

Module 2

Considerations Related to Leaving

Chapters

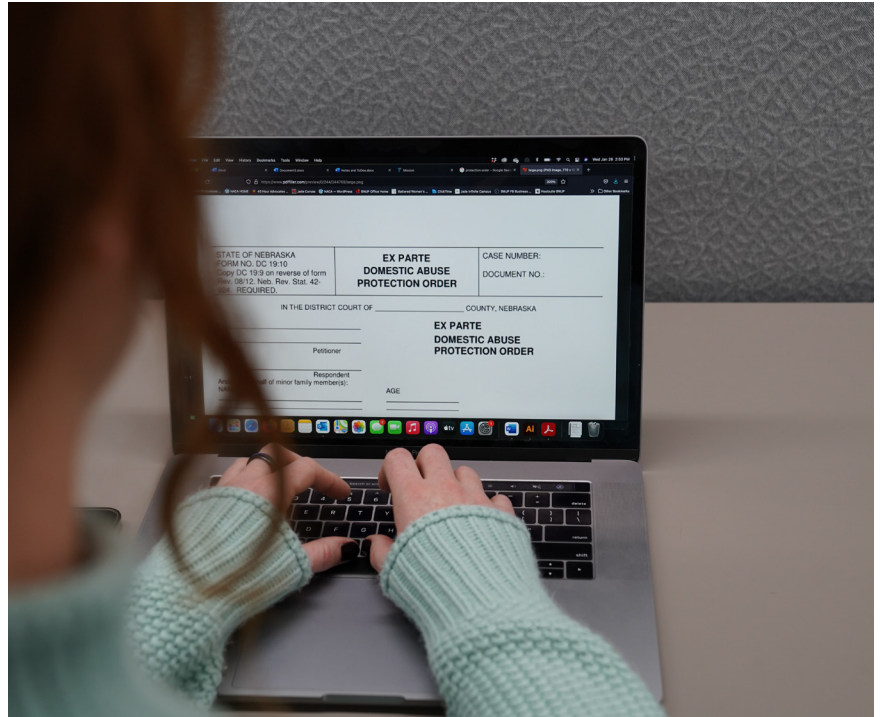
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What is an Order for Protection?

An order for protection is a court order that prohibits an abusive partner/ former partner from threatening, stalking, or harassing a victim of domestic violence.

Different states have different names for these orders including: protective order, restraining order, protection from abuse order, and others.

Orders for protection are available in every state and territory. Each state/ territory has its own process and requirements.



Orders for protection can:

- Remove a partner from your home
- Ban a partner from coming to your home, school or workplace
- Ban a partner from contacting you
- Be issued on behalf of minor children if they were abused as defined in your state's laws
- Provide additional forms of relief

Protection orders and access to money

Many states recognize that having access to money (economic relief) is key to staying safe. The options vary depending on state laws and relief in a protection order can include:

- Temporary child and/or spousal support
- Mortgage and/or rent payment
- Temporary possession of shared property
- Require the other party to maintain insurance coverage or utilities
- Reimbursement for medical expenses or property damage
- Payment of debts, bills, and insurance that come due during the order
- Reimbursement for lost wages, attorney's fees, or moving expenses relationships with others.
- Displaying weapons.



Protection order considerations

Safety

Protection orders can be an important tool for safety and they are not the right choice for everyone. A domestic violence advocate can help you sort through the pros and cons of petitioning for an order for your individual circumstances.

Immigration status

Protection orders are available regardless of immigration status. They can serve as evidence for survivors who are seeking legal status. Be aware that partners who violate protection orders may jeopardize their own immigration status.

The intersection of immigration laws and protection orders laws is complicated. Before taking action, try to consult with an attorney or advocate who is knowledgeable about both areas of law if you or your partner are not U.S. citizens.

Process

If you are potentially interested in seeking a protection order, consider talking with a domestic violence advocate or attorney. They can identify which forms of protection you may be eligible for and help you sort through the pros and cons. Together, you can decide if a protection order is right for you. An advocate also may be able to attend court with you for support.

Learn more

Here are resources for more information about protection order laws in your state:

- Go to WomensLaw.org and type “order for protection” and your state name in the search
- Complete an internet search with “order for protection” and the name of your state as key words
- Contact your local domestic violence program. The Hotline’s directory of local resources can help you locate programs near you.

Separation, divorce, & custody

Get legal advice

The best legal strategy will be different for every person and situation. If you are considering leaving, if at all possible, try to at least consult with a lawyer. If you have access to an Employee Assistance Program (EAP), check to see if it includes free legal consults. You will find some resources for finding affordable legal representation later in this section.



Gather information

Gather as much of the following information as possible before meeting with an attorney:

- Past income tax returns
- At least one pay stub for you and your partner if applicable
- Employee benefit statement(s), if any
- Copies or photos of retirement, bank, and/or investment account statements

A list of your possessions-your home, car, furniture, etc.

Categorize the list by:

1. Things that are yours
2. Things that are your partner's
3. Things you bought while married

Expenses and insurance

Estimate your current living expenses, including any money you spend on your children. This will be important during the divorce process. Your financial situation may change drastically, so it could be helpful to consider ways to cut back on expenses.

It is also important to consider insurance coverage. If you're now covered under your partner's health plan, you may be able to continue it. During divorce proceedings, you can request that your children's health care benefits be covered by your former partner. It's important to discuss these considerations with an attorney.

Division agreement

A divorce settlement includes a property division agreement or order. This will include both money and property (assets) and liabilities (debts). Some of the common assets that must be divided include your home, savings, retirement plans, and household items. Before meeting with an attorney it can be helpful to think about what assets you want to keep and the assets and liabilities you are most open to negotiating about.



Custody

Custody generally includes physical and legal custody as well as a parenting plan or other document that outlines details related to the child(ren).

Physical custody includes things like who the child(ren) lives with most of the time, responsibility for and decisions about daily routines and care of the child(ren).

Legal custody refers to the right to make major life decisions including education (what school, public, private or homeschool, etc), healthcare (consent for non-emergency treatment, selecting providers, etc.), religion (raising or not raising in a particular religion, enrollment in religious/spiritual courses).

A parenting plan is a document that outlines things like when the child(ren) will be with each parent, how holidays will be split, transportation of the children, how custody will be split, and how decisions related to the child(ren) will be made. It is often included as one section of a divorce decree.

The plan should be written in a way that works for the current age of the child(ren) and continues to work as they get older. The level of specificity varies and the items included will depend on your individual circumstances. A clause that's helpful for one situation can be harmful in another.

Remember, you know your situation best and are best positioned to know what will and will not be helpful for you.

WomensLaw provides explanations of each state's laws. Learning about them can help you prepare for a custody case.

The National Council of Juvenile and Family Court Judge's publishes an article titled "Ten things to know about parenting plans in cases involving domestic violence", it includes things to think about as you develop a parenting plan with or without an attorney.

Mediation

You may be asked to use a mediator to resolve financial obligations (debts) you share with your partner. While some states require mediation, **there are generally exceptions to this requirement possible when domestic violence is a factor.** Consider if mediation is the right choice for you. It is not always safe or helpful for survivors of domestic violence. This article includes things to consider and possible ways to make mediation safer. Let the court know if mediation is not a safe option for you.

If you decide to agree to mediation, understand that you do not need to like or agree with everything in order for mediation to work.

The role of the mediator varies somewhat based on the type of mediation. If you can, it is often helpful to have an attorney with you to help advocate for your best interests.

Lack of cooperation

Following separation and during a divorce process, abusive partners often refuse to cooperate. They may attempt to manipulate the process. Be aware of your safety risks as you face these challenges. You may discover that your partner has:

- Opened accounts and created additional debt in your name.
- Hidden or undervalued their assets.
- Refused to comply with payment plans established by creditors.
- Quit a job or obtained a low-paying job to escape financial responsibility.

Finding a low-cost attorney

Legal services organization

Every state has non-profit legal services organizations that provide free legal services to low-income residents if they meet other qualifying factors. However, the demand for free legal services far outweighs the supply of lawyers and so it may be difficult to get an attorney or there may be a waiting list.

Local domestic violence program Some programs have an attorney on staff or might be able to give you a referral for a reduced fee or volunteer attorney.

State bar association lawyer referral services Local bar associations usually have a Lawyer Referral Service where they can refer you to an attorney who specializes in your type of case. The attorneys will usually charge a reduced rate, between \$25-\$50, for the initial 30-minute consultation. They may also be able to provide information on whether an attorney has been the subject of an ethical complaint or inquiry.

Law schools

Some law schools provide free legal counsel by students who are supervised by a licensed attorney.



Pro se divorce

Sometimes, people only have the option to file on their own without an attorney. This is called **pro se litigation**.

Most courthouses provide divorce forms and some even have a pro se office where they can provide support and guidance through the process. A paralegal may also be able to help you prepare the forms at a rate that's more affordable than hiring an attorney. In addition, there are online resources, such as WomensLaw.org's Preparing for Court By Yourself page, that can help guide you through the process.

Paying for an attorney

Attorney costs can vary. The most typical fee arrangements are: charging by the hour, flat fee, and prepaid legal plans. You will find a more detailed description of each of these on the next page. Any of these arrangements should be clearly written out and include the attorney's responsibilities, communication expectations, and when payment is expected. Don't be afraid to negotiate the terms and don't sign anything you don't understand.

Charging by the hour

This rate is usually based on the attorney's experience. You will be billed for all their time on your case including emails and phone calls. The attorney will most likely require a retainer. A retainer is a single, up-front payment. The contract should detail how the retainer is used and whether it's refundable if you don't use the full amount.

Flat fee

This is a set amount of money for a specific action.

Prepaid legal plan

A participant (or employer) pays for future needed legal services. Usually, participants pay a fixed amount each month or year for benefits to be used when needed.

Child Support

Child support can be voluntary or it can be ordered by a judge or other agency. This depends on the laws of the state where child support is being determined. Child support covers some of the regular expenses involved in raising a child and can include medical support, educational assistance, and insurance costs.

States have their own methods for determining child support amounts. They generally consider total income as well as parenting time when determining amounts. One or both parents may be ordered to pay.

Paternity

For unmarried partners, paternity is not automatically established. If an affidavit of paternity was not signed at birth, either party can file in court to establish paternity. A judge may order a DNA test.

Paternity is a legal relationship. It may mean certain benefits are due from the legal father. These may include: child support, inheritance, veteran's benefits, social security benefits, and life insurance.

Individual decision

For some, child support provides welcome financial support. For others, it leads to custody and visitation struggles and unpaid child support. At times, it can lead to physical and emotional violence from the abuser against the survivor and her children.

Child support decisions can be very difficult. It's best to begin by getting advice specific to your situation and state. Speak with an attorney and/or domestic violence advocate before making a decision.

Child support FAQs



What agency enforces child support?

Child support enforcement programs are run by the states. They are often run by the Human Services Department, Attorney General's Office, or Department of Revenue. Tribal Nations often have their own child support enforcement programs. When a person ordered to pay child support is a military member, there may be additional enforcement options through the Defense Finance and Accounting Service and/or the chain of command.

In addition to state laws, there are federal laws regarding child support. To get information about child support enforcement in your state, you can contact the Office of Child Support Enforcement:

Office of Child Support Enforcement
Administration for Children and Families
Department of Health and Human Services
370 L'Enfant Promenade, SW
Washington, DC 20447
202-401-9373 www.acf.hhs.gov/css

Am I eligible to receive child support?

You may be able to collect child support if:

- At least one child for whom you are seeking support is under 18. In some states, it might be as high as the age of 21. There may also be exceptions if the child is going to school or if they are disabled.
- You are a parent/legal guardian of the child(ren) for whom you are seeking support and they are financially dependent on you.
- People who receive assistance under TANF (Temporary Assistance to Needy Families), Medicaid and other public benefits are automatically referred for child support enforcement services. Talk with an attorney or advocate to learn more about your options.

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Child support FAQs continued

If I receive public assistance, will it impact my child-support options?

If you disclose that you have been abused and are receiving funds through TANF, you must cooperate with the state. In order to collect child support, they need to find your children's father. This means you may need to provide information about him, including his name and address.

Provide this information unless you believe that collecting child support would put you or your child in danger. If you choose not to cooperate, you could lose some or all of your TANF assistance unless you can demonstrate you have a "good cause" not to cooperate. See the answer about good cause below for more information.

What does a protection order have to do with child support?

A protection order can provide safety protections from abusive partners. It can also help you and your children obtain financial support. A protection order may order your partner to pay for various expenses including child support. In this situation, child support will end when/if the protection order expires or when a permanent order for child support is issued in a family court proceeding (e.g. divorce or child custody)

What does good cause mean and what does it have to do with my child support options?

Everyone who applies for or gets TANF benefits must establish paternity and pursue support. At times, domestic or family violence makes complying with these requirements dangerous. If so, the recipient may be excused or waived from participation based on good cause. You can request good cause from your state child enforcement agency at any time. Some states automatically approve good cause claims from address confidentiality program participants.

Good cause will usually be granted if pursuing support would:

- Make it more difficult for a family or household member to escape domestic violence.
- Place a family or household member at risk of further domestic violence.
- Unfairly penalize a family or household member because of domestic violence.
- The child who needs support was raped by the biological father.
- The child who needs support was born as a result of rape or incest.
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Child support FAQs continued

What happens if I have good cause for not pursuing child support?

When someone requests good cause, a caseworker or family court is notified. When that happens, they will delay collection until the request has been considered. Requests are generally referred to the child support enforcement office or to a specific caseworker. They should help fill out the domestic violence verification form. Or they may supply verification in cases of rape, incest, or adoption. Once the form is complete, the survivor and her caseworker should work together to obtain a formal response to the good cause claim.

What are some common child support strategies to consider?

If you are applying for a protection order, consider requesting child support as part of the order if your state allows it.

Income information from both partners is required in child support enforcement cases. Consider consulting an attorney if the financial statement from your ex appears inaccurate or fraudulent.

Financial Assistance



Services that can help

Domestic violence programs offer services such as shelter, support groups, short-term economic planning, referral programs, legal advocacy, and peer support.

Public and private resources may offer free or low-cost services to help you and your children. They may also offer benefits to help with basic day-to-day needs, including housing, food, utilities, and clothing. Visit the federal government's benefits information website to learn more about your state's benefits.

Accessing public resources can be difficult. Work with a domestic violence advocate to learn about available community resources.

Public Assistance

Temporary Assistance for Needy Families (TANF) provides financial assistance to families on behalf of children who don't have the support of one of their parents. Eligibility for most programs is based on income level in relation to household size.

Once you receive public assistance, you will likely be required to regularly meet with a caseworker and show that you meet program requirements to keep receiving assistance. If you think your application or claim for benefits was unfairly denied, consider filing an appeal. A domestic violence advocate can help you.

TANF History:

The Personal Responsibility and Work Opportunity Reconciliation Act was passed in 1996. This created the Temporary Assistance for Needy Families (TANF) program. The act gives each state the choice to elect Family Violence Options (FVO) as part of its TANF state plan. FVO provides special provisions for people who are victims of family violence.

Family violence options (FVO)

Every state TANF plan has some form of Family Violence Options implementation that includes special provisions for persons who are victims of family violence including:

1

Domestic violence or abuse screening.

2

Confidentiality protections for survivors.

3

Information and referrals to DV services.

4

Waivers for program requirements.

FVO Waivers

Waivers (suspensions of a rule or policy) for FVO program requirements are granted when program requirements make it more difficult to escape abuse, present safety risks, or unfairly penalize domestic violence victims. Possible requirements that can be waived include:

- Time limits.
- Residency requirements.
- Child support cooperation requirements (good cause).
- Family cap provisions.

For more information on FVO in your state, contact your local domestic violence program.

Program information

If you contact a state or county public assistance office, request:

- A list and explanation of all programs and services available in your city and state, including cash assistance, child support, food stamps, free/reduced school lunch, child care assistance, medical insurance, and medical assistance.
- Information on how to access applications and how to complete and submit them.
- A list of eligibility requirements and required documents.
- Income and asset limitation documents.
- If you are homeless (including if you are living in a shelter or staying with a friend), ask about priority processing to receive emergency assistance services.

Ahead of time

Before you meet with a representative for public assistance, discuss the following with an advocate:

1

The pros and cons of disclosing domestic violence.

2

If you should request that domestic violence indicator flags be placed in your TANF file.

3

Any work or training requirements for accessing federal and state assistance programs and whether childcare is provided in those programs.

Privacy and Safety

Safety Planning

In addition to the strategies already covered, here are some additional things to keep in mind when seeking independence from your abusive partner.



Housing

If you choose to leave, safety plan around how to secure housing and what sort of housing will best meet your needs.

Tips:

If your state has an address confidentiality program, consider if it is right for you before finding new, permanent housing.

Supplying your own copy of your credit report when applying for housing may be a way to keep your new address off your credit report.

Private property owners may be less likely than large property-management firms to check your credit history through a credit bureau.

If you are getting a roommate, having the utilities listed in their name may help limit where your contact information can be found.



Technology

You can find out how much of your personal information is online with free and fee-based websites. You can search for your phone number and address via search engines and sites like True People Search or WhitePages. True People Search allows you to request removal of your record.

Be cautious with the internet including online applications and communicating with your landlord or mortgage company, as an abusive partner may have access.

Set up a news alert on www.google.com/alerts. It will notify you whenever your name, address or phone number are used on the internet.

Consider turning off location sharing and any GPS trackers if it's safe for you to do so.

Contact your state or local domestic violence program. Through them, you can learn more about technology safety and privacy strategies. You can also visit www.techsafety.com

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Safety Planning continued



Work

These potential strategies won't apply to all work situations and may not be right for you. It can be helpful to work with an advocate to develop an individualized plan. If it is safe, available, and appropriate consider the following:

- Provide your supervisor and company security with a copy of your protection order, if you have one.
- Provide your employer's security and reception people with a photo of your partner.
- Ask security to escort you to/from your car or public transit.
- Screen your telephone calls.
- Change your schedule and/or travel patterns to/from work.
- Save emails, voicemails, letters, and gifts from your abuser. If you choose to use the legal system, this evidence will be helpful. If you have a protection order, document violations of the order.
- Request your workspace be moved to a more secure area or another site if possible.
- Request to have your name/photo/contact information left off of directories and other public-facing locations such as websites, annual reports, etc.
- Look into state-specific job-protections that may apply. Legal Momentum has a list of protections available on their website that was last updated in December 2022.

Privacy protection

Protecting your privacy can help you protect your safety. Consider the following actions:

Address confidentiality program

If your state has an address confidentiality program, consider enrolling. If there isn't one, consider getting a PO Box address.

Social Security number

Block online and automated access to your Social Security number. Do this by calling 1-800-772-1213 or calling your local Social Security office.

Account passwords

Change all passwords that your abusive partner might know and log out of all accounts on devices they may have continued access to. Contact banks, utilities, department store credit cards, phone companies, etc. Place a new or extra password on your account.

Reduce accounts in your name

Reduce the number of accounts in your name, such as utilities. Try to find housing that includes utilities in the monthly rent. If you have a roommate, ask them to put household bills under their name.



Address confidentiality programs



Address confidentiality programs (ACPs) exist to protect victims of stalking, domestic violence, sexual assault, and other crimes. They give participants a legal substitute address (usually a post office box) to use in place of their physical address. This address can be used whenever an address is required.

First class mail sent to the substitute address is forwarded to the victim's actual address. ACPs generally only allow standard first class mail so you won't be able to get newspapers, magazines or packages delivered to your physical address in your name. ACP participation can add several days to mail delivery.

Most, but not all, states have an ACP. The comprehensiveness and specifics vary from state to state.

In order for an ACP to be effective, your address needs to be unknown to the person you fear at the time you enroll. ACPs can be a helpful piece of a comprehensive safety plan and are not an adequate safety plan in and of themselves.