of age, a copy of the petition, notice of hearing and any *ex parte* order of protection shall also be served on the parents of the minor child, or in the event that the parents are not living together and jointly caring for the child, upon the primary residential parent.

**See Tenn. Code Ann. § 36-3-609**



**WHERE TO FILE**

In Tennessee, you must file for an order of protection in the county where the abuser lives or in the county where the abuse took place. You may go to the clerk's office in the Circuit, Chancery, General Sessions, or Juvenile court.

In some counties, only one clerk's office handles orders of protection. Any of the clerk's offices can tell you where orders of protection are filed in that county.

**OUT OF STATE ORDERS**

Any valid protective order related to domestic abuse or family violence that is issued by a court of another state, tribe, or territory is entitled to full faith and credit by the courts of this state.

In order to secure enforcement of a foreign order of protection, the petitioner may present a certified copy of the foreign order to the clerk of the court having jurisdiction over protective orders. No fees or costs shall be charged.

The admissibility of orders of protection under 404(b) is determined under the same test as any other prior wrong, crime, or act under the rules of evidence.

In determining admissibility of an order of protection, or the violation of such order, the court must first “determine that a material issue exists other than conduct conforming with a character trait and must upon request state on the record the material issue, the ruling, and the reasons for admitting the evidence.”

Next, the court must “find proof of the other crime, wrong, or act to be clear and convincing.”

Finally, “The court must exclude the evidence if its probative value is outweighed by the danger of unfair prejudice.”

## CASE LAW

In *State v. Lane*, the Court of Criminal Appeals of Tennessee affirmed the trial court’s ruling allowing evidence of an order of protection, that was in place at the time of the incident that led to the indictment therein, which prohibited the Defendant from being on the premises where the incident occurred.

***State v. Lane***, No. E2019-01293-CCA-R3-CD, 2020, WL 4219756 (Tenn. Crim. App. Apr. 28, 2020).



If an order of protection is granted in a manner that fully complies with **18 U.S.C. § 922(g)(8)**, the respondent will be required to terminate physical possession of all firearms within 48 hours of granting of the order.



The issuance of an order of protection may also terminate, or at least suspend, the respondent's right to purchase or possess a firearm.

Upon issuance of an order of protection, the court **shall** instruct the respondent to complete and file an “Affidavit of Firearm Dispossession.”

It is a criminal offense for any such respondent to be in possession of a firearm while an order of protection is in effect.

**See Tenn. Code Ann. § 36-3-625.**

Upon violation of an order of protection or a court-approved consent agreement, the court **may** hold the defendant in civil or criminal contempt and punish the defendant in accordance with the law. Accordingly, a defendant may be subject to a Class A misdemeanor for contemptuous conduct.

The judge **may** issue any of the following penalties or actions:

Civil penalty of \$50;

Fine of no less than \$100 and no more than \$2,500;

Bond of at least \$2,500 for the duration of the order of protection; and

Incarceration.



The judge, upon finding a violation of an order of protection or a court-approved consent order, **shall** require a bond of the respondent until such time as the order of protection expires.

**See Tenn. Code Ann. § 36-3-610.**

A Motion to Modify/Extend the Order of Protection can be made if changes are necessary while an order of protection is in effect.

**See Tenn. Code Ann. § 36-3-305.**

## APPEALS

Any appeal from a final ruling on an order of protection by a general sessions court shall be to the circuit or chancery court of the county.

Such appeal shall be filed within ten (10) days and shall be heard de novo.

**See Tenn. Code Ann. § 36-3-601.**



**36-3-601. Part definitions.**

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As used in this part, unless the context otherwise requires:

(1)“Abuse” means inflicting, or attempting to inflict, physical injury on an adult or minor by other than accidental means, placing an adult or minor in fear of physical harm, physical restraint, malicious damage to the personal property of the abused party, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by an adult or minor, or placing an adult or minor in fear of physical harm to any animal owned, possessed, leased, kept, or held by the adult or minor;

(2)“Adult” means any person eighteen (18) years of age or older, or who is otherwise emancipated;

(3)

(A)“Court,” in counties having a population of not less than two hundred sixty thousand (260,000) nor more than eight hundred thousand (800,000), according to the 1980 federal census or any subsequent federal census, means any court of record with jurisdiction over domestic relation matters;

(B)Notwithstanding subdivision (3)(A), “court,” in counties with a metropolitan form of government with a population of more than one hundred thousand (100,000), according to the 1990 federal census or any subsequent federal census, means any court of record with jurisdiction over domestic relation matters and the general sessions court. In such county having a metropolitan form of government, a judicial commissioner may issue an ex parte order of protection. Nothing in this definition may be construed to grant jurisdiction to the general sessions court for matters relating to child custody, visitation, or support;

(C)“Court,” in all other counties, means any court of record with jurisdiction over domestic relation matters or the general sessions court;

(D)“Court” also includes judicial commissioners, magistrates and other officials with the authority to issue an arrest warrant in the absence of a judge for purposes of issuing ex parte orders of protection when a judge of one of the courts listed in subdivisions (3)(A), (3)(B) or (3)(C) is not available;

(E)In counties having a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census, “court” means any court of record with jurisdiction over domestic relations matters or the general sessions criminal court. In such counties, “court” also includes judicial commissioners, magistrates and other officials with the authority to issue an arrest warrant in the absence of a judge for

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purposes of issuing any order of protection pursuant to this part when a judge of one of the courts listed in subdivisions (3)(A), (3)(B) or (3)(C) is not available. Nothing in this definition may be construed to grant jurisdiction to the general sessions court, both criminal and civil, for matters relating to child custody, visitation, or support;

(F) Any appeal from a final ruling on an order of protection by a general sessions court or by any official authorized to issue an order of protection under this subdivision (3) shall be to the circuit or chancery court of the county. Such appeal shall be filed within ten (10) days and shall be heard de novo;

(4) "Domestic abuse" means committing abuse against a victim, as defined in subdivision (5);

(5) "Domestic abuse victim" means any person who falls within the following categories:

(A) Adults or minors who are current or former spouses;

(B) Adults or minors who live together or who have lived together;

(C) Adults or minors who are dating or who have dated or who have or had a sexual relationship. As used herein, "dating" and "dated" do not include fraternization between two (2) individuals in a business or social context;

(D) Adults or minors related by blood or adoption;

(E) Adults or minors who are related or were formerly related by marriage; or

(F) Adult or minor children of a person in a relationship that is described in subdivisions (5)(A)-(E);

(6) "Firearm" means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use;

(7) "Petitioner" means the person alleging domestic abuse, sexual assault or stalking in a petition for an order for protection;

(8) "Preferred response" means law enforcement officers shall arrest a person committing domestic abuse unless there is a clear and compelling reason not to arrest;

(9) "Respondent" means the person alleged to have abused, stalked or sexually assaulted another in a petition for an order for protection;

(10) "Sexual assault victim" means any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of any form of rape, as defined in § 39-13-502, § 39-13-503, § 39-13-506 or § 39-13-522, or sexual battery, as defined in § 39-13-504, § 39-13-505, or § 39-13-527;

(11) "Stalking victim" means any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of the offense of stalking, as defined in § 39-17-315; and

(12) "Weapon" means a firearm or a device listed in § 39-17-1302(a)(1)-(7).

**36-3-605. Ex parte protection order — Hearing — Extension.**

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(a) Upon the filing of a petition under this part, the courts may immediately, for good cause shown, issue an ex parte order of protection. An immediate and present danger of abuse to the petitioner shall constitute good cause for purposes of this section.

(b) Within fifteen (15) days of service of such order on the respondent under this part, a hearing shall be held, at which time the court shall either dissolve any ex parte order that has been issued, or shall, if the petitioner has proved the allegation of domestic abuse, stalking or sexual assault by a preponderance of the evidence, extend the order of protection for a definite period of time, not to exceed one (1) year, unless a further hearing on the continuation of such order is requested by the respondent or the petitioner; in which case, on proper showing of cause, such order may be continued for a further definite period of one (1) year, after which time a further hearing must be held for any subsequent one-year period. Any ex parte order of protection shall be in effect until the time of the hearing, and, if the hearing is held within fifteen (15) days of service of such order, the ex parte order shall continue in effect until the entry of any subsequent order of protection issued pursuant to § 36-3-609. If no ex parte order of protection has been issued as of the time of the hearing, and the petitioner has proven the allegation of domestic abuse, stalking or sexual assault by a preponderance of the evidence, the court may, at that time, issue an order of protection for a definite period of time, not to exceed one (1) year.

(c) The court shall cause a copy of the petition and notice of the date set for the hearing on such petition, as well as a copy of any ex parte order of protection, to be served upon the respondent at least five (5) days prior to such hearing. An ex parte order issued pursuant to this part shall be personally served upon the respondent. However, if the respondent is not a resident of Tennessee, the ex parte order shall be served pursuant to §§ 20-2-215 and 20-2-216. Such notice shall advise the respondent that the respondent may be represented by counsel. In every case, unless the court finds that the action would create a threat of serious harm to the minor, when a petitioner is under eighteen (18) years of age, a copy of the petition, notice of hearing and any ex parte order of protection shall also be served on the parents of the minor child, or in the event that the parents are not living together and jointly caring for the child, upon the primary residential parent, pursuant to the requirements of this section.

(d) Within the time the order of protection is in effect, any court of competent jurisdiction may modify the order of protection, either upon the court's own motion or upon motion of the petitioner. If a respondent is properly served and afforded the opportunity for a hearing pursuant to § 36-3-612, and is found to be in violation of the order, the court may extend the order of protection up to five (5) years. If a respondent is properly served and afforded the opportunity for a hearing pursuant to § 36-3-612, and is found to be in a second or subsequent violation of the order, the court may extend the order of protection up to ten (10) years. No new petition is required to be filed in order for a court to modify an order or extend an order pursuant to this subsection (d).

**36-3-610. Violation of order or consent agreement — Civil or criminal contempt — Financial penalty.**

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(a) Upon violation of the order of protection or a court-approved consent agreement, the court may hold the defendant in civil or criminal contempt and punish the defendant in accordance with the law. A judge of the general sessions court shall have the same power as a court of record to punish the defendant for contempt when exercising jurisdiction pursuant to this part or when exercising concurrent jurisdiction with a court of record. A judge of the general sessions court who is not a licensed attorney shall appoint an attorney referee to hear charges of criminal contempt.

(b)

(1) In addition to the authorized punishments for contempt of court, the judge may assess any person who violates an order of protection or a court-approved consent agreement a civil penalty of fifty dollars (\$50.00). The judge may further order that any support payment made pursuant to an order of protection or a court-approved consent agreement be made under an income assignment to the clerk of court.

(2) The judge upon finding a violation of an order of protection or a court-approved consent order shall require a bond of the respondent until such time as the order of protection expires. Such bond shall not be less than two thousand five hundred dollars (\$2,500) and shall be payable upon forfeit as provided. Bond shall be set at whatever the court determines is necessary to reasonably assure the safety of the petitioner as required. Any respondent for whom bond has been set may deposit with the clerk of the court before which the proceeding is pending a sum of money in cash equal to the amount of the bond. The clerk of the court may deposit funds received in lieu of bonds, or any funds received from the forfeiture of bonds, in an interest bearing account. Any interest received from such accounts shall be payable to the office of the clerk. Failure to comply with this subsection (b) may be punished by the court as a contempt of court as provided in title 29, chapter 9.

(3) If a respondent posting bond under this subsection (b) does not comply with the conditions of the bond, the court having jurisdiction shall enter an order declaring the bond to be forfeited. Notice of the order of forfeiture shall be mailed forthwith by the clerk to the respondent at the respondent's last known address. If the respondent does not within thirty (30) days from the date of the forfeiture satisfy the court that compliance with the conditions of the bond was met, the court shall enter judgment for the state against the defendant for the amount of the bond and costs of the court proceedings. The judgment and costs may be enforced and collected in the same manner as a judgment entered in a civil action.

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(4) Nothing in this section shall be construed to limit or affect any remedy in effect on July 1, 2010.

(c) Upon collecting the civil penalty imposed by subsection (b), the clerk shall, on a monthly basis, send the money to the state treasurer who shall deposit it in the domestic violence community education fund created by § 36-3-616.

(d) The proceeds of a judgment for the amount of the bond pursuant to this section shall be paid quarterly to the administrative office of the courts. The quarterly payments shall be due on the fifteenth day of the fourth month of the year; the fifteenth day of the sixth month; the fifteenth day of the ninth month; and on the fifteenth day of the first month of the next succeeding year. The proceeds shall be allocated equally on an annual basis as follows:

(1) To provide legal representation to low-income Tennesseans in civil matters in such manner as determined by the supreme court as described in § 16-3-808(c); provided, that one-fourth (¼) of such funds shall be allocated to an appropriate statewide nonprofit organization capable of providing continuing legal education, technology support, planning assistance, resource development and other support to organizations delivering civil legal representation to indigents. The remainder shall be distributed to organizations delivering direct assistance to clients with Legal Services Corporation funding as referenced in the Tennessee State Plan for Civil Legal Justice approved in March, 2001, by the Legal Services Corporation;

(2) To the domestic violence state coordinating council, created by title 38, chapter 12;

(3) To the Tennessee Court Appointed Special Advocates Association (CASA); and

(4) To Childhelp.

**36-3-622. Out-of-state protection orders.**

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(a) Any valid protection order related to abuse, domestic abuse, or domestic or family violence, issued by a court of another state, tribe or territory shall be afforded full faith and credit by the courts of this state and enforced as if it were issued in this state.

(b)

(1) A protection order issued by a state, tribal or territorial court related to abuse, domestic abuse or domestic or family violence shall be deemed valid if the issuing court has jurisdiction over the parties and matter under the law of the issuing state, tribe or territory. There shall be a presumption in favor of validity where an order appears authentic on its face.

(2) For a foreign protection order to be valid in this state, the respondent must have been given reasonable notice and the opportunity to be heard before the order of the foreign state, tribe or territory was issued; provided, that in the case of ex parte orders, notice and opportunity to be heard must have been given as soon as possible after the order was issued, consistent with due process.

(3) Failure to provide reasonable notice and the opportunity to be heard shall be an affirmative defense to any charge or process filed seeking enforcement of a foreign protection order.

(c) A petitioner may present a certified copy of a foreign order of protection to a court having jurisdiction of orders of protection in the county in which the petitioner believes enforcement may be necessary. The clerk of such court shall receive the certified copies of any foreign order of protection and any supporting documents used to show the validity of such order and shall maintain such orders, along with any submitted documents. No costs, fees or taxes shall be charged by the clerks for this service. If an enforcement action is instituted in the court pursuant to any such order, the clerk shall file the order and shall otherwise treat the enforcement action as a case, except that all court costs, fees and litigation taxes shall be taxed by the judge at the adjudication of the enforcement action. It shall be a defense to any action taken for the enforcement of such order that the order is not valid as provided in subsection (b) or (d). No person shall present a foreign order of protection to a clerk that the person knows to no longer be in effect. A foreign order of protection shall continue in effect for the period of time specified in the order, and, if no time limitation is so specified, then the order shall continue in effect for a period of one (1) year from the date on which it is first presented to a Tennessee court pursuant to subsection (c); provided, that a continuation of any such order may be granted by the court subject to the requirements set forth in § 36-3-605.

(d) A protection order entered against both the petitioner and respondent shall not be enforceable against the petitioner in a foreign jurisdiction unless:

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(1)The respondent filed a cross- or counter-petition, or a complaint or other written pleading was filed seeking such a protection order; and

(2)The issuing court made specific findings of domestic or family violence against the petitioner.

(e)The clerk shall be under no obligation to make a determination as to the validity of such orders or documentation, but shall forward a copy of the foreign protection order and any supporting documentation filed with the order to the local police or sheriff's office, as provided for in § 36-3-609.

(f)Upon request, the clerk shall provide a copy of the order to the person offering the same showing proof of receipt by the clerk's office.

(g)Regardless of whether a foreign order of protection has been filed in this state pursuant to this section, a law enforcement officer may rely upon a copy of any such protection order that has been provided to the officer by any source and may also rely upon the statement of any person protected by a foreign order that the order remains in effect. A law enforcement officer acting in good faith shall be immune from civil and criminal liability in any action in connection with a court's finding that the foreign order was for any reason not enforceable.

**36-3-625. Dispossession of firearms.**

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(a) Upon issuance of an order of protection that fully complies with 18 U.S.C. § 922(g)(8), the order shall include on its face the following disclosures:

(1) That the respondent is required to dispossess the respondent by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms, of all firearms the respondent possesses within forty-eight (48) hours of the issuance of the order;

(2) That the respondent is prohibited from possessing a firearm for so long as the order of protection or any successive order of protection is in effect, and may reassume possession of the dispossessed firearm at such time as the order expires or is otherwise no longer in effect; and

(3) Notice of the penalty for any violation of this section and § 39-17-1307(f).

(b) The court shall then order and instruct the respondent:

(1) To terminate the respondent's physical possession of the firearms in the respondent's possession by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms, within forty-eight (48) hours;

(2) To complete and return the affidavit of firearm dispossession form created pursuant to subsection (e), which the court may provide the respondent or direct the respondent to the administrative office of the courts' website; and

(3) That if the respondent possesses firearms as business inventory or that are registered under the National Firearms Act (26 U.S.C. §§ 5801 et seq.), there are additional statutory provisions that may apply and shall include these additional provisions in the content of the order.

(c) Upon issuance of the order of protection, its provisions and date and time of issuance shall be transmitted to the sheriff and all local law enforcement agencies in the county where the respondent resides.

(d) When the respondent is lawfully dispossessed of firearms as required by this section, the respondent shall complete an affidavit of firearms dispossession form created pursuant to subsection (e) and return it to the court issuing the order of protection.

(e) The affidavit of firearms dispossession form shall be developed by the domestic violence state coordinating council, in consultation with the administrative office of the courts. Upon completion, the form shall be posted on the website of the administrative office of the courts where it can be copied by respondents or provided to them by the court or the court clerk.

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**(f)**In determining what a lawful means of dispossession is:

**(1)**If the dispossession, including, but not limited to, the transfer of weapons registered under the National Firearms Act (26 U.S.C. §§ 5801 et seq.), that requires the approval of any state or federal agency prior to the transfer of the firearm, the respondent may comply with the dispossession requirement by having the firearm or firearms placed into a safe or similar container that is securely locked and to which the respondent does not have the combination, keys or other means of normal access;

**(2)**If the respondent is licensed as a federal firearms dealer or a responsible party under a federal firearms license, the determination of whether such an individual possesses firearms that constitute business inventory under the federal license shall be determined based upon the applicable federal statutes or the rules, regulations and official letters, rulings and publications of the bureau of alcohol, tobacco, firearms and explosives. The order of protection shall not require the surrender or transfer of the inventory if there are one (1) or more individuals who are responsible parties under the federal license who are not the respondent subject to the order of protection.

**(g)**A firearm subject to this section shall not be forfeited as provided in § 39-17-1317, unless the possession of the firearm prior to the entry of the order of protection constituted an independent crime of which the respondent has been convicted or the firearms are abandoned by the respondent.

**(h)**

**(1)**It is an offense for a person subject to an order of protection that fully complies with 18 U.S.C. § 922(g)(8) to knowingly fail to surrender or transfer all firearms the respondent possesses as required by this section.

**(2)**A violation of subdivision (h)(1) is a Class A misdemeanor and each violation shall constitute a separate offense.

**(3)**If the violation of subdivision (h)(1) also constitutes a violation of § 39-13-113(h) or § 39-17-1307(f), the respondent may be charged and convicted under any or all such sections.