

Orders of Protection

Presenters: Hon. LeAnne Sumner, Juvenile Court Magistrate

Dana Wolfe, Victim Services Coordinator

Stacy Miller, Asst. Dist. Attorney General

Course Plan:

- We will discuss:
- The Statute
- How DV and Order of Protection cases are handled at General Sessions and at Juvenile Court;
- What services are available to children and adults to respond to these issues;
- Any other questions or concerns that you have.

Orders of Protection

- Orders of protection originate at General Sessions Court.
- Orders of protection can also be filed as part of a divorce action.
- In Davidson County, people needing an OP can be sent to the Family Safety Center to get help with the paperwork and services.
- In your court, you will most likely have a designated person to handle the OP requests.

What law controls?

- Tenn. Code Ann. § 36-3-601 *et seq.*
- A Petition filed by a juvenile must be signed by that juvenile's parent or guardian.
- Does that code really translate well to our juvenile system????
- Not really, let's go over the statutory requirements and then we will discuss why not....

36-3-601

- (5) “Domestic abuse victim” means any person who falls within the following categories:
- (A) Adults or minors who are current or former spouses;
- (B) Adults or minors who live together or who have lived together;
- (C) Adults or minors who are dating or who have dated or who have or had a sexual relationship. As used herein, “dating” and “dated” do not include fraternization between two (2) individuals in a business or social context;
- (D) Adults or minors related by blood or adoption;
- (E) Adults or minors who are related or were formerly related by marriage; or
- (F) Adult or minor children of a person in a relationship that is described in subdivisions (5)(A)-(E);

36-3-602

- Temporary Order of Protection
- Juvenile's petition must be signed by a parent or guardian.
- Venue – the county where the respondent resides or the county where the abuse occurred.

36-3-603

- Duration of OP – divorce action:
- If an OP is in effect at the time of divorce complaint filing, it remains in effect until the Judge modifies it.

36-3-604

- Forms:
- The AOC has forms on the website and there are forms in your materials today.
- <https://www.tncourts.gov/node/305439>

36-3-605

- Ex parte Order
- Hearing within 15 days
- Good for 1 year.
- Can be extended.

36-2-606

- Broad scope.
- Protect from further abuse, stalking, etc.
- Grant temporary custody, possession of the residence, care of the animals, etc.
- Order DV programs and classes.

36-3-607

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- Bond not required to be posted by the petitioner.

36-3-608

- OPs shall be effective for a fixed period of time.
- 1 year
- Can be extended or modified.

36-3-609

- If service has been achieved, then all orders are effective when entered.

36-3-610

- Violation of Order or of the Consent Agreement.
- Court may hold the defendant in criminal or civil contempt.

36-3-611

- Arrest for violation of OP.
- Arrest may occur with or without a warrant.

36-3-612

- Contempt hearing.
- Hearing within 10 working days of the arrest.

36-3-613

- Right to relief not negated by the petitioner having to leave the residence or having to defend themselves against abusive behavior.

36-3-614

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- Covers Orders of Protection and parentage cases.

36-3-615

- Notification to victim that defendant may be released on bond.
- Arresting officer shall inform the victim that bond or even release may be possible.

36-3-616

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- Creates a domestic violence community education fund.

36-3-617

- A domestic abuse victim shall not be required to bear the costs of litigating the OP.
- Costs can be assessed if the Court determines that the Petitioner knew that the allegations were false at the time of the filing of the petition.

36-3-618

- Legislative intent:
- To recognize the seriousness of domestic violence and to ensure that the law provides victims with the protection they need and deserve.

36-3-619

- Primary Aggressor
- When called to a domestic violence incident, the preferred response is to arrest the primary aggressor.

36-3-620

- Seizure of weapons.
- The officer shall seize all weapons that are alleged to have been used by the abuser or threatened to be used by the abuser in the commission of a crime.
- (36-3-621 – repealed.)

36-3-622

- Full faith and credit granted to out of state protective orders.

36-3-623

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- Confidentiality of records at shelters or centers for DV, human trafficking, crisis centers, etc.

36-3-624

- Death review teams:
- Established to assist local agencies in identifying and reviewing domestic abuse deaths to facilitate communication and effective handling of these cases.

36-3-625

- Dispossession of firearms.
- Respondent is required to dispossess any firearms within 48 hours of the issuance of the order.
- Cannot possess firearms for as long as the OP is in effect.

New Law

- Public Chapter 828
- Following the arrest of a person for agg. assault in which the victim is a domestic violence victim, the Judge or Magistrate may extend the 12-hour hold to a 24-hour hold.

36-3-601 *et seq.*

- Dana and Magistrate Sumner will discuss:
- How our cases come to us;
- Once the OP is filed, “everything else stops here at Juvenile”...
- What docket do they go to – regular settlement vs. OP docket;
- Juvenile vs. Juvenile go to the Div. 2 Settlement/special OP docket.

Adult v. Adult – at Juv. Ct.

- Parentage OPs follow the pending cases at Juvenile Court.
- (Tenn. Code Ann. § 37-1-104(f) and AG opinion No. 13-98):
 - “Notwithstanding any provision of the law to the contrary, the juvenile court has concurrent jurisdiction with the circuit and chancery court of proceedings to establish paternity of children born out of lawful wedlock and to determine any custody, visitation, support, education or other issues regarding the care and control of children born out of wedlock.”

In General: Orders of Protection

- What can you tell the victim or family to help them prepare for the hearing?
 - The Petitioner/Juvenile will be representing themselves – no provision for an appointed attorney.
 - The parents can only testify if they are sworn in as witnesses. They cannot just advocate for or represent the youth.
 - The majority of our Ops end up as a “mutual stay away” order or consent agreement. This is usually how our cases are resolved.
 - Reminder to all: The OP order does not change custody. Visitation may be limited if there is a safety issue, but actual custody is not changed by the OP order.

OPs

- Obviously, we need complete information – address, etc. in order to file the petition and get it served.
- If an OP is granted, and a contempt is alleged, it must be filed at Court.
- Also true with the stay away order or violation of the consent agreement.
- If it started at Juvenile, it stays at Juvenile when juveniles are on both sides.

DVs at Court (cont.)

- What is the hearing like?
 - Juv. Ct. is just like in adult court. No major differences. Our Magistrate often will ask questions in order to move the case along and understand the issues.
- What parts of the DV statute translate well for our system?
 - The mutual agreement or the stay away order.
- Example: the actual order of protection can be issued and enforced.
 - We also utilize “stay away” orders or injunctions.
 - The underlying OP may be dismissed, but the stay away order will be in effect.

DVs at Juv. Ct. (cont.)

- What parts don't?
- Example: handguns – minors can't have them anyway;
- bond – our court doesn't issue bonds to minors,
- other examples: Step-parents filing or Parents filing against the child.
- The standard OP paperwork doesn't really work either and our Magistrate usually has to mark out quite a bit of it.

What works?

- Stay away orders – what are they and how do they work?
 - Tenn. Code Ann. § 37-1-152 – Injunctive Relief/Restraining Orders.
- Court ordered services and DCS referrals
- Tenn. Code Ann. § 37-1-131(c)(2) – allows the Juvenile Court to restrict contact between juveniles who attend the same school and also to strongly recommend to the school that the offender change schools.

What else works – at Juvenile and Adult Court?

- Prosecuting the underlying case – assault, aggravated assault. Etc.

What else works?

- Monitoring the case while services are completed.
- ADR such as mediation and classes while prosecution is deferred or diverted.

What are our biggest headaches?

- A Parent who files against their child – Can't really happen for an order of protection because parents are legally required to care for their children. There are other avenues available, but OP doesn't really work.
- What can the parent file? - Unruly petition, assault, etc. This is called a front desk complaint and we will process their case to a settlement date or some other intervention.
- Step-parents who file. They want the child removed from their home, but you run into the same problem as above with the biological parent. There could be problems with sibling contact too.

Headaches! (cont.)

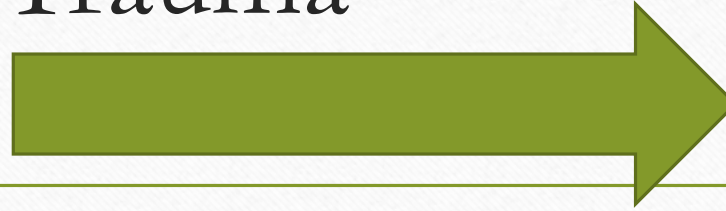
- Young people who don't want an OP or even a stay away order, but their parent does.
- **For adults and juveniles:**
 - **Social media – (revenge porn, bullying, harassment)**
- **Need I say more!!!!**

Specific Impact on Youth

- Co-occurring child abuse with DV has been rated as high as 45-60 % according to the CDC.
- The circumstances of DV leave the caregiver unavailable and emotionally unresponsive.
- Especially with young children, this type of toxic stress diminishes their brain development.
- Children witnessing DV have a far greater incidence of emotional and cognitive issues.
- And, they may well end up as a victim or abuser themselves.

DV Issues, Trauma

Custody Issues



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- With DV issues and trauma issues, you very well may end up in a custody battle.
 - Parent vs. parent
 - DCS/the State vs. parent
 - Grandparent vs. parent
 - Third party vs. parent.

Jurisdiction

- Juvenile Courts have jurisdiction over unmarried parents, so any custody battle between unmarried parties will be at Juvenile Court.
- Juvenile Courts have exclusive jurisdiction over child abuse cases, so they must be at Juv. Ct.
- That means that in a divorce case if child abuse issues are alleged that case has to start at Juvenile Court.

Child abuse or exposure to violence

- Yes, that could be enough for the state or a third party to get custody of a child.
- When abuse is alleged, the court will appoint a *Guardian ad litem* (Tenn. Code Ann. § 37-1-149). This person is an attorney who is required to present the child's best interests to the Court.
- It is not a best interest test though for the granting of custody to a third party, the first prong of substantial harm must be met, then you get to best interest.

Thank you!

- Thank you for your interest in the OP process.
- It has been our honor to talk with you today. Please feel free to contact us:
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