



Information on the Barring Order Proceedings in Cases of Domestic Violence



Baden-Württemberg

MINISTRY FOR SOCIAL AFFAIRS AND INTEGRATION

Distribution note:

This information brochure is published by the Federal State Government of Baden-Württemberg as part of its constitutional obligation to inform the general public. It may not be used by any political parties nor their candidates or campaign aides during an election campaign to canvass votes. This applies to all elections.

Misuse shall in particular be constituted by distribution at electoral events, at party information desks and it may not be used for campaign literature inserts, imprinting or affixing of stickers.

Also prohibited is the distribution of this brochure to third parties for purposes of securing votes. This brochure may also not be used at any election in the future, without limit of time, in a way that might be construed as the publisher's siding with individual political groups. These restrictions apply irrespective of the distribution channel employed, i.e. regardless of when, in what way and in what quantity this document reached the recipient.

However, the parties are allowed to use this brochure to inform their members.

Published by
Ministry for Social Affairs and Integration
Baden-Württemberg
Schellingstraße 15
70174 Stuttgart

Phone: 07 11 123-0
Fax: 07 11 123-39 99
Internet: www.sozialministerium-bw.de
Stuttgart, June 2016
Picture credit:
© Daniel Schreiber/Shotshop.com

Information on the Barring Order Proceedings in Cases of Domestic Violence

CONTENTS

Preface	2
Barring order proceedings in cases of domestic violence	3
Hints and answers to frequently asked questions on	
• emergency barring orders issued by the police	4
• advice/counselling	5
• civil legal protection	6
• criminal proceedings	8
Legal basis	9

Preface

Victims of domestic violence require special protection because violence in a domestic area is not a private matter. It can never be justified with reference to alcohol, stress or provocation. The responsibility for violence always lies with the person who exercises it. Whoever is affected by violence is entitled to protection and help.



The term “domestic violence” comprises all forms of physical, sexual and psychological (among others social and economic) violence taking place between adults who are or were in close relationships – regardless of where it occurred. These are mainly people living in cohabitation but also other family relationships.

The vast majority of the victims are women. Approximately 25% of women aged 16 to 85 have experienced either physical or sexual violence – or both – at least on one or even more occasions by their partner or husband.

It is therefore for the politicians to ensure protection and support and the government of the Federal State of Baden-Württemberg takes this task seriously. This is why we implemented an action plan for Baden-Württemberg on violence against women in 2014. It is thereby for the first time that we outlined a comprehensive concept for the combat against and the prevention of violence against women as well as for the care appropriate to those women’s needs who became victims of domestic violence, sexual violence, forced marriage or forced prostitution.

This action plan for Baden-Württemberg - developed over two years in a joint process with all the important institutions - clearly shows that the barring order serves as a quick and effective measure to protect women and their children. The victims cannot be expected to protect themselves and in the process also lose their home and familiar surroundings. With the barring order, the State sends a clear signal to the perpetrators: violence is no means to settling a conflict.

Protection against violence is a human right that also applies at home. People who don’t know their rights are unable to exercise them. This brochure aims at informing people suffering from domestic violence on the current legal situation - with answers to the most frequently asked questions referring to matters on the barring order.

A handwritten signature in blue ink, which appears to read 'Manfred Lucha'.

Manfred Lucha MdL
Minister of Social Affairs and Integration
Baden-Württemberg

Barring Order Proceedings in Cases of Domestic Violence

Barring order proceedings consist of several measures implemented to interactively help prevent any further domestic violence.

The first effective measure of the barring order proceedings is an emergency barring order issued by the police according to article 27 a of the Police Act. The police officers – usually the patrol police called to the scene – issues an emergency barring order for a limited time, i.e. the perpetrator is evicted/banned from the home if there is a risk that further physical abuse might occur and the barring order is appropriate to avert danger. As the victim you may stay at your home.

If there is a continuing danger after the perpetrator has been evicted from the home, the police officers can bar the evicted person from returning to the home or the immediate surroundings as well as impose a prohibition on approaching the injured or endangered person.

Police measures, however, are principally only effective for a limited time. Protection over a longer period of time can be offered through civil protection orders. To call on these you may turn to the Local Court (“Amtsgericht”) and request interim measures for the allocation of the home and/or to impose a prohibition on the perpetrator to approach or get in contact with the victim.

Further constituents of the barring order proceedings are

- advice for the concerned person
- resolute prosecution

The more careful these measures are matched the better the barring order proceedings can help to end the violence directed against you for good.

In many cases of domestic violence only individual measures can be imposed – for various reasons. For example, the victims can file for an application for civil protection orders - irrespective of the fact that an emergency barring order has been issued by the police. Counselling and advice offers are also available regardless of an issued barring order by the police.

Hints and answers to frequently asked questions on

- *emergency barring orders issued by the police*

WHAT DOES BARRING ORDER MEAN?

A barring order means the perpetrator is evicted from the home and surroundings. You may stay at the home. Generally, the perpetrator has to hand in the keys and is prohibited from returning to the home as long as the barring order is effective.

HOW LONG IS A BARRING ORDER EFFECTIVE?

The Community Police (“Ordnungsamt”) decides on the duration of the barring order according to the endangerment in each individual case. In most cases a barring order is issued for a period ranging between 4 and 14 days.

CAN A BARRING ORDER BE EXTENDED?

Yes. The decision on an initial – emergency - barring order, for instance over a weekend, is generally made by the patrol police officers at the scene. An extension (to a maximum of 14 days) can be granted by the Community Police.

Further extension (for another 14 days maximum) issued by the Community Police can solely be granted if you file an application for a civil protection order according to the Federal Act on the Protection from Violence.

WHAT DO I DO IF THE PERPETRATOR COMES BACK?

You should instantly call the police. If the barring order is breached by the perpetrator, he can be taken into custody if necessary.

WHAT CAN I DO IF I AM STILL SCARED OF THE PERPETRATOR DESPITE AN ISSUED BARRING ORDER?

You should talk to the police and advisory/counselling services about your concerns. If you don't feel sufficiently protected by the barring order you might also find temporary accommodation at a women's and children's shelter.

CAN I REQUEST A REPEAL OF THE BARRING ORDER?

No. The barring order is not dependent upon your request. Police will solely repeal a barring order if they can assume that there is longer any danger. Your opinion is of course vital for an evaluation on any further violent assaults that might occur. As the

case may be, the police officers, however, might assess the situation differently than you.

CAN A BARRING ORDER BE ISSUED PERMANENTLY?

No. Police measures are fundamentally issued for a limited time only. The civil court is responsible for long-term protection orders.

- *advice/counselling*

WHERE DO I GET ADVICE AND SUPPORT?

There are several counselling centres providing competent advice in cases of domestic violence. In some of the administrative districts and cities, counselling services have been established to specifically address barring order proceedings respectively domestic violence. You can find skilled and understanding counsellors at social services and at counselling services of local community or welfare associations. There are many places where you can find counselling centres for women with specialist competence regarding issues involving violence. The phone numbers and addresses of counselling services in your vicinity can be found in the phone book – where you can also find the numbers of the nearest women's and children's shelter

HOW DO I FIND THE APPROPRIATE COUNSELLING SERVICE?

The most important factor is for you to find a counsellor with whom you can establish a relationship of trust. Which of the counselling/advice centres might be the most appropriate will be determined in a personal talk. This is why there are many contact points regarding these matters at various places. Here, you will get information on the barring order proceedings and advice on how to proceed further. If you wish, you will be referred to other counselling centres.

CAN MY GIVING EVIDENCE RESULT IN MY CHILDREN BEING TAKEN AWAY FROM ME?

No. The perpetrator alone is responsible for the violence – not you!

WHAT HAPPENS TO THE CHILDREN?

Domestic violence exerts great stress on boys and girls. This is why an agent from the Youth Welfare Office will call you to talk about appropriate options of support – for instance talking to a psychologist – for your child or children.

WHO WILL HELP ME WITH FINANCIAL PROBLEMS?

If you lack financial means after the barring order you can contact the social welfare office.

WHERE CAN I GET TREATMENT FOR INJURIES?

Depending on the severity of your injury, you can get medical treatment from your general practitioner, a specialist or at the hospital. Ask the doctor for a medical certificate which you can later on submit in court as evidence.

- *civil legal protection*

WHERE CAN I APPLY FOR CIVIL LEGAL PROTECTION?

Civil protection orders are issued by the competent local Family Court. You can submit an application in writing. If you want to make an oral request it has to be recorded by the legal application office ("Rechtsantragsstelle") respectively clerks of the court.

WHAT CAN I REQUEST?

According to the new Protection against Violence Act you can apply for two things in particular:

1. Allocation of the home for your sole use.
2. Prohibition against the perpetrator to make contact with and approach you.

IS AN ALLOCATION OF THE HOME POSSIBLE EVEN THOUGH A BARRING ORDER HAS NOT BEEN ISSUED AGAINST THE PERPETRATOR?

Yes. The precondition for an allocation of the home is that the perpetrator has abused or assaulted you and has been living with you at home. In some cases a threat of violence might be sufficient.

IS AN ALLOCATION OF THE HOME POSSIBLE IF THE PERPETRATOR IS THE HOME OWNER OR TENANT?

Yes.

HOW LONG IS THE HOME FOR MY SOLE USE?

If you are the sole owner or tenant, the allocation of the home can be permanent. If the perpetrator is the sole owner or tenant, the allocation of the home for your sole use can be issued for a maximum of six months. If you don't succeed in finding a replacement accommodation during this period, court may extend the time limit to a maximum of another six months. If you and the tenant mutually rented or own the home, court may likewise issue a time limit for the sole use.

HOW CAN I PROVE THE PERPETRATOR HAS ASSAULTED OR THREATENED ME?

If a barring order has been imposed on the perpetrator you must inform the court about this. Court might request the documents from the police for its judicial decision. Also helpful are medical certificates or photographic documentation of any injuries. If possible you can name witnesses.

CAN THE PERPETRATOR BE PREVENTED FROM MEETING UP WITH THE CHILDREN?

In principle both father and mother have the right and duty to have contact with the child. If you or your children are in danger of being abused you can apply for measures for the prevention of danger at the Family Court. These can consist of contact and proximity restrictions in particular but also the reduction or termination of parental rights. Where appropriate, supervised access is ordered by court, which means that visits must take place in the presence of a trusted person respectively an agent of the Youth Welfare Centre.

CAN COURT PROTECT ME FROM HARASSMENT?

Yes. In cases of unacceptable harassment the Family Court can issue civil protection orders. Unacceptable harassment includes constant following or observing, and telephone, email and text message harassment among others.

WILL I NEED AN ATTORNEY?

No, you don't need to be represented by an attorney. It is, however helpful to seek advice from an attorney specialising in family law.

WHO WILL BEAR THE ATTORNEY'S FEES?

In financial emergencies you are entitled to free legal advice from an attorney. If applicable you may apply for legal aid – you can get information from the legal application office (“Rechtsantragsstelle”) or respectively the registry of the court (“Geschäftsstelle des Amtsgerichts”).

WHAT HAPPENS IF THE PERPETRATOR BREACHES THE CIVIL PROTECTION ORDER?

You should call the police. Any breach of the protection order according to the Protection Against Violence Act is a criminal offence.

HOW LONG WILL IT TAKE FOR THE COURT TO DECIDE ON MY REQUEST?

If you need a quick decision you can file for an urgent application. In urgent cases, a protection order can be issued within one day.

- *criminal proceedings*

WHAT HAPPENS AT THE PUBLIC PROSECUTOR'S OFFICE AND IN COURT?

When the public prosecutor's office is informed about a police intervention, it will examine whether there was an initial suspicion and if indications or evidence are sufficient to be provided before a court. If it leads to a main hearing, the court has to assess the defendant's guilt. If you are summoned to appear in court, you will be asked as a witness to give an account of your perceptions.

DO I HAVE TO APPEAR BEFORE THE PROSECUTOR RESPECTIVELY IN COURT IF I AM SUMMONED?

Yes.

DO I HAVE TO ANSWER THE QUESTIONS OF THE PROSECUTION RESPECTIVELY THE COURT?

In principal you are obliged to testify before the prosecutor and the court. If you are in any way related, engaged or married to the perpetrator or live with him in a registered partnership you can refuse to testify. Although you have to appear before the prosecutor or the court, you can refuse to provide information when summoned.

CAN I STOP THE CRIMINAL PROCEEDINGS?

Generally you can't. In many cases, however, evidence is insufficient for a conviction without the witness testimony. If you, in that case, make use of your right to refuse to give evidence, the proceedings might be stopped respectively the defendant will be acquitted.

CAN THE PERPETRATOR BE CONVICTED WITHOUT MY TESTIMONY?

If there is sufficient evidence the defendant can be convicted without your testimony.

CAN I HIRE A LAWYER?

You can hire a lawyer of your choice for advice or representation at any time. You also have an option of requesting legal aid.

Legal Basis

The barring order, prohibition of return to the home, and the prohibition to make contact with or approach the victim have their legal basis in Article 27 a of the Police Act Baden Württemberg in the version of 13th January 1992 (Gazette, p. 1, calcd p. 569, 1993 p. 155) last amended by Law of 29th July 2014 (Gazette p. 378) with effect from 13th August 2014.

The provision under Article 27 a was added through the Police Act as amended by Law of 18th November 2008 (Gazette p. 380) with effect from 22nd November 2008.

Article 27a, restraining order, ban on stay, barring order, prohibition of returning to the home, prohibition to make contact with or approach the victim.

(1) To prevent danger or eliminate a nuisance, police can temporarily evict a person from a place or impose a temporary prohibition on accessing the place (“Platzverweis”).

(2) The police can impose a prohibition of entering or access to a certain place, area within the community or municipality if circumstances give reason to believe that this person will commit a criminal act or might contribute to it (ban on stay = “Aufenthaltsverbot”). For the prevention of a the criminal offence, the ban on stay is to be limited with regards to duration and location as considered necessary and must not include access to the home by the concerned person with regard to the location. It must not extend a period of three months.

(3) The police may evict a person from the home and its immediate vicinity where that is necessary to protect other residents of this home (injured or threatened person) from imminent danger (barring order = “Wohnungsverweis”). If circumstances give reason to believe that considerable danger continues after the person has left the home, the police can prohibit the barred person from returning to the home or the immediate vicinity (“Rückkehrverbot”) and to make contact with or approach the injured or threatened person (“Annäherungsverbot”).

(4) Measures referred to in paragraph 3 are to be limited to a maximum of four working days in cases of police officer orders and to a maximum of two weeks in

cases of community police orders. If the injured or threatened person files an application for a protection order according to the Federal Act on the Protection from Violence before the expiry of the deadline, the community police can extend the deadline to a maximum of two weeks if the conditions according to paragraph 3 sentence 2 remain valid and this appears necessary with due regard to the legitimate interests of the person barred from the home. The measures expire on the day of the effective judicial decision, court settlement or interim measures.

(5) The court will immediately inform the competent police authority and the competent police station about applications in accordance with the Federal Act on the Protection from Violence as well as decisions made hereupon, court settlements or interim measures, especially the measures ordered by the court, the duration of the measures as well as violations of the sanctions.

Note:

The information brochure of the Ministry of Justice Baden-Württemberg on the Federal Act on the Protection from Violence „Stark gegen häusliche Gewalt“ is available through
Justizministerium Baden-Württemberg, Schillerplatz 4, 70173 Stuttgart,
phone 0711 / 279-0, and can be downloaded on the Justizministerium homepage under www.jum.baden-wuerttemberg.de