Fighting Domestic Violence - The Philippines

4. Protection for domestic violence victims and relief granted

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# 4.1 Civil protection orders

# 4.1.1 Are there civil protection orders available to victims of domestic abuse?

The Philippines does not have "civil protection orders," but has a *barangay* protection order, temporary protection order and permanent protection order.[39]

# 4.1.2 Who can petition for civil protection orders?

Under the VAWC Act, the following may apply for protection orders:

the offended party (victim)

parents or guardians of the offended party

ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity

officers or social workers of the DSWD or social workers of local government units

police officers, preferably those in charge of women and children's desks

*Punong Barangay* or *Barangay Kagawad*[40]

lawyer, counselor, therapist or healthcare provider of the petitioner

at least two concerned responsible citizens of the city or municipality where the violence against women and their children occurred who have personal knowledge of the offense committed[41]

If the petitioner is not the victim, the petition for the civil protection order should be accompanied by an affidavit of the petitioner attesting that the person has the authority to file the petition. It must outline the circumstances of the abuse suffered by the victim, as well as the consent given by or refusal of the victim to file the petition.[42]

If the victim files for the protection order, this suspends the right of all the other authorized parties above to file similar petitions. However, if an authorized party has previously filed a petition and the victim later files one, the latter's petition will not be dismissed but it will be consolidated with the petition filed earlier.[43]

# 4.1.3 Are there temporary custody of a child or child support orders?

A victim under the VAWC Act may ask for temporary or permanent custody of her children.[44]

The court may also direct the payment of child support through the temporary protection order or permanent protection order if the woman and child are entitled to it. The court may order a percentage of the abuser's income to be withheld by his employer for the same to be automatically remitted directly to the victim.[45]

In any event, the woman will be entitled to the custody and support of her child/children. Even if the woman suffers from battered woman syndrome, she is not disqualified from having custody of her children. Moreover, the perpetrator of battered woman syndrome cannot be given custody of minor children.[46]

The IRR of the VAWC Act provides that the DSWD will take protective custody of the abused child whether or not a protection order has been issued under the VAWC Act.[47]

# 4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?

Yes. The abuser may be temporarily or permanently removed and excluded from the residence of the victim regardless of whoever owns the residence, where no property rights are violated. The respondent may also be directed to stay away from the petitioner and designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment or any specific place frequented by the petitioner, as well as any designated family or household member.[[i]](file:///U:/Active/2020%20Pro-Bono%20GRW/Reports/010.%20Final/Philippines/2021_FDV_Philippines.docx#_edn1) Reliefs may be granted under a temporary protection order or permanent protection order.[49]

# 4.1.5 Are there any other types of emergency, preventive and civil protection orders?

No. Only the three types of protection orders mentioned earlier exist under Philippine law.

However, these protection orders already cover several reliefs such as paying medical expenses, directing the lawful use of the petitioner of essential personal effects, prohibiting the respondent from communicating with the petitioner and prohibiting the abuser from using or possessing any firearm or deadly weapon.[50]

# 4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

Yes. Under the VAWC Act, the following may apply for protection orders:

the offended party (victim)

parents or guardians of the offended party

ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity

officers or social workers of the DSWD or social workers of local government units

police officers, preferably those in charge of women and children's desks

*Punong Barangay* or *Barangay Kagawad*[51]

lawyer, counselor, therapist or healthcare provider of the petitioner

at least two concerned responsible citizens of the city or municipality where the violence against women and their children occurred who have personal knowledge of the offense committed[52]

# 4.1.7 Are there different types of civil protection orders, e.g., for a short- term period?

Yes. A *barangay* protection order and temporary protection order are short-term protection orders, while the permanent protection order is permanent. A *barangay* protection order is effective for 15 days, while a temporary protection order is valid for 30 days.

The head of the *barangay*, which is the smallest local government unit in the Philippines, issues the *barangay* protection order. A *barangay* protection order orders the perpetrator to desist from causing or threatening to cause physical harm to the woman or her child. A *barangay* protection order can also prohibit the abuser from contacting or communicating with the victim-survivor, directly or indirectly.[53] In the *barangay* proceedings, nonlawyer advocates may accompany the parties.[54]

A temporary protection order is issued by the courts, granting any, some or all of the reliefs allowed under the VAWC Act. The determination of whether the order can be issued is *ex parte*. The court will schedule a hearing on issuing a permanent order prior to or on the date of the expiration of the temporary protection order.[55]

A permanent protection order is also issued by the court after notice and a hearing, but it has a more permanent character. Much like the temporary protection order, the court may grant any, some or all of the reliefs under the VAWC Act. Regardless of whether the aggressor is convicted of a violation of the VAWC Act or is acquitted, the court has to determine whether the permanent protection order will become final. This would include a situation where there is no clear evidence showing that the act from which the order might arise did not exist. The lapse of time between the act of violence and filing the application for a permanent protection order will not be a ground to deny issuing the permanent protection order to the victim.[56]

Applying for a *barangay* protection order or being granted one will not prevent the victim from applying for a temporary protection order/permanent protection order with the courts or for the courts to grant a temporary protection order/permanent protection order. However, once the courts grant a temporary protection order/permanent protection order, the *barangay* can no longer grant a *barangay* protection order.[57]

# 4.1.8 Are ex parte orders permitted without the aggressor being present?

Yes. A *barangay* protection order is granted *ex parte*, without notice or a hearing, to the respondent.[58]

For temporary protection orders, whether they are granted is also determined *ex parte.*[59] If the court has reasonable grounds to believe that the imminent danger of violence against women and their children exists or is about to recur, the court may issue *ex parte* a temporary protection order.[60]

Permanent protection orders are issued by the court after notice and a hearing.[61] However, even if the aggressor does not appear despite prior notice, has no lawyer or his lawyer is unavailable, these would not be grounds to reschedule the hearing on the merits for issuing the permanent protection order.[62] The *ex parte* presentation of evidence is allowed if the respondent has filed his opposition but fails to appear at the preliminary conference of the case. [63]

# 4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

Yes, they may be extended to family members. Protection orders may extend other forms of relief to designated family or household members of the victim if she files for one. Should the victim pursue this protection, both the victim and the designated family or household member should consent to the relief.[64] One of these reliefs includes directing the respondent to stay away from the designated family or household members of the victim and to stay away from the residence, school, place of employment or any specified place frequented by the designated family or household member of the victim.[65] Directing the respondent to stay away from these places would assist in preventing abuse or intimidation of the victim's family or household members.

# 4.1.10 How long do the orders last?

A *barangay* protection order is effective for 15 days.[66] A temporary protection order is effective for 30 days.[67] A permanent protection order is effective until the court revokes it. It can be revoked if the person in whose favor the permanent protection order was issued requests the same.[68]

# 4.1.11 Please provide any data or hyperlinks to government or NGO websites that include information on how often civil protection orders are issued, and any relevant demographics information, e.g., police reports, convictions, etc.

<https://www.psa.gov.ph/content/domestic-violence-4>

<https://psa.gov.ph/content/domestic-violence-3>

<https://psa.gov.ph/content/one-four-women-have-ever-experienced-spousal-violence-preliminary-results-2017-national>

<https://www.api-gbv.org/resources/dvfactsheet-filipino/>

# 4.2 Steps for receiving a protective order

# 4.2.1 What documentation is needed to obtain a civil protection order?

There is no specific type of documentation/form of evidence needed to obtain a protection order under the VAWC Act.

However, under the Rules on Violence Against Women and Children, the requirements for a valid petition for a protection order include the personal information of the parties involved; a description of the relationship between the offended party and the respondent; a complete description of the alleged act constituting violence (including the date, time and place of occurrence); and the relief from violence prayed for, including protection orders to cover any designated family or household member who consents to the relief.[69] The respondent may file an opposition, which must be accompanied by the affidavits of witnesses and show cause why the protection order should not be issued.[70] If he fails to do so, the court will issue the protection order as may be warranted by the facts alleged in the petition.[71]

A *barangay* protection order may be issued *ex parte* by the *Punong Barangay* or, in his absence, the available *Barangay Kagawad*[72]based on an application that is in writing, signed and verified under oath stating the circumstances of abuse.[73]

A temporary protection order may be issued *ex parte* by the court if it is satisfied from the verified allegations of the petition that there are reasonable grounds to believe that the imminent danger of violence against women and their children exists or is about to recur.[74] It may also be issued at a later point in the proceedings, within five days of the termination of the preliminary conference, if the court is satisfied that it is necessary based on the pleadings, stipulations or admissions made by the parties.[75]

A permanent protection order is issued after trial. During trial, documentary, object and/or testimonial evidence may be received to prove that it is necessary.[76]

# 4.2.2 Does the victim need to attend a hearing?

For a *barangay* protection order, no hearings are conducted prior to its issuance.[77] For a temporary protection order, the court may issue the same *ex parte* or it may do so after a preliminary conference, which involves prior hearings.[78] However, the rules issued by the court do not require that the victim attend the hearings. A person who is not the offended party may file the petition. This person is required to be present in the preliminary conference as the "petitioner."[79] However, if the victim desires to testify, then the victim must personally appear in court subject to special allowances, such as testimony via a live television link or the judge ordering the exclusion of persons from the court to ensure the comfort of the victim.[80]

# 4.2.3 Can you request remedies?

Yes, the reliefs available under a protection order are not exclusive. The judge is permitted to grant other forms of relief to protect the offended party and any designated family or household member who consents to the relief.[81] Thus, a prayer for other reliefs and remedies may be included in the petition.

# 4.2.4 Are there time limits?

Yes, a *barangay* protection order is effective for 15 days.[82] Temporary protection orders are effective for 30 days[83] but may be extended for 30 more days each time until a final judgment is rendered.[84] There are no time limits for permanent protection orders.

# 4.2.5 Are there different rules in emergencies?

The law and rules allow for the *ex parte* issuance of *barangay* protection orders and temporary protection orders if the situation calls for it.[85]

# 4.3 Judicial discretion

# 4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

The judge possesses a wide range of discretion in determining whether a permanent protection order should be granted.

Under the Rules on Violence Against Women and Children, the requirements for a valid petition for a protection order include the personal information of the parties involved; a description of the relationship between the offended party and the respondent; a complete description of the alleged act constituting violence (including the date, time, and place of occurrence); and the relief from violence prayed for, including protection orders to cover any designated family or household member who consents to the relief.[86] The respondent may file an opposition, which must be accompanied by the affidavits of witnesses and show cause why the protection order should not be issued.[87] If he fails to do so, the court will issue the protection order as may be warranted by the facts alleged in the petition.[88]

While the rules do not specify the threshold or standards against which the judge must evaluate the merits of the petition, it is clear from the above that the evaluation of whether a protection order should be issued largely depends on the judge's evaluation of the facts provided.

To issue a protection order, only a preponderance of evidence is necessary.[89] The requirement for a valid petition is only a description of the alleged act, without the need to present affidavits of witnesses, in contrast to the requirement for an opposition to the petition. In addition, the rules enumerate a wide variety of reliefs that may be included when granting a protection order.[90] Other than the 12 examples of reliefs, the court may grant other forms of relief to protect the offended party and any designated family or household member who consents to the relief.[91]

# 4.3.2 Are there age limits on who can obtain orders?

No, there are no age limits on who can obtain protection orders.

# 4.4 Restitution and remedies available to victims

# 4.4.1 Can victims obtain reimbursement for costs and restitution paid?

Yes, victims can ask for costs and restitution to be paid. Victims may file a civil action for damages separate from the petition for a protection order. One of the reliefs that may be granted with the petition for a protection order is the award of actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, childcare expenses and loss of income, as well as compensatory, moral and exemplary damages.[92]

The petition may be filed ahead of the civil action and it may proceed separately. Upon a motion of the petitioner, the court may consolidate the petition with the civil action. If the petition is not filed ahead of the civil action, it is deemed instituted with the civil action for damages.[93]

# 4.4.2 Can they recover wages and profits lost?

Yes, please see the answer to the first question of Section 4.4.

# 4.4.3 Is a separate civil process required?

Yes. To claim damages, the remedy of the offended party is to file a civil action for damages.[94] The award of damages as a relief that may be included in a petition for a protection order is expressly made subject to Section 35, which states that the 1997 Rules of Civil Procedure govern the civil action for damages.

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