

# Order of Protection Bench Card

## PRIOR TO THE START OF THE OP DOCKET – announcement to all

- While waiting in the courthouse for OP hearing you may not have any contact with the other party to the OP.
- When I hear the OP I am not deciding on the criminal case. Your criminal case will be handled in a separate proceeding and possibly on a separate date.
- If granted, the OP will require your compliance for the entire length of the OP (up to 1 year).

### *Violations*

- If you violate the OP you will face criminal consequences.
- If you violate the OP a police officer can arrest you for that violation without a warrant.
- If the OP is in place and you assault or attempt to assault this same individual, your assault charge may be elevated to an aggravated assault charge. Aggravated assault is a Class C felony carrying 3-6 years in jail.
- An OP issued from this court is valid in all counties and in all states.
- If you cross state lines and violate an OP, you could potentially face federal charges.
- Violation of the OP also constitutes criminal contempt of court and each contempt charge carries up to ten days in jail along with a fine.
- Once OP is issued – violating the OP does not require that same type or level of conduct. It does not require another assault or vandalism. ANY communication between the parties what-so-ever at that time would constitute a violation of that OP even if it is nice communication. So a text message “I miss you” “I’m thinking about you” is a violation.
- The petitioner CANNOT give you permission to violate that order because it is a COURT order. So violating that order means that you violated my court order and the petitioner cannot give you permission to violate my court order.



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**OP HEARING: Determine petitioner eligibility (T.C.A. § 36-3-601(5)/T.C.A. § 36-3-602)**

**Petitioner must be the victim of domestic abuse, sexual assault or stalking**

- Required relationship for **domestic abuse**:
  - Adults or minors who are current or former spouses;
  - Adults or minors who live together or who have lived together;
  - Adults or minors who are dating or who have dated or who have or who have had a sexual relationship;
  - Adults or minors related by blood or adoption;
  - Adult or minor children who are related or were formerly related by marriage
  - Adult or minor children of a person in a relationship described above.
- Meaning of **sexual assault** victim (no relationship requirement): The petitioner has been subjected to, threatened with, or placed in fear of any form of:
  - Aggravated rape;
  - Rape;
  - Statutory Rape;
  - Rape of a Child;
  - Aggravated Sexual Battery;
  - Sexual Battery;
  - Sexual Battery by an Authority Figure.
- Meaning of **stalking victim**? (no relationship requirement) The petitioner has been subjected to, threatened with, or placed in fear of:
  - a willful course of conduct
  - involving repeated or continuing harassment of another individual
  - that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested, and
  - that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.



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## whether there is Good Cause

Is there an immediate and present danger of abuse to the petitioner? Consider the following:

- A history of violence;
- Respondent's pattern of conduct;
- Petitioner's injuries;
- Petitioner's fear of retaliation;
- Respondent's access to weapons;
- Respondent's history of stalking;
- Respondent's criminal record;
- Respondent's use of drugs or alcohol;
- Respondent's threats of suicide;
- Respondent's history of mental illness;
- Threats to attack the petitioner, the children, or other family members;
- Threats to animals (pets);
- Threats or attacks on family or household members.

## Determine Venue

For a petition for an OP, and all other matters relating to orders of protection, shall be:

- in the county where the respondent resides; or
- the county in which the domestic abuse, stalking or sexual assault occurred; or
- If the respondent is not a resident of Tennessee, the petition may be filed in the county where the petitioner resides.

## Burden of Proof

Petitioner must prove allegations in petition by a **preponderance of the evidence**



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## PROTECTIONS ALLOWED (T.C.A. § 36-3-606)

Protections to the petitioner against further domestic abuse, sexual assault and stalking:

- **No Harm:** Direct the respondent to refrain from committing domestic abuse, stalking, or sexual assault, or threatening to do the same;
- **Stay Away/No contact:** Prohibit respondent from coming about petitioner for any purpose, from telephoning, contacting, or otherwise communicating with petitioner directly or indirectly;
- **Firearm Dispossession:** T.C.A. § 36-3-625 **requires** that a judge, upon issuing an order that complies with provisions of 18 U.S.C.S. § 922 (g) (8), **must** order the respondent to terminate physical possession of firearms by any lawful means within **48 hours** of granting the order.
- **Residence:** Grant petitioner possession of the residence or household to the exclusion of the respondent by evicting the respondent, by restoring possession to the petitioner, or by both. Note: This does not change ownership of the property.
- **Alternative Housing:** Direct the respondent to provide suitable alternate housing for the petitioner when the respondent is the sole owner or lessee of the residence;
- **Lease:** Directing the respondent to pay the petitioner all costs, expenses and fees pertaining to the petitioner's breach of a residential lease if the court finds that continuing to reside in the residence may jeopardize the life, health and safety of the petitioner or the petitioner's children. Note: This language does not alter the terms, liability, or parties to the lease agreement;
- **Children:** Awarding temporary custody of, or establishing temporary visitation rights with regard to, any minor children born to or adopted by the parties;
  - Courts should consider the history of domestic violence and the violent behavior of the respondent in setting visitation and craft custody orders that will protect the petitioner and the minor children.
- **Support:** Awarding financial support to the petitioner and such persons as the respondent has a duty to support;
  - Child support should be set based upon the Tennessee Child Support Guidelines. Note: The Guidelines allow for deviations.
- **Counseling:** Directing respondent to attend available counseling programs that address violence and control (preferably a state certified batterers' intervention program BIP) or substance abuse problems;
- **Pets:** Directing care, custody, or control of any animal owned, possessed, leased, kept, or held by either party or a minor residing in the household. The court cannot place the animal in care, custody, or control of respondent, but can place the animal in care, custody, or control of petitioner or in an appropriate animal foster situation.
- **Wireless Phones:** Judge may sign an order transferring wireless phone account



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## ENFORCEMENT REMEDIES AND VIOLATIONS

- A violation of an order of protection can result in one or all of the following:
  - Civil Contempt (T.C.A. § 36-3-610/T.C.A. § 36-3-612)
  - Criminal Contempt (T.C.A. § 36-3-610/T.C.A. § 36-3-612)
  - Violation of Protective Order Misdemeanor: (T.C.A. § 39-13-113)
  - 5 or 10 Year Extension ( T.C.A § 36-3-605 (d))
  - Aggravated Assault (T.C.A. § 39-13-102(c))
  - Unlawful Possession of a Firearm (T.C.A. § 36-3-625, T.C.A. § 39- 17-1307)

Civil and Criminal Contempt are available for both the ex parte order and the order of protection. (T.C.A. § 36-3-610/ T.C.A. § 36-3-612)

- Violation of Protective Order (T.C.A. § 39-13-113) only applies in cases where:
  - The person received notice of the request for an order of protection or restraining order;
  - The person had an opportunity to appear and be heard in connection with the order;
  - The court made specific findings of fact in the order of protection or restraining order that the person had committed domestic abuse, sexual assault, or stalking.

**Note:** Tennessee law makes the violation of a protective order a misdemeanor crime of domestic violence.



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## EXTENSIONS OF THE ORDER OF PROTECTION (T.C.A. § 36-3-608)

Orders of Protection are ordered for a definite period of time not to exceed one year. However, orders can be extended upon motion. When extending an order of protection, the court should consider the following:

- Has the order of protection been effective in stopping the violence and keeping the respondent away?
- Does the petitioner fear that the respondent will continue the abusive behavior that resulted in the order of protection? If the defendant is convicted of an order of protection violation, the order can be extended upon the petitioner's motion or the judge's own motion. (T.C.A. § 36-3-605(d))
- The initial petition must have been served according to T.C.A. § 36-3-605(c)
- The order may be extended upon the petitioner's motion or sua sponte.
- If the respondent is found to be in violation of the order, the court may extend the order of protection up to five years or up to ten years on the second or subsequent violation. (T.C.A. § 36-3-605(d))

Note: If a divorce complaint is filed, the order of protection shall remain in effect until the court in which the divorce action lies modifies or dissolves the order. (T.C.A. §36-3-603).

Note: A form must be filed with the clerk for this to happen.

