

# Michigan Domestic Violence/PPO Guide

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# Domestic Violence

## Someone close to me is attacking/threatening me, what should I do?

This is likely to be a case of domestic violence, so you might consider getting a Personal Protection Order (PPO) against that person.

## What makes it “domestic” violence?

It is committed by someone with whom you share a domestic relationship. A domestic relationship can be any one of the following:

- A spouse or other family member
- The unmarried parent of your child
- Someone you are living with or have lived with previously
- Anyone you have ever been romantically involved with

## How do I get a PPO?

You must file a petition with a judge. This petition will contain all of the necessary information that the judge needs to determine if you qualify for a PPO. Try your best to give a detailed description of what happened and who did it to you? Try to remember dates and times as specifically as possible. If you have any copies of police reports, you should include them with your petition.

In addition to showing a domestic relationship, you must also demonstrate to the judge that you are afraid that the target of your order is likely to stalk, harass, threaten, or assault you.

## What does a PPO do for me?

A PPO is a restraining order. It legally bars the person subjected to it from certain actions and behaviors. More specifically, it bans them from:

- Entering your home or any other place that you occupy
- Assaulting, attacking, or harassing another person
- Threatening to injure or kill you or another person
- Removing any child that you have legal custody over
- Buying or possessing a firearm
- Preventing you from removing your children or personal possessions from any place owned or leased by the abuser
- Interfering with you at your school or job; or otherwise harming your career, education, or environment

- Having access to your home or work address or any telephone number associated with a child you both share
- Stalking you
- Causing mental harm or otherwise coercing you by threatening to harm or take away an animal that you own
- Any other action that interferes with your personal freedom or causes a reasonable fear of violence

Violation of a protection order is a crime. If you call the police, the violator is subject to immediate arrest. Following a violation, you can petition the court for a motion to show cause for the violation of the protection order. This will likely result in the judge punishing your abuser.

It is extremely important that you report any violation of your order. Do not allow your abuser to convince you that “things will be different”. Your order has a finite duration, allow that duration to run its course.

### **What happens if my abuser learns about the order before it takes effect?**

This is an extremely important issue. You can and should ask for an ex-parte order. This temporary emergency order will protect without the need to have a hearing or inform your abuser. If you don't get an ex-parte order, not only will you have to serve notice on your abuser, but a hearing will be scheduled. In that hearing, your abuser will be allowed to testify and to contest your protection order. If the judge denies your request for an ex-parte order, you can schedule a hearing within 21 days for a standard protection order.

Either way, the order becomes effective the moment the judge signs it. The order itself will state that it is effective immediately and enforceable anywhere in Michigan or the United States. It will list the prohibited actions and the consequences of violating the order. It will also contain the expiration date of the order as well as the law enforcement agency that will be enforcing it.

### **Is there anything else I should know about domestic violence and PPO's?**

Yes, especially if you have ever been a victim or a perpetrator of domestic violence. Under Michigan law, the police may perform a warrantless arrest of anyone if they have probable cause that domestic violence has occurred, or if they have reason to believe that person is subject to a PPO and has subsequently violated that protection order in some way. However, this warrantless arresting authority is only valid for the following suspected PPO violations:

- Entering a protected premises
- Attacking the petitioner (the person protected by the PPO)
- Threatening to kill or harm the petitioner
- Removing a minor child from their legal custodian
- Purchasing or owning a firearm

- Preventing the petitioner from removing their children or personal property from any premises owned or leased by the person restricted by a PPO
- Interfering with the petitioner at their work or school
- Stalking

This is something important to keep in mind if you are concerned about a potential hostile encounter with your abuser or if you have a record of abuse and suspect that you may be going into a situation where you may have a less than cordial encounter with the party at the other end of that particular incident.

If someone is arrested for violating the terms of a PPO, they could be charged with criminal contempt, which carries a max sentence of 93 days in jail and a \$500 fine.

## **Military Domestic Violence**

Protection orders targeting military personnel are affected by similar regulations as other domestic issues in a military context. In that military context, PPO's are called civilian protection orders (CPO). There are also MPOs which protect military personal from someone else.

### **What happens if my domestic abuser is in the military?**

He will enjoy certain procedural protections to prevent unfairness against a person who might be posted out of state or overseas. This is especially crucial for a service member because a PPO might bar them from owning or carrying firearms. It may also result in lost pay, the inability to re-enlist, or even a discharge from the military.

These due process regulations allow the service member to request a 90 day (three month) stay on the hearing if military duty prevents him from attending it. It also allows them to request that the court reopen a case with a default judgement if certain requirements are met (see section on military divorce). A CPO is just as effective on a military base as it is anywhere else.

## **Other legal Remedies for Domestic Violence**

### **Can I sue my domestic abuser for civil damages as a result of the injuries they inflicted on me? If so, what is the cause of action?**

Absolutely. Domestic violence is no different than any other intentionally harmful act, and can be the basis for a personal injury lawsuit in Michigan civil court. As for which tort/cause of action you might bring, there are several options. You can file an intentional tort claim (such as battery and/or assault) seeking compensation for the physical injuries you have suffered. Another option is a claim for intentional infliction of emotional distress, in order to address mental anguish and other psychological injuries. Keep in mind that these claims are not mutually exclusive and can be brought simultaneously.

## **What kind of damages could I be entitled to?**

In Michigan civil court, a plaintiff who has suffered domestic violence can seek compensation for lost wages, medical expenses, as well as pain and suffering depending on which causes of action are brought against their abuser. The amount you could be awarded for pain and suffering is somewhat subjective. It is based on the amount that is determined to fairly account for the suffering inflicted on the plaintiff. As such, it is quite helpful to have an attorney who can research similar lawsuits and compare what kind of damages those plaintiffs received. If your damages are not at least \$6000, consider whether or not this lawsuit will cost you more than you could get in return. You should also be aware that small claims court (which excludes attorneys for both parties) is not available in intentional injury cases.

Michigan law also allows for exemplary damages. Exemplary damages are similar to punitive damages which are available in other states (but have been abolished in Michigan). Exemplary damages are available to compensate for humiliation and other non-physical harms that result from the defendant's willful and malicious actions. The person seeking punitive damages does not have to provide direct evidence that they suffered such harms. They only need to persuade the judge or the jury that these are the sorts of harms that a reasonable person would expect to result from such egregious conduct.

Unfortunately, Michigan law does not allow plaintiffs in intentional injury lawsuits to sue for attorney's fees. This is why it is important to make sure the reasonable damages are not to cover the fees and costs.

## **Can I still sue my abuser if they are charged/convicted for a domestic violence crime?**

Yes, you can. The existence of criminal proceedings arising out of the same incidents of domestic abuse and violence do not preclude a lawsuit in civil court.

## **If I am convicted of a domestic violence crime, do I automatically lose or become disadvantaged in any civil case?**

That depends on the precise outcome of the criminal case. For one thing, there is no such thing as an automatic win or lose scenario. The civil case will still continue if you are convicted. If you plead guilty, any admission of wrongdoing you make in rendering that plea can be used as evidence against you in the civil case. However, if you plead no contest (*nolo contendere*), then no such statements may be used against you in civil court. This is pretty much the only reason why criminal defendant's would choose to plead no contest rather than guilty.

## Domestic Violence as a Criminal Act

### What sort of crimes could a domestic abuser be charged with?

Like many other states, Michigan makes acts of domestic violence criminal offenses. The two primary crimes of domestic violence are domestic assault and domestic assault and battery. The two terms are given identical legal treatment and are basically interchangeable. They are really just modifications of pre-existing assault/assault and battery offenses based on the victim being a spouse or in a dating relationship with the perpetrator. Domestic assault/domestic assault and battery is a misdemeanor punishable by 93 days in jail and a \$500 fine (The same as non-domestic assault/battery). If the victim suffers a severe or aggravated injury, then the penalty is bumped up to 1 year in jail and a \$1000 fine.

However, if one is convicted of domestic assault/battery and has one of several enumerated domestic or non-domestic violence crimes; then the possible sentence will be enhanced to 1 year in jail and a \$1000 fine. In the case of an otherwise non-domestic violence crime, the enhancement only applies if the victim was a spouse, dating partner, co-parent, or former household resident. The enumerated prior domestic violence crimes are as follows:

- Assault
- Assault and Battery
- Felonious Assault
- Assault with intent to commit murder, maim, or cause great bodily harm
- A conviction in another state that is substantially similar to any of the crimes listed above.

Keep in mind that none of these crimes are specifically “domestic violence crimes” aside from the relationship between the victim and perpetrator that makes this enhancement applicable. Even if a domestic violence event was charged with the standard assault/battery charge (rather than a Domestic assault/battery charge), it still counts.

If there are two or more of these prior charges, then the new domestic violence charge can be enhanced to two years in prison and a \$2500 fine.

## The Effect of Domestic Violence on Marriage and Divorce

### Is domestic violence a legal ground for divorce?

Michigan is a no-fault divorce state, which means you can fairly easily get a divorce without having to wait for domestic violence to break out between you and your spouse. All you need to show is that the marital relationship has become broken beyond repair (although violence breaking out between spouses is a pretty good indicator of a breakdown). It is highly advisable to

seek a legal separation (a temporary stopgap prior to a final divorce) and consider the merits of a divorce if the relationship with your spouse becomes particularly hostile and contentious.

## **How does domestic violence effect child custody and child support?**

A history of domestic violence is one of many factors that courts take into consideration when deciding child custody in the wake of a divorce. As one might expect, the domestic abuser is frequently disadvantaged by this factor. They would be highly unlikely to receive sole legal custody (and less likely to get shared custody). That being said, by no means would it be a guarantee that all custody and access to the child would be cut off. The most probable scenario is that they would be permitted to have supervised parenting time.

The primary focus of any custody proceeding is to ensure the best interests of the child. Any other factor, including the wellbeing of either parent or the perception of fairness, is strictly secondary. A history of domestic violence will be weighed in the context of how such a history might make it more or less likely that a parent with such a history

Keep in mind that custody is decided holistically based on a broad array of factors. A parent seeking to make amends for a history of abuse or to be a better parent to their children could certainly take steps to help their own case. Some helpful steps and factors include, but are not limited to:

- Proof or history of the parent having a capacity to love and nurture the child
- Having the means to provide for the child's material wellbeing
- Having a civil relationship with the other parent in spite of any rocky history between them
- Proof that the parent has managed to remain peaceful and law abiding for a significant amount of time.
- Voluntarily participating in some form of mediation or counseling in the wake of a domestic violence incident
- A verbal or written statement from the other parent attesting to your virtues and qualifications as a parent.

As for child support, the story is a little different. Unlike the issue of custody, domestic abuse is not a factor that the judge is required to take into consideration. Issues of child support are intended to ensure the best interest of the child. More specifically, it is intended to share the financial cost of providing for the child's needs. As such, it will never be used to compensate the other parent for any of their needs, not as a way to "ensure fairness". Unless domestic violence has caused injuries to the child or imposed medical expenses on the other parent, it is unlikely to play a factor in determining the amount a parent owes in child support.

A judge in family court has very broad discretion. Even where the law requires the judge to take a history of domestic violence into consideration, they are still free to make just about any decision they please. It is entirely within their purview to grant joint custody if they believe that doing so is in the child's best interest.

## Does it also effect alimony and property distribution?

Alimony and property distribution are left largely to the judge's discretion, and domestic violence is not a factor that the law requires them to take into consideration. That being said, family court judges have been known to take the fault of one party into account and give favorable treatment to the other.

In the case of alimony/spousal support, the judge is highly likely to take medical expenses born of domestic violence in to consideration.

## Help and Resources for Domestic Violence Victims

U.S. national domestic violence hotline: 1-800-799-7233

For help and resources in Michigan visit:  
[https://www.michigan.gov/mdhhs/0,5885,7-339-71548\\_7261---,00.html](https://www.michigan.gov/mdhhs/0,5885,7-339-71548_7261---,00.html)

Or visit the MDHSS website, find the tab labeled "Safety and injury prevention" at the top of the page. Find "Domestic and Sexual violence" on the drop down menu. This will bring you to a webpage with a variety of resources including a database of shelters and other resources organized by county.

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