

Domestic Violence Protective Orders

What is it?

- A DVPO is an Order of the Court granting a victim of domestic violence protection from his/her abuser. Many people refer to it as a “restraining order” or a “50B.” Law enforcement can arrest the perpetrator for violating the order, if they have reason to believe that the defendant has violated the order. Any person residing in this State may seek relief under this Chapter by filing a civil action complaint alleging acts of domestic violence against himself, herself or a minor child who resides with him/her or is in the custody of such person. The person can file anywhere in the state, no matter where the person lives in the state.

Who can file for a DVPO?

- The Plaintiff must have a “personal relationship” with the Defendant. **N.C.G.S. §50B-1**
 - Current or former spouses
 - Persons of the opposite sex who live together or have lived together
 - Related as parents and children, including grandparents and grandchildren
 - Have a child in common
 - Are current or former household members
 - Are persons who are in a dating relationship or have been in a dating relationship. A dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship
- Anyone living in North Carolina, regardless of citizenship, can file for a DVPO.
- A minor or minor’s parent may file a petition on their behalf.

What does “domestic violence” mean and what do I have to prove? N.C.G.S. §50B-1

- Domestic violence is defined as the commission of one or more of the following:
 - Attempting to cause bodily injury, or intentionally causing bodily injury
 - Placing the Plaintiff or a member of the Plaintiff’s family or household in fear of imminent serious bodily injury or continued harassment which rises to the level as to inflict substantial emotional distress
 - Committing one or more of the following sex acts: first degree forceable rape, second degree forceable rape, statutory rape of a child by an adult, first-degree statutory rape, statutory rape of someone who is 15 years or younger, first degree forceable sexual offense, second degree forceable sexual offense, statutory sexual offense with a child by an adult, first-degree statutory sexual offense, statutory sexual offense with a person who is 15 or younger, sexual activity but a substitute parent or custodian, sexual activity with a student, and sexual battery
- What do I have to prove to obtain a DVPO?

- That a “personal relationship” exists
- That an “act of domestic violence” occurred
- Evidence may include testimonies, witnesses, pictures, documents, or recordings.

What type of relief can I ask for from the Court: N.C.G.S. §50B-3(a)

- A Protective Order may include certain acts of relief, such as:
 - Direct a party to refrain from such acts
 - Grant possession of a home or vehicle
 - Spousal support or child support
 - Direct a party to provide alternative housing
 - Award temporary child custody
 - Award possession of a pet
 - Order the eviction of a party from the residence
 - Award attorney’s fees to either party
 - Order a party to refrain from threatening, abusing, harassing, or otherwise interfering with other party.
 - Prohibit a party from purchasing or owning a firearm
 - Order an offender to attend and complete an abuser treatment program

What is the process for obtaining a DVPO?

- Filing the Complaint.
 - Many counties have dedicated domestic violence agencies that can assist with the filing of a Complaint. Some counties have electronic filing systems
 - The forms will be provided to you at the Clerk’s office for filing. You can also access the forms beforehand online
 - The aggrieved party may file the civil action without the assistance of counsel.
 - When filing the Complaint, you can make a request for an Ex Parte Order. An Ex Parte Order is a temporary emergency order that a judge may grant if you are in immediate danger **N.C.G.S. § 50B-2(c)**
 - A request for an Ex Parte Order will either be granted or denied and a hearing will be set within ten (10) days for all parties to return to court and have a hearing on the allegations from the underlying Complaint. This is often referred to as the “10-day hearing.”
 - Prior to the hearing, if the court finds there is danger of violence against the aggrieved party or a minor child, the court may enter orders deemed necessary to protect the aggrieved party or minor child from those acts, including a temporary order for custody, Ex Parte
- Service of the Complaint on the Defendant—
 - This has to be served by the sheriff’s office.
 - In order to have a hearing on the Ex Parte Order and Complaint, the Defendant must be served with the summons, complaint, and notice of hearing.

- “10-day hearing” **N.C.G.S. § 50B-2(c)(5)**
 - If the Defendant has been served by the hearing date, there are several possible scenarios:
 - You (Plaintiff) does not go to Court.
 - In this scenario the Ex Parte Order will be dropped and will no longer be valid. The Complaint will be dismissed.
 - The Defendant does not come to Court.
 - If this happens, the judge will have a hearing with just you to decide if the order should be granted or not for one year.
 - The Plaintiff will have to present some sworn testimony as to the “relationship” with the Defendant and the “acts of domestic violence.”
 - The Defendant comes to Court but does not want to contest the order.
 - The parties may reach a consent agreement which is called a “Consent Order.” The order can be entered with findings of fact and conclusions of law regarding the acts of domestic violence alleged.
 - Or, the parties may agree to no findings of fact and no conclusions of law, and the Order will be drafted with the same, or similar, terms as the Ex Parte order. There will not be a hearing.
 - The Defendant comes to Court and contests the Order.
 - There will be a hearing on the Complaint filed. After the evidence is presented by both sides, the judge decides whether to keep the order in effect or dismiss it.

Are there any filing fees? No filing fees for the complaint or service

Can a DVPO be modified after its entered? Yes, upon written request of either party. **N.C.G.S. 50B-3(b2)**

- A Motion to Modify must be filed
- The Plaintiff or Defendant must be served with the Motion to Modify
- The Court must find “good cause” to modify the DVPO

Can I renew a DVPO? Yes, upon written request. **N.C.G.S. 50B-3(4)(b)**

- A Motion to Modify must be filed prior to the expiration of the DVPO
- The Defendant must be served
- The Court must find “good cause” to renew the DVPO
 - A DVPO can be renewed up to two (2) years at a time
 - Temporary custody within a DVPO cannot be renewed
- If the hearing to renew a protective order is set after the current order will have expired, the court may temporarily renew a current order for a fixed period of time.

Can I get a court appointed attorney?

- An action for a Domestic Violence Protective Order is a civil action so there is no right to a court appointed attorney for either party

- Legal Aid of North Carolina, Inc. does have dedicated domestic violence attorneys that assist with representation of Plaintiffs
- Contact Legal Aid of North Carolina, Inc. in your county for further assistance at 866-219-5262 or your local domestic violence agency.