

Kansas Legal Services

Domestic Violence and the Courts: Answers to frequently asked questions

New Client Intake Hotline Number:
1-800-723-6953
7:00 a.m. – 5:45 p.m.

Kansas Legal Services
400 State Avenue – Suite 1015
Suite 1015
Kansas City, Kansas 66101



What is the difference between a PFA and a No Contact/No Violent Contact Order?

No Contact/No Violent Contact

- *issued in a criminal case
- *generally a condition of bond or probation
- *usually expires at sentencing or upon successful completion of probation

Protect from Abuse (PFA)

- *civil remedy
- *lasts for up to one year
- *may be extended for one additional year

- *generally provides that the abuser have no contact with the victim in person, by telephone, in writing, through electronic means, or through a third party
- *can award custody to the Plaintiff
- *can order the Defendant to pay child support
- *can divide personal property
- *can award the victim possession of the residence (assuming the parties were either married to each other or both names are on the lease agreement)
- *can require the Defendant to attend counseling
- *can order supervised visits with the children

How can I tell the difference between the criminal case and the PFA case?

Criminal

- *the heading of the case will read:
State of Kansas (Plaintiff)
vs.
Abuser (Defendant)
- *the State of Kansas is the Plaintiff; you are a witness and will probably be called to testify at any hearings
- *although the State will listen to your recommendations – ultimately, the State makes the final decisions regarding plea agreements and sentencing
- *since you are not the Plaintiff, you cannot “drop” the charges – only the State can make such decisions (as they are the Plaintiff)

PFA

- *the heading of the case will read
Victim (Plaintiff)
vs.
Abuser (Defendant)
- *you are the Plaintiff in the case – you must show the court you have been victimized and need a Protection Order to prevent further incidents
- *you decide what you want the court to do (i.e. order counseling, give you custody of your children, divide personal property, etc.)

*you can “drop” the case

How do I know if I qualify for a PFA? In order to qualify to receive a PFA, you must be able to show that you and the Defendant either:

1. at one time, lived together; or
2. had a child together

Additionally, you need to be able to show that the Defendant either:

1. physically harmed you or your child(ren); or
2. by physical threat, put you or your child(ren) in fear of physical violence; or
3. performed some lewd act on a child under the age of 16

It is important to note that usually the court requires the abuse be imminent. This means the abuse needs to be recent. A good rule of thumb would be that if the abuse occurred more than three months ago, you are probably not eligible for a PFA. However, incidents of past abuse are useful in showing a Judge you have a real and imminent fear of future violent incidents because of the Defendant’s past actions.

How do I file a PFA? The Victims Assistance Unit of the district Attorney’s Office (VAU) in Johnson County has the forms necessary to file a PFA petition. The VAU is located on the 5th Floor of the Johnson County Courthouse. The volunteers at the VAU will assist you with the filing of the documents – they are not able to provide you with legal advice, but they will help guide you through the process.

What Important Information should be included in the Petition?

1. If you want the PFA to restrict the Defendant’s access to your child(ren) (i.e. provide for no contact, counseling, supervised visits, etc.) make sure to include your child(ren)’s names on the Petition.
2. If the PFA asks for you to describe the facts surrounding the incident, it is extremely important you make specific allegations of

abuse. You will most likely be held only to the events you listed on the PFA Petition (for example: if you only allege an incident of abuse on June 12th, you might not be able to tell the court about the other incidents that occurred on May 15th, May 30th and June 1st). It is far better to say: the Defendant has been physically violent to me (and my children) numerous times over the past several days/months/years with the most recent incident occurring on June 12th. If you do not know the exact dates, do not guess – just say the Defendant was abusive to me last Thursday, last week, last month, etc.

Is there anything specific I need to make known to the court when I file? If you currently have a divorce or paternity action on file in Johnson County involving both you and the Defendant (even if the divorce or paternity action has been completed), it is *extremely* important you notify the VAU and the Clerk: the PFA must be heard by the same judge who heard your divorce or paternity action.

What happen after I file? A court date will be set usually 20 days from the date you filed your PFA Petition. Generally, Temporary Orders will be issued in connection with the Petition. These Temporary Orders are only in effect until the date of the hearing. The Defendant will be served with the Petition and notified of the hearing date. Once the Defendant has been served with the Petition, the “no contact” provisions go into effect. If the Defendant contacts you at all (in person, by telephone, etc.) you need to call the police immediately and file a report. Any contact is a violation of the Temporary Orders and can submit the Defendant to contempt of court charges. It is very important that you follow through with every incident violating the Temporary Orders.

What happens at the hearing? There are generally three possible outcomes to a PFA hearing.

1. The Defendant does not appear. Generally, if the Defendant does not appear - you win. You will still need to explain to the judge why you

are requesting a PFA (for the judge to determine whether or not you meet statutory requirements).

2. The Defendant appears pro se (without an attorney). If the Defendant has no attorney, generally, the Judge will ask if the Defendant will agree to having “no contact” with the victim for the next year. If he agrees, a PFA final Order will be entered without a finding of fault. If he does not agree to the entering of orders, the hearing will be necessary. The Defendant can also request a continuance to hire an attorney.
3. The Defendant appears with an attorney. If the Defendant appears with an attorney a couple of things can happen. First, your attorney and the Defendant’s attorney can reach some sort of agreement. If you do not have an attorney, you can request a continuance from the Judge to give you time to find an attorney. If no agreement is reached, a hearing must be held on the matter.

What is the actual hearing like? The hearing is similar to a miniature trial. The Judge will probably begin by swearing you, the Defendant and any witnesses to tell the truth. You will then proceed to take the stand and testify to the events leading up to your filing of the PFA. It is very important for you to use action words to describe the incident; such as, “he shoved me”, “she kicked me” or “he threatened to kill me”. If the relationship was abusive in the past, highlight some of the more abusive incidents. After you testify, the Defendant (or his/her attorney) will then have a chance to ask you questions about your testimony. Once you and any witnesses you have testify, the Defendant will then get to testify as to his/her version of the events. After the Defendant testifies, you (or your attorney) will have a chance to ask questions of the Defendant. The Judge, after hearing the testimony, will make a final decision regarding the PFA. It is the Judge’s job to listen to the evidence and decide who is telling the truth.

What is proper courtroom etiquette? *stand when the Judge enters the room

*never interrupt the Judge

*do not resort to name calling or swearing in the courtroom

*do not speak to the Defendant (especially if a “No Contact” Order is in place)

*do not sigh, roll your eyes or shake your head in disagreement with either the Judge or the Defendant

*do not have gum in your mouth while speaking to the Judge

*turn off cell phones, pagers, etc. while in the courtroom

What do I do after I receive my final orders of Protection? Ask the Clerk to make at least three copies. Make sure to always keep one in your purse, one in your car and one at home. Additionally, if the Defendant is restrained from your child(ren)’s daycare provider or school, you should also get a copy to take to the school or day care.

*If child support or maintenance is ordered through the PFA, you need to go to the Court Trustee’s Office (4th Floor) to complete necessary paperwork. The paperwork will insure the Trustee knows about the Support Order and can begin to enforce the Order.

* Remember the PFA is only a piece of paper; you need to take necessary steps and precautions to keep yourself and your child(ren) safe. Always report any violations of the Order (phone calls, encounters, etc.) to your local police department – violations can subject the Defendant to prosecution for Contempt of Court.

What do I do if I want to drop the PFA? If you wish to drop the PFA, the District Attorney’s office has the necessary forms. You will need to complete the forms and then have the Judge who issued the “No Contact” Order sign off on your dismissal. Remember, you are only allowed to file two PFAs within a twelve-month period. Do not drop the PFA if you still have concerns about your or your child(ren)’s safety.