



Access to Protective Orders

People in Dating Relationships: Virginia has two types of Protective Orders (PO): 1) Family Abuse Protective Orders; and 2) Stalking, Sexual Battery, and other Acts of Violence Protective Orders. People in dating relationships may be eligible for one or both of these POs. If they have a child in common or have lived together in the past 12 months, they may be eligible for a Family Abuse PO. If not, she or he may be eligible for a PO in cases of stalking, sexual battery, and/or acts of violence (VA Code 19.2-152.8, 152.9 & 152.10) if a criminal warrant has been issued.

Minors: Virginia law neither prohibits nor explicitly permits minors from petitioning on their own behalf for a Family Abuse Protective Order or a Stalking, Sexual Battery, and other Acts of Violence Protective Order. Nor does the law specify any different procedures to be followed by petitioners who are minors as is the case where a protective order is sought on the minor's behalf in cases of child abuse and neglect.

Definition of Prohibited Conduct

Per Virginia Code 16.1-279.1, in cases of family abuse, a judge may issue a Family Abuse PO. In Code Section 16.1-228, family abuse is defined as "any act involving violence, force, or threat including, but not limited to, any forceful detention, which results in bodily injury or places one in reasonable apprehension of bodily injury and which is committed by a person against such person's family or household member." While the definition of family abuse does not explicitly recognize stalking, harassment or sexual abuse, these are not excluded either and in some jurisdictions it may be possible to obtain a Family Abuse PO for an act of stalking, harassment or sexual abuse that is committed against a family or household member.

In addition, VA statute provides for a separate PO for victims of stalking, sexual battery, and other acts of violence. This PO is available to any person regardless of the relationship with the respondent. However, unlike the Family Abuse PO, a criminal warrant must be issued for the offense before a petitioner may seek a protective order for stalking, sexual battery or other acts of violence.

Relief Available

Family Abuse Protective Orders: There are three different Family Abuse POs: 1) Emergency Protective Order; 2) Preliminary Protective Order; and 3) Protective Order. There is a wide range of relief available that varies based on the type of PO being issued and the relationship of the petitioner and respondent. The types of relief that the judge may order include, but are not limited to:

- Stay away from the petitioner;
- Vacate the petitioner's residence;
- Provide petitioner exclusive use/possession of property;
- Comply with a custody/visitation schedule;
- Pay child support;
- Participate in a counseling or batterers' intervention program;
- Pay attorney's fees; and/or
- Other relief within the court's discretion.

Stalking and Acts of Violence Protective Order: The relief available from a Stalking and Acts of Violence Protective Order are more limited than those provided by a Family Abuse Protective Order primarily because there is no requirement that the petitioner and the respondent be in any kind of "relationship." The judge may order the following relief:

- Prohibiting criminal offenses that may result in injury to person or property, or acts of stalking;
- Prohibiting contact by the respondent with the petitioner or the petitioner's family or household members; and/or
- Other relief within the court's discretion.

The Virginia Sexual and Domestic Violence Action Alliance (The Action Alliance) is a coalition of people and agencies in Virginia that envisions a world where relationships between people are healthy, respectful, and safe.

We have been dedicated to ensuring that unmarried partners were not excluded from the protections provided in Virginia's domestic violence laws and expanding protections for victims of dating violence, including minors. While we are pleased that remedies now exist for victims of stalking, sexual assault, and dating violence, we are concerned that these victims are required to pursue criminal prosecution to qualify for Protective Orders and that Virginia law does not explicitly provide minors the right to petition for a Protective Orders. We are committed to reducing barriers for all victims, clarifying current laws and procedures, and identifying comprehensive solutions.

Recommendations for Immediate Policy Change

In order to improve Virginia's response to teen dating violence, the following changes are recommended:

- Clarify state policy regarding minors' rights to petition for protective orders on their own behalf and promote consistent practice in Virginia.
- Conduct a comprehensive review of Virginia's Protective Order legislation in order to improve access and simplify procedures.
- Create civil remedies for victims of dating violence, stalking, and sexual assault available regardless of whether the respondent is the subject of criminal prosecution.

