

DOMESTIC VIOLENCE

Leaflet No. 6



LEGAL AID BOARD

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LEAFLET No. 6 - DOMESTIC VIOLENCE

Domestic violence is physical, sexual, emotional or psychological violence which threatens the safety or welfare of family members, and certain people in other domestic relationships.

If you or your children are under threat of domestic violence, you can report the violent person to the Garda Síochána. The Gardaí have the power to arrest and charge a person who is violent. You can also apply to court for a safety order, protection order, emergency barring order, interim barring order, or barring order.

What is Domestic Violence?

Domestic violence is physical, sexual, emotional or psychological violence which threatens the safety or welfare of family members, and certain people in other domestic relationships.

Can I and/or my children be protected from a violent person in our home?

Yes you can:

1. Report the matter to the Gardaí. Physical and/or sexual violence is a crime. The Gardaí have the power to arrest and charge a person who is violent.
2. Apply to court for orders under the domestic violence legislation. A court may grant protection, barring and / or safety orders against a spouse or partner including where people are not living together. These orders are made where it is necessary to protect the welfare or safety of the other spouse /partner and / or dependent children.

What type of protection is available under domestic violence legislation?

There are five main kinds of protection available from the courts:

- **Safety Order**

A **safety order** prohibits a person from using or threatening violence towards the person who has been granted the order and / or any dependent children. A safety order does not require a person to leave the home where they live. For people who are not married, you don't have to be living with the person or to have lived with them in the past to apply for a safety order. It lasts for five years.

- **Protection Order**

A **protection order** is a temporary safety order which can be granted by a court when a person applies for a safety order and / or barring order. A protection order only lasts until the full court hearing of the application for a safety order and / or barring order. It is not necessary to be living with the person or to have lived with them in the past to apply for a protection order

- **Barring Order**

A **barring order** requires a person, against whom the order is made, to leave and stay away from the home (place of residence) of the person applying for the order and / or dependent children;

- **An Interim Barring Order**

An **interim barring order** is a temporary barring order. It is only made in exceptional circumstances as it is granted without notice to the person against whom it is made. Where the court is of the opinion that there are reasonable grounds for believing that there is an immediate risk of significant harm to the applicant or any dependent person it may grant an interim barring order. An interim order made without notice to the person against whom it is made, can last for no more than eight days. Further orders can be made until the full hearing of the case;

- **An Emergency Barring Order**

An **emergency barring order** is available in certain circumstances to people living together and parents of adult children who would not ordinarily be able to apply for a barring/interim barring order because they have lesser ownership rights (don't need to own, co-own or have their name on the lease) in the place of residence than the person against whom the order is being sought. It can be granted without notice to the person against whom it is made and can last for no longer than eight days.

All orders include a prohibition on following or communicating (including by electronic means) with the applicant or the dependent person /child.

How long can an order last for?

The District Court can make:

- a **safety order** for any period up to a maximum of five years; and
- a **barring order** for any period up to three years.

These orders may be renewed.

The Circuit and High Court can make orders for unlimited periods.

Who can apply for domestic violence remedies?

The following people may apply for orders under the domestic violence legislation:-

- **Spouses and former spouses;**
- **Civil partners and former civil partners;**
- **Cohabitees** (in an intimate relationship)
- **Parents** of adult children who wish to seek orders against those children;
- **Persons** living together in a relationship the basis of which is not primarily contractual;
- **Persons** in a relationship who are not living together and
- **A Parent** of a child against the other parent.

When may a court grant a safety order to cohabittees?

A court may grant a safety order (including a protection order) if the parties have been living together in an intimate relationship.

When may a court grant a barring order to cohabittees?

A court may grant a barring order to cohabittees who have lived together in an intimate relationship.

When may a court grant a safety order or protection order to people not living together?

All partners in an intimate relationship are eligible for safety and protection orders and do not have to be living together.

When may a barring order NOT be granted to cohabittees?

A barring order will not be made against a cohabitee who owns the place of residence or who has greater ownership rights than the cohabitee seeking protection.

Can I get protection from an adult child?

Yes, you can apply for either a safety or a barring order against an abusive adult child.

When will the court NOT grant a barring order against a child?

A court will not grant a barring order against a child who;

- Is dependent;
- Owns the place of residence; or
- Who has greater ownership rights than the parent seeking protection.

When can persons living together apply for protection against either other?

Persons living together in the same house may apply for protection against each other. The person against whom protection is sought must be over the age of 18 years. However, the court will not grant protection if it considers that there is a contractual relationship between the persons

Can a dependant child apply for protection?

No. A **parent** may apply for protection on behalf of his / her own child.

The Child and Family Agency (Tusla) may apply for protection on behalf of a person and / or that person's dependent children in circumstances where the person cannot apply himself / herself.

What happens if a person does not obey a court order?

A breach of any order made under the domestic violence legislation is a **criminal offence**. The Gardaí can arrest and charge a person who breaches such an order.

Other criminal offences

Regardless of whether or not court orders are made under the domestic violence legislation, physical and / or sexual violence is a crime. The Gardaí have the power to arrest and charge a person who is violent. In the case of married persons it is also an offence to remove household items from a family home while there are proceedings pending under the domestic violence legislation.

The Court can make other orders at the same time as Domestic Violence Orders

At the same time as the Court is hearing the application for an order(s) under the domestic violence legislation it can also make maintenance, custody and access, child care and orders under the Family Home Protection Act. Generally, courts prefer separate applications for these orders to be made.

Do I need to pay a contribution towards legal aid in domestic violence cases?

No. As long as you meet the disposable income and capital thresholds for legal aid, and the only application you are making to the court is for a domestic violence remedy, you do not need to pay a contribution towards your legal aid.

Where can I get more information?

If your home isn't safe, support is still here - **www.stillhere.ie**

Legal Aid Board - **www.legalaidboard.ie**

Citizens Information Board – **www.citizensinformation.ie**

Department of Justice and Equality - **www.justice.ie**

NGOs operating in the sector

Women's Aid - **www.womensaid.ie**

Safe Ireland - **www.safeireland.ie** - National umbrella group - contains links to local support services

Men's Aid - **www.mensaid.ie** - 01 554 3811

Men's development network - 051 844 260

The above is provided for information purposes only. It does not purport to be either a statement of the law or legal advice.

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