

PROTECTION ORDERS



PROTECTION ORDERS

What is a protection order?

The purpose of a protection order is to protect victims or potential victims of physical and domestic violence and to ensure their health and rights are protected and preserved. It is an order made by the court when act of domestic violence has happened, ordering the abuser to, or prohibiting the abuser from doing certain acts in order to protect the victim. Even if an incident has not yet happened but you fear that you are at risk, you still have the right to apply for a protection order. The protection order will be enforceable throughout the Republic of Maldives.

If respondent of the order has been using or encouraging a third party to commit act which may be deemed an act of domestic violence instead of directly committing such acts, the court may issue a protection order against the said third party.

How will the court decide whether to issue a protection order?

The court can issue a protection order if it has verified the following circumstances:

- (1) that the person referred to in the order has committed, is committing, or may commit an act that is an act of domestic violence; and
- (2) issuing an order is a must for the protection of the interests of the person making the application, his/her children, or a member of his/her family.

Who can be protected under this order?

A person seeking an order of the court and his/her children will be protected under the order where the court issues a protection order. When issuing a protection order, the court may direct that the order enforced will extend to continuously protect the person who sought the order and any other person bound by a domestic relationship with the him/her.

Can anyone apply for a protection order?

Here's a list of categories of people who can apply for a protection order by law:

(1) The victim themselves:

A party in the domestic relationship can apply for a protection order

(2) Children:

This application should be made through the child's parents or guardians or custodians, or any person allowed under the law.

The application will allow the court the opportunity to hear from the child, even if it was made through the child's parents or guardians or custodians, or any person allowed under the law. As long as the child is accompanied by an employee of a social service provider, he/she may be summoned to court.

(3) Third party:

If the victim is not in a position to make the application, then it can be made through a person appointed by the victim. A third party will be allowed to make an application if:

- (a) practical incapacity due to present circumstances;
- (b) fear in making such an application;
- (c) making such an application in his own name may compromise their interests and wellbeing due to the circumstances.

'Third parties' includes registered associations, the family, relatives and friends of the victim of domestic violence.

In turn, the court will validate the following information before proceeding with a third-party application:

- (a) that the person does in fact want to make the application for an order;
- (b) that the third party who filed the case in, and made the application for an order to the court was appointed by the person;

- (c) that the person has appointed a third party on his/her will;
 - (d) that the designated third party has accepted the appointment;
 - (e) that there is no conflict of interest between the person making the application and the third party representing the person.
- (4) Persons with disability
- Parents or guardians or custodians may apply on behalf of a person with the following disabilities:
- (a) by reason of his disability; or
 - (b) lacks mental capacity to make decisions related to personal welfare or, inability to judge the nature and importance of such matters; or
 - (c) lacks ability to express or communicate matters despite such person's mental capacity to appreciate personal welfare matters and consequences of their actions.

I am in the middle of divorce proceedings and I have reason to believe my safety is at risk. Can I still apply for a protection order?

Yes. Even if you are on the midst of an on-going divorce or child custody proceedings related to the person you are seeking an order against or any other civil or criminal proceedings, you can still apply for a protection order.

How will the order protect me?

The order will prevent the respondent from:

- (a) causing or threatening to cause any physical or sexual injury;
- (b) causing or threatening to cause damage to your property;
- (c) commit or threaten to commit any act to intimidate, humiliate or cause psychological trauma;
- (d) the respondent of the order committing any of the prohibited acts against the protected person through an intermediary.

If *both parties do not share the same household*, the protection order will specifically prevent the respondent from:

- (a) Learning commonly visited places; or following the victim at times they enter these place with the intent to distress or discover the victim's whereabouts.
- (b) stalking, going to the same place, stopping, bothering or verbally assaulting the protected person;
- (c) entering or staying at the home of the protected person or other place without the permission of the person;
- (d) interacting with the victim using phones, letters, electronic mail, short message service (SMS) text messages or any other form, unless:
 - (i) it is allowed in an agreement or order pertaining to visitation rights in respect of a child of the victim and, to the extent allowed under the special conditions of the protection order;
 - (ii) for, and to the extent necessary for taking part in a family gathering.

Where the court deems it is reasonably necessary to protect or provide for the safety of the protected person or any child of the protected person, the protection order can also include *special conditions*:

- (i) an order relating to the place of residence:
 - protected person cannot be evicted or excluded from the shared household or any part of it by the respondent of the order.
 - the respondent may be required to deposit to the court a financial bond as security in order to discourage domestic violence. The bond may be forfeited by the court in the event of a breach of the residence order;
 - the court may pass an order directing the officer-in-charge of the nearest Police station to protect the victim or to assist the victim in making an application for a court order or in the enforcement of an order;

- the court may impose obligations relating to the discharge of rent and other payments related to the residence of the victim, having regard to the financial needs and resources of the parties.
- (ii) custody order; and/or
 - the court may, at any stage of hearing the application for protection order, issue a custody order granting temporary custody of any children of the victim of domestic violence to the victim or the person making an application on behalf, if the court is of the opinion that there is a possibility that the children or their interests may be harmed.
 - if the court is of the opinion that any visit of the respondent may be harmful to the interests of the children, then the court may prohibit the respondent from visiting the children.
- (iii) order for recovery of monetary damages.
 - based on the application, the court may make an order for recovery of monetary compensation

I have a protection order in place but the situation has escalated and I feel more threatened. The restrictions in the protection order is not sufficient. What can I do?

The protection order can be amended to meet the requirements of the current situation. You would have to apply to the courts and if the courts are satisfied, the court may:

- (a) remove or modify a special condition;
- (b) add a new special condition;
- (c) variation of the manner in which a certain act are to be performed, or removal of the requirement for performance of the same;
- (d) specify instructions for a specific matter.

How long does a protection order last?

The courts can impose a protection order for up to 1 year, maximum. It will remain lawful until revoked by the court. The

protected person or the respondent may apply to the court to revoke the order. The court will only revoke the order if it is satisfied that the conditions to revoke a protection order if fulfilled.

What happens when someone breaches the protection order?

If breached, the person would have committed an offence. A person is considered to have committed a criminal offence if he/she:

- (1) breached a protection order;
- (2) failed to comply with a term in the protection order;
- (3) breached an order of the court relating to a home, custody order and/or an order for recovery of monetary compensation;
- (4) failed to perform an act that is stated in a protection order.

At the scene of an incident, the Police has the power to arrest any person suspected of committing a domestic violence offence without having to produce a warrant (ie the person will be arrested straight away) and if there is reason to believe that the person has breached a protection order.

Because it is a criminal offence, the penalty if found guilty of a breach is as stated below:

First time offender	Not more than 6 months imprisonment or a fine of not more than MVR15,000
Second time offender	Not more than 1 year imprisonment or a fine of not more than MVR30,000
Third time offender	Not more than 3 years imprisonment or a fine of not more than MVR50,000

Note: The respondent will NOT be eligible for bail if he has been arrested for breaching a protection order.

The respondent is still liable for criminal offences committed during the act of domestic violence such as assault and battery, grievous bodily harm, rape, other sexual offences and murder.

What if I need a protection order on an urgent basis?

You may apply for an *Emergency Protection Order*. This order can be granted without notice to the abuser and will be based on the statement of the victim. This is a temporary order that should not last more than 3 months. However, unless it has been revoked before the expiration of the 3 months, it will then become a permanent order.

The following elements must be satisfied in order for the court to issue an emergency protection order:

- (a) a hearing from both parties may put the victim at risk;
- (b) justice sought by the victim may not be served;
- (c) threat and risk faced by the victim may escalate;
- (d) the victim is a person who is in a difficult situation.

The court will consider the following before issuing an emergency protection order:

- (a) seriousness and issues of the complaint filed by the victim;
- (b) harshness or seriousness of the acts carried out by the respondent of the order;
- (c) extent to which the interests of the victim are compromised by the abuser's conduct.

Can my abuser have the protection order revoked or change the terms of an emergency order?

It depends. The respondent has to the right to:

- (1) request to be heard before the order becomes permanent;
- (2) request for variation or revocation of a condition or matter in the order;
- (3) request the court for a revocation of the order;
- (4) put forward his objection to the order.

This will be decided through a court hearing and it will be conducted with both parties represented. And the court will ultimately decide to maintain, vary or revoke the temporary order.

If as a result of the abuse, you require medical attention, what should you expect?

By law, healthcare provider, who takes note of an act of domestic violence by way of being notified by the Police or having suspicions when treating a patient, is required to do the following:

- (a) examine the victim of domestic violence to the highest possible degree;
- (b) advise the victim of domestic violence on support options available;
- (c) assist the victim of domestic violence in seeking psychiatric support or counselling;

In circumstances of suspected sexual or physical abuse, the health care provider must examine the victim to the highest possible degree and prepare a report which will be submitted to the Police and Authorities.