

Know Your Legal Rights

It is against the law to physically hurt another adult, no matter how the two people are related. Every survivor of domestic abuse has a right under Florida law to be protected. There are two kinds of courts that handle domestic violence: **Criminal Court** and **Civil Court**. There are a number of legal steps survivors can take to protect themselves from further abuse including calling the police and/or filing for an **Injunction for Protection**.

CASA's Legal Advocacy Program is designed to assist those who seek legal services or police protection due to domestic violence. CASA's legal advocates are available in both civil and criminal court for support and help through the legal process. **For more information, call CASA at 727-895-4912 and ask for a legal advocate.**

Florida law states:

Florida law defines domestic violence as any assault (threat or attempt to do bodily harm), battery (intentional, unlawful touching or striking) sexual assault, sexual battery, stalking (repeated, willful and malicious pattern of harassing, or following), kidnapping, or false imprisonment or any criminal offense resulting in physical injury, or death of one "family or household" member by another who is, or was, residing in the same single dwelling unit.

"Family or household" members include spouses, former spouses, those related by blood or marriage, those who are or were residing in the same single dwelling unit (including same sex relationships), as well as those who have a child in common regardless of whether they have ever resided together.

Civil Court

Civil Court hears non-criminal matters such as divorce, child custody and Injunctions for Protection. This court, for example, may order a parent to pay child support, or it may order that the children not be removed from the state without approval of the court. If a civil order is not obeyed, the judge may hold a violator in contempt of court, which may result in a fine and/or imprisonment. Injunctions for Protection can also be enforced by the police.

Criminal Court

Criminal Court hears crimes such as assault or battery. The police may arrest anyone who commits a crime. Abusers arrested for domestic violence will be held without bond for up to 24 hours so that an advisory hearing can take place. The State Attorney will determine at that time if there is sufficient evidence to prosecute the case. Survivors have the right to attend any hearings and should be notified of what is happening in the case by the State Attorney. If offenders plead guilty, or are convicted of a crime, they can be sentenced to jail, probation, counseling, batterer's intervention program (BIP), payment of a fine, court costs, or ordered to make restitution to the victim of the crime. Criminal violations of a civil Injunction for Protection may be enforced by both the police and the Criminal Court.

Injunction for Protection

Florida recognizes domestic violence as a serious crime and has created the Injunction for Protection, which specifically addresses domestic violence. There are four types of Injunctions for Protection: (1) against domestic violence, (2) against repeat violence, which is used when the parties are not "family, or household members," (3) against dating violence, (4) against sexual violence.

Anyone who has been the victim of domestic violence, or has reasonable cause to believe they are in imminent danger of becoming a victim, can file for an Injunction for Protection. A Repeat Violence Injunction requires two unrelated incidents of violence or stalking, one of which must have occurred within the last six months of filing for the petition.

An Injunction for Protection may order the abuser to immediately stop the violence or harassment, to leave the shared home, to avoid contact with the victim at home, work or school, to attend batterer's intervention and/or appropriate counseling. The injunction can also provide for temporary custody, visitation, and child or spousal support.

Note: You do not have to file any other civil action (such as divorce), or call the police in order to obtain an Injunction for Protection.

If you live in CASA's service area (south Pinellas County Florida) you can file for an Injunction for Protection at the Clerk of Courts Office listed below.

If you do not live in south Pinellas County Florida, please call the national domestic violence help line at 800-7989-SAFE (7233) so they can put you in touch with the domestic violence agency in your area. Or call a courthouse in your area regarding filing an Injunction for Protection.

St. Petersburg

Judicial Building
545 1st Avenue North
Room 101

St. Petersburg

Criminal Court Complex
49th Street
Clerk's Office, 2nd floor

Clearwater

Courthouse
315 Court Street
Room 170

To file an Injunction for Protection you must appear in person in the Clerk's Office at any location weekdays, 8:00 a.m. - 5:00 p.m. It takes one to two hours to file. Arrive early. A legal advocate or clerk will assist in preparing the paper work. There is no fee for filing an Injunction for Protection.

You (the petitioner) will be asked to describe in the petition the actual incidents of abuse, injuries, threats of violence, stalking, kidnapping, or false imprisonment, as well as the approximate dates. In other words, you must clearly and factually state the reason for your fear of the person from whom you seek protection.

The assigned judge will review your petition that day and, if granted, the Temporary Injunction will be valid for 15 days unless further continued by the court. A law enforcement officer must attempt to serve a copy to the respondent (abuser being filed against) within 24 hours. There is a fee for out-of-county and out-of-state service, which is determined by the receiving county. It is important that you have a safety plan for you and your children. This is an especially dangerous time because you have taken an action that lessens the abuser's sense of control.

A short Return Hearing is held before a judge within 15 days of the Temporary Injunction. Both parties (you and your abuser) have the right to appear. You must appear, or the injunction may be dismissed. If you'd like a CASA advocate to appear with you, please call 727-895-4912 at least one week in advance of your return hearing.

As the petitioner, you should be prepared to speak directly and clearly about why you fear for your safety. This is the time to bring any photos, witnesses and recorded messages to be used as evidence. The Court may grant the injunction permanently, or choose to limit it to a specific time period. Issues of visitation and support may be referred to the General Master if more time is required.

Be prompt and dress conservatively for court. You should address the judge as "Your Honor" and try to remain calm. It is suggested that you avoid looking at or sitting near your abuser since it may be intimidating.

After receiving a certified copy of the permanent injunction, keep a copy with you at all times. Make extra copies to give to schools, landlords, work, etc.

Either party (you or your abuser) may request changes to the injunction at any time, but only the Court may modify or dismiss the injunction. Permanent Injunctions are valid and enforceable in all states after service by law enforcement, but each state has special rules regarding enforcement of out-of-state Injunctions. Only the respondent (abuser) can be punished for criminal violations of the Injunction.

If the respondent (abuser) criminally violates the injunction, the police should be called immediately. If the abuser commits a civil violation, such as refusing to obey custody, visitation, or support orders, the Clerk of Courts should be contacted.

Keep a journal of all violations and document the nature of the contact, include witnesses' names and dates. Evidence such as threatening messages or letters should be saved. If there has not been an arrest, the petitioner may go to the Clerk of the Courts to file either an Affidavit in Support of Violation or a Motion for Contempt, depending on the type of violation.

Domestic Violence Felony

A felony charge means serious abuse may have occurred. If you are a victim of a domestic felony, an investigation is set up by the local police department with the State Attorney's Office in order to collect evidence and obtain sworn testimony about the domestic violence felony charge. The determination of whether the action constitutes a felony or not is made by the State Attorney in conjunction with the arresting officer.

You will be notified of the time and date for the investigation by one of the following people: the police officer that made the arrest at the time of the incident, a CASA advocate, the Victim Advocates Division at the St. Petersburg Police Department, or the victim advocate at the State Attorney's Office. Other city police departments may hold investigations at the Pinellas County Sheriff's office. Please call CASA at 727-895-4912 if you would like an advocate to be with you for moral support during the investigation.

The investigation usually lasts about 15-30 minutes. The decision to press or drop charges in a criminal case is made by the State Attorney's Office. During the investigation the Assistant State Attorney must speak to you about the crime. You may tell the Assistant State Attorney what you would like to happen with the case. The Assistant State Attorney will consider your wishes and do her/his best to work on behalf of your best interest. However, the final decision to press or drop charges is still made by the State Attorney's Office.

Document Injuries in a Domestic Violence Felony

It is imperative that medical personnel document injuries in a precise manner. Make sure your medical records include the following:

- Chief complaint and description of the abuse event, using the patient's own words, whenever possible, along with the physician's assessment
- Complete medical history
- Relevant social history
- A detailed description of the injuries, including type, number, size, location, resolution, possible causes, and explanations given. Where applicable, the location and nature of the injuries recorded on a body chart or drawing
- When possible and with medical approval of the patient, take photographs prior to medical treatment using color film. Date all photos
- Provide adequate demonstration of the size of the injury using a coin, ruler or other object
- Include the patient's face in at least one photo
- Take at least two photographs of every major trauma area
- Mark photographs precisely with the time, patient's name, location of injury, name of the photographer, and others present
- An opinion on whether the injuries were adequately explained
- Results of all pertinent laboratory and other diagnostic procedures
- Name of the investigating officer and any action taken.

For additional information regarding Domestic Violence Felony, contact the

State Attorney's Office at:

<http://statty.co.pinellas.fl.us/>

Pinellas County Sheriff's Department at:

<http://www.co.pinellas.fl.us/sheriff/>

or call CASA's 24 hour access line:

727-895-4912, and select option "1" from the automated message.