

# Going to court for a domestic violence order



## What is domestic violence?

Domestic violence is any form of physical, sexual and psychological violence which threatens the safety or welfare of family members and certain persons in domestic relationships. Physical or sexual violence against a family member is a crime.

As well as physical violence, domestic violence can also involve:

- emotional abuse
- the destruction of property
- controlling behaviour such as isolation from friends, family and other potential sources of support
- threats to others including children
- stalking
- control over access to money, personal items, food, transportation and communication

On 1 January 2019, the [Domestic Violence Act 2018](#) came into effect. It consolidates the law on domestic violence and provides for additional protections for victims of domestic violence described in the document below.

A new offence of coercive control of a spouse, civil partner or intimate partner also comes into force under the 2018 Act. Coercive control is a pattern of intimidation, humiliation and controlling behaviour that causes fear of violence or serious distress that has a substantial impact on the victim's day-to-day activities.

Under domestic violence legislation, the main kinds of protection available are safety orders and barring orders.

## What is a safety order?

A safety order is an order of the court which prohibits the violent person (the respondent) from committing further violence or threats of violence. The respondent is not obliged to leave the home. If the person is not living with you, the safety order prohibits them from watching or being near your home and following or communicating (including electronically) with you or a dependent person. A safety order can last up to 5 years.

From 1 January 2019, people in an intimate relationship are eligible for safety orders. Previously couples had to cohabit to be able to get a safety order, but the 2018 Act has removed this requirement. The following people can apply for a safety order:

- Spouses and civil partners
- Parents with a child in common
- Partners in an intimate relationship (including cohabitants and dating partners)

- Parents of an abusive child if that child is over 18
- People residing with the respondent in a non-contractual relationship, such as two relatives living together

Former partners are also eligible, for example, a former spouse or cohabitant.

### **What is a protection order?**

Between the time of making an application for a safety order (or barring order) and the court's determination, there may be reasonable grounds for believing that the safety and welfare of you or of a dependent person is at risk. If so, the court can grant a protection order to prohibit the respondent from:

- Using or threatening to use violence
- If the person is not living with you, watching or being near your home
- Following or communicating with you or a dependent person

A protection order is temporary and only effective until the court hearing for the application for a safety order (or barring order).

### **What is a barring order?**

A barring order requires the violent person to leave the home and prohibits the person from entering the home. The order also prohibits the person from further violence or threats of violence, watching or being near your home, or following or communicating (including electronically) with you or a dependent person. A barring order can last up to 3 years.

The following people can apply for a barring order:

- Spouses and civil partners
- Cohabitants who live in an intimate relationship (the applicant must satisfy the property test, that is, they must have an equal or greater interest in the property than the respondent)
- Parents when the abuser is a non-dependent child

### **What is an interim barring order?**

Between the time of making an application for a barring order and the court's determination, there may be reasonable grounds for believing that the safety and welfare of you or of a dependent person is at risk. If so, the court can grant a protection order (see above) or an interim barring order. An interim barring order is an immediate order. It requires the violent person to leave the home where there is an immediate risk of significant harm to you or a dependent person and a protection order would not be sufficient protection.

### **What is an emergency barring order?**

The Domestic Violence Act 2018 provides for a new order called an emergency barring order. An emergency barring order requires the violent person to leave the home, and prohibits the person

from entering the home. This is an immediate order where there is reasonable grounds to believe there is an immediate risk of significant harm to you or a dependent person.

Unlike an interim barring order, the applicant does not have to satisfy the property test to be able to get an emergency barring order. This means the applicant does not need to own, co-own or have their name on the lease of the property. An emergency barring order can last for a maximum of 8 working days. It prohibits the same behaviours as a barring order.

## Applying for an order

To get a safety or barring order you must attend a District Court hearing. While you are waiting for the court to hear your application, the court can give you an immediate order.

In an emergency situation, the 2018 Act allows a member of the Gardaí to request that the Courts Service arrange a special out-of-hours sitting of the District Court for someone looking for an interim barring order, protection order or emergency barring order.

A safety order or barring order can be renewed by applying for a further order before the previous one expires.

The 2018 Act introduces [a list of factors that the court can consider when deciding on an application for a domestic violence order](#) (safety, protection or barring order). This list is not exhaustive but includes:

- history of violence by the respondent towards the applicant or any dependent person
- increase in severity or frequency of violence towards the applicant or their children
- exposure of children to violence inflicted by the respondent on the applicant or other child
- history of animal cruelty
- substance abuse (including alcohol), by the respondent, the applicant or a dependent person
- the age and state of health (including pregnancy) of the applicant or any dependent person

## Rules

### Spouses and civil partners

If you are married or in a civil partnership, and you can show the court that your spouse or civil partner is violent in any way towards you or the children, you can get a barring or safety order against them no matter how long you have lived together and even if they own most or all of the house.

### Cohabiting couples

If you have lived together in an intimate relationship you can get a safety order against a violent partner. You can also get a safety order against a person you have had a child with but are not living with or have never lived with.

You can get a barring order against a violent partner if you have been living together in an intimate relationship and your partner does not own most or all of the house you are living in. There is no minimum period of cohabitation required.

You can get an emergency barring order where there is reasonable grounds to believe there is an immediate risk of significant harm to you or a dependent even if you do not own, co-own or have your name on the lease.

## Parents

A parent can apply for a barring or safety order against domestic violence from their own child if their child is over 18. You cannot get a barring order if your child owns all or most of the house you are living in.

## Others living together

Others living together, for example, two relatives, can apply for a safety order.

## Children

The Domestic Violence Act 2018 contains specific provisions for the protection of children including:

- Children can make their views known to the court where a safety or barring order is sought on behalf of, or will partly relate to, a child. The court can appoint an expert to assist the court to get the views of the child depending on the child's age and maturity.
- When giving evidence in an application for a domestic violence order, a child cannot be cross-examined in person by the respondent or the applicant.
- Domestic violence orders relating to children remain in force until the order expires even after they reach the age of 18. Previously they expired when the child became 18 years old.

The Domestic Violence Act 2018 also amends the Civil Registration Act 2004 to remove the exemption for underage marriage. From 1 January 2019, the legal age requirement for marriage is 18 years. It is no longer possible to get a Court Exemption Order allowing a marriage to proceed if one or both parties are under 18 years.

## Tusla - The Child and Family Agency

[Tusla - The Child and Family Agency](#) may seek a safety or barring order against a violent adult on behalf of a child, whether or not that violent adult is married to the child's parent.

## What happens if an order is broken?

Anyone who breaks a safety order, protection order, barring order, interim barring order or emergency barring order is guilty of an offence. If the respondent prevents you or your dependants from entering or remaining in a place to which the order relates (while the order is in effect), this is also an offence.

The above offences under Section 33 of the Domestic Violence Act 2018 are punishable by a [class B fine](#), a prison term of 12 months, or both.

When the court is determining the sentencing for certain offences such as psychological, physical violence, sexual violence, coercive control and stalking, it is now considered an aggravating circumstance if the victim is or was a spouse, civil partner or in an intimate relationship with the offender. This means the court shall impose a sentence which is greater than would have been imposed because of the fact that the victim and perpetrator were in an intimate relationship. This provision is introduced by [Section 40 of the Domestic Violence Act 2018](#).

## Support

If you are concerned about violence in your home, you should contact [your local Garda station](#). Members of the Gardaí are specially trained to deal with these situations and can offer advice, information and assistance.

### How to get a safety or barring order

Most applications for domestic violence orders are made in the District Court. You can engage a solicitor to make an application on your behalf or you can make the application yourself. You may be entitled to [legal aid](#).

The District Court Office staff will identify the forms you need to make your application. If you are applying for a barring order or a safety order, the court clerk will arrange a court date for a court hearing. You will be given your summons for the court hearing at the time of your application. The forms will be sent to the respondent so that the respondent can attend in court on the day of the hearing. You do not need a solicitor to make an initial application, but it is recommended that you have legal representation for a full court hearing.

If there is an emergency situation or while you are waiting to go to court to get a barring order or safety order, you can get a protection order, an interim barring order, or an emergency barring order if you or a dependent child is at immediate risk of significant harm. If there is no sitting of the District Court at the time when you wish to make such an application, a member of the Gardaí may request the Courts Service to arrange a special sitting of the District Court. If you do not want a protection order or an interim barring order immediately, you can seek one at any time before your case is heard for a safety or barring order.

The decision of the court is produced in the form of a written document called an 'order'. If the respondent is in court when the order is made the respondent is considered to be notified and it is sent by the court office to the respondent by ordinary post. However, in the case of a protection order, interim barring order or emergency barring order the court usually directs that order be served on the respondent by a member of the Gardaí.

The court office will notify the Gardaí of the making of the order by sending a copy to the local Garda station by post. To avoid any delay in notifying the Gardaí you should call to the Garda station immediately after the order has been made, tell them of the making of the order and leave a copy with them (you can allow them to take a photocopy). A copy of your order will be sent to the superintendent of your local Garda station by registered post the following day.

Further information on making an application and preparing for a court hearing is available on the [www.courts.ie](http://www.courts.ie)

## Special Measures

Under the Domestic Violence Act 2018, there are a number of special measures which can be used when applying for a domestic violence order or attending breach hearings.

1. **Video Link Evidence:** Applicants for a domestic violence order, under or over 18, may apply for their evidence to be given by video link.
2. **Restrictions on Personal Cross-examination:** Applicants and respondents under 18 and over 18 are able to apply for protection from being cross-examined in person.
3. **Breach hearings:** Breach of domestic violence order hearings are to be heard in-camera. In camera means in private.
4. **Court Accompaniment:** Applicants for a domestic violence order have the right to be accompanied in Court by person they choose including a support worker.
5. **Views of child:** When a safety order or barring order is being decided, the views of the child must be considered.
6. **Information on Services :** Court Staff staff are now obliged to provide information on domestic violence services to all applicants for domestic violence orders.

## Ascend Court Accompaniment

We offer a court accompaniment service through which we:

- can support you in court on matters relating to Domestic violence, Maintenance, Child access, Separation and divorce
- can give you a clear understanding of the procedures of court
- accompany you to court and in to the courtroom for support. **The support worker does not speak in court unless specifically asked by the judge**
- accompany you to appointments with solicitors at your request
- explain the different court orders to you
- explain what is required of you by the Courts when Orders are granted and answer any question you may have about the case, the order or the Judge's decision
- provide practical help, for example with forms
- refer you to other agencies if necessary
- provide on-going service to you throughout your court history and follow-up
- cannot provide legal advice

## Tips for Attending Court

1. **Arrive early** to give yourself some extra time for traffic, to park the car, and get into the building. By arriving early, you will have a chance to straighten yourself out, collect your thoughts and to address any last minute concerns with your lawyer.
2. **Dress appropriately** in a neat and professional manner.
3. **Turn your mobile phone off!**

4. **Be courteous** to the judge, court clerks, and court officers, including the opposing counsel. The judge hearing your case is in control of the courtroom and makes all decisions in your case. Your body language is just as important as what you say in court.
5. **Don't minimise or exaggerate what has happened, just tell the TRUTH.** Just speak in your own words.
6. **Courts are not appropriate for small children.** Where possible make arrangements for your child's care when you come to court. If they are noisy in court the judge may have them removed from the building.
7. **Prepare for the unexpected.** You may feel shocked if the other party lies. If you do not agree with what is being said stay calm and do not roll your eyes or respond in any way, you will get an opportunity to make your case and respond to the other side.
8. **Only speak when addressed by the judge,** and even then speak only to the Judge, not the other party or lawyer. Maintain eye contact and be clear and confident when speaking. You are in court to be heard and believed. Never interrupt or talk out of turn and don't argue with anyone, especially the judge!
9. **Be engaged and show interest.**
10. **Be prepared** and have all important documents ready. The best way to reduce anxiety is to be positively organized and list the important points you want the judge to know. Remember this is about you and your children's safety.
11. Welcome the opportunity to be interviewed by your lawyer. Be ready to discuss all relevant considerations and facts surrounding the subject matter of the dispute. Ask questions about the issues that concern you.
12. Ask yourself what is the worst that can happen to me? Once you go through this process, you will discover that your fear is diminished.

### Check-list for court

Going to court to get an order takes enormous courage and to ensure a good outcome preparation is key.

- ✓ The Judge will want to hear of any incidents of domestic abuse in the last three months
- ✓ Go through these incidents carefully
- ✓ Use the order if granted.
- ✓ Ensure clients report all breaches to Gardaí. The Gardaí will ask you if you want to make a statement and if serious enough do so. If minor just ask to have it noted.
- ✓ If partner working off the books it is unlikely that will be considered when awarding maintenance
- ✓ Do you have all the documents that you need to begin proceedings?
- ✓ Have you checked your documents?
- ✓ When is your case due back in court?
- ✓ We recommend you obtain professional legal advice, whether you are an applicant or a respondent. If you feel that you cannot afford legal advice, you may be entitled to legal aid. More information can be found at [www.legalaidboard.ie](http://www.legalaidboard.ie).
- ✓ You are entitled to represent yourself in court. If you choose to represent yourself, you will be expected to have some knowledge of the law relevant to your proceedings. You will also

be expected to have read the appropriate sections of the Circuit Court Rules, and to know the documents you require for your application.

### **The District Court**

This is the most accessible court as there is one in nearly every town of any size in the country. In North Tipperary's district courts family law is dealt with two Thursdays a month in Nenagh, and one Tuesday a month in Thurles. This ensures that family law can be dealt with in a more sensitive and friendly way.

The District Court deals with child issues, maintenance, and violence or abuse matters. The District Court, however, has no power to deal with property, pensions, or to grant separations or divorces.

### **The Circuit Court**

The Circuit Court deals with the majority of separations and divorces. In North Tipperary there is no dedicated family Circuit Court which sits every week. This means that it is not always possible to access the court speedily. It can take quite some time to get the matter to trial. When a case is listed before the Circuit Court it will be on a list with other cases also on for hearing on the same day. Accordingly, the amount of time that the court has to give to any case is limited.

### **The High Court**

Family cases will also come for hearing in the High Court, though generally the cases dealt with in the High Court are cases which are cash and asset-rich. The High Court will assign the time to the case that counsel indicate to the judge it will take, and there will be nothing else in the docket for that time except the case.

The High Court does not sit in North Tipperary. While the High Court does go on circuit, meaning it travels to other cities around the country, every so often the majority of people will apply to the High Court sitting in Dublin, as this will turn out to be the most efficient way of disposing of their case. Clearly if you are coming from elsewhere this will increase already substantial costs.

Further information can be found on [www.courts.ie](http://www.courts.ie)