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Opinion No. 01-033

Availability of Protection Orders in Cases of Domestic Abuse

QUESTION

Does the issuance of a protection order in cases of domestic abuse require a prior determination by a law enforcement officer of the "primary aggressor" under the factors listed in Tenn. Code Ann. § 36-3-619(c)?

OPINION

No. Protection orders are available under Tenn. Code Ann. §§ 36-3-602 & 605 to any individual who has suffered, or who is at risk of suffering, domestic abuse subject only to the relationship limitations of Tenn. Code Ann. § 36-3-601(9) and a court's determination of good cause.

ANALYSIS

In cases of domestic abuse, *ex parte* orders of protection are available to any individual who has been "subjected to, or threatened with or placed in fear of domestic abuse," who meets the relationship requirements of Tenn. Code Ann. § 36-3-601(9)(A)-(F), and who files the necessary petition with the court. Tenn. Code Ann. § 36-3-602(a). Because issuance of the protection order is based solely upon this petition and the court's determination of good cause - such as "immediate and present danger" - it is not subject to prior involvement of a law enforcement officer or an officer's determination of the "primary aggressor" under the factors listed in Tenn. Code Ann. § 36-3-619. Tenn. Code Ann. § 36-3-605(a). In fact, this determination is only required when law enforcement investigates a reported incident of domestic abuse. In these circumstances, the law enforcement officer will determine the primary aggressor for the purposes of arrest and in order to

inform the "victim" of his/her legal rights, including the right to pursue an order of protection. Tenn. Code Ann. § 36-3-619(b) & (g)(3).

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