

# CUSTODY-DIVORCE AND THE ORDER OF PROTECTION

## Frequently Asked Questions

**DISCLAIMER:** This information is not legal advice. It is for informational purposes only. You should consult a lawyer for legal advice specific to your situation as each case is different.

**1. Can I apply for an order of protection if I have a child with the abuser or I am still married to my abuser?**

Yes. An order of protection is available to a person who has a child with the abuser or is related to the abuser by blood or marriage, people who are dating or who have had sex, or persons who have lived together.

**2. Can I include my child on a request for an order of Protection?**

Yes. A minor child may be considered a victim of domestic abuse, even if he or she has not been physically abused by the abuser, and may be included on your request for an order of protection. You also need to write down why you want the order of protection to include your children.

**3. Can I get custody of my child in an order of protection?**

Yes. However, each court is different in how it handles child custody cases in order of protection cases. If the abuser is your child's other parent, you may request that you be the primary residential parent of your minor child. The court will consider whether the abuser poses a danger to child. The court will decide whether visitation is appropriate between the child and the abuser. Whatever the judge decides about parenting time and visitation arrangements will last as long as the order of protection is in effect, unless the court later changes the order based on a change of circumstances.

**4. Can I ask for child support for my child in an Order of Protection?**

Yes. However, each court is different in how it handles child support cases. If the abuser has a legal obligation to support the child, then the judge can enter an order for child support in the order of protection. The judge will make a decision based upon the Tennessee Child Support Guidelines. This child support order will only be in effect as long as the order of protection is in effect.

**5. What happens if I file a petition for divorce while the order of protection is in effect?**

If you file for divorce while your order of protection is in effect, then the order of protection will remain in effect until the judge handling your divorce changes it or ends it with another court order. As a best practice, you or your divorce attorney should have this placed in writing so that law enforcement will know that your order of protection is still in effect while the divorce is pending.

**6. If an order of protection is entered and I then file for divorce, which court will deal with issues of child custody and child support?**

The divorce judge will conduct any new hearings about an order of protection, including child custody or support. Otherwise, the order of protection in effect is still a court order until or unless the divorce court or the order of protection court changes it.

**7. Can I ask for support for myself while the order of protection is in place?**

The judge has the authority to award financial support to you and such persons as the abuser has a duty to support.

**8. Can I ask the Court to divide up our property in the Order of Protection?**

Often the Court will allow you or the abuser to remove personal items (e.g., clothing, personal toiletries, items specifically required for work, etc.) from a shared residence, but any further division of property must be taken care of in either the divorce court hearing or a civil court case. The law specifically forbids the judge to make any orders that affect the title to a home.