

# Order of Protection Judicial Bench Card July 2025

TNCOALITION.ORG | 615.386.9406

## II. ORDER OF PROTECTION

(See **I. Ex Parte Orders of Protection Bench Card** for criteria to determine petitioner eligibility under T.C.A. § 36-3-601 / T.C.A. § 36-3-602)

### **Service T.C.A. § 36-3-605(c)**

A copy of the petition and notice of the date set for the hearing on such petition, as well a copy of any ex parte order of protection shall be served upon the respondent at least five (5) days prior to such hearing.

An ex parte order, the original summons, and certified summons issued shall be personally served upon Respondent. However, if the respondent is not a resident of Tennessee, service of process shall be made by lodging, by the plaintiff, the ex parte order, the original summons, and certified summons with the secretary of state, who shall send the certified copy by registered or certified return receipt mail pursuant to §§ 20-2-215 and 20-2-216.

### **Service T.C.A § 36-3-609**

(a) If the respondent has been served with a copy of the petition, notice of hearing, and any ex parte order issued pursuant to § 36-3-605(c), any subsequent order of protection shall be effective when the order is entered.

(b) (1) As used in subsection (a), service upon a party or counsel shall be made by delivering to such party or counsel a copy of the order of protection, or by the clerk mailing it to the party's last known address. In the event the party's last known address is unknown and cannot be ascertained upon diligent inquiry, the certificate of service shall so state. Service by mail is complete upon mailing. In order to complete service of process in a timely manner on a party who lives outside the county where the order was issued, the clerk may transmit the order to the sheriff in the appropriate county electronic transmission.

**(2) Notwithstanding § 16-15-902, an ex parte order of protection may be served within one (1) year of issuance.**

## **Findings**

If the court finds that the Petitioner has proven the allegation of domestic abuse, stalking, sexual exploitation of a minor, sexual assault, a human trafficking offense, observation without consent, or unlawful photography by a preponderance of the evidence, the court may, at that time, issue and order of protection for a definite period of time, not to exceed one (1) year. See T.C.A. § 36-3-605(b).

Courts should make findings of fact regarding the order of protection. Findings should reflect the grounds for the order of protection; whether domestic abuse, stalking, sexual exploitation of a minor, sexual assault, a human trafficking offense, observation without consent, or unlawful photography.

### **Under T.C.A. § 36-3-606 the Order of Protection may:**

- Direct the respondent to refrain from committing domestic abuse, stalking, sexual assault, a human trafficking offense, observation without consent, or unlawful photography, or threatening to do the same against the petitioner or the petitioner's minor children;
- Prohibit the respondent from coming about the petitioner for any purpose, from telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly;
- Prohibit the respondent from stalking the petitioner, as defined in § 39-17-315;
- Grant to the petitioner possession of the residence or household to the exclusion of the respondent by evicting the respondent, by restoring possession to the petitioner, or by both; (Ordering this relief does not change ownership of the property.)
- Direct the respondent to provide suitable alternate housing for the petitioner when the respondent is the sole owner or lessee of the residence or household;
- Award temporary custody of, or establishing temporary visitation rights with regard to, any minor children born to or adopted by the parties

(Courts should consider the history of domestic violence and the violent behavior of the respondent in setting visitation and craft custody orders that will protect the petitioner and the minor children.)

- Award financial support to the petitioner and such persons as the respondent has a duty to support. Except in cases of paternity, the court shall not have the authority to order financial support unless the petitioner and respondent are legally married; (Child support should be set based upon the Tennessee Child Support Guidelines. The Guidelines allow for deviations.)

- Direct the respondent to attend available counseling programs that address violence and control issues or substance abuse problems. A violation of a protection order or part of such order that directs counseling may be punished as criminal or civil contempt;

- Direct 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 be placed in the care, custody and control of the petitioner or in an animal foster situation;

- Direct the respondent to immediately and temporarily vacate a residence shared with the petitioner, pending a hearing on the matter;

- Direct 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 or if the court finds that continuing to reside in the rented or leased premises may jeopardize the life health or safety of the petitioner or the petitioner's children. This does not alter the terms, liability, or parties to the lease agreement;

- Order 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.

**The Court is not limited to the relief specifically enumerated in the statute. To be effective, Orders of Protection must include all necessary protection against future abuse, given the needs of the victim.**

Other remedies may include: Payment of utilities; Cost of replacement of locks; Use of an automobile; Return of immigration and other important papers; Restitution for property damage.

**An order of protection issued pursuant to this part that fully complies with 18 U.S.C. § 922(g)(8) shall contain the disclosures set out in § 36-3-625(a). See T.C.A. § 39-3-606(f).**

**T.C.A. § 36-3-625 requires that a judge, upon issuing an order that complies with provisions of 18 U.S.C.S. § 922 (g) (8), order the respondent to terminate physical possession of firearms by any lawful means within 48 hours of issuance of the order.**

**Note: Respondent must complete an Affidavit of Firearm Disposition form and return it to the court.**

Note that, depending upon the population of the county, "court" can mean a court of record with jurisdiction over domestic relation matters, the general sessions court, or a judicial commissioner. See T.C.A. §36-3-601.

### **Important! Agreed Orders of Protection**

The Respondent and the Petitioner may enter into an agreed order of protection, or a court-approved consent agreement. This is no different than an order of protection that was not entered into by agreement. The same protections and enforcement remedies are still available, including prohibitions on weapons as set forth in T.C.A. § 39-17-1351(c)(8) and T.C.A. § 39-17-1316(a)(1).

### **Weapons**

A person under an order of protection cannot ship, transport, possess, or receive any firearm. 18 U.S.C.S. § 922 (g)(8), T.C.A. § 36-3-625.

If the firearm is registered under the National Firearms Act, compiled in 26 U.S.C.S. §§ 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.

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.

**Pursuant to T.C.A. § 36-3-625(a), upon issuance of an order of protection that fully complies with 18 U.S.C.S. § 922(g)(8), the order shall include on its face the following disclosures:**

**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;**

**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**

**Notice of the penalty for any violation of T.C.A. § 36-3-625(a) or T.C.A. § 39-17-1307(f).**

A person under an order of protection cannot have a permit to carry a handgun. T.C.A. § 39-17-1351(c)(8).

A person cannot sell a firearm to anyone who is prohibited by a qualifying order of protection. T.C.A. § 39-17-1316(a)(1) and 18 U.S.C.S. § 922(d)(8).

A person who possesses a firearm and is under a qualifying order of protection is subject to a class A misdemeanor. T.C.A. § 36-3-625, T.C.A. § 39-17-1307, T.C.A. § 39-13-113.

#### **ENFORCEMENT REMEDIES AND VIOLATIONS (T.C.A. §39-13-113; T.C.A. §36-3-610)**

Violation of an order of protection or consent agreement may be punishable by civil or criminal contempt. T.C.A. § 36-3-610.

#### **Civil Contempt:(T.C.A. §29-9-104)/T.C.A. 36-3-610/T.C.A. § 36-3-612)**

"This project was supported by Grant No. 24YCTNSDVC awarded by the Office of Family Violence Prevention Services, U.S. Department of Health and Human Services. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Health and Human Services."

- Imprisonment until the act is performed
- May impose a civil penalty of \$50
- Bond

#### **Criminal Contempt: (T.C.A. §29-9-103/T.C.A. § 36-3-610/T.C.A. § 36-3-612)**

- Imprisonment for up to 10 days
- Fine up to \$50

Civil and Criminal Contempt are available for both the ex parte order and the order of protection. (T.C.A. § 36-3-610/ T.C.A. § 36-3-612)

Additionally, under T.C.A. § 39-13-113, it is a Class A misdemeanor to knowingly violate an order of protection or restraining order if:

- The person received notice of the request for an order of protection or restraining order;
- The person had an opportunity to appear and be heard in connection with the order of protection or restraining order; and
- The court made specific findings of fact in the order of protection or restraining order that the person had committed domestic abuse, sexual assault, or stalking.

Violation of an Order of protection or restraining order is a class A Misdemeanor with a fine not less than \$100 nor more than \$2,500. T.C.A. §39-13-113(g).

Any sentence of incarceration shall be served consecutively to sentence for any other offense that is based in whole or in part on the same factual allegations. However, sentence based out of same facts can be served concurrently.

If an order of protection is in place before the assault, said assault becomes aggravated assault and a Class C felony. T.C.A. §39-13-102(c), T.C.A. § 39-13-102(e)(1)(A)(iv).

Stalking becomes Aggravated Stalking and is a Class E felony if there is an OP in effect at the time of the stalking. T.C.A. §39-17-315(c)(1)(E).

#### **EXTENSIONS OF THE ORDER OF PROTECTION (T.C.A. § 36-3-605)**

Orders of Protection are ordered for a definite period of time not to exceed one (1) year. However, orders can be extended upon motion of the petitioner, or sua sponte. When extending an

order of protection, the court should consider the following:

- (1) Has the order of protection been effective in stopping the violence and keeping the respondent away?
- (2) Does the petitioner fear that the respondent will continue the abusive behavior that resulted in the order of protection?

If the respondent is properly served and afforded the opportunity for a hearing, and is found to be in violation of the order, the court may extend the order of protection up to five (5) years for the first violation or up to ten (10) years on the second or subsequent violation. T.C.A. § 36-3-605(d). A party seeking a modification or extension only needs to prove the allegation of domestic abuse, stalking or sexual assault by a preponderance of the evidence. [Gibson v. Bikas, 556 S.W.3d 796, 806 \(Tenn. App. 2018\)](#); [Wadhwani v. White, 2007 Tenn. App. LEXIS 7, 2007 WL 27329 \(Tenn.App. 2007\)](#); [Cardwell v. Hutchinson, 2010 Tenn.App. LEXIS 733, 2010 WL 4810671 \(Tenn.App. 2010\)](#).

**Note:** If a divorce complaint is filed, the order of protection shall remain in effect until the court in which the divorce action is assigned modifies the order, dissolves the order, or makes the order part of the divorce decree. T.C.A. §36-3-603.

#### **FULL FAITH AND CREDIT (T.C.A. § 36-3-606(e), 36-3-622)**

An order of protection issued pursuant to this part shall be valid and enforceable in any county of the state. T.C.A. § 36-3-606(e).

Any valid order of protection from another state shall be afforded full faith and credit. T.C.A. § 36-3-622.

For foreign orders to be valid in this state the respondent must have had notice and an opportunity to be heard before the order was issued. T.C.A. § 36-3-622(b)(2).

Regardless of whether a foreign order of protection has been filed in this state pursuant to T.C.A. § 36-3-622, a law enforcement officer may rely upon a copy of any such protection order and may also rely upon the statement of any person protected by the order that the order remains in effect. T.C.A. § 36-3-622(g).

Mutual orders of protection shall not be enforceable against a petitioner unless the respondent filed a cross or counter petition, and the court made specific findings against the petitioner. T.C.A. § 36-3-62(d).