



A S S I S T A N C E

## Protection from Abuse in Maine

Find more easy-to-read legal information at [www.ptla.org](http://www.ptla.org)

### What is a Protection from Abuse Order?

This is an Order you can get from the Court to protect you from being abused.

You can get a **Protection from Abuse Order** against:

- your spouse or ex-spouse
- someone who you live with or used to live with
- your current or former dating partner or sexual partner
- anyone who has stalked you or sexually assaulted you

### What if I am being harassed by someone else, or in other ways?

If you are being harassed in other ways, or by persons not on this list, you can ask for a **Protection from Harassment Order**. You can get the forms from any District Court. You can get a pamphlet about it from the Court or Pine Tree Legal Assistance.

### What if my child is being abused?

If you are responsible for a minor child, you can ask for an Order on behalf of the child. If you are both being abused, you can ask the Court to give an order that will protect both of you.

### Where do I go to ask for an order?

You can go to the District Court:

- where you live, or

- where the person who abused you lives, or
- where you have gone to escape the abuse

If that judge is not available, another Court can issue an order.

**NOTE:** If you have moved to escape your abuser, and you file your complaint in the county where you are now living, your abuser will know, from the court papers, which county you live in.

### How much will it cost?

There are no court fees.

### What happens when I go to the Court?

Go to the clerk's office and ask for a **Protection from Abuse Complaint** form, or get the form online at: [www.ptla.org/forms/pfa.htm](http://www.ptla.org/forms/pfa.htm). You can fill out the form at the courthouse or take it with you to fill out somewhere else. If you have trouble understanding the form, ask the clerk, a friend, or an advocate for help.

### How do I fill out the complaint form?

Fill out the form as completely as you can. You are the **Plaintiff** and the person who abused you is the **Defendant**. If you are bringing the complaint for your child, list yourself as Plaintiff "on behalf of" your child. If both of you have been abused, state that you are complaining on behalf of yourself and your child.

Describe the abuse with as much detail as you remember. Example: "On June 20 of this year John Doe slapped me on the face."



Then he kicked me on the legs causing bruises. The next day he told me he would kill my cat if I don't do as he says."

In the last section of the form, where you are asking the Court to give certain orders, be sure to check **all of the boxes** that apply to you. You can change your mind later and drop any requests. But if you leave any boxes unchecked, the Judge may not let you ask for those remedies later on (because the Defendant was not put on notice).

### **What if I don't want the Defendant to find out where I am staying?**

Where the Complaint form asks for your name and address, write your name only. Then ask the clerk for an **Affidavit for Confidential Address** form. (Also available online at: [www.ptla.org/forms/pfa.htm](http://www.ptla.org/forms/pfa.htm) ) State in the affidavit why you think this information must be kept private, for the safety of you or your children. Give your affidavit to the clerk along with your other papers. The clerk will then "seal" this information, so that the other party can't get it. If the other party objects to this in writing, the Court could hold a hearing to decide whether the clerk must still keep the information secret.

Let the clerk know if your address changes before your case is done.

**NOTE:** If you don't think that this will provide the protection you need, talk to your nearest Domestic Violence Project (listed below) about the "Address Confidentiality Program." This program gives you a legal address separate from your actual address. The Maine Secretary of State assigns the alternative address, gets your mail at that address, then forwards it to you.

### **How soon will the Court give an Order?**

If you need protection right away, check the box asking for a **Temporary Order**. If the judge who reads your complaint agrees that you are in **immediate and present danger**, she will give an order right away. The order will take effect as soon as it is served on the defendant. If the judge does not give a temporary order, you will still have the chance to get an order later, after a court hearing.

### **What happens after I fill out the Complaint?**

The Complaint has to be notarized. This means that you must sign the complaint, swearing that it is true, in front of the court clerk, a notary public, or a lawyer.

The clerk may also ask you to fill out a **Protection Order Service Information** form. On this form, write down where the defendant can be found. This will help the police or sheriff find the defendant to serve the court papers.

If the defendant is not already ordered to pay child support, and you want the Court to order child support, ask the clerk for a **Child Support Affidavit**. You can file it with your complaint or fill it out later. If you fill it out later, file it with the clerk before your court hearing, send a copy to the defendant, and save a copy for yourself.

You can get all the forms you need from the Court clerk or online at:  
[www.ptla.org/forms/pfa.htm](http://www.ptla.org/forms/pfa.htm)



### **Will I have to talk to the Judge?**

Maybe. The clerk will show your Complaint to the judge. After he reads it, he may want to know more. Then he will talk to you. He may ask you to explain the abuse in more detail. If your Complaint has enough information, he may give an Order without talking to you.

### **Will the Defendant see what I wrote in the Complaint?**

Yes. If the judge gave a **Temporary Order**, the clerk will ask a police officer or deputy sheriff to serve the **Complaint and Temporary Order and Notice of Hearing** on the Defendant. The clerk should also give you copies of these papers. The Court must schedule a hearing within 21 days. The **Notice of Hearing** will tell you the date and time.

If the judge denies the **Temporary Order** after talking to you, the clerk will fill out a **Summons**. The **Summons** will tell the Defendant the date and time that your Complaint will be heard by the Court. She will give you copies of the Complaint and Summons. Take two copies of each to the police department or sheriff's office, along with the **Protection Order Service Information** form. They will serve all of these papers on the Defendant. Check back with them before your hearing to make sure they have sent a **Return of Service** back to the Court, showing that the Defendant got notice of the hearing. The Court cannot hold a hearing on your Complaint until the Defendant has been notified.

If the **Temporary Order** is granted, you will not have to pay the sheriff's service fee.

If the **Temporary Order** is denied and you cannot afford the service fee, tell the clerk. She will give you an **Application to Proceed Without Payment of Fees** and an **Affidavit** form (also available online at: [www.ptla.org/forms/pfa.htm](http://www.ptla.org/forms/pfa.htm)). This form asks for financial information. **If your only income is TANF or SSI, the Court should waive the fee.** If the judge agrees that you cannot afford the cost of service, the fee will be waived.

### **What if the Defendant does not live in Maine?**

The Court cannot order out-of-state service. You will have to contact the local law enforcement office where the Defendant lives to arrange service. Mail two copies of the court papers to them, along with information about where the Defendant can be found. Ask them to send the **Return of Service** back to the District Court before the hearing date.

### **What if the Defendant is not served before the court hearing date?**

You should still go to Court at the scheduled time. The judge will postpone the hearing and set a new date. This might happen a few times until the Defendant is served. After 90 days, if the Defendant still cannot be found, your Complaint may be dismissed. You can file a new Complaint if the Defendant shows up later and you still need an Order.

### **Do I have to go to the court hearing?**

**Yes.** If you do not go, the Court will dismiss your case and your **Temporary Order** will end.



If you have a very compelling reason why you can't be at the hearing, you may ask the judge in writing for another hearing date. Give your request to the clerk. The judge will read it and decide if she will postpone the hearing or not.

### How do I prepare for the hearing?

#### Step 1: Decide if you want to have a lawyer represent you.

Many Protection from Abuse cases are handled without a lawyer. If you believe that the other side will have a lawyer, however, or if there are complicated issues to be raised in your case, you may be better off with a lawyer. In any event, it is your choice.

If you want a lawyer for the hearing, call one as early as possible. If you cannot afford a lawyer, you may be able to get one through Pine Tree Legal Assistance (listed in your telephone directory). If you do not want a lawyer but do not want to go alone, you can ask a friend to go with you. Your local domestic violence project may also be able to help. Call 1-866-834-HELP.

#### Step 2: Prepare your hearing testimony.

At the hearing, you will be asking the judge to continue the **Temporary Order** for up to two years. To get this, you must prove that the Defendant has abused you (or your child) in at least one of these ways:

- trying to hurt you or touch you in a hurtful way
- making you afraid by threatening, harassing or tormenting you

- forcing you or scaring you into:
  - doing something you have the right not to do (like staying up late at night to entertain or wait on the Defendant when you need to sleep), or
  - not doing something you have the right to do (like leaving the house or going to the store)
- kidnapping you or treating you like a prisoner
- frightening you by threatening to do serious violence to you or to someone else
- repeatedly following you or hanging around near your home, school, or work place to keep an eye on you
- sexually assaulting you

When you are thinking about how to tell the judge your story, be aware of these legal categories of abuse.

#### Step 3: Decide if you want witnesses.

If you know other people who saw or heard the abuse, or saw you right after the abuse happened, you may want to ask them to testify. You also have the right to subpoena witnesses. You can get subpoena forms from the clerk's office. It may not be a good idea to subpoena someone who is not willing to come on his own unless you are pretty sure that they will testify honestly and be helpful to your case. Keep in mind that, as a general rule, witnesses can only testify about what they actually saw and heard. Therefore, a lot of extra witnesses who did not actually observe any abuse, or the



immediate results of the abuse, will probably not be very helpful to your case.

If you have brought the complaint on behalf of a child, be aware that your case may be difficult to prove. If the child is too young to testify, then you will need other admissible evidence to prove your case. You may need testimony from a professional who has treated your child, such as a health worker or counselor, especially if there are no other witnesses to the abuse who can testify.

**Step 4: Decide if there are any documents you want to use as evidence.**

Many documents contain out-of-court statements which cannot be used in court. Most police reports fall into this category. A medical report documenting injuries can be helpful, but you must ask the hospital to **certify** it first. A threatening letter or note from the Defendant **can** be used as evidence. If you have documents that you think may help prove your case, bring them and the judge will decide if she can rely on them or not. Any documents you present as evidence will go into the court file so make copies of papers you want to keep.

**Step 5: Decide what relief you will ask the Court to give.**

After the hearing, the judge will decide whether to extend your Order. If he does, then there will be questions about what to include in the Order. The Order will usually:

- order the Defendant not to have any contact with you

- order the Defendant not to hurt you or threaten you or any children in your home
- order the Defendant to stay away from your home, school, business or workplace
- order the Defendant not to stalk you or follow you
- order the Defendant not to possess guns (or other specific weapons)
- grant temporary possession of the home to you or the Defendant
- order temporary division of personal property
- order the Defendant not to take, convert or damage any property that is yours or partly yours
- order the termination of any life insurance policy owned by the Defendant and insuring the Plaintiff, with a copy of the order to be sent to the insurer
- state how long the Order will be in effect (up to two years)

If you have mutual children, the Order may also:

- grant temporary parental rights (primary residence and visitation)
- order payment of child support (or order the filing of child support affidavits so child support can be determined and ordered later)
- order an immediate payroll withholding to collect support

You can also ask the judge to:

- order the Defendant to get counseling or attend a certified batterers' intervention program



- order the Defendant to pay for your temporary support
- order the Defendant to pay you for loss of earnings, injury to you or your property, or moving expenses
- order the Defendant to pay court costs or attorney fees (or order you to pay these costs if your complaint is dismissed)
- order that you will have custody and control of any animals in the household
- order anything else you need to stay safe

**Note:** If the Court orders that the Defendant cannot have weapons, the Court must also order the Defendant to give up those weapons within at least 24 hours. If the weapons are not turned over to a law enforcement officer, the Defendant must immediately (within 24 hours) file a written statement explaining: 1) what weapons have been turned over; and 2) the name and address of the holder of the weapons. If these orders are not followed, the Court may issue a search warrant, to find and seize the weapons.

Think about any specific kind of relief you may need and be prepared to ask for it. For example:

- if you have no income, prepare a budget showing the court how much money you need per month
- if you are asking for support for yourself or your children, be prepared to testify about the Defendant's income, if you know, or bring verifying documents
- if you think your children are not safe visiting the Defendant alone, develop and propose a supervised visitation plan
- if you think your children would benefit from the Defendant getting a specific

type of counseling, ask the court to order that and explain why

- if you are asking for possession of your home, you may want the judge to order the Defendant to turn over all keys to you right away
- tell the judge how long you would like the Order to be in effect (up to two years)

### **What happens at the court hearing?**

If the Defendant does not come to court, then you may not have a hearing. Some judges will grant the Order without hearing. Tell the judge what you want the Order to say. Other judges will want you to testify briefly about the statements made in your complaint. Explain again how the Defendant has abused you. If your Temporary Order was denied, be prepared to tell the judge about the abuse in more detail. Then tell the judge what you want the Order to say.

If the Defendant appears and agrees to an Order being issued, then the judge will usually draft an Order at your request and sign it. In that case, you will not need a hearing. Tell the judge about any specific relief you need in the Order. If you get an Order by agreement, it carries the same legal weight as an Order given by a judge after a hearing.

**NOTE:** If you or the other party has a lawyer, the lawyer may encourage you to enter into an Order by agreement. If you agree to such an Order, you give up your right to a hearing. Be very sure that you understand and are satisfied with the terms of any agreement before you accept an Order without hearing.



If the Defendant contests your Complaint, then you will have a hearing so the judge can decide the issues you disagree on. Each witness will be sworn in. As the Plaintiff, you testify first. Tell the judge your story, describing the abuse as specifically as you can. Explain what happened and when. Then tell the judge about any specific relief you need and why. Tell the judge how long you want the order to last. If you have brought documents, ask the judge to consider them. If you have brought or subpoenaed witnesses, ask them to tell the judge what they saw and heard. The Defendant will have the chance to ask you and your witnesses questions.

After you have finished, the judge will ask the Defendant to give his testimony and present witnesses. If you disagree with what the Defendant is saying, don't interrupt. Write down what you want to ask or say later in response. When the Defendant finishes, you can ask questions. You can also ask questions of the Defendant's witnesses. You have the right to see any documents the Defendant presents.

If the Defendant brings up any new issues, you may testify again after the Defendant closes, but only to respond to any new issues raised by the defense, not to go back over evidence you have already presented.

After both sides have finished, the judge will decide the case. If the Defendant is there and the judge issues an Order, a deputy sheriff will serve the Defendant with the Order right away. You should get a copy of the Order, too. If the Defendant is not there, the clerk will get an officer to serve the Order on the Defendant. The clerk will also send a

copy of the Order to your local police or sheriff's office.

### **What if the Court denies me an Order for Protection?**

Here are some options:

- You may want to appeal the decision. However, the grounds for appeal are limited to "error of law" and "abuse of discretion." The appellate court will not change the fact findings. **The appeal deadline is 21 days.** See a lawyer.
- You can bring a new Complaint later if the abuse continues. Include in the new complaint any abuse that has happened since the court's denial.
- Whether you have a Protective Order or not, assault, criminal threatening, stalking and trespassing are still criminal acts. If you think the Defendant has committed a new criminal act against you, contact the police and file a new criminal complaint.
- Take other steps to protect yourself. Make a plan and go to a safe place. Get help and support from your local domestic violence project (1-866-834-HELP) and from supportive friends and relatives.

### **What if the Defendant violates the Order?**

Call the police and tell them that the Defendant has violated your Order. The officer must arrest the Defendant. The officer does not need a warrant and does not have to see the violation in order to arrest. Most violations of the Order are at least Class D crimes. (Read your Order to see



which parts apply.) The maximum penalties for Class D crimes include one year in jail and a \$2,000 fine.

The Maine legislature continues to add more serious criminal penalties for domestic abuse. For example, repeated acts and more extreme forms of domestic violence are categorized as Class C crimes. The maximum penalties for Class C crimes include five years in jail and a \$5,000 fine.

If the Defendant is being prosecuted for crimes against you, contact the victim advocate at your county district attorney's office for information and support.

### **Can I get the Order extended past the two-year time limit?**

If the Order is going to run out and you still have good reason to believe that you need protection, you can ask for an extension of the Order. Ask the clerk's office for a **Motion to Extend** form, or get it online at: [www.ptla.org/forms/pfa.htm](http://www.ptla.org/forms/pfa.htm) . Fill this out, along with a new **Protection Order Service Information** form. The clerk will set a time

and date for your motion to be heard by the judge after the Defendant has received notice of the hearing.

If you do not file the **Motion to Extend** before the old Order runs out, you will have to start all over again by filing a new **Protection from Abuse Complaint**.

If you have mutual children and no long-term court order setting out parental rights and responsibilities, you should probably get this done while your **Protection from Abuse Order** is in effect. If you are married to the Defendant, you would deal with these issues in a divorce action. If you are not married to the Defendant, you would need to bring a **Determination of Parental Rights and Responsibilities Complaint**. If you do not have enough money to hire a lawyer, you may be able to get a free lawyer. Call or write to:

Volunteer Lawyer's Project  
P.O. Box 547  
Portland, ME 04112-0547  
**1-800-442-4293 or 774-4348**  
[www.vlp.org](http://www.vlp.org)

### **Do you need support? More information? Someone to talk to?**

#### **Call day or night, toll-free or collect:**

Maine Domestic Violence Helpline: 1-866-834-HELP

Maine Sexual Assault Crisis and Support Line

1.800.871.7741 TTY 1.888.458.5599

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### **Notice**

Prepared by Pine Tree Legal Assistance  
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Sometimes the laws change. We cannot promise that this information is always up-to-date and correct. If the date above is not this year, call us to see if there is an update.

We provide this information as a public service. It is not legal advice. By sending you this information, we are not acting as your lawyer. Always consult a lawyer, if you can, before taking legal action.

