Fighting Domestic Violence - China

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?

Yes, there are. The protection order for victims of domestic violence in the PRC is called personal security protection order.

# 4.1.2 Who can petition for civil protection orders?

Under the Anti-Domestic Violence Law, the applicant includes the following:

the person who has suffered from domestic violence or who is in real danger of domestic violence

their close relatives, public security authorities, women's federation, residents' committee, villagers' committee and the relief administration agency

According to the law, if the party concerned does not have civil capacity or only has limited civil capacity, or is unable to apply for a personal security protection order due to coercion or intimidation, their close relatives, public security authorities, women's federation, residents' committee, villagers' committee or the relief administration agency may apply on their behalf. Victims of domestic violence, their close relatives, friends, neighbors and colleagues, as well as villagers'/residents' committee, people's mediation committee, women's federation, the communist youth league, the disabled persons' federation, hospital, school, kindergarten, etc., units and organizations will have the right and obligation to promptly report, charge or report to the public security authorities, procuratorate or court when they discover domestic violence.[37]

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

If a person without civil capacity or with limited civil capacity suffers serious physical injury, facing threats to personal safety or is in a dangerous state such as unattended care due to domestic violence, the public security authorities will notify and assist the authority of civil affairs to place them in a temporary shelter, a relief administration agency or a welfare institution.

For custody, if the guardian implementing domestic violence toward wards that seriously infringes the lawful rights and interests of the ward, the court, a procuratorate or the public security authorities may notify the ward, other persons and units with guardianship to apply to the court to revoke the qualification of that guardian and to appoint a new guardian according to the law. [38]

# 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 measures of a personal security protection order are broad and can be flexible depending on the circumstances of the case. These include the following:

requiring the abuser to move out from where the victim lives or stay away from the place where the victim frequents

prohibiting the respondent from committing domestic violence

prohibiting the respondent from harassing, tracking or contacting the applicant and their close relatives

prohibiting the respondent from harassing or intimidating the applicant and their close relatives by telephone, short message, WeChat or other means[39]

prohibiting the respondent from moving within 200 meters of the applicant's residence, school, workplace or other places frequented by the applicant;

during the effective period of the personal security protection order, one party will not take the liberty to dispose the greater value of the community property[40]

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

Yes, there are personal security protection orders for healthcare personnel.

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

If the party concerned is without civil capacity or with limited civil capacity, or is unable to apply for a personal security protection order due to coercion or intimidation, their close relatives, public security authorities, women's federation, residents' committee, villagers' committee or the relief administration agency may apply on their behalf.[41]

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

No. Generally, a personal security protection order cannot last more than six months. The judge will decide the validity term based on the actual circumstances of the case.

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

Yes. In general, it does not necessarily require that the domestic violence is ongoing, i.e., that the abuser is actively abusing. According to Article 28 of the Anti-Domestic Violence Law, it does not matter whether the abuser is present as long as one of the following conditions is met:

a clear respondent, that is, the abuser, their name, ID number, address or other basic information

have a specific request, such as in a personal security protection order, requiring the respondent to move out of the residence, stop the harassment of the victim and their close relatives or other measures

the applicant suffered domestic violence or is in actual danger of domestic violence

The violence in the application conditions includes the actual violence and the violence that is sufficient to constitute a threat of violence where it is not subject to the occurrence of actual damage but the threat of domestic violence.

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

Yes. A request can be made in the personal security protection order application for the protection of the victim's family members, and for their close relatives to be free from physical distance intimidation and harassment and communication devices (such as WeChat) intimidation and harassment.

# 4.1.10 How long do the orders last?

The term of validity of a personal security protection order starts from the date of issuance and does not exceed six months. Before the personal security protection order becomes invalid, the applicant may apply to the court for a cancellation, alteration or extension.[42]

# 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.

N/A

# 4.2 Steps for receiving a protective order

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

The applicant should file a written application to obtain a personal security protection order. The application should be clear on the respondent and the specific request. The applicant should provide evidence of domestic violence or the threat of domestic violence, including but not limited to police attendance records, warning letters, injury evaluation opinions and other evidence.

If the applicant truly has difficulties making a written application, an oral application may be acceptable, for which the court will make a written record.[43]

# 4.2.2 Does the victim need to attend a hearing?

No, the victim does not need to attend a hearing unless there is an ongoing family lawsuit. If the applicant is applying for a personal security protection order, the judge will decide according to the specific circumstances whether it is necessary to hear the views of the respondent, but will not ask the victim to attend the hearing.[44] The judge may consider the victim's safety when requesting the respondent's or the victim's attendance.

# 4.2.3 Can you request remedies?

The Anti-Domestic Violence Law does not directly prescribe remedies. However, according to the Civil Code, in the case of divorce due to domestic violence, the innocent party is entitled to claim compensation for damages. In addition, the victim has the right to demand reasonable expenses for treatment and rehabilitation (including but not limited to medical expenses, nursing expenses, transportation expenses, nutrition expenses, hospital food subsidies, etc.) and reduced income due to absence from work as a result of personal injury caused by the abuser. The applicant has the right to request the cost of assistive devices, compensation for disability, funeral expenses and compensation for death, and compensation for mental damage if serious mental damage was caused to the victim.[45]

# 4.2.4 Are there time limits?

The term of validity of a personal security protection order starts from the date of issuance and will not exceed six months. Before the personal security protection order becomes invalid, the applicant may apply to the court for a cancellation, alteration or extension.[46]

# 4.2.5 Are there different rules in emergencies?

The court will issue a personal security protection order or reject the application within 72 hours after accepting the application. The decision will be made within 24 hours for urgent situations.[47]

# 4.3 Judicial discretion

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

If there is no family lawsuit in progress in the court where the application has been received, the case will be heard by the judge on a sole trial basis. As to whether it is necessary to hear the respondent's opinion on issuing a personal security protection order, it is up to the judge to decide based on considerations of the specific circumstances of the case.

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

No. Generally, there is no age limit for the victim to obtain a personal security protection order if the statutory requirements are satisfied. Only if the party concerned is without civil capacity or with limited civil capacity, or is unable to apply for a personal security protection order due to coercion or intimidation, their close relatives, public security authorities, women's federation, residents' committee, villagers' committee or the relief administration agency may apply on their behalf.

# 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. The Anti-Domestic Violence Law does not have clear guidelines on paying expenses and compensation. However, according to the Civil Code, tort damages, reasonable expenses for treatment and rehabilitation can be required (including but not limited to medical expenses, nursing expenses, transportation expenses, nutrition expenses, hospital meals subsidies, etc.), as well as reduced income due to missing work and compensation for mental damages.

# 4.4.2 Can they recover wages and profits lost?

Yes, they can request to recover wages and profits lost as tort damages under the Civil Code.

# 4.4.3 Is a separate civil process required?

The Anti-Domestic Violence Law does not directly stipulate the procedure to be applied in personal security protection order cases. The court may try the case according to special procedures. If a party in a family lawsuit applies to the court for a personal security protection order, the judicial organization for the family lawsuit hearing will decide whether to issue a personal security protection order. If the applicant for a personal security protection order has no family lawsuit in progress with the court where the application has been received, the judge will hear the case on a sole trial basis. As to whether it is necessary to hear the respondent's opinion on the issue of a personal security protection order, it is up to the judge to decide considering the specific circumstances of the case.[48]

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