

Ex parte proceedings; temporary orders

If a plaintiff petitions for a temporary order for protection from abuse and alleges **immediate and present danger** of abuse to the plaintiff or minor children, the court must conduct an **ex parte proceeding**. The term "**Ex Parte**" means literally "without the party." The Court may enter the order for temporary protection without notice to the non-moving party. There is no requirement that a person charged with abuse must receive notice of such an *ex parte* hearing, even if the hearing may result in an order temporarily excluding him or her from property that he or she owns in whole or in part. The court may enter such a temporary order as it deems necessary to protect the plaintiff or minor children when it finds they are in **immediate and present danger** of abuse. The order remains in effect until modified or terminated by the court after notice and hearing.

The Allegations in the Petition are all a LIE!!

The Protection from Abuse Act does not anticipate that a person filing a petition will be rigorously limited to the specific allegations of abuse found in that petition. The tenor of the Act is to focus on the prevention of abuse in the generic sense; it does not provide in what detail allegations of abuse must be made, or whether a petitioner can bring up at trial incidents or details not written in the petition. Thus, some flexibility must be allowed in the admission of evidence relating to past acts of abuse.

Accordingly, in evaluating a person's conduct to determine if it constituted abuse within the meaning of the Act, a court may consider other incidents between the parties that did not constitute abuse due to the mutual fault of both parties. The court may also consider prior acts of abuse other than those immediately preceding the petition, and this fact does not render the Act invalid as an *ex post facto* law. However, the trial court does not have unlimited authority in determining whether past incidents of abuse should be admitted or excluded. **There will be times when the alleged incidents of abuse are too remote or too insignificant to have much relevance to the court's determination.**

Evidence of abuse; admissibility—Burden and standard of proof; sufficiency

At the hearing, the plaintiff must prove the allegation of abuse by a preponderance of the evidence. "**By a Preponderance of the Evidence**" means a little more than half. Although not reducible to a mathematical number, it **would be about 51%**. Thus, the plaintiff is **not required** to establish that abuse occurred beyond a reasonable doubt. Just as the alleged victim must demonstrate that abuse has in fact occurred, a third party advancing the same accusations must, at the very least, bear the same burden.

What can happen besides a finding of Abuse?

The court may approve any **consent agreement** to bring about a cessation of abuse of the plaintiff or minor children. No agreement will in any manner affect title to any real property. The parties may agree to the entry of a final order that will, in effect, grant the entry of the order with limitations:

- (1) Custody of the minor children can be agreed upon (pending further custody action in family court);
- (2) The right to possess certain firearms can be agreed (men that want to hunt will wish to keep their rifles or shotguns);

- (3) The division of property in the home (A party may be escorted by a constable or sheriff at a time and date certain to retrieve certain items of personalty);
- (4) The length and duration of the order can be agreed upon (The longest is 36 months, the shortest is about 6);
- (5) The application of anger management or batterer's and/or drug & alcohol counseling may be contemplated and agreed upon;
- (6) The payment of court costs may be divided if agreed upon;
- (7) No admission of fact may accompany the agreement.

A decree entered by consent of the parties is so conclusive that it will be reviewed only on a showing that an objecting party's consent was obtained by fraud or that it was based on a mutual mistake. **It is not necessary that a consent-based agreement be accompanied by admissions of abuse.** The term "consent" ordinarily connotes acquiescence without reference to admissions. Consequently, the plain and unambiguous language of the Protection from Abuse Act merely indicates that it authorizes and enforces consent-based protective orders. In light of the absence of any reference to the necessity that such orders be accompanied by admissions of abuse, the matter is excluded from the statute, and a trial court's imposition of that requirement as a prerequisite to the enforcement of the order is erroneous.