

13.0 FAMILY LAW ISSUES

Overview

Natural disasters can create stress for families as a result of displacement, destruction of homes and property, loss and separation of family members, and lack of essential resources. Families often undergo changes in their regular routines, children sometimes change school, new employment may be needed, and income may decrease. This stress often results in family law issues regarding custody, visitation, child support, and alimony. Incidents of family and sexual violence typically increase following a natural disaster.

This section is intended to assist attorneys in advising natural disaster survivors on common family law issues.

Common Issues/ Questions

- What do I do if I lost the physical copy of my Order of Protection in the disaster?
- I had to relocate to a different state following a disaster. Is my Order of Protection still enforceable?
- How can I make sure my abuser does not find me in a disaster-relief shelter?
- I have been sexually assaulted in a disaster-relief shelter. What can I do?
- I am the child's grandparent, but I do not have custody. Can I still enroll my grandchild in school and obtain medical care?
- I had to evacuate my home. Where do I go to modify my child's custody or support order?
- What if my child's other parent refuses to pay child support after the disaster?
- During the disaster, my child's other parent evacuated with my child and will not give him/her back. What can I do?

Summary of the Law

An Order of Protection is a court order providing protection to a victim of domestic violence or sexual assault or to a minor child who has been the victim of domestic violence or sexual assault. Orders of Protection are issued under the South Carolina Code of Laws, Chapter 4, Article 1 of Protection from Domestic Abuse Act. Orders of Protection are issued by the Family Court. Magistrate's Court may issue an order for protection during nonbusiness hours or at other times when the court is not in session. Orders issued by Magistrates Court are limited to providing safety provisions and cannot include other forms of relief, such as custody, S.C. Code§20-4-30(a)

A Petitioner may file for an Order of Protection if he or she, or any minor child (under the age of 18) in the household, has been a victim of abuse by a household member. Abuse includes physical harm, bodily injury, assault or the threat of physical harm, or a sexual criminal offense committed by a family or household member.

In order to get an order of protection, the Petitioner applying for the Order must have a qualifying relationship with the abuser. The Petitioner must be a "household member", which is limited to an abusive current or former spouse, parties who have a child in common, or a current or previous live-in partner. If the parties do not have one of these qualifying relationships, then a restraining order through Magistrate's Court may need to be pursued instead.

A temporary Order of Protection can order the abuser to stop threatening or abusing the Petitioner, stop attempted or actual communication with the Petitioner (including through social media), and order the abusive person to stay away from the places frequented by the Petitioner, such as school(s), work, or children's daycare.

The Order of Protection can provide several forms of relief to the Petitioner, including custody, visitation, child support, spousal support, possession of the home, restraining orders against selling or destroying property, pet protections, possession of personal property, such as clothes or vehicles, possession of firearms and attorney's fees.

The petition for the Order of Protection must be filed with the Clerk of Family Court in the county where the abuse happened, the Petitioner resides or is sheltered (unless the petitioner is a nonresident of South Carolina), where the Respondent lives, or where the parties last lived together. If the Petitioner files in a county in which s/he live or is sheltered, and the Respondent does not reside in that county, but in another county within South Carolina, the case must be transferred to the county where Respondent resides.

The petition for the Order of Protection must be served on the Respondent before a hearing can be held. An emergency hearing can be held within twenty-four hours of service, upon good cause shown. If the court denies a request for a twenty-four-hour hearing, or the request is not made, the petitioner may request, and the court must grant a hearing within fifteen days of filing., S.C. Code 20-4-50

The Order, if granted, will last from six (6) months to one (1) year and may be extended for good cause shown. S.C. Code § 20-4-70. In order to be extended, a motion to extend must be filed with the Court at least thirty (30) days before the Order expires. Good cause includes a new incident of abuse, threat or other circumstance that warrants the order being continued for safety purposes

Victims may complete all the necessary forms and print them from that website. Forms are also available at www.sccourts.org.

If an Order of Protection is violated, the Respondent can be arrested immediately. After a hearing is held, the Respondent can be sentenced up to thirty (30) days in jail or a five hundred dollar (\$500) fine or up to one year and up to a fifteen hundred dollar (\$1500) fine, depending on the Court in which the violation is heard.

Custody

Custody and related matters are within the original jurisdiction of Family Court in South Carolina. Custody refers to the rights and duties regarding the child.

A South Carolina Family Court has jurisdiction to make an initial custody determination if South Carolina is the home state of the child. South Carolina is the home state if the child lived here with a parent or a person acting as a parent for at least six consecutive months immediately before the start of a child custody proceeding. If the child is less than six months old, the child must have lived in South Carolina from birth with a parent or person acting as a parent, S.C. Code §63-15-302. The initial custody action can be filed in South Carolina if it is the home state of the child on the day the custody action is filed or was the home state of the child within six months before the commencement of the proceeding and the child is absent from South Carolina, but a parent or person acting as a parent continues to live in this state. A Family Court in South Carolina can only make an initial custody determination if another state does not have jurisdiction or declines to exercise jurisdiction because this state is the more appropriate forum.

South Carolina may decline to exercise jurisdiction if the Family Court determines it is an inconvenient forum under the circumstances of the case and that a court of another state is a more appropriate forum, S.C. Code §63-15-342. A victim of domestic or sexual abuse who was a resident of South Carolina, but who moves to another state due to domestic violence or sexual abuse, may file for custody in the other state and ask for jurisdiction to be exercised there based on an occurrence of domestic violence that is likely to continue in the future and if the party and child can best be protected in another state, S.C. Code §63-15-342(b). There are several additional factors a South Carolina court must consider in deciding whether to decline to exercise jurisdiction of a child and which can be found in S.C. Code §63-15-342. The Family Court in South Carolina may confer with the appropriate court in the other state where the custody action is filed to determine which state should assume jurisdiction, S.C. Code 63-15-318.

Joint custody means both parents have equal rights and responsibilities.

The court must determine custody based upon the best interest of the child. The court must give weight to evidence of domestic violence between the parties. The absence or relocation of a person from the home where domestic violence has occurred must not be considered by the court as a basis to deny custody of a child to that person, S.C. Code §63-15-40(b).

The court must find adequate provisions for the safety of the child and victim of domestic violence before granting visitation to a person who has been found by a court to have committed domestic violence. The judge may include several various provisions in a custody order to protect the child and abuse victim, such as, but not limited to, ordering supervised visitation, requiring exchange of the child in a protected setting, and requiring that the location of the child and victim be kept confidential, S.C. Code §63-15-50.

If the parties are married when the child is born, there is a presumption of joint custody. If the mother is not married at the time of birth, then she has sole custody of the child, unless otherwise court ordered, S.C. Code 63-17-20§. Even if one parent is granted sole custody, the non-custodial parent still has equal rights to obtain all educational and medical records of the child, to participate in the child's school and extracurricular activities that are held in a public location, unless prohibited by an order of the court or state law, S.C. Code § 63-15-260.

Existing custody orders must be modified by the court and in the county where it was initially issued, except in limited circumstances, S.C. Code 63-15-332. The party seeking a change of a custody order must show a substantial change in circumstances affecting the child after the initial order was made. Some common factors that constitute a substantial change in circumstances include relocation of a parent, loss of employment or housing and substance abuse issues.

Visit the following for a list of resources and shelters for domestic violence and sexual assault survivors:

1. South Carolina Legal Services

Offers free, civil legal assistance and representation to crime victims

1-888-346-5592

www.sclegal.org

www.lawhelp.org/sc

2. SCAADVASA

The statewide coalition of organizations providing intervention services to victims and survivors of domestic violence and sexual assault and Primary Prevention programs to students and communities across the state. Provides a statewide map of local shelters and providers assisting domestic violence and sexual assault survivors.

3. SCVAN

South Carolina Victim Assistance Network

Provides legal assistance, resources and financial assistance for housing to domestic violence and sexual assault survivors.

4. National Domestic Violence Hotline
www.thehotline.org
1-800-799-7233

Provides support by phone and chat for abuse survivors. Provides educational resources.

FAQs- Domestic Violence/ Sexual Assault

1. ***What do I do if I lost the physical copy of my protective order in a disaster and it is not in the police database?***

You can obtain free, certified copies of your Order of Protection from the Clerk's office of the Family Court that issued the order. It is best to always keep a printed copy of the order on your person. It is also a good idea to keep a photo copy of your order on your cell phone, if you have one, as a backup copy.

After the Order is issued, the court is required to mail or serve a certified copy to local law enforcement, S.C. Code §20-4-80. Law enforcement will enter the Order into a database so that they can enforce the order as needed. Even if the order is not entered into the police database, it is still enforceable.

If you believe your order is being violated, then you should immediately call 911. If it is safe for you to do so, you should document the violation, such as keeping any text messages or voicemail messages to you from the abuser after the Order of Protection is issued.

Law enforcement has duties required under the law in responding to domestic violence situations, S.C. Code§ 20-4-100. The officer's primary duty is to enforce the laws allegedly violated and to protect the abused person if there are supporting facts of their complaint. The officer must inform you of the right to start criminal proceedings and the right to apply for an Order of Protection. The officer should inform you the importance of preserving evidence and may also provide transportation to a hospital, shelter, or other safe place. The officer may also go with you to retrieve clothing, medication and other reasonably necessary items from your home. The officer should also arrest the abuser if there is evidence of the violation.

2. *What happens if my abuser tries to communicate with me or bothers me after I obtain an Order of Protection?*

If the abuser continues to harass, bother, come near or communicate with you, you should notify the police. The abuser can be arrested immediately if there is supporting evidence of the violation. It is important to keep any evidence you of these attempts. Alternatively, you may file a contempt motion in the Family Court that issued your order, and a hearing will be held to determine whether there has been a violation of the order. You and the abuser will need to attend that hearing. You should take any evidence and witnesses that you have of the abuse to the hearing.

If an Order of Protection is violated, the Respondent can be arrested immediately. After a hearing is held, the Respondent can be sentenced up to thirty (30) days in jail or a five hundred dollar (\$500) fine or up to one year and up to a fifteen hundred dollar (\$1500) fine, depending on the Court in which the violation is heard.

3. *I had to relocate to a different state following a disaster. Is my protective order still enforceable?*

It is likely that your order is still enforceable in another state. The Violence Against Women Act (VAWA) requires that any protection order that meets federal requirements "shall be accorded full faith and credit by the court of another state... and enforced by the court and law enforcement personnel of the other state as if it were the order of the enforcing state." A protective order meets federal requirements if (1) the issuing court had jurisdiction over the parties and matter and (2) reasonable notice and opportunity to be heard was given to the respondent. 18 U.S.C. §2265(b).

If you are in South Carolina and have an Order of Protection that was issued in another state, the order will be enforced in South Carolina, following the procedures of this state for the enforcement of protection orders, S.C. Code § 20-4-330. The protective order from another state is enforceable in South Carolina if it, S.C. Code 20-4-330(d):

- a. Identifies the protected individual and the respondent
- b. Is currently in effect
- c. Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state, and
- d. Was issued after the respondent was given reasonable notice and have an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the right of the respondent to due process.

Law enforcement should enforce the order of protection from another state the same as if it were issued by a South Carolina court, S.C. Code §20-4-340. This means that if an abuser violates an order from another state, the police can still arrest that person and they can be held in contempt for violating the order.

If you have a protective order that was issued by another state and move to South Carolina, it is a good idea to register the order in the country where you relocate. To register the order, you present a certified copy of the order to the Family Court. The Clerk will register the order and it will be entered into any existing state or federal registry of protection orders, in accordance with applicable law, S.C. Code §20-4-350. There is not fee to register a protective order from another state.

4. *How can I make sure my abuser does not find me in a disaster-relief shelter?*

You can keep your address confidential on any required forms for you to obtain an Order of Protection and on the order itself, if providing this information is likely to result in harm to you or a minor child. If necessary, you can provide the address of a friend or relative on any necessary documents, so that the court can contact you as necessary regarding the order of protection.

You should also consider staying in a domestic violence shelter, if that option is available. Domestic violence shelters do not reveal who is in the shelter and are experienced in keeping private all information about the individuals that it serves.

You may also contact a victim's advocate with the Sheriff's Department of local law enforcement office, to find out whether they can provide a hotel stay for you and any minor children. You should explain that you are a domestic violence/sexual assault victim and are afraid of your whereabouts being found out by the abuser, if you stay in a disaster-relief shelter.

5. *I have been sexually assaulted in a disaster-relief shelter. What can I do?*

If you have been sexually assaulted, immediately call the police. It is important that you do not change clothes, shower or bathe before you meet with law enforcement.

Your safety and well-being following a sexual assault should be the first concern. You should discuss with the police and officials responsible for operating the shelter, as appropriate, the removal of your abuser from the disaster-relief shelter, or placing you in alternative, safe housing.

You may qualify for an Order of Protection if the person who assaulted you is your spouse, former spouse, a person with whom you have a child, or someone that you were intimately involved with and with whom you shared a home.

You may also want to consider counseling following a sexual assault. Local domestic violence/sexual assault shelters often provide free counseling to victims and their children. You may also seek free financial assistance for counseling for yourself and your minor children, lost wages, mileage reimbursement and medication, by applying for assistance through the Office of the Attorney General, Department of Crime Victim Assistance (DCVC), www.sova.sc.gov. In order to qualify for assistance, the program has eligibility requirements that should be reviewed before applying.

As a victim of crime in South Carolina, you are entitled to certain rights under Article I§24-Victim's Bill of Rights. Some of the rights included in this bill include a right to be treated with fairness, respect and dignity, and to be free from intimidation, harassment or abuse throughout the criminal and juvenile justice process, to be reasonably informed when the accused or convicted person is arrested, released from custody or has escaped and be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present.

6. *I am the child's grandparent, but I do not have a court order for custody. Can I still enroll my grandchild in school and obtain medical care?*

Yes, you can enroll the child in the school district in which you live, with the consent of the custodial parent. The child may be enrolled based upon your address if your grandchild or the parents of the grandchild are homeless, which is applicable if due to a natural disaster, S.C. Code 59-63-31(v). You may be required to complete an affidavit stating that the child is homeless. Homeless is defined under federal law as "individuals how lack a fixed, regular and adequate nighttime residence..." and "children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason... are living in emergency or transitional shelters", 42 U.S.C. §11434(a)(2).

You can get the affidavit to enroll the child in school from the school where you want to enroll the child.

In order to obtain medical treatment for your child, you should first find out what requirements the medical care provider may have prior to treating the child. If your grandchild is staying with you temporarily due to a natural disaster, the medical provider may simply require written and notarized consent from the child's custodial parent. If the provider will not accept such documentation, then it may be necessary for you to apply for temporary custody of the child through Family Court. You should seek assistance from an attorney to assist you in filing. The child's custodial parent will have to be served with documents for the custody case in order for you to proceed to having a hearing, unless there are emergency circumstances.

If a medical emergency occurs and the grandchild is in your care. You should seek medical attention right away. The medical provider should provide any immediate and emergency services required to stabilize and preserve the child's life, without first requiring legal documentation that you are authorized to seek treatment for the child. Continued care for the child may require the custodian to be present or you may have to obtain temporary legal custody of the child in order to make decision about his or her medical care.

7. *I had to evacuate my home. Where do I go to modify my child's custody order?*

Under S.C. Code 63-15, after a South Carolina court issues a custody order, any modifications to that order must be heard before that same court, unless:

- a. The child, the child's parents, and any person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships, or

- b. a court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

If the custodian for the child, the child, and the non-custodial parent(s) no longer live in the county where the original custody order was issued, but all of the parties still live in South Carolina, the case should be filed in the county where the person against whom custody is being sought resides, S.C. Code 15-7-30 (c)(1).

8. *What if my child's other parent refuses to pay child support after the disaster?*

You may try to enforce your child support order, if issued in South Carolina, in Family Court. Any family court has authority to enforce or modify an order of any other court respecting support of...children..., " S.C. Code 63-17-310. If the order is issued through the South Carolina Department of Social Services Child Support Enforcement Office, then you can contact that office for assistance with collecting on unpaid child support.

You may request a contempt hearing in Family Court if the other parent is not paying child support under a child support order that was granted through Family Court. If your child support order is through the Department of Social Services Child Support Enforcement Office, you may contact that office for assistance in enforcing the order. The Enforcement Office has several ways to enforce child support orders, including, but not limited to, revoking the payor's driver's license, automatic withholding from the obligor's paycheck and recovery from the obligor's state tax refund.

The person paying support may be entitled to a reduction in support upon a showing of changed circumstances, S.C. Code §63-17-310. Common reasons for a reduction are a change in income, job loss or disability. A natural disaster may be a justifiable reason for a reduction of child support if it results in job loss or significant loss of income. The person who wants the child support reduced is required to file in Family Court or make a written modification request with the Child Support Enforcement Office for a reduction in the support obligation.

During the disaster my child's other parent evacuated with my child and will not give him or her back. What can I do?

You should seek assistance from an attorney to help you file a petition to enforce a custody order. After the petition is filed, the court will issue an order requiring the parent who has the child to appear in person at a hearing and any include other requirements in the order to ensure the safety of the parties and child, S.C. Code 63-15-364 (c). The hearing must be held on the next judicial day after the order is served, unless that date is impossible.

The child will be ordered to be returned to the party with court ordered custody, unless the custody order has not been registered or confirmed and the issuing court did not have jurisdiction, the custody order has been vacated, stayed or modified by a court authorized to do so or the respondent was not properly notified of the proceedings in which custody

was initially addressed, S.C. Code 63-15-364(D)(1). The other parent may not be ordered to return the child if the custody order was registered and confirmed but has been vacated, stayed or modified by a court with proper jurisdiction, S.C. Code 63-15364(D)(2)

The Court may issue an order for the child to be removed from the other parent, without first serving the other parent, in emergency situations where there is a valid concern that the child is immediately likely to suffer serious physical harm or be removed from the state. If you have urgent concerns about the child's safety while in the care of the other party, you should notify the police immediately. The police may remove the child if there is evidence of imminent harm.

If the other parent removes the child to another state, you should first contact the police in the other state to see if they will assist you in having the child returned without first filing a court case. If the police will not assist you, then you will need to contact an attorney in the state where the child is located to find out the procedure to enforce the South Carolina order and to have the child returned to you.