

# Protective Orders in Virginia



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As I am writing this article, it is the day after the first week of NFL football games. The sole topic on the cover of sports websites, discussed on sports radio shows and covered on ESPN and other sports channels is the video in which Ray Rice brutally knocked his fiancé unconscious inside of a Las Vegas casino elevator. While this incident is both graphic and extremely unfortunate, it reminds the greater public what many family law attorneys already know to be true: domestic violence is alive and well in our society.

### Domestic Violence Statutes in Virginia

Fortunately, Virginia has a number of statutes which provide safety and peace of mind to victims of domestic violence. If you, or someone you know, is a victim of “family abuse” (defined as “any act involving force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person’s family or household member”- Virginia Code § 16.1-228), then he or she should immediately make an appointment at the civil intake office in the Juvenile and Domestic Relations District Court in the County where the abuse occurred. At this appointment, the victim will recount all instances of prior family abuse in a sworn affidavit, which will be presented to a judge *ex parte* (meaning outside the presence of the offender). If the judge finds there is good cause, he or she will issue a preliminary protective order. Good cause requires that the family abuse has been recent or the threat of further abuse is imminent.

### Protective Orders

If the court issues a preliminary protective order, it has a lot of restrictions it can place upon the alleged abuser. The court can restrain the alleged abuser from committing further acts of abuse, limit contact, get one party out of a common residence, prevent the termination of utilities in said residence, grant one party the use of a common vehicle, require the alleged abuser to provide alternative housing for the victim and any other necessary relief.

Regardless of the outcome of the preliminary protective order, a hearing on a permanent protective order (i.e. a protective order for up to two years) shall be docketed within 15 days of the initial intake. At a permanent protective order hearing, the court has even broader powers. In addition to the powers available to the court with a preliminary protective order, a permanent protective order allows the court to order treatment or counseling for the alleged abuser, grant the alleged victim possession of any pet, issue temporary child support, issue a temporary custody ruling and accord any other relief necessary to protect the alleged victim and other household members.

Within the context of a divorce case, the court can issue a protective order to limit contact and/or grant one party exclusive use of the marital residence pending a final divorce hearing under Virginia Code § 20-103. Such matters are heard in the Circuit Court. For cost and strategy reasons, the undersigned typically refers individuals to the Juvenile and Domestic Relations District Court for protective orders.

Protective orders are logged in a criminal database which is easily accessible to law enforcement officers. This is intended to prevent protective order violations and to ensure that the abuser respects the restraints imposed upon him or her. For individuals with an important state-issued license (doctor, lawyer, teacher, etc.) or security clearance (contractor, government personnel, military), this process can be scary and professionally damaging far beyond the scope of the other restraints described above.

### **Other Considerations**

Additionally, assault and battery upon a family member is a Class 1 misdemeanor, punishable by up to a year in jail and a heavy fine. It is standard to impose 72 hour emergency protective orders to the alleged victims in such instances. Many police officers responding to 911 calls reporting domestic violence ensure that one of the participants in such a disturbance will be charged and is often arrested that evening, so such calls should be made judiciously.

In sum, the powers available to the court to curb domestic violence in Virginia are broad, and effective. While they have brought justice, safety, and peace of mind to victims of domestic violence in our Commonwealth, they can also be manipulated. Individuals involved in contested family law cases will sometimes resort to these statutes to gain a swift and cost-effective upper hand. I would urge only true victims of family abuse to resort to these procedures, as false allegations of domestic violence not only hurt the falsely accused, but also the true victims, as the entire process loses credibility.