



Domestic Violence
Protective Order
Judicial Bench Card

I. Overview

Georgia law offers four types of domestic violence protective orders: Family Violence Protective Orders (O.C.G.A. § 19-13-1 et seq.), Stalking Protective Orders (O.C.G.A. § 16-5-94), Dating Violence Protective Orders (O.C.G.A. § 19-13A-1 et seq.), and Employer Protective Orders (O.C.G.A. § 34-1-7) (while not specifically for domestic violence, may be applicable in certain situations).

Family Violence, Stalking, and Dating Violence forms may be found on the Georgia Superior Court Clerk's Authority website <https://www.gscca.org/file/family-violence-forms>

II. Ex Parte Orders

Determine petitioner eligibility

- Adult may petition on behalf of minor (O.C.G.A. § 19-13-3(a))
- Petitioner is victim family violence (O.C.G.A. § 19-13-1)
 - Relationship required
 - Past or present spouses
 - Parents of a child in common
 - Parent/step/foster parent & child
 - Persons living or formerly living together
 - Act of family violence required (O.C.G.A. § 19-13-1)
 - Any felony
 - Simple assault
 - Assault
 - Simple battery
 - Battery
 - Stalking
 - Criminal damage to property
 - Criminal trespassing
- Petitioner is victim of stalking (O.C.G.A. § 16-5-94)
 - No relationship required
 - Act of stalking required
- Petitioner is victim of dating violence (O.C.G.A. § 19-13A-1)
 - Relationship required
 - Currently dating (does not require sexual intimacy, may be online relationship)
 - Previously dating within the last 12 months
 - A current pregnancy has developed between petitioner & respondent
 - Findings of fact required (at least one of the following)
 - Committed romantic relationship not normally found in typical business, social, or educational contexts.
 - Factors exist that demonstrate the existence of dating relationship
 - Interpersonal bond greater than that of casual friendship
 - The length of the parties' relationship (though no length is required)
 - The nature and frequency of the interactions between the parties
 - Parties' behavior or statements affirm dating relationship
 - Both parties have acknowledged the dating relationship
 - Act of dating violence required
 - Any felony
 - Simple assault
 - Simple battery
 - Battery
 - Stalking
- Petitioner is employer (O.C.G.A. § 34-1-7)
 - Relationship required (between petitioner and victim, not respondent)
 - Employer-employee
 - Act of violence or threat of violence committed at employee's workplace required
 - Simple assault
 - Assault
 - Aggravated assault
 - Simple battery
 - Battery
 - Aggravated battery
 - Stalking
 - Aggravated stalking
 - Threat of violence includes knowing & willful statement or course of conduct "would cause a reasonable person to believe that he or she is under threat of death or serious bodily injury"; and the respondent intends to cause "a person to believe that he or she is under threat of death or serious bodily injury"; and "actually causes" the person to believe the threat; and "serves no legitimate purpose."

Determine need for protection

- Likelihood of future violence (O.C.G.A. § 19-13-3(b), O.C.G.A. § 16-5-94(c), O.C.G.A. § 19-13A-3(a), O.C.G.A. § 34-1-7(d))
 - Family violence, dating violence, or stalking occurred in the past and may occur in the future
 - No finding that violence or threat of violence may occur in the future for employer protective order
 - Recency not required, though may be considered to determine likelihood of future violence
 - Proof of fear not required for family violence or dating violence protective orders
 - In addition to underlying acts of violence in the petition, intimate partner violence lethality factors may also indicate need for protection
 - Escalation of abuse—severity or frequency
 - Pet abuse
 - Centrality of the victim/extreme jealousy
 - Sexual assault
 - Strangulation
 - Victim's efforts to leave relationship
 - Victim's pregnancy
 - Respondent's access to firearms
 - Respondent's unemployment
 - Respondent's threats of suicide

Determine ex parte relief

- Ex parte relief may be granted based on probable cause that family violence, stalking or dating violence has occurred in the past and may occur in the future (O.C.G.A. § 19-13-3(b), (O.C.G.A. § 16-5-94(c), O.C.G.A. § 19-13A-3(a))
 - Lasts until 2nd hearing is held (within 30 days) or is dismissed (O.C.G.A. § 19-13-3(c), O.C.G.A. § 16-5-94(e), O.C.G.A. § 19-13A-3(b))
 - May be continued if respondent is avoiding service (O.C.G.A. § 19-13-3(e), O.C.G.A. § 16-5-94(e), O.C.G.A. § 19-13A-3(d))
- Ex parte relief may be granted to employers (O.C.G.A. § 34-1-7(d)) with affidavit showing all three factors listed:
 - reasonable proof that an employee has suffered unlawful violence or credible threat of violence by the respondent
 - that great or irreparable harm shall result without injunction
 - that the petitioner has conducted a reasonable investigation into the underlying facts
 - Lasts 15 days unless modified or terminated by court
 - Since hearing may be scheduled within 30 days, petitioner may need to request extension

III. Protective Orders & Remedies

- Court may order relief up to 12 months in family violence and dating violence cases (O.C.G.A. § 19-13-4(c), O.C.G.A. § 19-13A-4(d)), when the petitioner has proved by a preponderance of evidence that:
 - the petitioner has a particular relationship to the respondent; and
 - the respondent has engaged in one or more particular types of violence; and
 - the petitioner needs protection against future violence by the respondent.
- Court may order relief up to 12 months in stalking cases (O.C.G.A. § 16-5-94(e)) when the petitioner has proved by a preponderance of evidence that:
 - the respondent has stalked the petitioner
 - the petitioner needs protection against future stalking by the respondent
- Court may order relief up to 3 years in employer cases (O.C.G.A. § 34-1-7(e)) when petitioner has proved by clear and convincing evidence that:
 - the employer has an employer-employee relationship with the employee;
 - the employee has suffered unlawful violence or a credible threat of violence;
 - from the respondent,
 - at the employee's workplace or in the course of the employee's work.
- Broadest array of relief available in family violence orders. (O.C.G.A. § 19-13-4(a)1-11)
 - Protection—refrain from acts of family violence, refrain from harassing or interfering with petitioner, stay away from petitioner and minor children, no contact or limited contact
 - Children—custody, visitation and support
 - Property—possession of residence, personal property (including pets)
 - Treatment—family violence intervention programs, psychological evaluation and treatment
 - Costs—costs and attorney's fees
 - "It is further ordered"—courts may specify additional relief necessary to protect the petitioner. This might include:
 - Return of important documents and identification
 - Payment for lock changes, property damage or security devices

- Dating violence orders provide more limited relief (O.C.G.A. § 19-13A-4(b)1-5)
 - Protection—refrain from acts of dating violence, refrain from harassing or interfering with petitioner, stay away from petitioner, no contact or limited contact
 - Property—possession of personal property (including pets)
 - Treatment—psychological evaluation and treatment, educational services
 - Costs—costs and attorney’s fees
- Stalking orders provide more limited relief (O.C.G.A. § 16-5-94(d))
 - Protection—refrain from acts of stalking, refrain from harassing or interfering with petitioner, stay away from petitioner, no contact or communication
 - Treatment—appropriate psychological evaluation and treatment
 - Costs—costs and attorney’s fees
- Employer orders provide the most limited relief (O.C.G.A. § 34-1-7(e))
 - Protection—order the cessation of unlawful violence or threats of violence at the employee’s workplace or while the employee is acting within the course and scope of employment

IV. Mutual Orders

- No authority to issue mutual protective orders for family violence or dating violence (O.C.G.A. § 19-13-4(a), O.C.G.A. § 19-13A-4(b)) without the following:
 - verified counter petition filed no later than 3 days prior to the hearing, and
 - provisions of O.C.G.A. § 19-13-3 O.C.G.A. § 19-13A-3 are satisfied

V. Firearms

- Until February, 2023, the federal firearm prohibitions against abusers have been universally upheld. The 5th Circuit Court of Appeals ruled otherwise in *U.S. v. Rahimi*, No. 21-11001 (5th Cir. 2023), though not binding on 11th Circuit. Given the increased danger to victims of domestic violence when abusers have access to weapons, it is important that courts continue to implement lawful firearms restrictions.
- Federal-- Two Categories of Individuals who Cannot Purchase Firearms (under 18 U.S.C. §922 (g) (8) & (9)):
 - Individuals who are subject to court order that:
 - (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
 - (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - (C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
 - Individuals who have been convicted in any court of a misdemeanor crime of domestic violence
 - Misdemeanor crime of domestic violence (18 U.S.C. § 921 Definition (a)(33)(ii)) the use or attempted use of physical force, or the threatened use of a deadly weapon committed by:
 - current or former spouse, parent, or guardian of the victim
 - person with whom the victim shares a child in common
 - current or former cohabiting person similarly situated to a spouse, parent, or guardian of the victim
 - person who has a current or recent former dating relationship with the victim
- Georgia—No parallel restriction in Georgia, but court may order such temporary relief ex parte as it deems necessary to protect the petitioner or minor of the household from violence O.C.G.A. § 19-13-3(b)

VI. Enforcement & Violations

- Family violence orders, stalking protective orders, and dating violence protective orders “apply and shall be effective throughout this state.” O.C.G.A. §§ 19-13-4(d), 16-4-94(e), 19-13A-4(e).
- Employer protective orders are effective only “at the employee’s workplace” or “while the employee is acting within the course and scope of employment with the employer.” O.C.G.A. § 34-1-7(d).
- In addition, the petitioner must deliver the employer protective order to such law enforcement agencies as the court, in its discretion and upon request by the petitioner, may designate. O.C.G.A. § 34-1-7(g).

- Contempt
 - Specifically authorized for family violence and dating violence protective orders (O.C.G.A. § 19-13-6, 19-13A-6)
 - Stalking and employer protective orders lack similar statutory authorization. But the superior court has inherent authority to use contempt for breach of its orders, (O.C.G.A. § 15-6-8 (5) and O.C.G.A. § 15-1-4). This would seem to permit orders of contempt to issue for violations of these orders.
- Misdemeanor offense of violating a family violence order (O.C.G.A. § 16-5-95)
 - Applies to knowing and nonviolent acts including:
 - Communication
 - Exclusion from the residence
 - Staying away
 - While the legislature clearly intended this to apply to dating violence protective orders as well (O.C.G.A. §§ 19-13A-6), O.C.G.A. § 16-5-95 was not amended to reference violations of dating violence protective orders.
- Stalking O.C.G.A. § 16-5-90
- Aggravated Stalking O.C.G.A. § 16-5-91

VII. Extensions

- Family violence, stalking and dating violence protective orders last for up to one year. Petitioner may file a motion to extend the order for up to 3 years or permanently (O.C.G.A. § 19-13-4(c); O.C.G.A. § 16-5-94(e); O.C.G.A. § 19-13A-4(d)).
 - No ex parte extension, must have hearing.
 - Petitioner must file motion within the original time period of the protective order.
 - Court should consider history of abuse, lethality factors, whether order has been effective in stopping abusive behavior or contact from respondent, petitioner's fear that abuse will resume.
- Employer protective orders last for 3 years. Employer may apply for "renewal" of injunction (O.C.G.A. § 34-1-7(e)).

VIII. Resources

Domestic violence advocates may help survivors fill out and file the proper forms for family violence, dating violence and stalking protective orders. Additionally, advocates can assist with safety planning, shelter, relocation or financial assistance, emotional support, referrals and other kinds of assistance.

Courts may refer survivors to their local program, provide the statewide hotline: 1-800-33-HAVEN or find a list of domestic violence centers here: <https://gcadv.org/domestic-violence-centers/>.

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