

ORDERS OF PROTECTION

A. DOMESTIC ABUSE ASSISTANCE ACT (La. R.S. 46:2131, et seq.)

Victims of domestic violence in Louisiana, more specifically battered women, most often use the legal relief afforded under the Domestic Abuse Assistance portion of the Protection From Family Violence Act. This body of law was first enacted by the Louisiana Legislature in 1982; it has been amended numerous times since then. A victim may seek a civil court order if she has experienced "domestic abuse" and is a "family or household member". Domestic abuse is defined rather broadly at R.S. 46:2132(3) to include any offense against the person as defined in the Criminal Code of Louisiana, except negligent injury and defamation. However, the definition of "domestic abuse" is not limited to physical or sexual abuse. Therefore, a court could consider as "domestic abuse" other crimes that abusers commit against their partners; for instance, offenses against property, including arson, burglary, trespass, theft, etc.; as well as offenses such as cruelty to animals.

A parent or other adult household member may seek a court order when a minor child is being abused by another family or household member. The District Attorney may also.

A battered woman may file her petition pursuant to this body of law in the parish where she and the defendant last lived together, where he resides or is domiciled, where the petitioner resides or is domiciled, or where the abuse took place.

The clerk of court in each one of Louisiana's parishes is responsible for making forms available to victims of domestic violence to seek these civil orders of protection. In addition, each clerk of court is responsible for providing clerical and notarial assistance and advising petitioners of their right to file in forma pauperis (without prepaying the court costs).

Since 1997, the Judicial Administrator's Office of the State Supreme Court has been responsible for developing the forms for courts to use when they grant an order of protection. When the court grants either a temporary restraining order or a protective order under this body of law, it is the court's responsibility to make sure that the proper form is used and forwarded to the clerk of court for filing. It is the responsibility of the clerk of court to make sure that that temporary restraining order or protective order or any modification to the protective order is then forwarded to the Louisiana Protective Order Registry.

If the court grants a temporary restraining order, as of August 15, 1999, R.S. 46:2135(B) requires that the protective order hearing (also referred to as a rule to show cause hearing) shall be set within twenty days.

The ex parte (without notice to the defendant and without the defendant being heard) temporary restraining order may include the following kinds of relief:

1. Prohibiting the defendant from abusing, harassing, or interfering with the petitioner or her employment and from going near her residence or place of employment.
2. Awarding the petitioner use and possession of certain community property items, such as a vehicle and/or household furnishings.
3. Awarding the petitioner the use and occupancy of the residence and evicting the defendant or restoring possession to the petitioner of the residence if:
 - a. The residence is jointly owned or leased by the petitioner and the defendant.
 - b. The residence is solely owned by the petitioner.
 - c. The residence is solely leased by the defendant and the defendant has a duty to support the petitioner or anyone on whose behalf the petition is brought.

NOTE: Therefore, if the residence is solely owned by the defendant, the petitioner does not have a right to seek use and possession of that home. However, if the petitioner files a petition for divorce, she may ask for use of the family home in that proceeding even if the defendant solely owns it. But, she cannot be granted use of the family home through a petition for divorce ex parte; she may only be granted use of the family home after a contradictory hearing. That means after the defendant has been served with a copy of the petition for divorce and both the petitioner and the defendant are before the court at a preset hearing. (See R.S. 9:374 Possession and use of the family residence or community movables or immovables.)

4. Prohibiting either party from transferring, encumbering, or disposing of property mutually owned or leased.
5. Temporary custody of minor children.

Also, during the existence of the temporary restraining order each party has the right to return to the family residence to recover their personal clothing and necessities as long as a law enforcement officer accompanies that party.

If the court does not grant a temporary restraining order, the court is required to set a hearing on the request for the protective order within ten days from the date the defendant is served with a copy of the petition.

On the date of the rule to show cause hearing, the petitioner has the burden of proving the allegations of abuse. If for some reason the rule to show cause hearing for the protective order has to be continued until a later date, the court is required to either make or extend such temporary restraining orders as the court deems necessary. Continuances should not exceed ten days. At the rule to show cause hearing for the protective order, the parties may enter into a stipulation or consent agreement which the court may approve. The parties may agree to just about anything that is not prohibited by public policy or a specific law. If a hearing is held, the court may grant relief which may include, but is not limited to, the relief that could have been granted in the ex parte temporary restraining order and, in addition:

1. Child support for minor children born of the parties.
2. Interim periodic support (temporary alimony) to a spouse.
3. Establishing temporary visitation rights and conditions of visitation for any minor children born of the parties.
4. Ordering counseling or medical treatment for either or both parties.

If the parties enter into a consent agreement or stipulation wherein the petitioner agrees that the defendant can also have a protective order against the petitioner, the court can then approve that consent agreement which contains mutual and reciprocal protective orders. However, if the court conducts a hearing, the court cannot order mutual or reciprocal protective orders unless the defendant has also filed a petition for a protective order and that petition was served on the original petitioner (battered woman) and she was given reasonable notice and an opportunity to be heard in response to defendant's petition.

The protective order, whether it is issued after a hearing or whether the parties enter into a stipulation or consent agreement, is good for up to eighteen months. Either the parties can agree to a period of up to eighteen months or the court can decide how long the protective order will be in effect, so long as it is not for a period of time exceeding eighteen months. Prior to the expiration of the protective order, the protective order may be modified. It will be necessary for one of the parties to file a motion requesting the modification, have the other

party served with that motion and a hearing held. The modification, whether by stipulation between the parties or after hearing, may include any item that may have been included in the original protective order.

Further, prior to the expiration of the protective order, it may be extended for an additional period of time. A motion to extend the protective order must be filed, the defendant served, and a hearing held prior to the expiration date of the original protective order. The extension of the protective order may be for a period of time agreed to by the parties or decided by the court, not to exceed eighteen months.

The petitioner may request in her petition that the defendant pay all court costs, attorney fees, evaluation fees, and expert witness fees that have been incurred by the petitioner in seeking a protective order. In addition, a petitioner may also ask that the defendant pay all costs of medical and psychological care for the petitioner and for any children that has been necessitated by the abuse. If the court grants the protective order, the law requires the defendant to pay all court costs, attorney fees, evaluation fees and expert witness fees that have been incurred by the petitioner in seeking the order. The law also requires that the defendant pay all costs of medical and psychological care for the petitioner and for any children which has been necessitated by the domestic violence. If your program provides the services of an attorney, the attorney may request that the court order the defendant to pay attorney fees to the program. This is true also in those areas of our state where a legal services corporation provides free legal services to petitioners.

In any proceeding brought pursuant to this Act, the court may grant the remedies provided in the Post Separation Family Violence Relief Act (R.S. 9:361, et seq.). Such relief may include, depending upon the circumstances and the evidence presented, the petitioner being granted sole custody of the children, the abusive parent being denied visitation, the abusive parent being granted supervised visitation, the abusive parent being granted supervised visitation conditioned upon their completing a treatment program and meeting other requisites provided for in R.S. 9:364.

Violations of the temporary restraining order or of the protective order are both civil contempt and crimes if the defendant has been served with a copy of the order. The battered woman may file a rule for contempt against the defendant alleging those behaviors of the defendant which are in violation of either the temporary restraining order or the protective order. The defendant will need to be served with a copy of the rule for contempt which will set a date and time for a court hearing. The defendant will be entitled to be represented by an attorney; he may hire one of his choosing or if he is indigent, the court will appoint an attorney to represent him. It will be the petitioner's burden to prove beyond a reasonable doubt that the defendant committed these behaviors in violation of the court order. The defendant, if the court finds him in contempt, can be sentenced for up to six months in jail and fined for up to five hundred dollars, or both. In addition, the battered woman may call law enforcement and file charges against the defendant for the crime of "violation of a protective order" (see R.S. 14:79).

Louisiana courts are required by law to use a uniform form for temporary restraining orders and protective orders issued pursuant to the Domestic Abuse Assistance Act (as well as other laws, as will be discussed later).

B. DOMESTIC ABUSE ASSISTANCE ACT (La. Children's Code Article 1564, et seq.)

The Children's Code contains very similar provisions to Title 46, the Domestic Abuse Assistance Act part under the Protection from Family Violence Act. These articles begin with Children's Code Article 1564 and continue through Article 1575. Some Louisiana courts with juvenile jurisdiction are better prepared to hear domestic violence petitions than the local district court. A battered woman, assuming she meets the requisites of being a victim of domestic abuse and is included in the definition of family or household member, has the option of filing under Title 46 or under the Children's Code, depending on the parish or city within which she is eligible to seek such relief. Both Title 46 and the Children's Code provisions regarding domestic abuse assistance give jurisdiction to those courts that have juvenile jurisdiction. There are however, some differences between Title 46 and the Children's Code; they are as follows:

1. The definition of domestic abuse in the Children's Code does not include domestic abuse perpetrated by an adult child or grandchild against a grandparent.
2. The Children's Code does not include in its definition of family or household member grandparents and grandchildren. Also, the Children's Code requires that the battered woman who seeks a protective order under this body of law and who is not married or formerly married to her abuser, must be residing with her abuser when the complained-about abuse took place AND there must be a minor child residing in the household. As you can see, the definition of family or household member in the Children's Code varies greatly from the new definition in Title 46.
3. The Children's Code allows the local child protection unit to file a petition on behalf of a child; this is not provided for in Title 46.
4. Further, the Children's Code provides that if the petitioner is filing a petition for a protective order in the parish in which she resides AND if that parish is different from the other venue options (where the last matrimonial domicile or household is located, where the defendant resides or is domiciled, where the abuse occurred, or where the petitioner is domiciled) then the only relief in the temporary restraining order that the court can

grant to that petitioner is directed to the defendant to refrain from abusing, harassing, or interfering with the person or employment or going near the residence or place of employment of the petitioner or any person whose behalf the petition was filed. However, the petitioner may request that the protective order include all the other kinds of relief available which are the same as the relief available in Title 46.

5. Under the Children's Code the protective order may only be granted for up to six months.

6. Under the Children's Code, if a protective order is granted because of sexual abuse of a child, the protective order will stay in effect until the child reaches the age of eighteen.

As in Title 46, the clerk of court in each one of Louisiana's parishes is responsible for making forms available to victims of domestic violence to seek a protective order. In addition, the clerk of court is responsible for providing clerical and notarial assistance and advising petitioners of their right to file *in forma pauperis* (without prepaying the court costs).

As in Title 46, Louisiana courts are required by law to use a uniform form for temporary restraining orders and protective orders issued pursuant to this body of law. Clerks of court are required by law to forward the temporary restraining orders and protective orders or any modification to the protective order to the Louisiana Protective Order Registry.

Violations of the temporary restraining order or of a protective order are both civil contempt and crimes once the defendant has been served with a copy of the order, as they are in Title 46. The battered woman may file a rule for contempt against the defendant alleging those behaviors of the defendant which are in violation of either the temporary restraining order or the protective order. The defendant will need to be served with a copy of the rule for contempt which will set a date and time for a court hearing. The defendant will be entitled to be represented by an attorney; he may hire one of his own choosing or if he is indigent, the court will appoint an attorney to represent him. It will be the petitioner's burden to prove beyond a reasonable doubt that the defendant committed these behaviors in violation of the court order. The defendant, if the court finds him in contempt, may be sentenced for up to six months in jail and fined up to five hundred dollars, or both. In addition, the battered woman may call law enforcement and file charges against the defendant for the crime of "violation of a protective order" (see R.S. 14:79).

C. POST SEPARATION FAMILY VIOLENCE RELIEF ACT (La. R.S. 9:361, et seq.)

This body of law may be used by a battered woman to seek full custody of

her children and/or restrict the abuser to supervised visitation. A battered woman may use this Act in conjunction with a proceeding pursuant to the Domestic Abuse Assistance Act (R.S. 46:2131, et seq.) or in conjunction with a petition for divorce, or thereafter. If the battered woman is able to prove to the court that the abuser has committed either one incident of family violence that resulted in serious bodily injury or more than one incident of family violence, the court may then find the abuser to have a "history of perpetrating family violence". If the court finds the abuser to have a "history of perpetrating family violence," then there is created a legal presumption that that parent shall not be awarded sole or joint custody of the children. That legal presumption may only be overcome by the abusive parent proving that they have:

1. successfully completed a court monitored Domestic Abuse Intervention Program as defined in this body of law as a course of evaluation and psychotherapy designed specifically for perpetrators of family violence, and conducted by licensed mental health professionals;
2. is not abusing alcohol or using illegal drugs;
3. that the best interest of the child requires that abusive parent's participation as a custodial parent because of the non-abusive parent's absence, mental illness, or substance abuse; and
4. such other circumstances which affect the best interest of the child or children.

The fact that the abused parent suffers from the effects of the abuse shall not be grounds for denying the abused parent custody. Further, if the court does make a finding of a history of family violence, the court shall allow only supervised visitation for the abusive parent conditioned upon that parent's participation in and completion of a treatment program. The abusive parent may only be granted unsupervised visitation if that abusive parent can prove to the court that:

1. the violent parent has completed a treatment program;
2. the violent parent is not abusing alcohol and psychoactive drugs;
3. the abusive parent poses no danger to the child; and
4. such unsupervised visitation is in the child's best interest.

If the court finds, by clear and convincing evidence, that a parent has sexually abused his child, the court shall prohibit all visitation and contact between the abusive parent and the child until, after a contradictory hearing, the

court finds by a preponderance of the evidence:

1. the abusive parent has successfully completed a treatment program designed for such sexual abusers; and
2. that supervised visitation is in the children's best interest.

As you can see, if the court finds by clear and convincing evidence that a parent has sexually abused his child, that parent at best could only be granted supervised visitation with the child.

Family violence under this body of law is defined broadly as it is in Title 46; family violence includes violence by one parent against the other parent and violence by a parent against a child. However, this body of law provides that family violence does not include reasonable acts of self-defense used by one parent to protect herself or a child from the family violence of the other parent.

Please familiarize yourself with the definition of "supervised visitation" at R.S. 9:362(6). Some courts in Louisiana when they hear sufficient evidence in a petition for domestic abuse assistance often find the abusive party of having a "history of perpetrating family violence". When the court makes this finding, the court then awards only supervised visitation to the abusive parent. It is important that the battered woman be prepared to offer the names of possible supervisors. As you can see from a reading of that particular statute, the abused parent may ask the court to order that the supervising person be a police officer or some other competent professional. This body of law also provides that all costs incurred in this supervision of visitation shall be borne by the abusive parent.

Please note that in addition to the abusive parent being responsible for all costs associated with supervised visitation, the violent parent is also responsible for all court costs, attorney fees, evaluation fees, and expert witness fees incurred in seeking protection pursuant to this body of law; the perpetrator of the family violence is also responsible for all costs of medical and psychological care for the abused parent and for any children that has been necessitated by the family violence. Also, please note that mediation in family violence cases is specifically prohibited pursuant to R.S. 9:363. Also, please become familiar with R.S. 9:365 which sets forth the required training and experience that the mental health professional must have in order to conduct the custody evaluation in a case where family violence is an issue.

Violations of the injunction issued pursuant to this body of law are both civil contempts and crimes. The battered woman (or non-violent parent) may file a rule for contempt against the abusive parent alleging those behaviors of the abusive parent which are in violation of the injunction. The violent parent will be served with a copy of this rule for contempt which will contain the date and time for the hearing. The abusive parent will be entitled to be represented by an attorney; he

may hire one of his own choosing or if he is indigent, the court will appoint an attorney to represent him. It will be the battered woman's (or non-abusive parent) burden to prove beyond a reasonable doubt that the abusive parent committed these behaviors in violation of the injunction. In addition, the battered woman (or non-violent parent) may call law enforcement and file charges against the abusive parent for the crime of "violation of a protective order" (see R.S. 14:79).

As you can see from a reading of this body of law, an injunction issued hereunder is somewhat different from the temporary restraining order and protective order issued pursuant to Title 46 and the Children's Code. The clerks of court are also required to forward the injunctions to the Louisiana Protective Order Registry.

D. TEMPORARY RESTRAINING ORDER, PRELIMINARY OR PERMANENT INJUNCTION ANCILLARY TO A PETITION FOR DIVORCE (La. R.S. 9:372)

In a petition for divorce, a battered woman may seek a temporary restraining order and thereafter a preliminary and permanent injunction prohibiting her spouse from harassing or physically or sexually abusing her or a child of either of the spouses. Please note that a temporary restraining order/injunction pursuant to this particular statute does not provide the broad protection that a temporary restraining order/protective order pursuant to Title 46 or the Children's Code entails. This particular statute is very specific about what the temporary restraining order/injunction can prohibit. However, if the battered woman seeks such a temporary restraining order/injunction under this statute and if the defendant agrees, the injunction could be as broad as the spouses agree. Usually, if the defendant is willing to agree to such broad protection for the battered woman, his lawyer will demand that the defendant also be granted such an injunction. If the defendant will not agree to the additional protective provisions that the battered woman would like, the battered woman can certainly provide evidence at the preliminary injunction hearing why the defendant should be restrained from doing certain things and the court may, based on that evidence, grant a preliminary and thereafter a permanent injunction that is more protective. The court is required to make sure that the temporary restraining order/injunction is on the uniform forms which will then be forwarded by the clerk of court to the Louisiana Protective Order Registry.

Violations of the temporary restraining order or preliminary or permanent injunction are both civil contempts and crimes. The battered woman may file a rule for contempt against the defendant alleging those behaviors of the defendant which are violations of either the temporary restraining order or the preliminary or permanent injunction. The defendant will be served with a copy of this rule for contempt and the order setting the matter for hearing on a particular date and time. The defendant will be entitled to be represented by an attorney; he may hire one of his choosing or if he is indigent, the court will appoint an attorney to

represent him. It will be the petitioner's burden to prove beyond a reasonable doubt that the defendant committed these behaviors in violation of the court order. In addition, the battered woman may call law enforcement and file charges against the defendant for the crime of "violation of a protective order" (see R.S. 14:79).

E. CIVIL LEGAL RELIEF FOR THE BATTERED WOMAN WHO DOES NOT QUALIFY TO SEEK PROTECTION PURSUANT TO THE FOUR FOREGOING BODIES OF LAW. (La. Code of Civil Procedure Art. 3601, et seq.)

A battered woman who is not eligible to seek relief under the laws described in Sections A through D above may seek a temporary restraining order and thereafter a preliminary and permanent injunction by filing a petition for injunctive relief either in state district court or city court.

If the court grants the temporary restraining order, it will be in effect for no longer than ten days during which time a hearing on the preliminary injunction will need to be scheduled. The defendant will be served with a copy of the petition and the temporary restraining order which contains a notice of the date and time for the preliminary injunction hearing. It will be the petitioner's burden to prove the allegations of abuse contained in her petition. The petitioner will need to file this petition in the parish where the defendant is domiciled or where the behavior sought to be enjoined may occur. If the victim is a minor, a parent may file the petition on the minor's behalf.

The clerk of court is not required by law to provide clerical and notarial assistance to these petitioners; the clerks of court will be responsible, however, for advising petitioners of their right to file *in forma pauperis* (without prepaying the court costs).

A temporary restraining order, before its expiration, may be extended by the court for one or more periods not exceeding ten days each. The defendant may consent that the temporary restraining order be extended for a longer period of time. Both a temporary restraining order and a preliminary injunction may be modified or dissolved upon two days' notice to the other party. The court, on its own motion and upon notice to all parties and after hearing, may modify or dissolve a temporary restraining order or preliminary injunction.

If the court grants the preliminary injunction, a trial date will be set for the permanent injunction. At this time, it will be necessary for the petitioner to prove that irreparable injury or harm will result to her unless the defendant is permanently enjoined from committing certain acts. The permanent injunction will be effective until it is dissolved by the court or deemed to be no longer necessary.

Under this body of law, the petitioner will be ordered by the court to post a bond in an amount to be determined by the court. This bond is for the purpose of

protecting a defendant who may be wrongfully enjoined.

Violations of the temporary restraining order or preliminary or permanent injunction are both civil contempt and crimes. The battered woman may file a rule for contempt against the defendant alleging those behaviors of the defendant which are in violation of either the temporary restraining order or the preliminary or permanent injunction. The defendant will be served with a copy of this rule for contempt and the order setting the matter for hearing on a particular date and time. The defendant will be entitled to be represented by an attorney; he may hire one of his choosing or if he is indigent, the court will appoint an attorney to represent him. It will be the petitioner's burden to prove beyond a reasonable doubt that the defendant committed these behaviors in violation of the court order.. In addition, the battered woman may call law enforcement and file charges against the defendant for the crime of "violation of a protective order" (see R.S. 14:79).

F. CRIMINAL STAY AWAY ORDERS (La. Code of Criminal Procedure Articles 327.1, 335.1, and 871.1)

A battered woman may ask a court to issue, as a condition of release of her abuser from jail, what is known as a criminal stay away order. This order can prohibit the criminal defendant from going to the residence or household of the battered woman, from going to the battered woman's school or place of employment or otherwise contacting her in any manner whatsoever. This order shall also prohibit the criminal defendant from having any further contact with the victim. Courts are required to put this kind of order on one of the uniform forms and forward it to the clerk of court to transmit to the Louisiana Protective Order Registry.

Also, a battered woman may request the court, as a condition of a criminal defendant's sentence, to issue a criminal stay away order as outlined in the paragraph above. Again, the court is required to put this order on a uniform form, forward it to the clerk of clerk to transmit to the Louisiana Protective Order Registry.

Violations of these criminal stay away orders are punishable by the forfeiture of bail, by the issuance of a bench warrant for the defendant's arrest, by remanding the defendant into state custody, by modification of the terms of bail, and as of August 15, 1999, the violation of any of the provisions in a criminal stay away order constitute the crime of "violation of a protective order" (see R.S. 14:79).

G. TRIBAL ORDERS OF PROTECTION

Native-American courts may issue their own orders of protection. These orders of protection are to be given full faith and credit within our state (and in other states and tribal lands).

H. EFFECT OF FEDERAL LAW ON ORDERS OF PROTECTION

1. Full Faith and Credit.

Orders of protection are to be given full faith and credit in all other states, tribal lands, commonwealths, territories, possessions, etc. of the United States. In order for a Louisiana order of protection to be given full faith and credit in another state, the order must have either been granted after the defendant was given notice and an opportunity to be heard or in the case of ex parte orders, if the court sets a hearing for the defendant to be heard within the time frame that is provided for in our laws. This means that if a temporary restraining order is issued pursuant to the Domestic Abuse Assistance Acts under Title 46 or the Children's Code, the hearing on the protective order must be set within twenty days from the issuance of the temporary restraining order. If a protective order is issued pursuant to the afore-mentioned statutes, it must have been issued after the defendant was given notice and an opportunity to be heard. Also, the judge who issues the temporary restraining order or the protective order under the afore-mentioned statutes must certify that that court has jurisdiction over the person of the defendant and jurisdiction over the subject matter of the proceeding. The Louisiana Uniform Abuse Prevention Orders which have been developed by the Louisiana Protective Order Registry contain such a certification for the judge to sign.

If a temporary restraining order is issued pursuant to R.S. 9:361, et seq. and C.C.P. Art. 3601, et seq., the temporary restraining order which is issued ex parte would be given full faith and credit if the hearing on the preliminary injunction is set within the specific time frame provided for in the Code of Civil Procedure, which is ten days. A temporary restraining order issued pursuant to R.S. 9:372 will be afforded full faith and credit as long as the hearing on the preliminary injunction is set within a reasonable period of time. A preliminary or permanent injunction issued pursuant to the foregoing statutes would be given full faith and credit in other jurisdictions since preliminary and permanent injunctions are only granted after notice and an opportunity to be heard is given to the defendant.

Full faith and credit does not apply to mutual orders of protection if (a) the original defendant did not file a cross or counter petition seeking an order of protection or (b) if such a cross or counter petition was filed, that the court did not make specific findings that each party was entitled to such an order of protection.

Criminal stay away orders which are issued without a hearing will be given full faith and credit in other states and tribal lands if the criminal defendant is given notice and an opportunity to be heard within a reasonable period of time. Criminal stay away orders issued in the state of Louisiana after a hearing should be given full faith and credit in other states and tribal lands. Further, in both cases, the judge certifies that the court had jurisdiction over the defendant and the subject matter and that the foregoing reference to notice was complied with.

2. Prohibition against purchasing or possessing a firearm or ammunition.

Federal law and Louisiana law prohibit a person who is subject to a protective order from purchasing or possessing a firearm for the duration of that protective order. A prohibition against purchase or possession of a firearm attaches only after the defendant has been given notice and an opportunity to be heard at a contradictory hearing. Temporary restraining orders are issued ex parte (without the defendant being present and without a hearing) so the prohibition does not apply for those orders. Protective orders, preliminary or permanent injunctions are issued after the defendant has notice and an opportunity to be heard at a contradictory hearing and therefore do result in the defendant being prohibited from purchasing or possessing a firearm for the duration of that particular order or injunction. If the defendant does possess a firearm during the duration of the order or injunction, he can be arrested and prosecuted under R.S. 14:95.10

Under federal law, a criminal stay away order that is issued without a hearing will not prevent the defendant from possessing a firearm or ammunition. However, once the defendant has notice and an opportunity to participate in a contradictory hearing and if a criminal stay away order is issued after that hearing, the defendant will be prohibited from purchasing or possessing a firearm or ammunition for the duration of that criminal stay away order.

Federal law and Louisiana law also prohibit a defendant who has been convicted of a misdemeanor crime of domestic violence from purchasing or possessing a firearm. Criminal defendants convicted of felonies were already prohibited from purchasing or possessing a firearm. Federal law does not require that states have specific "crimes of domestic violence" in order for this prohibition to apply. It is sufficient that the defendant and victim of the crime were "intimate partners" as defined by Federal law and that the defendant has been convicted of a crime which has as an element the use or attempted use of physical force or the threatened use of a deadly weapon.

I. OTHER FEDERAL LAWS AFFECTING VICTIMS OF DOMESTIC VIOLENCE

It is a federal crime for a person to transfer a firearm or ammunition to an individual subject to an order of protection (see 18 U.S.C. § 922(d)(8)). It is also a federal crime to possess a firearm or ammunition while subject to an order of protection (see 18 U.S.C. § 922 (g)(8)). However, the restrictions of sections 922 (d)(8) and (g)(8) do not apply to firearms issued by governmental agencies to a law enforcement officer or military personnel as long as the officer or military personnel is on duty. Personal firearms do not fall within this exemption nor may the personnel possess officially issued firearms when off duty.

A law enforcement officer or military personnel who has been convicted of a domestic violence misdemeanor will not be able to possess or receive firearms for any purpose, including the performance of official duties.

The Violence Against Women Act, in addition to providing for full faith and credit for orders of protection, also created several federal crimes of domestic violence. It is now a federal crime to travel interstate or to leave or enter Indian country with the intent of committing a crime of domestic violence. It is also a federal crime to cause an intimate partner to cross-state lines or to leave or enter Indian country. Further, it is a federal crime to cross a state line or enter or leave Indian country to stalk an intimate partner.

Federal law also prohibits interstate travel or travel into or out of Indian country with the intent to violate an order of protection. Further, it is a federal crime to cause an intimate partner to cross-state lines or leave or enter Indian country.

Further, federal law specifically provides that battered and abused spouses and children of citizens and lawful permanent residents may self-petition for independent legal residency. This statute prevents citizens or residents from using the residency process as a means to exert control over an alien spouse or child. This statute also allows victims to remain in the United States independent of their abusive husband/parent (see 8 U.S.C. § 1154).

Obtaining a Protective Order

STEP ONE: INTRODUCTION TO FILING

A person seeking protection may ask the court for protection by filing a petition for a restraining order.

The person in need of protection is the petitioner , the person against whom the petition is filed (the abusive person) is the defendant .

There are no filing fees and court costs for this process.

It is not necessary to have an attorney to file the petition or to represent the petitioner at court. Petitioners may get forms and assistance from legal advocates, the parish Clerk of Court's office, or district attorney's victim assistance program.

STEP TWO: DETERMINE ELIGIBILITY AND VENUE

Eligibility for the most commonly used statutes differs.

Domestic Abuse Assistance Act (La. R.S. 46:2131, et seq.)

Can be filed by or on behalf of a person who has experienced domestic abuse.

The relationship between the abuser and the person asking for protection must be one of the following:

- o family member (spouses, former spouses, parent/child, stepparent/stepchild, grandparent/grandchild)
- o household member (persons of opposite sex presently or formerly living together as spouses)
- o parent, adult household member, or district attorney on behalf of minor child(ren) or an adult who is incompetent to act in his/her own behalf

This statute may provide more opportunities for protection than the "generic" restraining order (for example, in addition to prohibiting any contact by the abuser, this order may also include ordering temporary child custody, financial support, and use of property to the victim in order to ensure safety).

Protection from Dating Violence Act (La. R.S. 46:2151)

Extends the same protections as the Domestic Abuse Assistance Act to dating partners. Eligibility under this statute is not limited to opposite sex relationships. Dating partners may be people who have not lived together.

Protection from Stalking (La. R.S. 46:2171)

Can be filed by a person who is being stalked by a stranger or acquaintance. (Victims of stalking by a current or former intimate partner can file under the statutes listed previously.)

Protection from Sexual Assault (La. R.S. 46:2181)

Can be filed by a person who has been a victim of sexual assault by a stranger or acquaintance. (Victims of sexual assault by a current or former intimate partner can file under previously listed statute.)

STEP THREE: FILL OUT FORMS

There is a section of the petition where petitioners will swear to the truthfulness of the information they have provided. This section requires their signature to be notarized, so they must sign it in front of a notary public. The Clerk of Court's office can usually provide the services of a Notary.

PETITIONS

If you want to file a petition under the Domestic Abuse Assistance Act (La. R.S. 46:2131, et seq.), you will use Petition **LPOR B**.

If you want to file a petition under the Children's Code (La. Ch. C. Art. 1564, et seq.), you will use Petition **LPOR C**.

But, if they are filing a petition against their spouse under this statute, and their spouse has already filed for a legal action which has not yet been finalized (such as a divorce or a protective order against them, or other legal actions), they will use Petition **LPOR BR**, or Petition **LPOR CR** instead of **LPOR B** or **LPOR C**. This circumstance is called filing in reconvention.

TIP: To help fill out Petition **LPOR B**, Petition **LPOR BR**, Petition **C**, or Petition **CR** see "LPOR A-Instructions."

If you want to file for an order of protection against a stranger or acquaintance who has been stalking you, you will use Petition Form **LPOR D**.

TIP: To help fill out **LPOR D**, see "LPOR Y – Instructions."

If you want to file a petition for a "Generic" Restraining Order (La. Code of Civil Proc. Article 3601, et seq.) you will use Petition **LPOR O**.

TIP: To help fill out **LPOR O**, see "LPOR Z - Instructions."

OTHER FORMS

In addition to filling out a petition, there are several supplemental forms a petitioner can fill out as well.

LPOR H - Information for Service of Process Form

The abuser must be served by the sheriff's office with a certified copy of the order and notice to come to court on the assigned day of the hearing. To assist the sheriff's office in locating the defendant, fill out this form as completely as possible. This form can be used with any of the petitions.

LPOR F - Confidential Address Form

Available under the Domestic Abuse Assistance Act only. Petitioner's address will be kept private by the court and the abuser will not receive notice of where they are currently living if they submit this form with their petition. Use this form only with **LPOR B**, or **LPOR C**.

LPOR FR - Confidential Address Form (In Reconvention)

Available under the Domestic Abuse Assistance Act only. Use this form when the abuser is the petitioner's spouse and has filed a legal action that has not yet been finalized. Petitioner's address will be kept private by the court and the abuser will not receive notice of where they are currently living if they submit this form with their petition. Use this form only with **LPOR BR**, or **LPOR CR**.

STEP FOUR: FILE PETITION

The petition and accompanying forms are filed in the Clerk of Court's office. The Clerk will present the forms to the judge for review. If the judge agrees that immediate court protection is necessary, s/he will grant a Temporary Restraining Order (TRO) with a date to come back to court for a hearing. The TRO will contain some or all of the requests made in the petition, and will be in effect until the date of the court hearing, up to 20 days if filed under the Domestic Abuse Assistance Act (LPOR B, BR, C, or CR) or 10 days if filed under La. Code of Civil Proc. 3601, et seq. (LPOR O).

The clerk should provide the petitioner with a copy of the petition, a certified copy of the TRO, and the date and time of the court hearing. The clerk will also give a copy of the petition and TRO to the sheriff's office to serve to the defendant. The defendant will be notified to be present at court on the date of the hearing.

NOTE: The petitioner should keep a copy of the TRO at all times. The petitioner may also want to make copies of the TRO to be kept in the car, at work, with a friend or other safe place, at children's daycare or school, or other places it may be needed.

STEP FIVE: PREPARE FOR HEARING

It is not required that the petitioner have an attorney at the hearing; the petitioner may represent him/herself. The petitioner has a legal right to have an advocate present at the hearing.

The petitioner should notify any potential witnesses about the court date.

STEP SIX: THE HEARING

At the hearing the petitioner may be asked to explain to the court the history of abuse or stalking and/or the need for court protection. The defendant, if present, will be given an opportunity to respond. The judge will determine whether to grant the protection requested.

If the petition is filed under the Domestic Abuse Assistance Act (LPOR B, BR), Protection from Dating Violence Act (LPOR B or BR), or Protection from Stalking Act (LPOR D), the order granted at the hearing is called a protective order, and can be good for up to 18 months from the date of the hearing. Some of the items on the order may be non-expiring.

If the petition is filed under the Civil Code of Proc. Art. 3601, et seq. (LPOR O), the order granted at the hearing is called a Preliminary Injunction and will be in effect until a hearing for a Permanent Injunction is held.

If a hearing officer presides over the hearing instead of a judge.

In some courts a hearing officer hears protective order cases instead of the judge. After the hearing, the hearing officer writes his/her recommendations to the judge about whether or not the orders should be granted. The petitioner and defendant are given copies of the recommendation. If the petitioner or defendant does not agree with the hearing officer's recommendations, s/he can ask for a hearing before the judge within 3 days of the hearing officer's hearing. The TRO remains in effect until the judge makes a decision, or for 15 days, whichever is the longest. The petitioner should find out when and how to obtain a copy of the judge's order once s/he has ruled on the hearing officer's recommendations.

The petitioner should receive a certified copy of the order, and keep it handy at all times. It is a good idea to make copies of the order for work, school, car, daycare, or storage in a safe place.

STEP SEVEN: EXTENDING, MODIFYING OR DISSOLVING THE ORDER

To extend the court order beyond the period of time the judge has granted, the petitioner can file a motion to modify the order - BEFORE it expires.

If the petitioner or defendant wishes to change the terms of the order, a motion to modify the order can be filed.

If the petitioner or defendant wishes to dissolve the order, a motion to dissolve can be filed. The court will set a date for a hearing and the defendant will be served with a copy of the motion and a request to be present. The petitioner must be present at the hearing to tell the judge why the extension, modification or dissolution is requested.

Courtesy of Louisiana Protective Order Registry