

Section IV: The Legal System

Many women choose to seek legal action against their abuser.

This section will provide you with some basic information about the legal options that may be available to you. You are entitled to know what your rights are. Being persistent and asking questions is okay. Remember that you know your situation better than anyone else does and when it comes to making decisions about your safety – you are the expert.

Here is a list of some of the Laws of Belize that the Magistrates may use when hearing your case. Remember that you are your best advocate! You can read these laws online at www.belize-law.org or you can talk to a Women's Development Officer at the Women's Department for more information.

- The Domestic Violence Act
- The Families and Children Act
- The Married Persons Act
- The Criminal Code of Belize

The Domestic Violence Act

The Domestic Violence Act Chapter 178 is one of the Laws of Belize. The law is designed to provide better protection to individuals, especially women and children, who are being affected by Domestic Violence. Written in 1992, the Domestic Violence Act was last revised in 2000.

A review of the Domestic Violence Act was spearheaded by the Women's Department from February to June 2005. Efforts are currently being made to make amendments and additions to the act.

Contact the Women's Department for more information about the efforts being made to improve this act.

Overview

If your partner has assaulted you, there are several legal courses of action that you can take.

You can decide to:

- Apply for a Protection Order (Family Court)
- Press Criminal Charges against your abuser (Magistrate Court)

You may also decide to apply for:

- Legal Separation (Family Court)
- Spousal or Child Maintenance (Family Court)

Note: Some of the legal information below may vary from district to district. The number of each district court is listed in the back of this handbook. You can call the court in your district for specific information about your district.

Protection Orders and Occupation Orders

What is a Protection Order?

A Protection Order is an order, granted by the Family Court, which can make some of the things that your abuser does to scare you or hurt you against the law. A Protection Order can make it so that your assailant can be arrested if he tries to harass you.

The order can be issued for a period of one year.

A Protection Order may prohibit your assailant from:

- Going to your place of work
- Going to your place of education

- Going to a certain place that you often frequent. (i.e. your mother's house) You will need to ask the magistrate to include this in the order.
- Being within a certain distance of you
- Speaking to you or sending unwelcomed messages
- Taking possession of your personal property

- Engaging in "Conduct of an offensive or harassing nature"
 - o Intimidating you through threatening language
 - o Damaging or hiding your property
 - o Persistently following you
 - o Watching your house, school or place of work

What is an Interim Protection Order?

An Interim Protection Order is an order of protection that is granted in an emergency, usually on the same day that you apply. In cases where the court feels an immediate order is necessary to ensure the safety of a survivor, a magistrate may issue a temporary Protection Order for a period of 14 days. This type of protection order can be granted without your assailant being present.

Who can apply for a Protection Order?

- Husband or Wife
- A former husband or wife
- Common Law Partner
- A person with whom you have a child in common
- A parent or guardian or grandparent
- A step-child or an adopted child

The law currently does not allow a Protection Order to be granted to individuals in a short term dating relationship or to individuals in a same-sex relationship. Efforts to change this are currently underway.

How can I get a Protection Order?

You can apply for a Protection Order by going to the Family Court.

In Belize City - the Family Court is located on the third floor of the Commercial Center building downtown. When you arrive at the court, you should tell the Clerk of the Court or the secretary that you have come to apply for a Protection Order. You will be directed to meet with an Intake Welfare Officer who will help you complete the application form required.

In the Districts - the Family Court is located in the Magistrate Court. When you arrive at the court, you can go directly to the Clerk of the Court and let her know that you are there to apply for a Protection Order. The Clerk of the Court will assist you in filling out the required application form.

The Intake Welfare Officer or the Clerk of the Court will meet with clients on a “first come, first serve” basis. You will probably be asked to wait in the lobby until your name is called. Not everyone waiting is there for a Protection Order so nobody else will know why you are there.

When you meet with the Intake Welfare Officer or clerk, they will ask you to explain the reasons why you feel that a Protection Order is necessary. It may be helpful if you have specific details about recent assaults or threats. The Intake Welfare Officer or clerk will explain more about what a Protection Order is and will sit with you while they fill out the actual form that is the application to the court. At this time, you will have an opportunity to ask any specific questions that you may have about the process.

Once the application form has been completed you will be directed to the Cashier's office where you will need to pay a fee of \$2.50. This fee is for the service of the hearing notice that will be delivered by the court to your assailant.

At this point, you will be assigned a time and date for your hearing. The first Protection Order hearing should be scheduled within a week from the date that you applied.

****Important:** In order for the court to serve the hearing notice to your assailant, the Court will need to have an address where he can be found. This could be where he works, lives or hangs out.

When and how will my assailant be notified about the hearing date?

The bailiff of the court (or in some cases a police officer) will serve the respondent with the hearing notice. This will inform the respondent of when they need to appear in court for a Protection Order hearing. The respondent will receive the notice within 1-4 days after you file the application with the court.

This time could be especially dangerous for you. Your assailant may become angry when they realize that you have applied for an order against them. He or she may try to talk you out of following through with the order by threatening you or by promising you that they will not hurt you again.

During this time, it is important that you have a safety plan for how to deal with this situation if it arises.

What will happen at the Protection Order Hearing?

You should ensure that you arrive early on the date of your hearing. On arrival, check with the Clerk of the Court to notify them of your presence. Once this is done, you will have to wait on the benches outside of the courtroom until your case is called. Your assailant may be waiting in the same lobby, so you may consider asking a friend or relative to accompany you to the court for emotional support. The Women's Department can provide an advocate to assist you on the day of your hearing. Once your case is called you will have to go into the courtroom alone, any friend/relative or advocate will need to wait outside in the lobby.

At the Protection Order hearing, the magistrate will review your file and decide whether to grant the order. In order to make the decision the magistrate will:

- Read your application
- Give the respondent the opportunity to contest the application
- Ask you to swear on the Bible that you will tell the truth
- Ask you to explain why you are applying for a Protection Order

It is important to remember that although it can be daunting being asked questions and talking in the courtroom, the magistrate simply wants to know all of the facts, so they can **help you**. Therefore, try to remain calm, speak clearly and slowly and answer all the questions as fully as possible. If asked about a specific incident try to recall how you felt when the incident occurred, for example, you may have been scared and crying. Relate this information in your answer. This will assist the magistrate greatly.

If the magistrate **grants the order** then they will:

- Inform your assailant of the conditions of the order
- Give you a copy of the order
- Give your assailant a copy of the order
- Give a copy of the order to the Domestic Violence Unit at the police station

You may want to make copies of the order for your own records.

What if he does not show up to the hearing?

If your assailant has received a notice to appear in court and does not show up on the date set for your hearing the magistrate may choose to adjourn the hearing. If this happens, the magistrate will set another date to hear your case. The court will then send another notice to your assailant.

The magistrate may also choose to grant the order in the absence of your assailant. If this happens, the court will notify your assailant that an order has been issued against him/her.

What if I change my mind or decide that I no longer need a Protection Order?

If you have filled out an application for a Protection Order and you decide that you no longer want to proceed, you may withdraw your application in several ways:

- Write a letter to the Court explaining your decision to withdraw the application and deliver it to the Clerk of the Court as soon as possible.

- At the hearing, let the magistrate know that you have decided not to follow through with the application.

If you have already been granted a Protection Order and you decide that you no longer wish to have an order against this person you can:

- Write a letter to the court expressing your desire to terminate the order.
- File an application to have the order discharged. (In this case, you will be asked to come into the court on a scheduled hearing date and explain to the magistrate the reason for your decision.)
- You can also simply not call the police to enforce the order.

What should I do if he violates the Protection Order?

Call the Police. Activate Safety Plan.

As part of your safety plan, you may want to inform your friends, neighbors and employer that you have an order against your assailant. You may also want to develop a plan for how you will respond if he/she attempts to harass or assault you.

It may be helpful to deliver a copy of the Protection Order to your local police station yourself. This way they will be familiar with your situation and where you live and will be able to respond quicker in case of an emergency. Make sure that you have a copy of the order to show to the police when they arrive.

If your assailant is still on the premises when the police arrive, they should arrest him. If he is no longer on the premises, the police should try to locate him. Once he is

arrested, he will be taken into custody where he will be held until he is arraigned and issued a court date for the violation of the order. This generally takes about 24-72hrs.

If you are unsure whether your assailant is in custody you can call the police station to find out.

It is important to keep a clear record of any violations of the order. It may be helpful to keep a journal of any threats, assaults, phone calls or any other type of harassment by your assailant. Make sure to write down the date and time of the incidents and to record any contact with the police.

What are the consequences of breaching an order?

The Domestic Violence Act of Belize states that a person who violates a Protection Order of the Court may receive:

- a fine up to \$5,000
- imprisonment up to 6 months
- probation through a Rehabilitation Order

The sentence for violating a Protection Order can vary depending on the individual magistrate, the severity of the violation and the history of abuse.

What is an Occupation Order?

An Occupation Order is an order of the court that grants the applicant the right to remain living in the home that is shared with the respondent. This order is granted only in conjunction with a Protection Order. The order will allow the applicant to remain in the house for a specified time even if the residence is owned or rented in the respondent's name. The order may also require that the respondent continue to pay the rent for the time specified in the order. The respondent will not be

allowed to live in the household during the time that the order is valid.

If you decide that you need to apply for an Occupation Order you should speak with the Intake Welfare Officer (or the Clerk of the Court in the districts) at the same time that you apply for a Protection Order.

Pressing Charges

If your assailant has physically assaulted you, you may decide to pursue criminal charges. This means that you can report the assault to the police and the police will investigate to determine whether there is enough evidence to lay criminal charges against the assailant. The law that makes it possible to press charges for a physical assault is the Criminal Code Act.

Below is a general outline of the criminal process.

Making a Statement:

If you have decided to report the assault to the police, you will be asked to come into the station to make a statement. This is where the officer will ask you to give a detailed account of what happened. It is important that you provide as much information as possible. Include details about *how* you were assaulted and any threats that your assailant may have made. This information will be helpful to your case later on.

Gathering Evidence:

After you have given your statement, the police will begin to gather evidence for your case. Important evidence can include:

- Witnesses to the assault
- Pictures of any physical marks on your body or destruction of property
- Your police statement
- Medical documentation of your injuries

Once the officer has collected the evidence, he or she will create a formal police report. You have the right to request a copy of your statement and a copy of the police report.

After you have made your statement and the necessary evidence has been gathered, the police can make a decision to arrest your assailant.

Arraignment:

If the accused has been arrested, they will remain in police custody until they are arraigned. This should be within 72 hours of the arrest and will take place at the Magistrate Court.

At the arraignment, the magistrate will read the charges to the assailant (in the court of law this person is called the *defendant*). The defendant will have the option to plead GUILTY or NOT GUILTY.

If the defendant chooses to plead Guilty: The case will go directly to sentencing. The magistrate can sentence the defendant at the arraignment **OR** the case can be adjourned and a separate hearing will be set for sentencing.

If the defendant chooses to plead Not Guilty: The case will be set for trial.

Remember that you are your best advocate. It is likely that no one will contact you to let you know the outcome of the arraignment. You have the right to call the public prosecutor and request this information. The number of the prosecutor's office is listed in the back of this handbook and in the phone book.

After the arraignment, your assailant may be released on bond.

You can call the police station to find out if your assailant has been released.

The Trial:

If the defendant pleads not guilty to the charges against them, the magistrate will set a date for the trial. This should be within one month of the arraignment. The purpose of the trial is to bring all of the evidence from both sides of the case before the magistrate who will determine the outcome of the case based on the evidence presented.

The trial can often be a very tense and emotional time. You will be required to appear at the trial to present the evidence supporting your case.

At the hearing, the magistrate may ask you to explain the events that occurred on the day of the assault. The defendant (the person who assaulted you) will have a copy of the original statement that you made at the police station. After reviewing the statement, the defendant will be given the chance to cross-examine you or ask you questions. You and the prosecutor assigned to your case will also have the opportunity to ask the defendant questions.

Working with the Prosecutor: When you decide to press charges, your case will be assigned to a public prosecutor. This person's job is to help you present the evidence to prove your case at the trial. In Belize, there is a small number of prosecutors to handle a large number of cases. This may mean that the prosecutor assigned to your case will have a limited amount of time to work with you before your hearing date. Remember that you are your best advocate!

It will be very helpful for you to keep your own record of events. Some things that may be useful in proving your case are:

- Copies of your statement and of the police report
- Any important dates including:
 - Date of the assault
 - Any police contact
 - Any attempts that the defendant has made to contact you since the assault
- Copies of medical treatment received as a result of the assault
- Pictures of your injuries or of damaged property resulting from the assault
- Names of people who witnessed the assault
- Clear and chronological details of the assault

After the magistrate has heard all of the evidence from both sides, he or she will make a decision to find the defendant GUILTY or NOT GUILTY. If the magistrate finds the defendant GUILTY, then a next hearing date will be set for sentencing. The sentencing hearing should be set within one month of the last trial hearing.

Sentencing:

At the sentencing, the Magistrate will determine a punishment for the crime according to the law. This can include jail time and/or fines.

You are not required to attend the sentencing. However, to learn the outcome of the sentencing hearing, you can contact the prosecutor assigned to your case.

Making the decision to press criminal charges may seem overwhelming. However, the abuse that you have suffered is wrong and your assailant deserves to be held accountable for his actions. Remember that the Women's Department is here to support you.

Legal Separation and Maintenance

What is a Legal Separation?

If you are married to your assailant, you may choose to apply for a Legal Separation. A Legal Separation is an order of the court that can:

- Allow you to legally live separate from your husband.
- Grant you (the applicant) legal custody of your children if they are under 16 and order that your ex-partner pay child maintenance of up to \$50.00 a week per child.
- Order that your ex-partner (the respondent) pay spousal maintenance to you of up to \$100.00 per week.

How is a Legal Separation different from a Divorce?

Getting a legal separation is not the same thing as getting a divorce. If you have a legal separation, you *cannot* re-marry. In a legal separation, no shared assets or properties are given directly to you or your ex-partner.

You do not have to have an attorney to get a legal separation. However, if you have access to legal counsel, you may wish to discuss your case with an attorney so that you feel well informed about your options.

Divorce cases are handled in the Supreme Court. This process can be lengthy and does require that you have an attorney.

How do I apply for a Legal Separation?

Step 1: Go to the Family Court.

Let the Clerk of the Court know that you have come to apply for a Legal Separation.

Step 2: Choose a ground.

The law states that there are several grounds or reasons that the court will grant a separation. The Intake Welfare Officer or the Clerk of the Court will ask you why you feel that you need a legal separation. The grounds for separation include:

- Husband has been convicted of aggravated assault
- Husband has deserted wife
- Husband has been guilty of persistent cruelty to wife and/or children
- Husband has not provided reasonable maintenance to wife and/or child
- Husband is a drunkard
- Husband, while knowing he carried a venereal disease, insisted on having sex with his wife
- Husband has forced his wife into prostitution
- Husband is guilty of adultery (this can be the most difficult to prove)

The Court will send a notice to your husband that you are applying for a separation. The notice will request that the two of you meet with an Intake Welfare Officer or the Clerk of the Court and will specify a time and date to return to the courthouse.

Step 3: Meeting with your husband and the Intake Welfare Officer (or Clerk of the Court).

The purpose of this meeting is to agree upon the grounds for separation and to try to come to an agreement about custody and maintenance issues (if possible). At this meeting, you will be asked to pay the \$2.50 summons fee and the Clerk of the Court will assign a date for your legal separation hearing.

Step 4: Legal Separation Hearing

At the hearing, the Magistrate will review the details of your case. He or she will ask you to swear in and then will give you a chance to explain the grounds for the separation.

It is important that you are ready for this step and that you feel well organized and prepared to speak to the Magistrate. It may be helpful to write down what you want to say so that you can practice it a few times before the hearing. Remember, that the Women's Department may be able to help you prepare for your hearing.

After you have spoken to the Magistrate, your husband will have a chance to speak. He may ask you questions. You do not have to answer anything that you do not want to. It will be helpful for you to have as much proof as possible for your case. Some things that will be helpful in proving your grounds for separation may be:

- A copy of a Protection Order that you have against him
- Dates of any past police involvement he has had with the police (especially reports of violence)

- Pictures of any bruises, marks or scars that he has inflicted on you
- A copy of any police reports or statements that you have made to the police about your partners abuse
- Any dates of past or recent assaults.
- A person who has witnessed his violence toward you or your children and is willing to tell the court about it

If the Magistrate makes a decision to grant the separation, he or she will also consider the matter of maintenance and child custody. Sometimes, the married partners are able to come to some agreement about these issues before the hearing. If they cannot agree on child maintenance or child custody issues at the initial hearing the case may be adjourned to allow each person more time to consider an agreement.

What if my assailant will not agree to a separation?

If your assailant decides that he does NOT want a legal separation, you may go ahead with the application anyway. However, you will have to prove to the court that your husband is guilty of one of the grounds for separation listed above. After you make an application, the court will send a notice to your husband to appear in court for a legal separation hearing. If he does not appear the first time then the case *may* be adjourned to give him one more chance to appear. The Magistrate will not hear a legal separation case if both partners are not present.

If he does not appear a second time, the court *may* order a warrant for his arrest. If he is arrested, he can be brought to the hearing by the police.

Spousal Maintenance

Spousal maintenance is a specified amount of money that one partner is ordered to pay to the other. The law says that the amount cannot exceed \$100.00 a week. The Magistrate usually determines the exact amount to be paid. The process of collecting spousal maintenance is similar to that of child maintenance (see next section).

Child Custody and Maintenance

Any mother, who has children to a man out of wedlock, automatically has sole custody of her children. Having custody means that you are the sole person responsible for making decisions about your children.

What is Child Maintenance?

According to the Families and Children Act of Belize, every man and woman is required to maintain their children. If either the mother or the father fails to maintain their children then one parent or guardian, with whom the child lives, may apply to the court for a Maintenance Order.

A Child Maintenance Order is an order of the court for one parent to pay money to the other parent for the care of their child or children. This amount cannot exceed \$50.00 a week per child.

How can I apply for Child Maintenance?

To apply for maintenance of your children, follow the same procedure as filing for a legal separation or a protection order. Go to the Family Court and meet with the clerk or an Intake Welfare Officer who will assist in filing an application. You will then receive a hearing date. If you are also applying

for legal separation, the issue of child maintenance may be addressed at the same hearing.

How long does the order last?

The Maintenance Order lasts until the child is eighteen years old OR until the order expires. When the order expires, you can apply to the court for an extension.

When will I begin to receive payments?

The Court will deliver the Maintenance Order to the parent who is being ordered to pay. The person is expected to begin making payments directly to the Family Court immediately after they receive the notice. If the ordered parent does not make any payments within 14 days of receiving notice of the order, (or hearing) the Court may issue a warrant for that parent's arrest.

If the person who has been ordered to pay has a consistent job, the payment may be automatically deducted from his paycheck.

What if I do not receive any payments?

If several weeks have gone by and you have not received any maintenance, you can go back to the Family Court and file a complaint. This is sometimes called an application for recovery of arrears.

The court will send a summons to the respondent. If the respondent does not respond to the summons, the Magistrate may order a warrant for his arrest.

Going to Court

Going to court can seem scary and intimidating to some people. Knowing what to expect when you go to your hearing can help to ease the anxiety a little.

Tips for going to Court:

- Be prepared to wait. In all of the districts, going to court can be time-consuming. You might be waiting for several hours before your case is called.
- Bring any important documents. If you have kept a journal of the abuse and/or any relevant events such as police contact or records of court dates, bring it. If you have any pictures, police statements or any documents that relate to your case this information could be helpful to the magistrate during your hearing.
- Dress for success. All of the Courts in Belize have a dress code. Women are required to wear a long skirt or slacks and a shirt that covers the shoulders. Dressing up shows the magistrate that you respect their court and may make you feel more confident in the courtroom.
- Be prepared to see your Assailant. While you are waiting at the courthouse for your cases to be called, you may be asked to wait in the same area as the person who assaulted you. Your assailant may use this opportunity to try to talk to you or to threaten you with looks or stares. Try to ignore him. You may want to position yourself in a part of the waiting area that is close to a security guard and to other people. This might make it more difficult for your assailant to harass you.

- Bring Support. This can be a very emotional time for you. Bringing a supportive friend or family member to talk with you or to just sit next to you while you wait can be helpful.

Ask questions. If you are unsure about where to go or who to speak to or if you feel that you have been waiting for a long time with no explanation – ask someone. You have the right to be informed about what is happening with your case. The Clerk of the Court or the secretaries may be able to answer your questions. Remember – You are your best advocate!