

Important Numbers You Should Know

Emergency: **911**

Durham County Sheriff's Office:

Main Emergency Number **560-0900**

Domestic Violence Coordinator **560-0974**

Durham Crisis Response Center (24hr. Crisis Line): **403-6562**

Durham Police Department:

Communications 560-4606

Domestic Violence Unit 560-4910

Durham County Courthouse Numbers:

Civil DV Clerk of Court 808-3123

District Criminal Clerk 808-3000

Durham County District Attorney 808-3010

Family Court 808-3015

Child Advocacy 490-4848

Durham County Jail:

Desk Officer 560-0961

Booking/Release 560-0915

Criminal Magistrate 560-6826

Other Services:

Child Protective Services 560-8424

Durham County Mental Health 560-7100

NC SAVAN 1-877-NC-SAVAN or 1-877-627-2826

NC Victim Assistance Network (NCVAN) 919-831-2857

National Domestic Violence Hotline 1-800-799-SAFE

Or 1-800-799-7233

NC Attorney General 919-716-6400

NC Office of Victim Services (Dept. of Correction)

1-866-719-0108

Office of the Sheriff

Durham County

Clarence F. Birkhead, Sheriff

Learn the Basics about Domestic Violence Protection Orders

If you or a loved one is the victim of domestic violence, this information may assist you in taking the next step toward protecting yourself or someone you love from future acts of abuse. The Durham County Sheriff's Office is here to help you take that step.



STOP THE VIOLENCE!

BREAK THE CYCLE!

This pamphlet is intended to only answer basic questions about obtaining a Domestic Violence Protection Order (DVPO). The State of North Carolina has very specific laws designed to protect victims of domestic violence. Some victims may choose to utilize our civil legal system to seek relief from the courts. For a detailed explanation of the North Carolina laws pertaining to Domestic Violence Protection Orders you should refer to NC General Statute – Chapter 50B.

Did you know?

... If you are a victim of domestic violence you may be eligible for a domestic violence protection order. Obtaining a DVPO is an important decision and you must be sure that it is the right one for you.

You must first determine if you qualify.

To qualify you must share a personal relationship with your abuser. The law says that he or she must be one of the following...

- 1) current or former spouse
- 2) parent, child, or in some cases grandparent, or grandchild
- 3) have a child in common
- 4) current or former household member
- 5) person of the opposite sex who you are dating or have dated

You must also be able to show or explain that your abuser has done one or a combination of the following...

- 1) attempted to or intentionally injured you
- 2) placed you or a member of your family or household in fear of imminent serious bodily injury
- 3) harassed you to such a level as to inflict substantial emotional distress
- 4) committed crimes of rape or sexual offense



You must understand what a DVPO is and what it can and cannot do for you.

IT IS...

- a court order signed by a Judge
- a document that may help protect you and prevent future acts of violence
- a directive intended to limit actions and behavior of the offender
- a civil action that may legally require the abuser to do things necessary to protect you or your minor child
- a court document that allows civil and criminal penalties when the order is violated



IT IS NOT...

- a criminal warrant
- a personal body guard. You must maintain a realistic understanding that a protection order, although legally binding, does not act as a "shield." It is a tool used to hold the abuser accountable for his or her actions and assist law enforcement in quickly and efficiently providing aid to you when the order is violated.

Is a Domestic Violence Protection Order my only option? Is it the best option?

When trying to decide what to do, consider your needs and goals. Use this simple guide to think it through.

Domestic Violence Protection Order = a way for a judge to order the offender to stay away (NOT a way to punish him/her), focusing on future needs

Arrest and entry into the Criminal Court System = a way to make the offender answer for his/her crime, focusing on what has already happened

Family Court Services = a way to resolve child custody, property distribution, divorce and other family related issues

Some people find that the process of obtaining a protection order is not their best option. It is merely a useful tool in attempting to establish a safe environment for yourself and/or your children. Some victims have confronted their abusers in criminal court and have been satisfied with letting the law punish the offender. Quite often, people will pursue both options. It may be necessary to do so. An important factor to remember is that punishing the offender, although satisfying, does not always guarantee your future safety. You will also need to consider utilizing Family Court services to resolve long term child custody issues, property distribution, divorce, etc.

It is very important that you weigh all the risks involved with obtaining a domestic violence protection order. Timing can be a very crucial element in obtaining an order. You must be prepared to face your abuser in court, and realize that the defendant might become even angrier and more aggressive as a result of the order. You will still need to do some extensive safety planning once you get your order. There are also emotional and financial factors to consider: you may have to come to court several times; child-care may be a factor; and for some victims the court process is exhausting and intimidating. Every situation is different and every victim's circumstance is different. If you question whether or not to take this step, you should consult a victim's advocate at the Durham Crisis Response Center or another certified professional caregiver to talk through some of these issues. It may be worth it in the long run. There are available resources that may help you overcome some of the obstacles in your way. Try to be flexible, realistic, and patient. Do not make a rash decision because **your immediate safety is the most important thing to consider.**

Is there anyone to help me fill out the application?

The Clerk of Court can provide you with the appropriate paperwork and an instruction sheet. The clerk cannot actually sit down with you to fill out all of the information. The clerk can only give you guidance about what paperwork you will need to complete. If you feel that you will need additional assistance you may want to contact the Durham Crisis Response Center at 919-403-6562. They may be able to provide a civil advocate that can meet with you by appointment, and/or talk through the paperwork with you over the telephone. In addition, you may contact the Durham City Police Department Domestic Violence Unit or the Durham County Sheriff's Office for additional referral information or assistance. **Remember that this is a civil action, not a criminal action, and you will be primarily responsible for proceeding with your case.**



Do I need a lawyer?

Maybe. You may proceed "Pro Se" (without a lawyer), but some people prefer to hire an attorney to represent them in court. The clerk's office and local law enforcement cannot recommend lawyers, nor can they provide legal advice. Neither you, nor the defendant is entitled to have a lawyer appointed by the state since this is a civil action. The defendant may have been appointed a lawyer in a related criminal case, but public defenders cannot represent their clients in a civil matter. If either you or the defendant wishes to be represented in a civil case for a Domestic Violence Protection Order, that person is responsible for hiring their own attorney. You may want to contact the Durham Crisis Response Center to ask about free legal clinics.

Do I have to go to the Hearing?

YES! You must come back to court after the temporary order to testify to the details of your complaint. The defendant is entitled to receive notice of the action and has the right to be present in court to speak at the hearing if he or she chooses. You should always expect that you will face your abuser in the courtroom.



What information will I need in order to apply for an order of protection?

You **must** have the first and last name of the Defendant to be named in the order. You will need to be able to provide descriptive information about the defendant on a form provided by the Clerk of Court, such as date of birth, approximate height, weight, eye color, hair color, etc. You **must** provide a **physical address** where the defendant can be found or else the process will be delayed. You may still apply for the order, but until he/she is served, you will not be "protected" by the order. Any other information that you might have should also be included to assist law enforcement with locating, identifying and properly serving the defendant.

Will the order affect my pending criminal case with the defendant?

Some victims of domestic violence have also filed criminal charges against their abusers. The two cases will remain separate and will be handled at different times. A finding of guilt or innocence in criminal court does not determine whether or not a judge will grant you a year long protection order. However, the criminal case can interfere to the extent that the civil case may not be decided until his/her criminal charges have been disposed of. This is usually allowed in cases where the defendant does not want to incriminate him/herself in civil court. This is merely a delay in the process. Your temporary order will still be valid as long as you continue to come to court and a ruling has been made.

Once I get the order, what happens if the defendant violates it? What do I do?



CALL 911 IF THE ORDER IS VIOLATED!

There are some details you will need to know once your order is approved. This information should be given to you once you receive your copies from the clerk. Basically, you should know that for **temporary orders**, the defendant would not be arrested for violating the order unless he/she has received notice of it. To legally receive notice, a Deputy Sheriff must have served him/her with copies of the Notice of Hearing, Civil Summons, and Ex Parte. The safest thing to do is call local law enforcement to find out whether or not the defendant has been served. If the defendant, with knowledge of the order, violates it, call 911. If the judge grants a year long order at the hearing, it is not necessary to have a Deputy serve the Defendant with that paperwork because he/she has already had an opportunity to be present in court. If the defendant was legally served with the Notice of Hearing and does not come to court on the specified date, the judge may proceed with the hearing and issue a year long order with or without the defendant's knowledge. The Clerk will mail copies to the defendant, but ultimately he/she is responsible for abiding by the order. If other criminal acts occur when the defendant violates the order, he/she can be arrested and charged for those offenses as well.



Is the order only good in Durham County?

NO! A valid Domestic Violence Protection Order issued in Durham County *is* enforceable in all other North Carolina counties and all 50 states. In fact, there are other enforceable jurisdictions such as; Indian tribal lands, the District of Columbia, the US Virgin Islands, Puerto Rico, American Samoa, the Northern Mariana Islands, and Guam.



IT DOES NOT...

- resolve issues of divorce and marital property
- resolve issues of child custody for extended periods of time
- take the place of any pending criminal charges
- immediately put the offender in jail (unless it is violated)
- take away the need to utilize a safety plan

What if the Defendant lives out of state?

There are special conditions that may apply to getting the defendant served in another state. The clerk will work with you about service in another state, but take notice that it may take several attempts and it may take a longer time period for service. **NOTE: Other out-of-state agencies may charge a fee for the service of paperwork.**



How many copies will I need?

You should always make extra copies of your Domestic Violence Protection Order. You should always try to keep a copy nearby in case you need to show it to local law enforcement. They can assist you more quickly if you have documentation available. It is a good idea to keep a copy in your car, leave one with a friend, keep one in your wallet or purse, keep one close by in your home, etc.

Once I get the order, can the defendant take an order out on me?

Yes. All citizens in Durham can use the same procedure to apply for a Domestic Violence Protection Order if they meet the basic criteria. It is up to the judge to determine the facts of the case. It is possible that a Judge will grant emergency orders for both parties if both apply. However, if one order is already in place, a judge is not likely to grant relief that contradicts what is in the first order. In some cases, concerns of child endangerment may prompt a judge change his ruling about temporary child custody. The judge will probably not interfere with temporary orders that have already granted temporary possession of a home, possession of a vehicle, etc. These issues can only be resolved at the hearing for the year long order.

FREQUENTLY ASKED QUESTIONS

Who is the Plaintiff and who is the Defendant?

The legal term, "Plaintiff", refers to the person applying for the protection order. In other words, it is the person alleging to be a victim of domestic violence and seeking protection from the courts. The "Defendant" is the person that the order is issued against.

Where do I go to get a protection order and how much does it cost?

You must file your complaint and request for emergency relief with the Civil Domestic Violence Clerk in room 486 on the fourth floor of the Durham County Judicial Building. If it is an emergency and cannot wait until the Clerk's office is open, you may go down to the Magistrate's Office to file. It is recommended that you file with the Clerk. In Durham County it is free to file for an order of protection and there is no fee charged by the Sheriff for service of the paperwork.

How long does the order last?

There are two stages to the process. The first order (sometimes referred to as an emergency, temporary, or ex parte order) is only good for 10 days or until you have a hearing in front of a judge. At the hearing, the judge considers testimony from both parties and determines whether or not your order will be dismissed or extended for a period of one year. At the end of that yearlong period, it automatically expires unless you apply to have it renewed for a second year.

You must file a motion to renew your order with the Clerk of Court at least two weeks prior to the expiration date of a yearlong protection order. You will have to come back and have another hearing in front of a judge every year that you wish to continue your order, and the defendant must again be notified of the hearing.