



INTERVENTION ORDERS



**Legal Services
Commission**
OF SOUTH AUSTRALIA

This information is general and not a substitute for legal advice.

The Legal Services Commission provides free advice for most legal problems.

Contact the Legal Helpline on 1300 366 424

www.lsc.sa.gov.au & www.lawhandbook.sa.gov.au

WHAT IS AN INTERVENTION ORDER?

An intervention order (previously known as a restraining order) is a court order which prohibits a person (the defendant) from behaving in a particular manner towards a protected person or persons. The purpose of an intervention order is to protect anyone against whom it is suspected the defendant will commit an act of abuse, including any child who may be exposed to the effects of abuse committed by the defendant against another person.

WHO CAN APPLY FOR AN INTERVENTION ORDER?

The police, anyone who suspects they will be abused by someone, their representative, or a child who may hear or witness abuse may apply for an intervention order. If the person is under the age of 14, a parent or representative may apply on their behalf. You can apply for an intervention order if the abuse may come from someone you are or were in a relationship with (domestic abuse) – ‘relationship’ has a very wide definition, including, for example, the relationship between a carer and the person they care for. You can also apply for an intervention order if the abuse may come from someone you are not in a relationship with (non-domestic abuse). Where the people involved are not in a relationship (non-domestic abuse), the Court must consider whether mediation is an option before making an order.

WHEN CAN I APPLY FOR AN INTERVENTION ORDER?

You can apply for an intervention order if it is reasonable to suspect that the defendant will commit an act of abuse against you unless there is an intervention order. Your suspicion that abuse may occur will be based on previous behaviour or threats. You may be protected from behaviour that results in or is intended to result in physical injury, emotional or psychological harm, unreasonable and non-consensual denial of financial, social or personal autonomy, or damage to property owned possessed or used by you. This could be, for example, where someone:

- follows or watches you, or hangs around your home or places you go to
- drives dangerously while you are a passenger in a vehicle
- interferes with or disposes of your property or jointly owned property
- gives or sends offensive material to you or leaves it where you will find it (this includes publishing offensive material on the Internet)
- communicates with you or to others about you (including by post, phone, email, fax, SMS, Internet) in an abusive way, including racial and derogatory taunts
- causes death or injury to an animal
- threatens they will institutionalise you, withdraw your care or withhold your medication
- withholds your financial support or prevents you seeking or keeping a job
- forces you to sign financial documents
- prevents you keeping connections with your friends, family or cultural group, or participating in spiritual or cultural ceremonies or practices
- exercises an unreasonable level of control over your daily life.

WHAT DO I DO FIRST?

If you need immediate protection, call the police. The police have the power to issue an interim intervention order if the defendant is present or in custody. This will give you immediate protection as soon as the defendant is notified. Otherwise, go to the police. Before you go, make a list of the behaviours that concern you and when they happened. Note that the police will only act on relatively recent behaviour or threats – the longer the time since the behaviour or threats, the less likely it is that an order is needed to prevent abuse.



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YOU CAN ALSO GET HELP FROM...

The Domestic Violence Unit at the Legal Services Commission, a community legal centre or a private lawyer are all able to give you advice and assistance.

WHY WON'T THE POLICE ALWAYS HELP?

They may feel there is not enough evidence. If you disagree, ask to be referred to the Family Violence Investigation Section in your area. If the police are unwilling to act, you can make your own application - by yourself or with the help of a lawyer or other representative. At the time of printing, the fee if you apply on your own behalf is \$267. Court fees can be waived in cases of financial hardship.

WHAT WILL I NEED TO PROVE?

The court must be convinced it is reasonable to suspect that the defendant will commit an act of abuse. Your signed statement is presented in court. It should contain:

- brief information about the background to your relationship with the defendant
- details of the recent behaviour you are concerned about
- details of any other incidents or threats which happened in the past
- details of relevant existing or pending court orders (Family Law Act orders, agreements, plans, injunctions, undertakings; orders or agreements for division of property; Children's Protection Act orders; any existing restraining order; any other legal proceedings between you)
- any weapons the defendant has.

The police (who usually act on your behalf - if not, you or your lawyer or representative) have to show the magistrate that it is more likely than not that the defendant will commit an act of abuse. This is called proving the evidence 'on the balance of probabilities'. Your statement is the evidence.

HOW LONG DOES IT TAKE?

If the police have issued an interim intervention order then it takes effect when the defendant is served. This allows you to have immediate protection from abuse without the need to go to court first. Otherwise you or the police can make an application to the Court to have a preliminary hearing, and this may take a few days.

WHAT STEPS ARE INVOLVED IN GETTING THE INTERVENTION ORDER?

1. APPLICATION

If the police have not issued an interim intervention order then you, your representative or the police may apply to the Court for an intervention order. The application is filed in the Magistrates Court.

2. PRELIMINARY HEARING

At the preliminary hearing, a magistrate will read your statement and if he or she decides there is enough evidence, an interim intervention order will be made. You may not need to attend if your application is made by the police. The police or your lawyer will tell you if you should attend. If you apply yourself, you must attend. The defendant will not be present at this hearing.

3. LETTING THE DEFENDANT KNOW

The interim intervention order does not take effect until the police hand it to the defendant personally. Once this has been done, it is effective and you can tell the police if it is not obeyed.



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4. DETERMINATION OF THE APPLICATION

After the issuing of an interim intervention order by the police or the Court, the defendant will be required to appear in Court within 8 days (or within 2 days of the Court next sitting at that place). If the defendant is under 18, the hearing will be in the Youth Court. If the defendant does not appear at the determination hearing, the order will be made final. At this hearing the Court can:

- confirm the interim order already in place and make it final, without the need for further service on the defendant; or
- substitute the interim order for a final intervention order (this will occur if a term needs to be changed); or
- dismiss the application and end the interim order; or
- adjourn the hearing if necessary, for example, if the defendant has not yet been served; or
- if the defendant contests the application, set another date for hearing evidence.

In a domestic abuse situation where the application is contested, there are procedures to ensure the matter is resolved as quickly as possible. There will usually only be one adjournment to hear evidence. If the matter is not resolved, a pre-trial conference will be ordered. If the matter is not resolved then, a date must be set for trial.

DO I HAVE TO GO TO COURT?

If you make the application yourself, you must attend. If the police are making the application, they will say if you are required to attend. Your case may be more likely to succeed if you appear in court. It is a good idea to bring a friend along with you.

WHAT CAN BE PUT IN THE ORDER?

This depends very much on your situation. As well as protecting you, the order can deal with the protection of family members and any children. If it is appropriate that your child has some contact with the defendant, or if there is a Court order for contact that it is appropriate to continue, the intervention order can take this into account. Examples of intervention orders include prohibiting the defendant from:

- approaching you or family members at your home or any place you may be contacting, harassing, threatening or intimidating you or any other person at a place where you live or work
- contacting or communicating with you in any way
- publishing (in any way, including by email, SMS, or the Internet) any material about you
- assaulting, harassing, threatening or intimidating you
- damaging property, or taking certain property
- allowing or encouraging another person to do the above acts.

The defendant can also be ordered to allow you to access or use property or return property to you, and to give up weapons. The Court can also order that the defendant attend an intervention program. At the time of printing, programs are only available in metropolitan Adelaide and to assist defendants to deal with their violent behaviour.

FIREARMS

An intervention order (including an interim intervention order issued by the police) must include a firearms term requiring the defendant to surrender any firearm and any firearms licence, suspending any firearms licence and disqualifying the defendant from having a firearms licence while the intervention order is in force. With one very limited exception, such a term must be included even if the defendant uses a firearm in the course of their employment.



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CAN A DEFENDANT BE RESTRAINED FROM GOING NEAR A HOUSE OR FLAT HE OR SHE OWNS OR RENTS?

Yes. A defendant may be ordered to stay away from premises even if they have a legal or equitable interest in the property. The protected person may change door or window locks, even if the premises are rented. If locks are changed on rented premises, the landlord must be given a key (unless the landlord is the defendant). The Court (not the police) may also make a tenancy order in certain circumstances, removing a defendant from a tenancy agreement and giving their interest to the protected person or another person.

PROBLEM GAMBLING ORDERS

If the Court (not the police) makes an intervention order and believes there is a reasonable likelihood of harm to family members because of problem gambling, it may also issue a problem gambling order.

HOW DOES AN INTERVENTION ORDER FIT WITH FAMILY COURT ORDERS?

If there is a parenting order, take a copy of it with you to the police and to Court so the magistrate can make an appropriate order which takes account of contact with children. Alternatively, the magistrate can change a Family Court order to make it consistent with an intervention order. Family Court protection orders are called injunctions. They can be harder to obtain and enforce than intervention orders. If you already have an intervention order, you cannot also take out an injunction with the Family Court. However, it is possible to get an intervention order if you already have a Family Court injunction. For more information, seek legal advice.

WHAT IF THE POLICE CANNOT FIND THE DEFENDANT?

The order has no power until it is given to the defendant. The police may give you an extra copy of the intervention order and if the defendant appears, you can ask a police patrol to serve it on the spot.

CAN THE DEFENDANT FIND OUT MY ADDRESS?

It is the policy of the police and the court not to give out the victim's address. Let the police know if you do not wish the defendant to know your address.

HOW LONG DOES AN INTERVENTION ORDER LAST?

An intervention order is ongoing and continues in force until it is revoked by the Court.

CAN AN ORDER BE CHANGED OR STOPPED?

Yes. Either you (or the police or your representative on your behalf) or the defendant can apply to the court to have an order changed or stopped. The defendant has to wait at least 12 months after the order was issued to apply to change or stop it. The Court can set a longer time the defendant has to wait. If the defendant applies, the application will only be successful if they can prove there has been a substantial change in circumstances.

ENFORCEMENT OF ORDERS INTERSTATE

If you move to another state and you are concerned that the defendant will follow you, ask the police or Court in your new state about how to register the South Australian order. If you have an order from interstate or New Zealand, you can register it here and it will be enforced as if it were a South Australian order. If serving the registered order on the defendant would be unsafe for you, the Court can order that the order take effect in South Australia without needing service on the defendant.

WHAT IF THE INTERVENTION ORDER IS IGNORED?

This is a criminal offence. The defendant must obey the order and may be charged with a criminal offence if it is ignored. A protected person who acts contrary to the order is not guilty of an offence, as long as their behaviour does not affect any other person protected by the order or another protection order they knew about or could reasonably have been expected to know about.



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ARE THERE ANY ALTERNATIVES TO AN INTERVENTION ORDER?

Counselling or Mediation - Sometimes, a counsellor or a mediator can help you to resolve your problem with the other person. However, be sure to tell them if you have concerns about violence. This option is usually not advisable if there is ongoing violence, or threats of violence, particularly in domestic abuse cases. If you do not feel totally safe, then it is probably best to handle the problem through the police and the courts.

Criminal charges - If you have been hurt or threatened, the police may charge the other person with a criminal offence such as assault or stalking. The police make a decision about criminal charges after hearing your story. Only the police can do this - you cannot lay or withdraw charges.

WHAT IF I AM THE ONE WHO RECEIVES AN INTERVENTION ORDER?

See the Legal Services Commission's pamphlet on Intervention Orders for Persons Restrained. Receiving an intervention order is not a criminal matter and does not give you a criminal record. However you may be charged with a criminal offence if you disobey (breach) the order. If you do not want to go near the places named in the order, it may be easier to agree with the order. You should get legal advice before deciding what to do.

This information is a guide to the law and is not a substitute for legal advice. It is not intended that any person should prefer to rely on the law as stated in this guide rather than choose to consult a lawyer. While care has been taken to ensure the accuracy of material contained in this publication, no responsibility will be accepted for any errors or omissions.

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