

Family Court Definitions

An important note on interpreting the data

The majority of data in the summaries has been drawn from administrative and service data. As such, they are dependent on reporting and recording practices and cannot be used as indicators of the incidence of family violence in the population. In addition, they cannot be used to comment on trends in the occurrence of family violence over time. Sexual and family violence are often not reported to authorities and so can be very hard to measure from administrative data. Further, the data provided is often provisional (subject to change if new information is gathered) and drawn from dynamic operational databases.

Introduction

The data in the 2017 data summaries was extracted on 1 May 2017 from a live dataset. From 29 April 2016, the Ministry of Justice source courts data from the new Enterprise Data Warehouse (EDW), rather than the Justice Sector data warehouse used over recent years. Changes in data processing may cause small differences if you compare current data with similar results produced before 29 April 2016.

For the data relating to Protection Order applications, the year shown in the data tables is the year the application was filed. The number and proportion of Protection Order applications granted for the most recent year is lower than in previous years because some cases filed in that year are still before the court at the time of data extraction. The number of applicants/other protected adults each year will not equal the number of Protection Order applications or the number of respondents/associated respondents. The number of respondents/associated respondents each year will not equal the number of Protection Order applications or the number of applicants/other protected adults. The gender, ethnicity, and age of the respondent/associated respondent is provided by the applicant. Not all applicants know the profile of the respondent/associated respondent and they are not required to fill this information out.

The tables in the *Children and Youth Affected by Family Violence* data summary describe the *number of children* involved in cases under either the Domestic Violence Act 1995 or

the Children, Young Persons, and Their Families Act 1989. There are also other ways that children who experience violence can be involved in the Family Court, such as through applications made under the Care of Children Act 2004. These cases are not included in the data summaries.

Protection Orders¹

Protection Orders

A Protection Order is a legal Order designed to protect the person who applied (the applicant) and their children from a violent person (the respondent). The Protection Order can also protect other people, like a new partner or a flatmate but the person who applies for the Order must ask for these people to be protected in the Order (as Other potential protected adults). Following an application, a judge can grant a Protection Order if they are satisfied that there has been violence, and the order is needed to protect the applicant (and any children under the age of 17) who are at risk of experiencing violence from the respondent or an associated respondent.

The number of Protection Order applicants and respondents each year in the data summaries includes: the applicants and other protected adults (number of applicants), and the number of respondents and associated respondents (number of respondents) included in the Protection Orders.

Applicant: The person who applies to have a Protection Order to prevent further physical, sexual or psychological abuse.

Other potential protected adults: Another adult who is to be protected by the Protection Order.

Respondent: The (violent) person named in the application.

Associated respondent: Any person who the respondent has encouraged to be violent towards the applicant and is also named in the application.

Protection Order applications

There are four Protection Order application types. These are:

On notice

Without notice



Sentencing Act

Breach of Police Safety Order.

The type of application determines the track taken to reach a final outcome and whether a temporary Protection Order is granted during the process. On notice and Without notice applications are made by the applicant in the Family Court. Sentencing Act and Breach of Police Safety Order applications are made by a judge as a result of proceedings in the District Court. [A flow chart of the Protection Order application process can be accessed here.](#) Each application type is explained below.

On Notice application: If urgent protection is not needed, an On notice application is made. The respondent has the chance to defend themselves in court before any Order is made. Once the respondent is served with the application, the judge listens to evidence from both sides and decides if a final Protection Order should be granted. The judge can still grant an Order if the respondent does not defend the application.

Without Notice application: The applicant makes a Without notice application if they want urgent protection for themselves and their children. If the judge agrees the situation is urgent they will grant a temporary Protection Order, which usually lasts for three months. To keep the applicant safe, the respondent is not informed of (served with) the application until after the temporary Order has been granted. If the respondent wants to defend the temporary Order during the three months, the court will set a hearing date to listen to both sides. At the hearing, the judge could make it a final Protection Order, or discharge (end) the temporary Protection Order (the application is dismissed). If the respondent does not defend the temporary Order (they do nothing during the three months), then the temporary Order automatically becomes a final Protection Order.

The judge may decide after reviewing a Without notice application that urgent protection is not needed and may transfer it to the On notice track. The respondent will then be served with the application and given the opportunity to defend themselves in court. No temporary Order is granted in that instance.



Sentencing Act application: This application is made in the District Court and transferred to Family Court. It always results in a Final protection Order being granted. It is granted at sentencing for family violence offending where a Protection Order is not already in place, and the victim does not object. Sentencing Act Protection Orders came into effect on 1 July 2010 (under section 4 of the Sentencing Amendment Act (No.2) 2009).

Breach of a Police Safety Order application: A Police Safety Order (PSO) can be issued by Police to protect people at risk from violence, harassment or intimidation. When a PSO is made, the person bound by it must leave the address while the PSO is in force and abide by certain conditions. If the bound person does anything that is not permitted by the PSO, Police can take the person to court. A breach of a PSO is not a criminal offence. However, where a PSO has been breached, Police can request a temporary Protection Order be issued by the District Court. This occurs as long as there is no objection from the person being protected. Once the temporary Protection Order is granted it is served to the respondent and treated as issued by the Family Court. It can become a final Protection Order following the process for a Without notice application. Orders resulting from a Breach of Police Safety Order came into effect on 1 July 2010 (under section 124N of the Domestic Violence Act 1995).

Outcomes of Protection Order applications

There are a number of potential outcomes from Protection Order applications:

- application may be granted – a final Protection Order is granted. It will remain in force permanently, unless either the applicant or the respondent asks the court to discharge (end) it and the court agrees.
- application may be dismissed or struck out – occurs when the judge determines there are insufficient grounds to grant a Protection Order
- application could lapse, be withdrawn or discontinued, with or without a temporary Protection Order having been granted
 - an applicant can withdraw their application at any point (with the permission of the court)
 - if the respondent can't be served with the temporary Protection Order the temporary Order can be extended for an additional three months



- to enable the respondent to be served. If they still cannot be served then the application lapses at the end of those three months.
- for On notice applications, the application, not a temporary Protection Order is served to the respondent. If the application cannot be served then it may be discontinued
- application may still be active – a final outcome is yet to be determined.

The data on Protection Order applications is drawn from a live dataset. Each year, the number of applications still active are highest for the most recent year. This results from applications being made close to the time at which the data was extracted – with the passage of time this number reduces. As such, care should be taken when interpreting the percentage of applications granted in the most recent year compared to previous years.

Temporary Protection Order

A temporary Protection Order being granted is not a final outcome. It is issued following a Without notice application, where an applicant requires urgent protection and it lasts for three months. During that time if the respondent wants to defend the Order, the Court will set a hearing date to listen to both sides. At the hearing, the Judge may discharge the temporary Order or make it final. However, if the respondent does not defend the Order, after three months, the temporary Protection Order will automatically become a final Protection Order.

Final Protection Order

A final Protection Order is a final outcome from a Protection Order application. The Order remains in force permanently, unless the respondent or the applicant asks the Family Court to discharge it and the court agrees. The court has to be satisfied that the reasons for the Protection Order are no longer an issue and the respondent is no longer a risk to the applicant.

Breaches of Protection Orders

If a respondent breaches the conditions attached to the Protection Order (such as contacting the applicant) they can be charged with Contravening a Protection Order (with



or without a firearm). These offences have a maximum penalty of 3 years imprisonment (this increased from a maximum of 2 years imprisonment in 2013).

Data summaries published prior to 2015 also included offences for failing to comply with a Protection Order and Failing to attend a programme as Breach of Protection Order offences. However, as noted in the current legislation (updated with the Domestic Violence Amendment Act 2013 on 1 October 2014) and its previous iterations, these offences are not technically classified as a Breach of Protection Order. This change in reporting was made when the Ministry of Justice went through a process of standardising the definitions and the statistics produced in 2015.



References

¹ Senior Analyst, Ministry of Justice. (2017, May). [Protection Orders definitions: Personal Communication].

