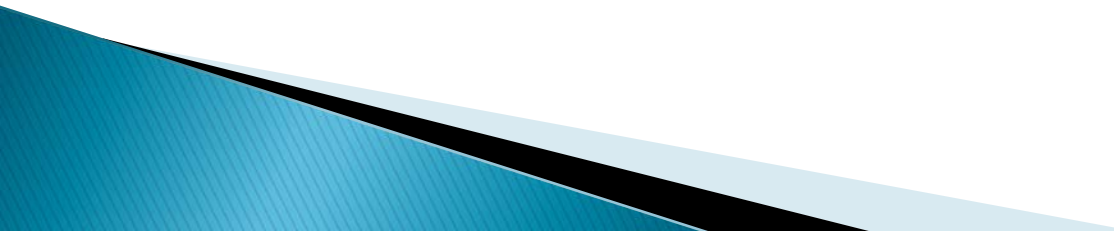


Everything You Wanted to Know About Kentucky Protective Orders



What is a protective order?

- ▶ A protective order is a court order that orders a person to have no contact or communication with the person requesting the order.
 - ▶ Two Types:
 - ▶ Emergency Protective Order (EPO)
 - ▶ Domestic Violence Order (DVO) [KRS 403](#)
 - ▶ Temporary Interpersonal Protective Order (TIPO)
 - ▶ Interpersonal Protective Order (IPO) [KRS 456](#)
- 



What is a protective order?

- ▶ EPOs and TIPOs are temporary, ex parte orders
- ▶ In effect until a hearing is held
- ▶ Hearing must be held within 14 days of issuance
- ▶ Respondent must be served with the petition and order and have an opportunity to defend themselves in court
- ▶ EPO/TIPO must be reset for hearing every 14 days until service is made on the Respondent
- ▶ EPO/TIPO may stay in effect for 6 months if the Respondent can't be served and may then be reissued

Who can get a protective order?

▶ Family Members

- Spouse/ex
- Grandparent/grandchild
- Parent/child/step
- Any child if the Respondent lives in the same house

▶ Member of an Unmarried Couple

- Live/have lived together
- Child in common

EPO/DVO

EPO/DVO

Who can get a protective order?

▶ Dating Relationship

- Have or have had romantic or intimate relationship
- Does not include casual acquaintances or ordinary social or business associates

▶ Victim of Stalking or Sexual Assault

- No relationship required

TIPO/IPO

TIPO/IPO

What is a dating relationship?

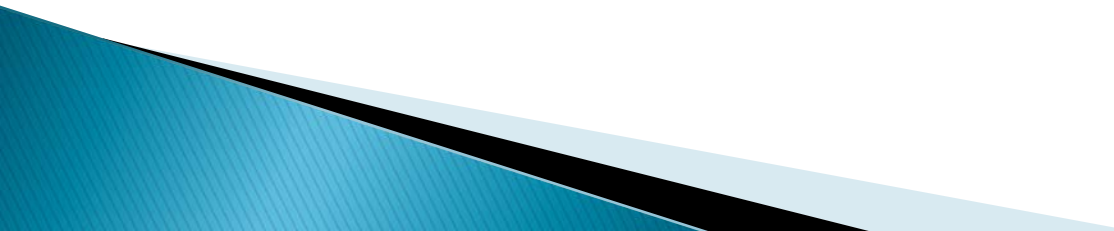
▶ Six Factors

- Declarations of romantic interest
- Relationship was characterized by the expectation of affection
- Attendance at social outings together as a couple
- Frequency and type of interaction
 - Over time/continuous basis
- Length and Recency
- Other indications of substantial connection that would lead a reasonable person to understand that a dating relationship existed

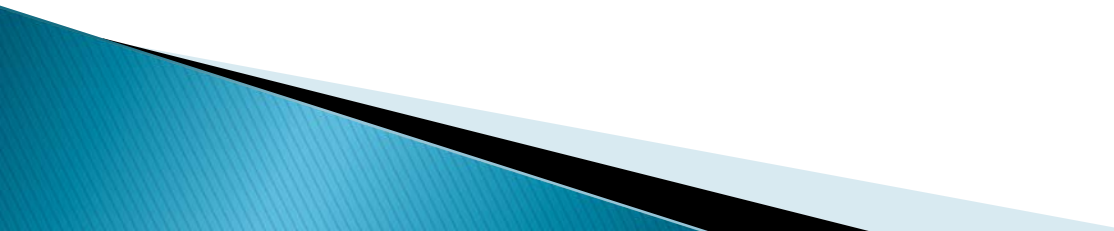
Where do I go to get an EPO/TIPO?

- ▶ County of your usual residence
- ▶ County to which you fled to escape abuse and violence
- ▶ Local protocol in each county gives specific instructions
 - <http://courts.ky.gov/Pages/localrules.aspx>
- ▶ Each county is required to provide 24 hour access to people seeking a protective order
- ▶ No cost to Petitioner to file petition or have petition served on Respondent

IPO upon criminal conviction for stalking or sexual assault

- ▶ Conviction acts as automatic application for IPO
 - ▶ Victim can decline
 - ▶ Defendant can request a hearing
 - ▶ Conviction serves as sufficient proof for entry of IPO
 - ▶ Duration of up to 10 years, eligible for renewal in 10 year increments
- 

What do I need to put in my petition?

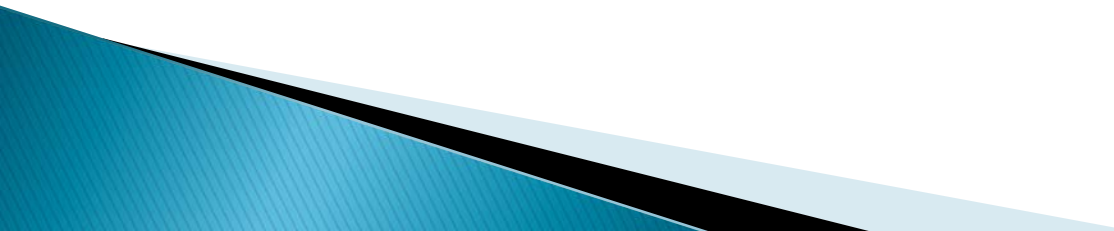
- ▶ Everything you want to tell the judge about acts of domestic violence and abuse (EPO) or dating violence and abuse, stalking, or sexual assault (TIPO) that the Respondent has committed
 - ▶ You may not be able to testify about things that are not in your petition, because the judge may find that the Respondent didn't have notice of those allegations and exclude that testimony
- 

Definitions

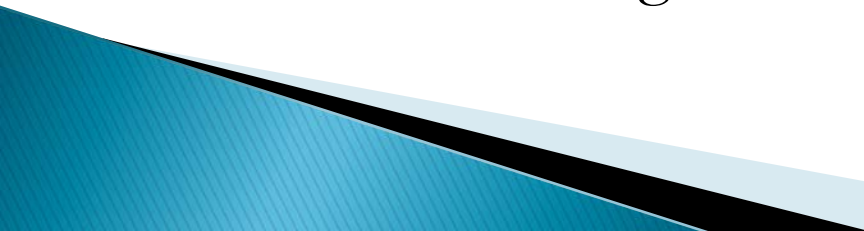
▶ Domestic Violence and Abuse

- Physical injury, serious physical injury, stalking, or sexual assault or the infliction of the fear of imminent physical injury, serious physical injury, or sexual assault occurring between family members or members of an unmarried couple

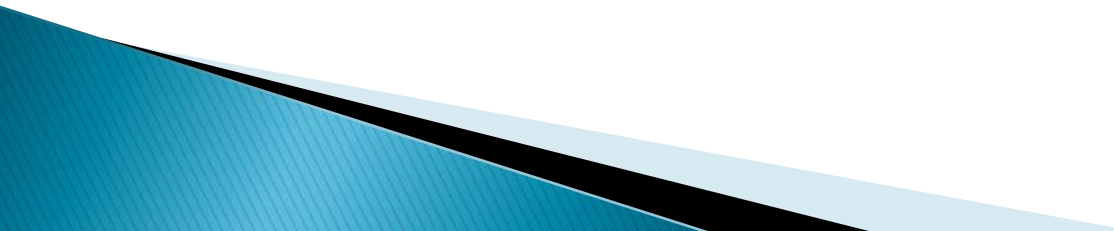
▶ Dating Violence and Abuse

- Physical injury, serious physical injury, stalking, or sexual assault or the infliction of the fear of imminent physical injury, serious physical injury, or sexual assault occurring between persons who are or have been in a dating relationship
- 

What happens after I file the petition?

- ▶ The petition should be reviewed by a judge immediately
 - ▶ If the judge finds that the petition indicates that domestic violence and abuse/dating violence/stalking/sexual assault exist, the judge shall issue a summons for a hearing in 14 days or less
 - ▶ If find basis does not exist, may consider amended petition or dismiss petition without prejudice
 - ▶ If also find presence of immediate and present danger of domestic violence and abuse/dating violence/stalking/sexual assault, shall issue EPO/TIPO
- 

Which judge will hear my case?

- ▶ Family Court judges hear EPO cases
 - ▶ In counties with no family court, District Court judges hear EPO cases unless there is a divorce/custody case which transfers jurisdiction to Circuit Court
 - ▶ TIPO cases may be heard by District Court or Family Court, depending on local protocol
- 

What do I have to prove to have a long-term order (DVO/IPO) entered?

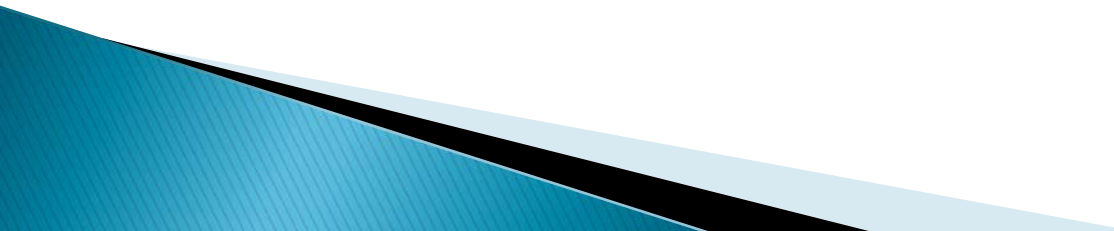
- ▶ Petitioner has the burden of proof
- ▶ Standard of proof is preponderance of the evidence
 - More likely than not (51%)
- ▶ DVO
 - Petitioner must prove that an act of domestic violence and abuse has occurred and may occur again
- ▶ IPO
 - Petitioner must prove that an act of dating violence and abuse, stalking, or sexual assault has occurred or may occur again

Do I need a lawyer for my hearing?

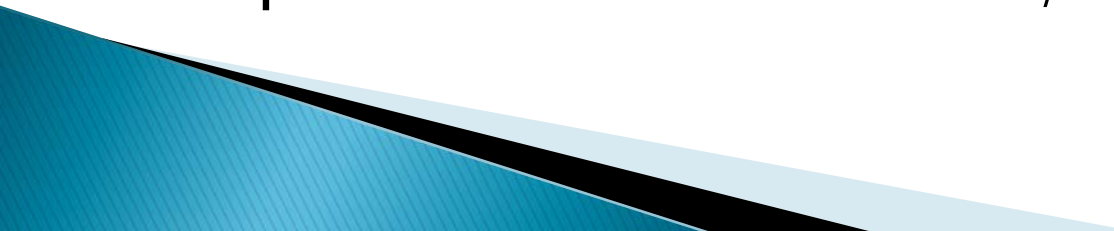
- ▶ You do not *have* to have a lawyer at your hearing, but either party *may* bring a lawyer with them
- ▶ If you want a lawyer to help you, you should contact them as soon as possible after filing your petition
- ▶ Free legal help:
 - <http://www.ardfky.org/node/6/legal-assistance-applications>
 - 1-866-277-5733
 - Call your local office



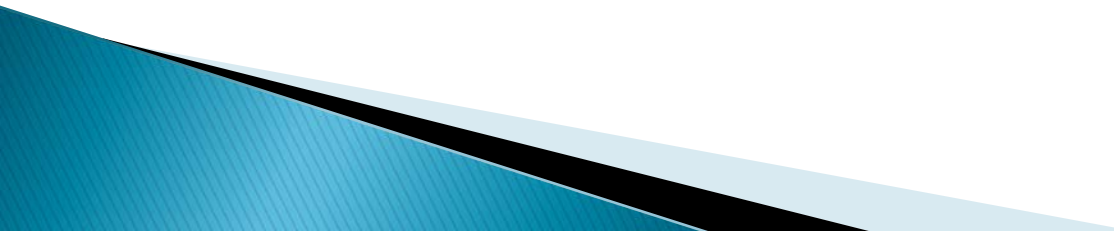
AppalReD Offices:

- ▶ Barbourville (serves Bell, Clay, Harlan, Knox, Laurel & Whitley Counties) – (606) 546-5115
 - ▶ Hazard (serves Breathitt, Lee, Leslie, Letcher, Owsley, Perry & Wolfe Counties) – (606) 439-2315
 - ▶ Pikeville and Prestonsburg (serve Floyd, Johnson, Knott, Lawrence, Magoffin, Martin & Pike Counties) – (606) 886-3876
 - ▶ Richmond (serves Clark, Estill, Garrard, Jackson, Madison & Powell Counties) – (859) 624-1394
 - ▶ Somerset (serves Adair, Casey, Clinton, Cumberland, Green, Lincoln, McCreary, Monroe, Pulaski, Rockcastle, Russell, Taylor & Wayne Counties) – (606) 679-7313
- 


What will happen when I apply for Legal Aid help?

- ▶ An intake specialist will review your application, to make sure that you meet our guidelines for assistance
 - ▶ The intake specialist will check to assure there are no conflicts of interest
 - ▶ If you qualify and there are no conflicts, your case will be reviewed by and assigned to a lawyer
 - ▶ Your lawyer will either speak with you over the phone, or meet with you in person
 - ▶ If appropriate, the lawyer will sign an agreement to represent you; and will provide that representation at the DVO/IPO hearing
- 


What should I bring to my hearing?

- ▶ Your court date will likely be the only chance you have to talk to the judge about your case. You should bring all witnesses and evidence you have to the hearing.
 - Pictures of injuries or damage caused during assault
 - Medical Records
 - Police Reports
 - ▶ You need to be prepared to ask your witnesses questions
 - ▶ Documents and photos need to be authenticated
- 

What will happen at the hearing?

- ▶ The judge will talk to both parties about the allegations in the petition. The Petitioner talks first.
 - ▶ Both parties have the right to cross-examine the other party's testimony and any witnesses the other party calls.
 - ▶ At the end of the hearing, the judge will decide whether or not the Petitioner has proven by a preponderance of the evidence that prohibited conduct has occurred and may occur again. If so, a long-term protective order will be entered. If not, the petition will be dismissed.
 - ▶ The judge may consider Respondent's criminal record
- 

What can the judge order?

- ▶ No contact or communication OR can allow contact or communication at Petitioner's request
 - ▶ No further acts of domestic or dating violence or abuse
 - ▶ Temporary child custody and support
 - ▶ Federal gun prohibition applies to most DVOs, does not apply to IPOs
 - ▶ Counseling
 - ▶ Maximum length: 3 years, can be reissued before expiration, but must hold hearing. Petitioner must take action to request reissuance of the protective order
- 

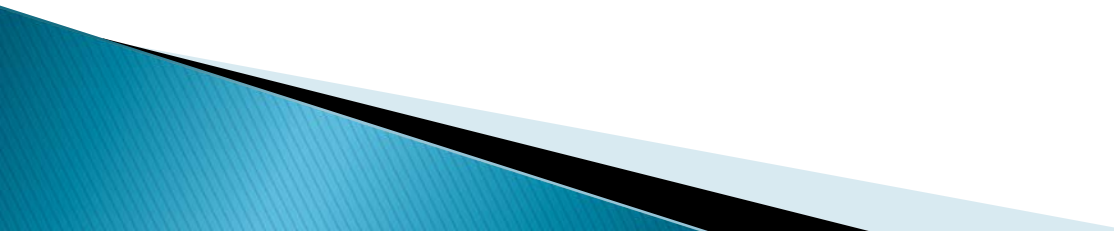
Can the Respondent still visit our children if I have a DVO?

- ▶ Yes, can be ordered in domestic violence hearing or through divorce or custody hearing
- ▶ Court is required to consider evidence of domestic violence and the extent to which the violence has impacted the child's relationship with both parents
KRS 403.270
- ▶ Court shall make arrangements for visitation so as not to seriously endanger the child or custodial parent's physical, mental, or emotional health KRS 403.320

What if the Respondent goes to my school?

- ▶ IPO – if either party is a minor, the court shall inquire whether parties attend school in the same school system. If they do, the court shall impose conditions having the least disruption in the administration of education to the parties while providing appropriate protection to the Petitioner


What if the Respondent violates the protective order?

- ▶ Criminal action KRS 403.763/KRS 456.180
 - Mandatory arrest
 - ▶ Contempt of Court
 - File motion in the domestic violence case
 - ▶ Contempt and criminal action are mutually exclusive, but may be charged criminally for other crimes committed in course of violating protective order if pursuing contempt
 - ▶ Judge may order GPS monitoring for substantial violation
- 

Is my order valid outside Kentucky?

- ▶ Both EPO/DVOs and TIPO/IPOs are covered by VAWA full faith and credit
- ▶ Presumed valid and are to be enforced by law enforcement without authentication

What is a mutual civil protective order?

- ▶ Order entered in a divorce or custody case in exchange for dismissal of EPO/TIPO
 - ▶ Orders both parties to have no (or limited) contact with the other party
 - ▶ Violates prohibition of entry of mutual orders without separate petitions
 - ▶ Violation not a crime
 - ▶ Not entered into LINK, will not be enforced by police
 - ▶ Doesn't trigger federal gun prohibition or procedures for recognizing an out-of-state protective order
- 

- ▶ Special thanks to Catherine DeFlorio of Legal Aid of the Bluegrass and Mary Savage of Kentucky Coalition Against Domestic Violence as well as Melissa Tidwell of AppalReD Legal Aid (Barbourville) for use of their slides and resources in preparing this presentation

If you need me, call me!

Beverly Shea
Directing Attorney, Somerset Office
beverlys@ardfky.org
AppalReD Legal Aid
108 College Street
Somerset, KY 42501
606-679-7313

