

Domestic Violence

What Is It and When It Is Appropriate To File for a Protective Order

by Marci R. Carroll, Esq.

Domestic violence is a serious issue taken seriously by law enforcement and courts alike these days. But every argument does not domestic violence make. There are four main legal components to be addressed when evaluating whether or not filing a domestic violence petition is appropriate.

First, is the situation between “family or household members”? Under West Virginia domestic violence law, family or household members are statutorily defined more broadly than you might expect in that biological relationships, legal relationships, romantic relationships, residential arrangements, and parenting relationships may qualify. And such past relationships and residential arrangements count as well as current ones.

Second, do the acts and/or words between the family or household members fall under the statutory definition of “domestic violence or abuse”? Yes, certain verbal communications count, and there is certainly no requirement that the alleged victim be beaten or even that hands be laid upon them for domestic violence to have occurred. Under West Virginia law, there are five categories of activities and/or communications that constitute domestic violence:

- ❖ Attempting to cause or intentionally, knowingly, or recklessly causing physical harm to another with or without dangerous or deadly weapons;
- ❖ Placing another in reasonable apprehension of physical harm;
- ❖ Creating fear of physical harm by harassment, psychological abuse, or threatening acts;
- ❖ Committing either sexual assault or sexual abuse as defined under the pertinent criminal statutes; or
- ❖ Holding, confining, detaining, or abducting another person against that person’s will.

It is very important to recognize and understand that the underlying concern in the first three categories of domestic violence is that of physical harm.

Third, is the person filing the domestic violence petition in magistrate court a person who may file under the statute? A person who believes that they themselves have been the victim of domestic violence may file to seek relief for himself or herself. If the alleged domestic violence victim is a minor child or physically or mentally incapacitated to the extent that he or she is unable to file on his or her own behalf, an adult family or household member of the alleged victim may file for that person; the most common situation in which this provision is used is where a parent files on behalf of a minor child. Finally, a person (not necessarily a family or household member to the alleged victim or the alleged perpetrator) who has witnessed or reported a domestic violence incident and

who, as a result, has been abused, threatened, or harassed, or has been the subject of other actions intended to intimidate them may file a domestic violence petition.

Fourth, can the domestic violence petition be filed and heard in a particular county? A person filing a domestic violence petition has potentially several choices of counties in which to file and have their case heard: where the alleged domestic violence occurred, where the alleged perpetrator is living (either temporarily or permanently), and where the alleged victim is living (either temporarily or permanently). If the parties are married to each other, the potential list of counties can expand even more.

Finally, where the request for relief includes child support and/or custody/visitation/parenting time, multistate jurisdictional issues arise under the Uniform Interstate Family Support Act and the Uniform Child Custody Jurisdiction and Enforcement Act.

Domestic violence petitions are filed in magistrate court on standardized forms, but completing the forms fully and effectively can be difficult and potentially have serious consequences at the final hearing days later in family court. Presenting your case effectively at that final hearing can also be more complicated than just telling your side of the story. Retaining an experienced family lawyer to assist you (whether you are filing a domestic violence petition or you have been served with a temporary domestic violence order) in the process from the outset can make a significant difference.

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