



ORDER OF PROTECTION JUDICIAL BENCHCARD



I. EX PARTE ORDER OF PROTECTION ORDER WITHOUT RESPONDENT PRESENT

Determine petitioner eligibility (T.C.A. § 36-3-601(5)/T.C.A. § 36-3-602)

Is the petitioner a domestic abuse victim? (relationship required)

Adults or minors who: (1) are current or former spouses; (2) live together or who have lived together; (3) are dating or have dated or who have or have had a sexual relationship; (4) are related by blood or adoption; (5) are related or were formerly related by marriage; (6) adult or minor children of a person in a relationship described above.

Is the petitioner a sexual assault victim? (no relationship requirement for sexual assault victim) The petitioner has been subjected to, threatened with, or placed in fear of any form of: Aggravated rape; Rape; Statutory Rape; Rape of a Child; Aggravated Sexual Battery; Sexual Battery; Sexual Battery by an Authority Figure.

Is the petitioner a stalking victim? (no relationship requirement for stalking victim) The petitioner has been subjected to, threatened with, or placed in fear of the offense of stalking, defined in T.C.A. § 39-17-315 as a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

Course of Conduct means a pattern of conduct composed of a series of two (2) or more separate, non-continuous acts evidencing a continuity of purpose, including, but not limited to, acts in which the defendant directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to a person, or interferes with a person's property.

Harassment means "conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact (for example, following, appearing at workplace, sending or posting electronic communications) that would cause a reasonable person to suffer emotional distress (significant mental suffering), and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

Is the petitioner a victim of sexual exploitation of a minor?

T.C.A. §39-17-1003 Sexual exploitation of a minor. It is unlawful for any person to knowingly possess material that includes a minor engaged in sexual activity; or simulated sexual activity that is patently offensive. T.C.A. §39-17-1004 Aggravated sexual exploitation of a minor. T.C.A. §39-17-1005 Especially aggravated sexual exploitation of a minor.

Is the petitioner a victim of a human trafficking offense?

T.C.A. §39-13-314 defines a human trafficking offense as the commission of any act that constitutes the criminal offense of: Involuntary labor servitude, under § 39-13-307; Trafficking persons for forced labor or services, under § 39-13-308; Trafficking for commercial sex act, under § 39-13-309; or Promoting the prostitution under § 39-13-515. T.C.A. § 39-13-316 defines aggravated human trafficking as the commission of any act listed above where the victim is under thirteen (13).

The Petitioner and/or the Respondent in an Order of Protection can be adults or minors.

Special considerations for petitions for minors:

A petition filed by an unemancipated minor must be signed by at least one parent or by the minor's guardian. A petition may also be signed by a caseworker for a nonprofit, such as a domestic violence shelter, but in that case, the petition may not be filed against the minor's parent or guardian. The Guardian ad litem, if the court has appointed one, or a representative of the TN Department of Children's Services, if DCS is a party, may sign a petition for a minor. (T.C.A. 36-3-602(b)).

Law enforcement may initiate a petition for an ex parte order. (T.C.A. § 36-3-619)

For good cause shown, the court may issue an ex parte order of protection pursuant to T.C.A. § 36-3-605 upon a sworn petition filed by a law enforcement officer responding to an incident of domestic abuse who asserts in the petition reasonable grounds to believe that a person is in immediate and present danger of abuse and that person has consented to the filing in writing. The law enforcement officer may seek the ex parte order on behalf of the person, regardless of the time of day or whether or not an arrest has been made.

Venue

Venue for a petition for an order of protection, and all other matters relating to orders of protection, shall be in the county where the respondent resides or the county in which the domestic abuse, stalking, or sexual assault occurred. If the respondent is not a resident of Tennessee, the petition may be filed in the county where the petitioner resides. Venue is waived unless the respondent appears in court and objects to the venue. Venue may be waived and is waived when a defendant "defends upon the merits without first interposing an objection to improper venue." *Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977), *Sw. Williamson Cnty. Comm. Ass'n v. Saltsman*, 66 S.W.3d 872, 882 (Tenn. Ct. App. 2001).

Note: There is no statute of limitations on the abuse for filing an order of protection, and there is no requirement to file a police report or other criminal charges to obtain order of protection relief.

Upon the filing of a petition, the courts may immediately, for good cause shown, issue an ex parte order of protection.

Determine whether there is good cause (T.C.A. § 36-3-605)

Is there an immediate and present danger of abuse to the petitioner? Consider the following:

- A history of violence;
- Respondent's pattern of conduct;
- Petitioner's injuries;
- Petitioner's fear of retaliation;
- Respondent's access to weapons;
- Respondent's history of stalking;
- Respondent's criminal record;
- Respondent's use of drugs or alcohol;
- Respondent's threats of suicide;
- Respondent's history of mental illness;
- Threats to attack the petitioner, the children, or other family members;
- Threats to animals (pets);
- Threats or attacks on family or household members.

Issuance of an ex parte order of protection (36-3-605)

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 a hearing. Ex Parte orders stay in effect until the time of the hearing on the matter so long as the hearing occurs within 15 days of service of the order on respondent. (T.C.A. § 36-3-605). If a hearing is not held within the 15 days, the ex parte order expires and the case assumes the posture of a case where no ex parte OP issued. *Kite v. Kite*, 22 S.W.3d 803, 805 (Tenn. 1997).

If the petitioner does not meet the standard of proof – for good cause shown – for the ex parte order, the judge is required to set a hearing on the order of protection and shall cause a copy of the petition and notice of the date set for the hearing to be served upon the respondent at least five (5) days prior to such hearing. If the ex parte order is dismissed, the judge must hear the pending petition.

Relief Available upon issuance of an Ex Parte Order: T.C.A. 36-3-606 (b)

- Directing the respondent to refrain from committing or threatening to commit domestic abuse, stalking or sexual assault against the petitioner or the petitioner's minor children;
- Prohibiting the respondent from coming about the petitioner for any purpose, from telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly;
- Prohibiting the respondent from stalking the petitioner. (See above definition.)
- Directing the care, custody, or control of any animal owned, possessed, leased, kept, or held by either party or a minor residing in the household. In no instance shall the animal be placed in the care, custody, or control of the respondent, but shall instead be placed in the care, custody or control of the petitioner or in an appropriate animal foster situation;
- Directing the respondent to immediately and temporarily vacate a residence shared with the petitioner, pending a hearing on the matter, notwithstanding any provision of this part to the contrary;

- Directing the respondent to pay the petitioner all costs, expenses and fees pertaining to the petitioner's breach of a lease or rental agreement for residential property if the petitioner is a party to the lease or rental agreement and if the court finds that continuing to reside in the rented or leased premises may jeopardize the life, health and safety of the petitioner or the petitioner's children. Nothing in this subdivision (a)(11) shall be construed as altering the terms of, liability for, or parties to such lease or rental agreement; or

- Ordering a wireless service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers to a petitioner pursuant to § 36-3-621.

Court Costs (T.C.A. § 36-3-617)

Notwithstanding any other provision of law to the contrary, no (domestic abuse victim, stalking victim, sexual assault victim, or victim of certain felony offenses shall be required to bear the costs, including any court costs, filing fees, litigation taxes or any other costs associated with the filing, issuance, registration, service, dismissal or nonsuit, appeal or enforcement of an ex parte order of protection, order of protection, or a petition for either such order, whether issued inside or outside of the state. There is no initial fee for a petition to the court for any action on an order of protection.

If the court, after the hearing on the petition issues or extends an order of protection, all court costs, filing fees, litigation taxes and attorney fees shall be assessed against the respondent.

If the court does not issue or extend an order of protection, the court may assess all court costs, filing fees, litigation taxes and attorney fees against the petitioner if the court finds by clear and convincing evidence: (a) the petitioner is not a domestic abuse victim, stalking victim, sexual assault victim, or a victim of specific felony offenses and that such determination is not based on the fact that the petitioner requested that the petition be dismissed, failed to attend the hearing or incorrectly filled out the petition; AND (b) the petitioner knew that the allegation of domestic abuse, stalking, sexual assault, or specific felony offense was false at the time the petition was filed.

Enforcement of the Ex Parte Order: An ex parte order of protection can be enforced by arrest once the respondent has been served or has actual knowledge of the order. (T.C.A. §36-3-611) Note: Violations of ex parte orders of protection do not require physical contact.

Enforcement Remedies of the Ex Parte Order:

Civil Contempt (T.C.A. § 36-3-610/ § 36-3-612)
Criminal Contempt (T.C.A. § 36-3-610/ § 36-3-612)
Warrantless Arrest (T.C.A. § 36-3-611(a))

Important!

The office of the clerk of court shall provide forms that may be necessary to seek a protection order (T.C.A. § 36-3-604). Courts shall use the Administrative Office of the Courts forms. (T.C.A. § 36-3-604)
<http://www.tsc.state.tn.us>.