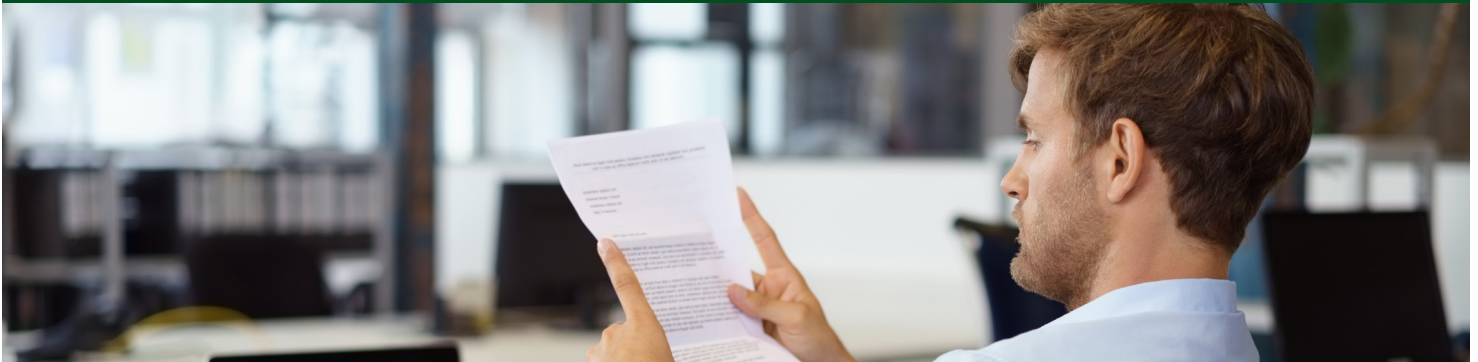


WHEN THERE IS AN INTERVENTION ORDER AGAINST YOU



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WHAT IS AN INTERVENTION ORDER?

An intervention order (previously known as a restraining order) is an order made by a police officer or magistrate which restricts how you can behave towards another person. You are called a defendant and the other person is called a protected person in the order.

The police officer or magistrate decides the conditions which will apply in your particular case. Intervention orders usually say that you must not contact the protected person (including in person or by telephone or any electronic means), and not go near their home or workplace. You may even be ordered to stay away from premises you own or rent. The order can prevent you from damaging or taking property, or require you to return or allow access to property. It will also prevent you from having firearms or holding a firearms licence.

DOES AN INTERVENTION ORDER GIVE ME A CRIMINAL RECORD?

No. You are not being charged with breaking the law. An intervention order is a court order restricting how you can behave towards the protected person. However, once an intervention order is made, it is a crime to disobey the order. Disobeying the order is called 'breaching' the order. The police can arrest and charge you with breaching the order.

WHEN CAN A PERSON APPLY FOR AN ORDER AGAINST ME?

A person can ask the police or the court to make an intervention order against you if they claim it is reasonable to suspect that you will commit an act of abuse against them. An act of abuse can include any act that is intended to cause a protected person:

- physical injury, or
- emotional or psychological harm, such as distress, anxiety or fear, or
- the unreasonable denial of financial, social or personal autonomy, or
- damage to their property.

Any child who may hear or witness, or be exposed to the effects of an act of abuse committed by you against the other person may also be protected by an intervention order. Abuse can include indirect abuse. For example, if you threaten to harm a person who is close to the protected person.

QUESTIONING BY THE POLICE

If at any time the police suspect you may have committed an offence, they may ask you to assist with their inquiries. You can be required to provide your personal details to them (including your name, address and date of birth). You can also be required to answer some police questions about your identity, if you are the driver of a motor vehicle, and the motor vehicle owner's identity, and about firearms. However, you do not have to answer any other police questions, for example, questions about what happened between you and the protected person. It is entirely your decision whether to answer these police questions or not. If you deny the conduct alleged against you, you may wish to tell the police this at the outset. Just remember that you have the right to silence and anything that you say to the police may be recorded and brought up later in evidence. There is no such thing as an 'off the record' conversation with a police officer.

HOW IS AN ORDER MADE AGAINST ME?

If the police attend an incident and they suspect you have committed or will commit an act of abuse, then they can issue an interim intervention order on the spot. They may do this even if the protected person doesn't want them to and they may require you to stay with them while they prepare the order. If they suspect you will not follow this requirement they may arrest and detain you for up to two hours. The order will take effect immediately after it is given to you. It will require you to appear in court at a specified place and time (usually within 8 days) for a determination hearing. If an interim order is made against you, you must comply with all of the conditions set out in the order.

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Alternatively, the police or a person can apply directly to the court for an intervention order. If they apply directly to the court for an intervention order, the court can make an interim intervention order at a preliminary hearing. You are not involved in the preliminary hearing. The magistrate can make an interim order based on the evidence presented to the court. However, the order does not take effect until the police give you a copy of the order. The order will tell you when to come to court for a determination hearing, so that the court can hear from you. There will be a court appointment usually within 8 days.

WHAT HAPPENS AT THE DETERMINATION HEARING?

At the determination hearing, you will have the chance to tell the magistrate whether you want to dispute the order or any of its conditions.

If you are unsure how the order might affect you and whether you want to dispute it, you can ask for an adjournment (that is, to move the hearing to a later date) to allow you time to get legal advice. Be aware that the court will usually only allow one adjournment. At the determination hearing, the court will either:

- dismiss the application and end the interim order
- change the conditions of the interim order and make it final
- confirm the conditions of the interim order and make it final
- continue the interim order and set a date for a pre-trial conference (See How do I dispute the order?)

HOW TO PRESENT YOURSELF TO THE COURT

Dress as neatly as possible. Turn your mobile telephone off or put it into silent mode.

Even though the matter may be stressful for you, do your best to stay calm and courteous at all times. Address the magistrate as “Your Honour” or “Sir/Madam”. The magistrate will ask you whether you want to dispute the order and whether there is anything else you wish to say. Remember that anything that you say in the courtroom will be recorded on the court transcript and may be referred to later on.

WHAT HAPPENS IF I DON'T GO TO COURT?

If you do not want to dispute the order or any of its conditions, and the court hearing is only for the intervention order, then you do not have to go to court. You will not be arrested for failing to attend court. However, you should get legal advice before agreeing to an intervention order, in case it affects you in ways you are not aware of.

If you want to dispute the order or any of its conditions, you must attend, because if you are not there, the magistrate may confirm the interim order and make it final in your absence. By staying away, you lose the chance to dispute the order or say how it should be changed. Orders made in your absence are difficult to change. To get it changed, you would usually need to have a genuine and compelling reason why you did not go to court.

WHAT CAN I DO IF THE PROPOSED ORDER IS UNREASONABLE?

The purpose of the order is to keep the protected person safe. If the magistrate forms the view that it is necessary to restrict your activities to achieve this, then the magistrate will do so. However, if you think the order will create unreasonable restrictions on your activities that are not necessary for the protected person's safety, you should point this out to the magistrate at the determination hearing.

Inconvenience is not enough. You must show that this will cause you a serious problem. For example, if the conditions of the order will stop you from earning your living or doing other legitimate and necessary things, tell the magistrate about this the first time you are in court. Suggest ways the order could be changed to solve the problem without affecting the protected person's safety.

AGREEING TO AN ORDER WITHOUT ADMISSION

You can agree to the order even if you do not admit to the allegations made against you in the application. You may not wish to dispute the order itself if you have no particular need to see the protected person or go to places where the protected person might be. However, before agreeing to an order, be sure to get legal advice in case the order affects you in ways that you are not aware of. For example, an intervention order may make it more difficult to get a Family Law Court order to see your children.

HOW DO I DISPUTE THE ORDER?

The only way to dispute the order is to attend the determination hearing and tell the magistrate that you want to dispute it.

The magistrate will then set a date for a pre-trial conference. Make sure you get legal advice before the pre-trial conference.

The pre-trial conference is a further opportunity to:

- say whether you want to dispute the order in any way, or
- reach an agreement if possible

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If an agreement cannot be reached at the conference, the matter will have to be set for trial. You will now need to give some thought to any witnesses you might wish to call to give evidence because this will inform the suitability of the trial dates and its length.

THE PROTECTED PERSON'S EVIDENCE

The evidence of the protected person will often have been presented at the preliminary hearing in writing (in an affidavit) and/or in person in court. If you are not given a copy, you should ask for a copy of the protected person's affidavit and/or the transcript of the protected person's evidence. Challenging the evidence given by the protected person usually involves 'cross-examining' them, that is, asking them questions about the evidence they have given. If you have a lawyer representing you at trial, your lawyer will do this.

If you do not have a lawyer, you are not able to ask the protected person questions directly. You must work out what questions you want to ask, write them down and then give them to the magistrate, who will then decide which questions are 'allowable' (because, unlike a lawyer, you cannot be expected to know what is OK to ask). The magistrate or another person nominated by the magistrate will then ask the questions for you.

DO I NEED A LAWYER?

You can have a lawyer to handle the case for you if you wish. Names of lawyers who do this type of work can be obtained from the Law Society (Tel: 8229 0222).

Charges will vary and you should ask about the cost when making the appointment or at the first interview. Legal aid is not granted for intervention order cases, because they are not criminal matters, so if you hire a lawyer you will have to pay their fees.

You do not need to have a lawyer if you do not want one. Often, people represent themselves in these cases. Even if you represent yourself, you should get legal advice, either from the Legal Services Commission, a community legal service, or a private lawyer.

CAN THE ORDER STOP ME FROM GOING TO MY OWN HOME?

Yes, an order can stop you from going to premises you own or rent, to the place where you normally live, or anywhere else.

If your personal possessions are still in the home, you can ask the magistrate to make an order about their return or collection. Do not rely on a friend or family member to collect your possessions and

bring them to you unless the magistrate has specifically allowed this, because some orders include conditions to prevent this.

An intervention order does not change who owns the home, it only stops you from going there. When a relationship has broken down, a Family Law Court can share out the property; you should get legal advice about this.

Similarly an order does not change a tenancy agreement. However, the protected person may also seek a tenancy order from the magistrate (see What else can be ordered?) or apply to the South Australian Civil and Administrative Tribunal (SACAT) to change the tenancy, including removing your name from the tenancy agreement.

WHAT ABOUT CONTACT WITH MY CHILDREN?

If your children are living with the protected person, then the order may stop you from spending time with them. If possible, the order should be designed to take the children's need to see you into account. If there are parenting orders in place, the magistrate must take these orders into account. However, when making an interim intervention order, the magistrate may temporarily change or stop an existing parenting order. And when making a final intervention order, a magistrate may change a parenting order, but only if there is evidence that was not presented to the Family Law Court at the time it made the original order.

If there are no parenting orders, you can ask the magistrate to consider the children's need to see you in deciding the conditions of the order. An order can be made which allows some kind of contact between you and the protected person about children's arrangements (it may be through another person), and/or allows you to attend counselling or mediation together. However, it is up to the magistrate whether this will happen.

If you think the final intervention order does not make adequate arrangements for parenting your children you may apply for a parenting order from the Family Law Court. You should not try to contact the children if the intervention order stops you. Disobeying the intervention order is a crime with serious penalties. Also, disobeying the order could effect a Family Law Court application. If you need a parenting order from the Family Law Court, you should get legal advice about this without delay, especially if you were having regular contact with the children before. Once you have a parenting order from the Family Law Court, this overrides the intervention order.

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WHAT ELSE CAN BE ORDERED?

Every intervention order must require the defendant to give up any firearms and firearms licence, and disqualify them from having firearms. If you need a firearm as part of your job, you should get legal advice.

A magistrate may order you to attend an intervention program (if you have been assessed as suitable for the program). An intervention program can provide for supervised treatment, rehabilitation, behaviour management and/or access to relevant support services.

If you and the protected person lived together in rental housing before the intervention order, and you are a party to the rental agreement, the magistrate may also make a tenancy order in addition to the intervention order. A tenancy order gives your interest in the tenancy to the protected person (or some other person). Any bond money paid by you is not paid out to you but stays held as bond money for the new person responsible for the tenancy.

If the court, when making a final intervention order, believes there is a reasonable likelihood of harm to family members because of your gambling, it may issue a problem gambling order in addition to the intervention order.

CAN I APPEAL AGAINST THE ORDER?

Once a magistrate has made an order, you can appeal it, but you will need to be granted permission to appeal first. You can lodge a request for permission to appeal (together with the appeal itself) to the Supreme Court within 21 days. It is a good idea to get legal advice before doing so, because you may have to pay legal costs to the other side if you lose. The order still applies while the appeal is being decided.

HOW LONG DOES THE ORDER LAST?

A final intervention order is ongoing and continues in force until it is changed or stopped.

CAN I APPLY TO CHANGE OR STOP THE ORDER LATER ON?

You have to wait at least 12 months after the order was issued to apply to change or stop it. The court can also set a longer time you have to wait. If you apply, the application will only be successful if you can prove there has been a substantial change since the order was

made. You do this by completing an application form at the court and making a sworn written statement about the changed situation. A time will be made for a hearing. You will need to convince the court that the order can be changed without risk to the protected person. Both the police and the protected person will be given an opportunity to have their say as well.

DOES THE ORDER APPLY INTERSTATE?

Yes. Since 25 November 2017, all intervention orders issued in South Australia (arising from domestic violence) are automatically recognised and enforceable nationwide. The same applies to intervention orders issued in other States. They are now automatically recognised and enforceable in South Australia.

WHAT IF THE OTHER PERSON CHANGES THEIR MIND AND WANTS TO SEE ME?

Even if the protected person wants to contact you, you must not disobey the intervention order, because this is a crime with serious penalties, including imprisonment. The fact that the protected person agreed to disobey it does not matter. If the protected person invites you around or does anything else to encourage you to disobey the order, you must refuse to speak to them and keep away. The most you can do is keep a record of the protected person's invitations and/or actions and report them to the police, who may then remind the protected person of the conditions of the order.

If the protected person wants to resume a relationship with you, or see you for certain purposes, they can apply to the court to change or stop the order. They can ask the police to help with this. Unlike defendants, who have to wait at least 12 months before applying to change or stop the order, the protected person can do so at any time. The final decision whether to change an order is made by the court, after hearing the evidence.