

# Protect Yourself from Domestic Violence

There are two kinds of protective orders. The first is a **criminal no contact order**, which is part of the criminal case for domestic abuse. When a person calls the police after he or she has been hurt, the alleged abuser may be charged with domestic abuse, and a no contact order, also known as a protective order, may be issued. The no contact order usually lasts until the trial on the domestic abuse charge (or until a plea bargain is reached). The State of Iowa, as represented by the county attorney, negotiates with the alleged abuser or the attorney representing the abuser. Sometimes the no contact order is dropped after a plea bargain is struck.

The other kind of protective order is a **civil protective order**. Any victim of domestic abuse can obtain a civil protective order by going to the clerk of court and asking for the form for protective orders. You fill out the form, and give it back to the clerk. Then you go see a judge. The judge will see you ahead of regular court business, because of the emergency nature of protective orders. The temporary order granted by the judge will be in effect until a hearing on the case can take place-usually about 10 to 15 days after you first get the temporary order.

This page is a general summary of domestic abuse law and procedures. It is not meant to explain completely the subjects in this page. IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE.

If you need a lawyer but cannot afford one, contact Iowa Legal Aid at 1-800-532-1275 (voice and TTY), or 1-800-272-0008 (en Español).

If you need a safe place to stay, call the Iowa Domestic Abuse Hotline, at **1-800-942-0333**.

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### I. IS A PRO SE DOMESTIC ABUSE CASE RIGHT FOR ME?

Any lawsuit, including an action involving domestic abuse, requires a great deal of energy and effort on your part and on the part of personnel at the courthouse. You need to think carefully and decide if it is the best route for you. You need to know what will be involved if you do.

For example, once you get a protective order from the judge, you will be the one who has to make sure that the abuser follows the judge's order. When

the abuser does not follow the judge's order, it is called a violation. You will have to report violations to the police or go back to court to tell the judge about violations. It is possible that the police may notice the abuser is with you after you have a protective order. Some women have had to go to jail after getting an order to protect them because the police saw them with the abuser. A protective order is supposed to protect you; but if you decide you need to have contact with the abuser, the order could hurt you if you do not talk to the judge first.

**A. What are the legal requirements for a domestic abuse protective order?**

Domestic abuse takes many forms. However, not all domestic abuse fits under the legal definitions included in Iowa's domestic abuse law, Chapter 236, Section 236.2. You must know what must be proven to get a protective order or other help under Chapter 236.

The legal requirements you must prove are these:

1. **Relationship:** You must show that you and the abuser meet ONE of the following:
  - Presently married, even if you are not living together.
  - Divorced or separated, whether or not living together.
  - Living together (co-habiting) in an intimate relationship with the abuser at the time of the abuse.
  - Living together and related by blood (such as parents) or by affinity (such as adoption or marriage).
  - You and the abuser are parents of the same child who is under 18 years of age.
  - You and the abuser lived together at some time during the past year and were in an intimate relationship.
  - You and the abuser lived together at some time during the past year and were related by blood or affinity.
  - You and the abuser are dating.
  - You and the abuser were dating and have had contact within one year of the assault.
2. **Abuse and present threat of harm:** You must show that an assault, as defined in Iowa Code section 708.1, has occurred. Assault means ONE of the following must have happened:
  - Someone physically abused you; OR
  - Someone pointed a gun at you or displayed a dangerous weapon (such as a knife) toward you in a threatening manner; OR
  - Someone threatened you with physical contact which would cause pain or injury; AND
    - The threat put you in fear, AND
    - The threat could be carried out immediately.

There is a form petition available free of charge at the Clerk's office which you can use to file for a protective order. It gives very clear instructions. Parts of the form ask you to describe the relationship and to give details about what abuse has

happened to you. If you pay *careful* attention to the instructions on the form petition, you will provide enough information so that the judge has the facts needed. A sample form petition is included at the back of this page.

3. **Residence:** You or the abuser must live in Iowa. You must file your form petition in the courthouse located in the county where either you or the abuser is living.

**B. What if I am younger than 18 years old?**

If you meet the three legal requirements of relationship, abuse and present threat of harm, and residence, you may get a protective order under Iowa law. If you are emancipated, you can file the forms yourself. Iowa law does not specifically define what it is to be an emancipated minor. You may be emancipated if you are under 18 years of age and are legally married. You should talk to a lawyer for help if you want to file on your own as an emancipated minor. If you are not yet 18 years old and are not emancipated, you cannot file for a protective order on your own. You must have your parent or legal guardian file for you. The Clerk of Court has special forms for parents and guardians of minors seeking relief from domestic abuse. Since you are not yet a legal adult in the eyes of the law, the only way your situation is different is that you cannot file without your parent or guardian. Except for filing, all the other parts of the law apply to you and the abuser. It is vital that you read the rest of this book for more information on protective orders and the ways they may help you or hurt you.

**C. What can the court do to protect me under Chapter 236?**

Under this law, the court can do many things to protect you. The court can order, for example:

- That the abuser stops abusing you.
- That the abuser leaves the house or apartment.
- That the abuser provides you with some other place to stay.
- That the abuser stays away from where you live, where you go to school and where you work.
- Who will have custody of the children and special precautions for their safety.
- Visitation of the children with special arrangements for when the abuser can visit the children and how he can visit, without having any contact with you.
- Financial support for your children and for you.
- Counseling for you, for the abuser, and for the children. You or the abuser will probably have to pay for any court-ordered counseling.

The court can issue three kinds of protection orders. The judge assumes that the reason you ask for either a temporary order or an emergency order is because you want a permanent order.

**Temporary order:** Issued the same day you file the petition asking for protection. Good until the time of the court hearing, normally within fifteen days of the day the temporary order is issued.

**Permanent order:** Issued at the end of the court hearing held within fifteen days of getting the temporary order. At the hearing, you prove that abuse took place, and the abuser has a chance to prove that abuse didn't take place. Good for up to one year and may be extended unlimited times.

**Emergency order:** Issued at night or over a weekend when the courthouse is not open. Good for 72 hours. If you need an order at night or over a weekend, call the domestic abuse program nearest you (see page 34) or the Iowa Domestic Abuse Hotline, at **1(800) 942-0333**.

**D. If I decide not to get a protective order, are there other ways I can protect myself?**

Yes. If you don't want or don't legally qualify for a domestic abuse protective order, there are other things you can do.

0. **Prepare a safety plan.** Think ahead. What can you do if you need to leave in a hurry? Where can you go? What will you take with you? What money will you have available? You are in the best position to know what danger you and your children are in and what steps might keep you safe. The domestic violence centers around the state (the list is on page 34) can help you prepare this plan. You **MUST** prepare this plan no matter what other options you use. Some abusers obey court protection orders, and others do not. *Some women are actually in more danger when they take steps to leave or make the abuse public.*
1. **Divorce.** Begin divorce proceedings (Chapter 598 of the Iowa Code) immediately and seek a protective injunction in the divorce case. You will need a lawyer to do this.
2. **Writ of injunction.** Even if you don't qualify for a protective order under Chapter 236, you may get some help through a writ of injunction. You can get a writ of injunction as part of a divorce (see number 1, above). If you are not married, a lawyer can ask the court for a writ of injunction to protect you. There are no "pro se" forms for this writ of injunction. You will need a lawyer.
3. **Move.** Move away and/or go into a shelter or other safe and hidden place. The domestic violence program nearest you can help you with this.
4. **Criminal charges.** Request that the police or county attorney file criminal charges against the abuser and ask the judge to order "no contact" while the criminal case is pending.

**E. What are the differences in the legal matters?**

Each legal option you have--criminal charges, divorce, or getting an injunction or a protective order--offers something different. Each has its advantages and disadvantages:

0. **Criminal charges.** The decision whether to go forward with criminal charges is up to the prosecutor (county attorney), not the victim. However, the prosecutor and victim share one important goal: stopping the abuser's criminal violence. At the end of the case, if the abuser pleads guilty or is found guilty at trial, he may serve a jail term and the judge will order him into a "batterer's education program." (See "Definition of Terms," page 23.)

The abuser can be ordered to stay away from you as a condition of his release from jail, but only while the case is pending. After the case is over, the abuser can be ordered to stay away from you if the judge decides you are still in danger.

The police may enforce this order more easily than other types of orders.

1. **Divorce:**

If you get an injunction in a divorce case, you can ask the judge to continue the injunction even after the divorce is finalized. You can get an injunction (see "Definition of Terms," page 23) once you file for the divorce as part of the judge's order, which would include arrangements for your protection.

Police are supposed to enforce violations of injunctions against domestic violence in divorce orders. However, they may have a harder time enforcing them because the orders are not always as clear on this point as they should be.

You will likely need to have a lawyer to get a divorce.

2. **Protective orders under Chapter 236:**

Faster, cheaper, and you don't usually need a lawyer to get it:

You can get child custody, visitation, and financial support ordered, as well as an order giving you exclusive use of the home.

You can get a temporary order right away, if you qualify.

You must go back to court within fifteen days after the temporary order is issued, for a hearing on whether the order will continue in effect (up to a full year). The abuser has a right to be present, to have a lawyer represent him, and to contest the allegations of abuse. The Court may deny the order.

The maximum length of time for the order is one year. This may be extended unlimited times if you petition the court for an extension before the original order expires.

If you want to see the abuser, you must go back to the judge so that the judge can either stop the protective order or change it. If you start to see the abuser again without the judge's knowing, you could be sent to jail or have to pay a fine.

3. **Writs of injunction.** There is no mandatory arrest by police for violations of writs of injunction. However, you can bring a contempt proceeding and the judge can decide to have the abuser jailed, or fined, or both, if the judge finds he violated the writ. There are no pro se forms, and therefore you will need a lawyer. It does not cover custody, visitation, or child support.

F. **Even if I qualify for a protective order, should I act as my own attorney--that is, "go pro se"?**

In passing the pro se law, the Iowa Legislature recognized that domestic violence victims should be able to get a court order of protection without a lawyer. Many persons throughout the state have successfully used the pro se forms and process since the law went into effect in 1991.

However, there are some risks involved:

0. **The abuser gets an attorney.** Even if you cannot afford a lawyer, the abuser may hire one. In fact, later on in the case, if the abuser is accused of violating a protective order, the court may appoint a lawyer paid by the government to represent him because of the likelihood that the abuser will serve jail time for contempt of court. When the abuser is represented by an attorney at a contempt hearing, it is very important that you try to get a lawyer. (See "Enforcing your protective order" on page 21.) If you are concerned about representing yourself, you should consider getting an attorney. When you act as your own attorney, you may be at a disadvantage because you won't know the court rules and processes as well as the abuser's lawyer does. This page gives you some of the information you need but cannot give you all of it. The judge or your domestic abuse advocate cannot give you legal advice.
1. **Children are involved.** The court's authority under Chapter 236 goes beyond ordering the abuser to restrain from abuse and harassment. At your request, or at the abuser's, the court can make decisions about children that are both of yours--who should have custody, what child visitation must be allowed, who should move out of the household, and who should pay child or spousal support, and how much. Even if you only want a court order telling the abuser to stop the abuse, the abuser may ask the court to decide about the children. Therefore, you should be prepared to present evidence on child custody and

the other issues at the court hearing for the permanent order. If you think there will be a custody fight, you should get an attorney for the permanent order hearing. (See "What do I do to get ready for the hearing?" on page 13.)

2. **What about court costs?** Per Iowa Code section 236.3: "The filing fee and court costs for an order for protection and in a contempt action under this chapter shall be waived for the plaintiff. The clerk of court, the sheriff of any county in this state, and other law enforcement and corrections officers shall perform their duties relating to service of process without charge to the plaintiff. When an order for protection is entered by the court, the court may direct the defendant to pay to the clerk of court the fees for the filing of the petition and reasonable costs of service of process if the court determines the defendant has the ability to pay the plaintiff's fees and costs." In short, as the applicant, you should not be charged filing or service fees. However, the court could order the abuser to pay for these costs

If you decide that you still want a protective order but should not represent yourself, try to find an attorney to help you:

- Call the Legal Aid office nearest you (see page 36 for a list).
- Call the Domestic Violence Program nearest you (see page 34 for a list).
- Call your county attorney's office (check the county government listings in your phone book) to see whether anyone in that office can help you. County attorneys have discretion to assist pro se petitioners who don't have funds to hire an attorney. See Iowa Code section 236.3B.

#### G. How can I choose what to do?

Only lawyers can give you advice on your legal options, such as recommending divorce or a protective order, or deciding what to put on your court papers. Victim advocates at domestic violence programs and Clerks of Court may give you the papers and some guidance throughout the court processes. The law prohibits them from providing the types of services that lawyers traditionally do, such as giving you advice or making recommendations. Domestic violence centers can help you keep yourself and your children safe. Call the hotline **(1-800-942-0333)** or the shelter in your area, which is listed on page 34.

## II. WHAT TO DO TO GET A PROTECTIVE ORDER?

Each courthouse has its own way of following the pro se law. A domestic abuse advocate can guide you, or the Clerk of Court can give you information. This page gives you general information only.

#### H. Where do I go?

Go to the *county* courthouse in the county where you or the abuser lives. When you get to the courthouse, find the office of the Clerk of Court. Tell them that you are there to file a pro se petition for relief from domestic abuse. You will be given a form to fill out. Your advocate or someone from the Clerk's office can help you.

**I. How do I fill out the forms?**

The form petition is an official legal document, and it gives you step-by-step guidance. You **MUST** read it very carefully and ask questions if you do not understand what it says. This is a very serious matter involving both your protection and safety, as well as the legal rights of you, your children, and the abuser. The information you give must be correct and truthful. If you are unsure of some fact, do your best, but don't write down what you don't know for certain.

You can fill out the forms at the courthouse or at some other place. Complete the form, but **DO NOT SIGN IT**. Your signature has to be notarized. This means that you have to sign it in front of a person who is a notary. The clerk's office will have a notary who can witness your signature and notarize it. You should bring a picture I.D., if you have one, to show the notary.

**J. What if I don't have any money?**

**Per Iowa Code §236.3**, filing and service fees shall be waived for the plaintiff. However, the court could order that these costs be paid by the abuser.

**K. If I am in danger of continued abuse, what do I do?**

When the forms are completed and filed, ask the Clerk's office how you can get a judge to review your case as soon as possible. In some counties, judges are available only at certain times of the day or certain days of the week. If there is not a judge available in the county where you are, the Clerk of Court can fax your request to the nearest available judge for immediate action. Ask the Clerk for more information.

The petition will be given to the judge either by the Clerk's office, or by you. Some judges will want to visit with you and ask you questions before they enter the order. Other judges will enter the order on the basis of the forms alone.

**L. How do I have the court papers delivered to the abuser?**

The judge's order is not in effect until the abuser has received it. The Clerk's office makes official copies of all papers completed by you or the judge that day, including your petition and the judge's order. The

sheriff must serve these papers to the abuser, often face to face. Therefore, either you or the Clerk must give them to the sheriff. Find out from the Clerk whether the Clerk's office will deliver the papers to the sheriff for service or whether you must. You will need to give the sheriff's office all the information you have about where they can find the abuser--where he works, where he might be staying, the names and addresses of his friends, or other places he might spend time.

After any order, temporary or permanent, is issued by the court, the Clerk's office must give it to the 911 dispatch center in that county. Police throughout Iowa and other states can find out about your order by checking a computerized registry of orders. (See "Enforcing your protective order" on page 21.)

#### M. **Can I have a copy of the protective order?**

Yes. The Clerk of Court should give you an official copy of the order before you leave the courthouse. Keep it with you always and show it to the police if necessary. You can also make copies and give them to people at work, at the children's daycare, or anywhere else the judge ordered the abuser to stay away from.

### **III. WHAT IF I CHANGE MY MIND**

After the court issues a temporary order, you may decide you don't want to go through with the hearing. Think carefully before you stop the process. It is usually not a good idea to stop the process because the abuser has threatened you. Talk to family, friends, or a trained domestic abuse advocate. You run a risk when you stop orders. The judge may think you never really needed help.

If you still do not want to go forward after you have carefully considered your options, you **MUST** go to the courthouse and tell the judge that fact. You and the abuser cannot, by yourselves, "undo," "stop," or "lift" the court's order. If the judge has not changed the order and you pretend the order doesn't exist, the police could arrest you and the abuser and the judge could hold you both responsible by putting you in jail or making you pay a fine. The judge must dismiss the case or change the order's terms. The clerk's office has forms you can use to ask the court to lift or change the terms of the order.

There are many reasons you must go back to the courthouse, at the time of the hearing or beforehand, to ask the court to lift or change the order, otherwise:

- The police can still enforce the order by arresting the abuser even if you and the abuser say you don't want or need the order any more.
- If you do something to cause the abuser to violate the order's terms, such as inviting him over, the police or court can charge you with aiding and abetting the abuser to violate the court's order. You could go to jail or have to pay a fine.
- The court may dismiss your case if you don't show up for your hearing and will probably charge you for the costs of the case.

When you go to the courthouse, the judge may want to talk to you so that he or she can be sure you will be safe if the order is dropped. The judge may want to be sure that the abuser has not threatened or pressured you into dropping the case. The Clerk at the courthouse will have a form called a "Motion to Dismiss" for you to use.

You may want to leave the order in effect but change part of it. For example, you may want the abuser to telephone or write you, but still keep him away from the home. You may want him to move back in, but still keep him from abusing you. If you want the terms of the order to be changed, you should go to court to ask to modify the order. There is a form called a "Request to Cancel or Modify" at the Clerk's office.

#### **IV. WHAT DO I DO AT THE HEARING FOR A PERMANENT ORDER**

**Q. Why is there a hearing?**

The purpose of a hearing is for each side to tell the judge what has happened so the judge can decide what to do. The only thing the judge will know about your situation is what you prove--or what the abuser proves--at the hearing. It isn't enough that you told the judge what happened when you filled out your petition. At the hearing, you must prove that what you put in the petition is true. (See "What do I do to get ready for the hearing" on page 13.)

**R. Why must I attend?**

When you are involved with the court system, legal rights and important personal rights are at stake. Decisions are made that may affect every aspect of your life. You need to be there and be prepared.

**S. What if the abuser doesn't show up?**

The abuser may not show up because he has not received copies of the judge's order and your petition. You can call the Clerk's office before the hearing to find out if he did receive these copies. If he did not, and he doesn't show up, the judge must postpone the hearing to another date. If the abuser does not show up at the hearing but did receive the court papers, the Court may enter a judgment in your favor by "default." That means the Court takes what you said in your petition as true and enters an order on that basis. Some judges may require you to testify before they issue the order, even if the abuser does not come to court.

**T. What do I do to get ready for the hearing?**

0. **Read and understand "Tips on Courtroom Behavior," p. 28.**
1. **What is proof?**

- . **Your own testimony.** This is your description of what happened. As you get ready to go to court, you may want to make notes to help you remember what you want to tell the judge.
- a. **Testimony of other people.** The statements of other people who know something about what happened to you. They may have seen or heard it, or may have seen your injuries, or have other information that would help the judge make decisions. You can ask the person to come to court voluntarily, but it is usually better if the person gets a subpoena. A subpoena is an official order to come to court at the time and place of the hearing. The Clerk's office has subpoenas and can help you fill them out. You can give subpoenas to people you want to testify or you can take the subpoenas to the sheriff's office and follow the same procedure you used to serve the abuser. (See "How do I have the court papers delivered to the abuser?" on page 11.) The court may order that the abuser pay them later. The costs are \$80 for the filing fee, and although sheriff's costs are different in each county, they will average between \$40 and \$60. This means the abuser could have to pay \$120 to \$140 or more.
- b. **Medical records.** Medical records of the treatment for any injuries the abuser ever caused you. To get those records, go to the doctor or hospital and ask for them. You will be asked to sign a request and to have some proof that you are the person treated. The doctor and hospital probably will charge you money for these copies.
- c. **Police reports.** The law enforcement department that responded to any call from you or from anyone else about the abuse is supposed to make out a report for each time they came to your residence. If you know the dates, that will be helpful. The records also may be kept by the name of the abuser or by the address. If criminal charges were filed, the records are available from the county attorney's office, or from the Clerk of Court's office. The police, clerk, or county attorney may charge you money for these copies.
- d. **Photographs.** You do not need to have visible physical injuries to show that you were abused. If you do, you may want to have someone take clear pictures of them to show the court. Sometimes bruises don't show up until a day (or two or three days) later. Have someone take pictures of the injuries every day or two until the injuries are healed.
- e. **Other documents.** Any other papers that show that you were abused or that have a bearing on any other part of the case, such as custody, visitation, child support, alimony, or who should stay in the home.
- f. **Injury map.** If you have, or have had, various physical injuries, you may wish to give the court a diagram of

those injuries. Injury maps (with instructions) are found on pages 30 and 31. You don't have to have physical injuries to get a protective order, but if you do, the diagram, with the dates when the injuries happened, may be a way for both you and the judge to go over your testimony.

2. **What do I have to prove?** A checklist to use in preparing your case for hearing is at the back of the page on page 26.

**The type of relationship required under Chapter 236.** (See "What are the legal requirements for a domestic abuse protective order?" on page 4.) If you think the abuser may deny the relationship, you will need to be prepared to prove it. To prove the relationship, gather up any legal documents that concern the relationship:

- Your marriage certificate.
- The court order which granted you the divorce.

If you are relying on the fact that you and the abuser were living together at the time of the abuse, and you are not legally married, you should be prepared to tell the court about these kinds of things:

- Where each of you keep your clothing, your toiletries, your personal belongings.
- How much time you and the abuser spend at the joint residence.
- Do you and the abuser sleep at the joint residence? How often?
- Whose names are on the lease, contract, or mortgage for the joint residence? (This is important, but not the only thing the judge will consider.)
- Do both of you get mail at this joint residence?
- What address is on each driver's license?
- What other people know that you and the abuser are living together?

- a. **Abuse.** Abuse may take many forms. Among the types of conduct which constitute abuse under Chapter 236 are the following:

- hitting
- slapping
- pushing
- pulling hair
- dragging or throwing someone around
- kicking
- poking with an object or with hands
- throwing something AT a person
- pointing or firing a gun at someone
- forcing unwanted sex or sexual activity
- showing a knife or other weapon while making threats to the person's safety

- stabbing/shooting/beating with an object
  - threatening to cause physical injury and being able to do it
- b. **Who should have custody of the children, and how can visitation occur?** If you and your abuser have children in common, the judge has the power to decide who gets custody. The judge can also decide how and when the parent who does not have custody can visit the children. If you think that your abuser will make a serious attempt to take your children away from you, you should make EVERY EFFORT to find an attorney to represent you. If your abuser has an attorney, and child custody will be something you and the abuser disagree about, you will be at a very grave disadvantage. Tell the domestic violence victim advocate, the Clerk of Court, or the judge that you need an attorney to help you with child custody. If you must prove on your own that you should have custody, here are the things the court will consider in determining custody:
- Whether you or your children's safety will be at risk by the custody or visitation arrangement (Iowa Code section 598.41(3)(i));
  - The characteristics of each child, including age, maturity, mental and physical health;
  - The emotional, social, moral, material, and educational needs of the child;
  - The characteristics of each parent, including age, character, stability, mental and physical health;
  - The capacity and interest of each parent to provide for the emotional, social, moral, material, and educational needs of the child;
  - The interpersonal relationship between the child and each parent;
  - The interpersonal relationship between the child and its siblings;
  - The effect on the child of continuing or disrupting an existing custodial status;
  - The nature of each proposed environment, including its stability and wholesomeness;
  - The preference of the child, if the child is old and mature enough;
  - The report and recommendation of the attorney for the child or other independent investigator;
  - Available alternatives; and
  - Any other relevant matter the evidence in a particular case may disclose.

Make specific suggestions to the court about how the abuser could see the children without being a threat to you. For example, could they be picked up and dropped off at a relative's house? If the children have also been abused, be sure the court is aware of that fact and prepare to present proof: medical records, or the

testimony of teachers or friends who have seen abuse or injuries. Tell or show the Court whatever else will help you to convince the court that the children should either not see the abuser at all, or not see the abuser without someone else being there at all times.

- c. **Who should get to stay in the home?** If you and the abuser have been living in the same home or apartment, the judge can make the abuser leave. You may not wish to stay where your abuser can find you so easily. If you do want to remain there, you will need to prove that it is your apartment alone, or, if it is both of yours, that it is fair for you to stay in the home:
- Who was there first?
  - Who owns the house, or has the lease on the property?
  - Are there children involved whose lives will be disrupted by a move?
  - If there is a business or income-producing part of the home, or if it is a farm, who runs it?
- d. **The court should not charge me court costs.** Per 236.3: "The filing fee and court costs for an order for protection and in a contempt action under this chapter shall be waived for the plaintiff. The clerk of court, the sheriff of any county in this state, and other law enforcement and corrections officers shall perform their duties relating to service of process without charge to the plaintiff. When an order for protection is entered by the court, the court may direct the defendant to pay to the clerk of court the fees for the filing of the petition and reasonable costs of service of process if the court determines the defendant has the ability to pay the plaintiff's fees and costs."
- e. **Financial support for you and your children.** Under Iowa law, the abuser can be ordered to pay you money to support you and the children. The court needs to know how much you are regularly paid from a job, or a pension, or from the government such as Worker's Compensation, Social Security, or Unemployment Compensation, or from rental property or any other regular source. The judge will need to have the same information concerning your abuser. You also need to figure out your regular expenses for housing, utilities, food, clothing, and other things. (The worksheet on pages 32 - 34 can help you prepare for this part of the hearing.) There is a series of charts for the court to use to decide how much child support to order. They are called the "Iowa Child Support Guidelines." The Guidelines are to be used to determine child support except in very unusual cases. The Guidelines can be accessed at the following website:  
<http://www.judicial.state.ia.us/families/childsup.asp>.

Here is a list of things that the court will consider in deciding whether to order financial support for you (not the children), and the amount:

- The length of time you and the abuser have been together;
- Both of your ages;
- The physical and mental health of each of you;
- How much property each of you has;
- Educational background;
- How much money each of you can fairly be expected to earn, based on such things as training, experience, and so on;
- Income tax consequences of ordering support;
- Any agreement of the parties; and
- Other things that are important in your particular case.

If you do not have the necessary information about your abuser, you can have the sheriff serve him with a special kind of subpoena called a subpoena duces tecum. You can get this subpoena at the Clerk's office. Using that kind of subpoena, you can ask him for his tax returns, W-2 forms, or anything else you think he may have that will show his income and expenses.

3. **Your own testimony.** What you tell the court will be the foundation of your case, so you must be well prepared. For each incident of abuse, give the court as many details as you can. Use words that are comfortable for you. Start with the most recent event and work backwards. Focus on the abuse and NOT on the events leading up to the abuse. Here are some questions to help you to organize your thoughts:

- What was the date and time of the abuse?
- What did the abuser do? Be as specific as you can. For example, don't just say, "He hit me." It is better to say something like "He hit me ten times in the face and the neck and he cut my lower lip with the ring he wears on his right hand."
- Approximately how many times were you hit, slapped, kicked, or otherwise harmed?
- About how long did the attack continue? (Keep in mind that time is VERY difficult to estimate. Don't estimate time unless you have markers like what was on TV, or that you looked at a clock.)
- What were your injuries from the assault? Again, be as specific as you can. Here is where the diagram (page 30 or 31) may be helpful.
- Were you given medical treatment for the assault? When? By whom?
- Were the police called? Who responded? What did they do?

- Did you leave the home?
- Are criminal charges pending?
- Did you lose your job, or time from work or school?
- Were any of your things damaged or taken by the abuser?
- Were the children hit or threatened in any way? How?
- Were the children aware of the assault? (Within sight or hearing.) Where were they? What did they do? (Such as crying, hiding, going to neighbors.)
- Did the children suffer any later effects? (Such as school problems, nightmares, bedwetting, anxiety.)

If you were not physically abused, but you were threatened, here are questions to help you prepare:

- What did the abuser do or say that made you afraid that he would harm you?
- Did he have any weapon?
- Has he harmed you in the past?
- What was his emotional state? Was he angry? Was he drunk or using other drugs?
- What caused you to think he would carry out his threats?

4. **Some things to do to make the hearing go smoothly:**

- Make a list of the people who know something about what happened, or the other issues. Get a subpoena served on them.
- Make a list of the documents, records, or other things that help you to prove your case. Gather them.
- Make notes of *your own* testimony, with a list of dates and injuries and medical care and other details.
- Make notes about what each of the witnesses can say about the abuse or other issues.
- Put your notes in the order that you plan to use them during the hearing.
- Take your notes and documents to court with you.
- When you are talking in court, look at the judge or at a friend or advocate.
- Think ahead of time what questions you might ask the abuser or his witnesses. You may take notes during their testimony to help you form questions.

U. **How is the hearing usually conducted?**

Every county and every judge will hold hearings in a little different way. If you have an advocate, she may know the procedure in your county, or before the particular judge. Otherwise, the Clerk of Court or judge can give you this information. For general ideas on how you should act in court, see "Tips on Courtroom Behavior" on page 28.

O. **Set-up of the courtroom.** Each courtroom is unique. All will have the following:

- A place for the judge to sit. This is called the judge's "bench." It is usually on a raised platform to signify the respect we give to the court.
- A place for the witness to sit while giving testimony. It is called the "witness stand," even though it is a chair.
- A place for the parties (and the lawyers) to sit. Usually this is a table with chairs on the side facing the judge's bench. This is where you will sit, except when you are giving testimony. Depending on the courtroom, the abuser may sit at the same table with you or at a different table a few feet away.
- Near the witness stand will be a place for the court reporter to sit and record the testimony.

If you or your advocate knows what courtroom will be used for your hearing, you may want to visit it before the date of the hearing. Your advocate also may know when other pro se hearings will be held, and you may want to see one.

1. **Order of proof.** The judge will ask you to start the hearing and present all of the witnesses and documents you have. Usually, you will want to give your testimony first and talk to the judge about what has happened, what you want and why. Go to the witness stand with your notes and documents. The judge will give you the oath. Then sit down and tell the judge about the abuse or the threat of abuse. When you have finished, the abuser or the abuser's lawyer will have the right to ask you questions. This is called "cross-examination." Be sure you answer truthfully and directly, and try very hard not to get angry or upset. After the abuser or his lawyer has asked you questions, you can again talk to the judge if you feel you need to offer some further explanation of some point brought out on cross-examination.

After you are done, go back to the table and call any other witnesses you have to the witness stand. First, you will ask the witness questions, then the abuser or his lawyer can ask questions, and then you may want to ask a few further questions to explain anything that came up in the cross-examination. Follow the same procedure for each of your witnesses. Give the court any documents or pictures while you are presenting your side. (See "Exhibits" on page 20.) Some judges may ask questions of you and the other witnesses.

After you have completed the testimony of all of your witnesses, the abuser presents his evidence. You have the right to cross-examine his witnesses and to challenge the accuracy of any of his documents. (See "Cross-examination" on page 21.)

After the abuser has finished with all of his evidence, the judge may ask you if you have anything else to say or any other witnesses or documents to present. If you do, follow the same procedure. The abuser also can present more evidence after you are done. Do not repeat the same evidence just to get in the last word.

These hearings may last from 30 to 60 minutes. The judge will appreciate it if you are well-organized and direct in your presentation, and if you are careful not to waste time or go over the same things several times.

2. **Exhibits.** Documents, records, affidavits, reports, diagrams (such as the diagram with marks of your injuries), or other physical things are called "Exhibits." If you have them, before you can make them a part of your proof, the judge or court reporter will give them a number or letter designation. For example, if you have a record from the hospital where your injuries were treated, the court will put a small sticker on it and write "Plaintiff's Exhibit 1" on the sticker.

If you have documents or photographs, you should ask the witness who knows about them to tell the court what they are and what they mean. For example, if you have photos of your injuries, you yourself would usually be the right person to tell the judge about them.

If the photos are not too clear, you may want to ask another witness who actually saw your injuries to look at the photos and tell the court what he or she saw on your body.

### 3. **Cross-examination:**

If you are being cross-examined, by the abuser or the abuser's attorney, remember these things:

- Be truthful;
- Do not exaggerate;
- Make sure you hear and understand the question before you answer it;
- Answer the question and stop talking;
- If the question can be answered with a yes or no, do so;
- Try not to get angry or upset with the questioner.

a. **If you are the person doing the cross-examination,** remember these things:

- This is the time to ask questions, not to respond to the witness with testimony of your own.
- Do *not argue* with the witness;
- If the witness seems to be lying, try to figure out why and ask questions that might let the court know why the witness may not be telling the truth;
- Remember that the way lawyers and courts look on television is not very much like real life.
- Do not ask the witness to just repeat what he/she said during the direct examination; and
- Do the best you can and then STOP.

4. **Objections to evidence.** Court proceedings are conducted under certain rules of evidence. The rules of evidence are not too strict in proceedings like this, but if there is a lawyer on the other side, your presentation of evidence may be interrupted by objections. If the judge "overrules" the objection, you may proceed with the question, or use the document. If the judge "sustains" the objection, you

should not answer the question or continue with that part of your statement.

## **V. WHAT DO I DO AFTER I GET AN ORDER FROM A JUDGE**

### **V. Enforcing your protective order**

When the Court signs a protective order under Chapter 236 (or an injunction) the Clerk of Court will give you a copy. You should keep this copy with you at all times, in case you need to show it to the police. You should also make copies for your children's school or daycare, your place of work, or other places you or members of your family regularly go.

The Clerk also must provide a copy of this protective order to the police who operate "911." All law enforcement centers in Iowa and other states can find out about your order by checking a computerized registry.

If the abuser disobeys the judge's protective order--such as by calling you or by coming over when he has been ordered not to--you should telephone the police or the county sheriff immediately. The police are supposed to investigate your call. They will decide whether they believe that the abuser violated the order. If the police decide that he has, **THEY MUST ARREST THE ABUSER RIGHT AWAY, AND TAKE HIM TO JAIL. THE ABUSER SHOULD STAY IN JAIL UNTIL HE SEES A JUDGE.**

If you do not call the police, or if you call them but, they do not arrest him, you can still take action to enforce the order. If you believe that the abuser disobeyed the order, and especially if you are afraid of him, you should go to the courthouse and tell the Clerk of Court that you want to "start contempt proceedings" against the abuser. The clerk can give you some forms to fill out to start this contempt action. You may have to see a judge to tell him or her what happened and show him or her your papers so that the judge can decide whether to go forward with the case.

Before the court will punish the abuser for disobeying the court order, another court hearing will have to be held. The abuser will be given notice of the time and date of this hearing and why it is being held by having the sheriff or judge serve him with another set of papers.

Whether you have an attorney, or you act as your own attorney, **YOU MUST ATTEND THIS HEARING.** If you do not, the contempt action will probably be thrown out. If you are acting as your own attorney, it is your job to prove that the abuser disobeyed the court's order. You can do this by proving that he called you, bothered you at work, assaulted you again, or did something else he was not supposed to do. The same suggestions that were made in the portion of this page on proof at the

first hearing apply here as well. Prepare ahead of time. Bring witnesses, such as the police who came to your house, or exhibits, such as the police report. Tell the court what happened to you. Prepare to ask questions of the abuser or his witnesses.

The abuser will probably have an attorney represent him at this hearing. If he can't afford one, the court can arrange to have his attorney's fees paid for with public money. (This is because he may go to jail if the court holds him in contempt of court for disobeying the order.) Because the abuser will have an attorney, **YOU SHOULD MAKE EVERY EFFORT TO FIND AN ATTORNEY TO REPRESENT YOU AT THIS HEARING.** Call the domestic violence program nearest you, the Legal Aid office which serves your area (see the list on page 36), or the Clerk of Court and ask them to help you find one. The County Attorney also has the authority to help you with contempt hearings (Iowa Code section 236.3B).

#### **W. Extending your order**

As of July 1, 1999, you can ask the court to extend your order for an additional year. If the court grants it, you can have your order extended for periods of one year without limitation. You do not have to have lived with the abuser since the order was issued in order to apply for an extension.

To extend your order, you need to fill out the "Request to Cancel or Change a Chapter 236 Protective Order" on page 29. You must submit this form to the court before your order expires. When filling out the request you should check the box marked "Change the court's order regarding other provisions in the Protective Order" and write in "extend order for another year."

The judge will set a hearing to consider your request. The abuser will be informed about the hearing and will be allowed to present evidence. You will need to prove that the abuser still poses a risk to you, people you live with, or members of your immediate family. To prepare for the hearing, review "What is proof?" on page 13, "Your own testimony" page 18, "Some things to make the hearing go smoothly" page 18, "How is a hearing usually conducted?" page 19, "Exhibits" page 20, "Cross-examination" page 21, and "Objections to Evidence" page 21.

#### **X. What if I travel outside Iowa or move to another state?**

You should keep your protective order with you at all times, especially when you are out of state. If the abuser bothers you in another state, the police may have to verify either the validity of the order or the terms and conditions of the order before taking action.

You also should record the names and telephone numbers of the sheriff's office or police department in Iowa that has a copy of your order on file, and of the court that issued the order.

Federal law says that each state or tribal court must enforce your order as if that state had issued it. Many states have laws or rules about how to enforce out-of-state protective orders. These rules are not the same in every state. In most places, having your order enforced is not difficult if you know the rules.

You can find out how to get your order enforced by calling a domestic violence program, the court clerk, or the local prosecutor where you are. If you do not know how to contact a domestic violence program, you can call the National Domestic Violence Hotline at **1 (800) 799-7233 (voice), 1 (800) 787-3224 (TTY)**.

There are still some people who may not be familiar with this law. You may need to get an attorney or an advocate from a domestic violence program to help you get your order enforced.

You will need a certified copy of your order. A certified copy has a statement on it that says it is a true and correct copy of the court document, and is signed or initialed by the court clerk. You can get one from the court clerk where you got your order originally. If you no longer live in that area, your court clerk, domestic violence advocate, or attorney should be able to help you get a certified copy.

## **VI. CONCLUSION**

No one deserves to be abused. This page describes only one of the ways in which you can do something to protect yourself. There are many others. Use the resources available through the Domestic Abuse Hotline, your local battered women's shelter, the police department, your friends, family, religious community, and this page to get out of the abusive situation and to get on with your life. Start today to take action to protect yourself. Many of people are ready to help you.

## **DEFINITION OF TERMS**

**AIDING AND ABETTING:** A crime charged against a person who assists another in committing a public offense (such as violating a protective order). A person can be found guilty of aiding and abetting even if the person who was responsible for the crime is found not guilty.

**BATTERER'S EDUCATION PROGRAM:** A weekly program (for 14 to 24 weeks) run by the probation office, which an abuser must complete if a judge orders him to do so. The program gives the abuser a chance to see how he abuses, why he does, and what he can do to change. There is no guarantee that the program will stop the abuse. The domestic violence program nearest you can give you more information.

**BURDEN OF PROOF:** The plaintiff has the "burden of proof." The burden of proof is the duty to prove that the abuse happened and that the judge should issue an order. A party usually meets the burden of proof by introducing sworn testimony of witnesses or by introducing exhibits (see **EVIDENCE**).

**CONTEMPT OF COURT:** The failure or refusal of a party to obey an order of the court, or an injunction of the court. Someone found in contempt of court can be punished by fine or a jail term, or both.

**COURT REPORTER:** Someone who makes a complete record of everything said at a hearing.

**DEFAULT:** The abuser may not show up at the courthouse for the hearing after he was given notice to do so. He may have "defaulted." Usually the judge will grant all the requests that you made. This is called a "default judgment."

**DEFENDANT:** The person against whom the lawsuit is brought. The person who did not ask for a protective order. In this page, we have referred to the defendant as the "abuser."

**EVIDENCE:** All types of proof, which a party may present under certain legal rules at a hearing or trial. Testimony of witnesses, documents, records, pictures, exhibits, and so on may be evidence. You present evidence to persuade the judge that that you should win the case.

**EX PARTE:** It is called an "ex parte proceeding" when the plaintiff files a petition asking for temporary protection before the abuser gets official notice from the court, and the judge issues an order without listening to both sides of the case.

**HEARING:** The time when the parties present evidence to the judge so that the judge can decide whether to give the plaintiff what is requested. Hearings may be **EX PARTE** (see above). Hearings also may be adversarial--that is, with both parties present in the courtroom presenting evidence and cross-examining each other's witnesses.

**INJUNCTION:** A court order which requires the abuser to stay away, leave the house, pay money, visit the children under set conditions, etc. A person may be held in contempt of court for violating an injunction.

**NOTARY or NOTARY PUBLIC:** Someone who has the authority to show that you signed a statement or document. A notary may be found at the courthouse and at many banks.

**NOTICE:** When a person is given information about a fact, usually that legal action may be taken against him, he has "notice." For example, when an abuser is given your application for a protective order and the court's order setting the time for a hearing by a sheriff, he has been given "notice." (See **SERVICE OF PROCESS**.)

**ORDER:** A command or direction of a judge, in writing.

**PETITION:** The first paper filed with the Clerk of Court by a plaintiff in a lawsuit. The petition contains your statement describing abuse and asking the court to issue a protection order. This petition will be given to the abuser so that he can prepare a defense.

**PLAINTIFF:** The person who starts the lawsuit, usually to ask the court to order certain things he or she is entitled to by law. The plaintiff is the person who must prove the facts in a lawsuit.

**PRO SE:** This is a Latin term meaning "for oneself." Persons have a constitutional right to act as their own lawyers in court, to go pro se. On July 1, 1991, Iowa's domestic abuse law (Section 236.2(5) ) was changed to clarify this right. Section 236.3A makes exercising this right easier by ordering the Attorney General's office to print forms which pro se plaintiffs can use. Clerks of court in each county courthouse must give them to plaintiffs at no cost. Samples of the forms are included at the back of this page.

**PROTECTIVE ORDER:** An order of a court to protect a person from certain conduct, such as harassment, assaults, or threats. Under Iowa's domestic abuse law, the order may also direct the abuser to leave the house, to pay money for child support, and do other things to prevent domestic abuse. The order may determine child custody and visitation while the order is valid.

**Temporary order:** Issued the same day you file the petition asking for protection. Good until the time of the court hearing, normally within 15 days of the day the temporary order is issued.

**Permanent order:** Issued at the end of the hearing. At the hearing, you prove abuse took place and the abuser has a chance to prove abuse didn't take place. Good for up to one year and may be extended for a year at a time, indefinitely.

**Emergency order:** Issued at night or over a weekend when the courthouse is not open. Good for 72 hours.

**RESIDENCE:** Place where one actually lives.

**SERVICE OF PROCESS:** For protective orders to take legal effect, they must be given to the abuser. Service gives the abuser **NOTICE** (see above) that a domestic abuse action has been started against him and lets him know what the court has ordered.

**Process:** The legal papers (here, the petition, affidavit, orders) filed with the court in a lawsuit which the party is entitled to have.

**Service:** Delivery of court documents to the party, usually (but not necessarily) by the sheriff, or other person whose business it is to "serve" papers. The sheriff may require you to provide information about the abuser's whereabouts (for example, address, work place, and hours) to assist the sheriff in finding the abuser.

**SUBPOENA:** A legal paper directed to a witness, telling him or her to appear at a specific date and time to testify.

### **CHECKLIST FOR THE HEARING ON A PERMANENT ORDER**

1. Prove that you have a relationship with the abuser:
  - Married, divorced, or separated; OR
  - Living together; OR
  - Related by blood (relatives) or by affinity (in-laws, adoption); OR
  - Lived together within the last year and were in an intimate relationship, or related by blood or affinity; OR
  - Are the parents of the same child under 18 years of age.
  
2. Prove that you were abused by the abuser:
  - Specific times that you were assaulted or threatened.
  
3. Prove that you or the abuser live in the same county as the courthouse where you filed your papers. Use your own testimony or documents.
4. Prove your money situation:
  - Child support;
  - Spouse support.
  
5. Prove who should get to stay in the house.
6. Prove child arrangements:
  - Custody and visitation;
  - What arrangements you want;
  - Why your arrangements are a good idea.

### TIPS ON COURTROOM BEHAVIOR

1. You must be on time for your hearing. Check with the court administrator for the location of the hearing.
2. A neat appearance in court is important. It shows respect for the court.
3. It is not a good idea to bring children to the hearing. Arrange for someone to look after your children while you are at the hearing. If you do bring them, the judge may not permit them in the courtroom. However, if any of your children are going to give testimony, you will want to bring them with you.
4. Review your petition before the hearing. Be familiar with your petition. Stick to the facts--don't ramble when offering evidence to support your request. Tell the truth.
5. Enter the courtroom and find a seat. If the abuser sits next to you, it is your right to take another seat and to receive help from court staff in keeping the abuser away from you.
6. Stand when the judge enters.
7. Sit down only after the judge or clerk instructs you to.
8. The judge usually will announce your case.
9. The judge will ask you questions. If you don't understand a question, say so. Don't answer until you fully understand the question.
10. If you don't know an answer, say so. Do not be afraid to admit that you don't know something.
11. Take your time when answering questions. Give each question as much thought as you need to understand it and formulate your answer. Explain your answer if needed.
12. Be direct with the judge. The judge will not appreciate evasiveness.
13. Be courteous. Never interrupt the judge or anyone else during the hearing. If something needs to be clarified, wait until it is your turn to testify or ask to make a clarification at the end of the hearing. Stop speaking instantly if the judge interrupts.
14. Be sincere. Don't be sarcastic or appear dissatisfied with the judge or the other side.
15. Be serious in the courtroom. Avoid joking and wisecracks. Testifying is a very serious matter and not one to be taken lightly.
16. If you are stating dates, times, and places, etc., be exact. If you cannot be exact, make it understood that you are only estimating.
17. Speak clearly and distinctly, using words, phrases, and terminology that you understand.
18. Keep your hands away from your mouth and do not chew gum. Speak clearly and loud enough so the judge and court reporter can easily hear you.
19. Always answer verbally so your answer can be properly recorded. For example, do not nod your head to indicate yes.
20. When the judge is asking you questions, try not to look to your advocate or attorney for help. If you appear to require help with your testimony, it could jeopardize your credibility and sincerity.
21. Avoid laughing or talking about the case in the hallway or restrooms of the courthouse in such a way that the other party and counsel and witnesses for the other party may see you or hear you.

22. Be especially respectful of the judge. Always address the judge as "Your Honor." Never argue with the judge, or the other side. Stay calm. Do not lose your temper; this may cause the judge to lose respect for you.
23. Bring the following to the hearing: police reports about the abuse; doctor's statements; pictures of the abuse; clothing torn during the most recent act of abuse; any prior protection order; any witnesses of abuse; and anything else that you believe will show that the abuser abused you.
24. Now go back and reread these suggestions so that you will have them firmly in your mind. They do not need to be memorized.

Written by Barbara J. Hart, Legal Counsel to the Pennsylvania Coalition against Domestic Violence, and appearing in *SEEKING JUSTICE: Legal advocacy Principles and Practice*, 1993. Reprinted with permission.



**IOWA HOTLINE  
(800) 942-0333**

**NATIONAL HOTLINE  
(800) 799-SAFE (7233) or TDD (800) 787-3224**