



Factsheet - Family Violence

General Principles

The Family Violence Act 2004 was enacted to highlight the criminal nature of family violence, to improve the safety of victims of family violence and to put into place an integrated government response to the growing problem of family violence in our community. Under the Act, the safety, mental wellbeing and interests of people affected by family violence are the most important considerations.

What Is Family Violence?

Family violence is any of the following types of conduct committed by a person, directly or indirectly against that person's spouse or partner: assault (including sexual assault), threats, coercion, intimidation or verbal abuse, abduction, stalking or an attempt to do any of those things. It also includes economic abuse, emotional abuse or intimidation, and contravening a family violence order (FVO), police family violence order (PFVO), an external FVO or an interim FVO.

Applying For A Family Violence Order

An application for an FVO may be made to a magistrate by a victim of family violence (affected person), or a police officer. Application forms can be obtained from the Magistrates Court of Tasmania (see Contacts). The application and procedure for applying for an FVO is very similar to that used when applying for a restraint order under the Justices Act 1959.

When considering an application for making an FVO, the court must consider the following matters:

- the safety and interests of the applicant and any affected child (a child whose safety, psychological wellbeing or interests are affected or likely to be affected by family violence) to be of paramount importance;
- whether contact between the applicant and the respondent and any child who is a member of the family is relevant to the making of the FVO; or
- whether there is any relevant Family Court orders in place.

An FVO may contain conditions on it to prevent further family violence against the applicant or any other person named in the order such as requiring the respondent to leave the family home, not enter the family home or only enter the family home on certain conditions, and may require the respondent to not possess any firearms or hand in any firearms in their possession.

Police Family Violence Orders

Tasmania Police are able to issue family violence orders against a person, if satisfied that person has committed, or is likely to commit, a family violence offence. A police family violence order (PFVO) operates for 12 months from the date the order is served on the respondent. Like an FVO, a PFVO may have conditions attached to it.

A PFVO may be varied by Police if the affected person and the respondent consent and the variation will not adversely affect the safety and interests of the affected person or an affected child. A court may also vary a PFVO.

A PFVO is revoked if an FVO or interim FVO is made in respect of the same parties. A court may revoke a PFVO on the application of the Police, an affected person, the person against who it was issued, or any other person the court may grant leave to, at any time during its operation.

A PFVO operates subject to any Family Court Order.

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External Family Violence Orders

A Family Violence Order made in another State or Territory of Australia, or in New Zealand, may be registered in Tasmania. Once registered, this external family violence order will have the same effect as if it were made in Tasmania and may be enforced in the same way as a family violence order made in Tasmania.

Family Violence Offences

Assault, aggravated assault, indecent assault, stalking and some sexual offences are family violence offences. Contravening an FVO, PFVO or interim FVO are also family violence offences, as is economic abuse or emotional abuse or intimidation. A person convicted of any of these offences faces severe penalties.

Arrest

Where a police officer reasonably suspects that a person has committed a family violence offence, that police officer may arrest that person without a warrant and take them into custody.

A person taken into custody for this reason must be taken to court to appear before a justice as soon as is reasonably practicable, unless released unconditionally or on bail.

A person taken into custody may be detained for a period reasonably required to do these things:

- determine the charge(s) which should be laid in relation to the family violence;
- carry out a risk screening (assessment done by Police of the likelihood of family violence being repeated or becoming more severe) or a safety audit (carried out by Police identifying the measures available to enhance the safety of an affected person or affected child);
- implement the measures identified by a safety audit, where it is practical to do so;
- make and serve a PFVO or an application for an FVO.

In deciding whether to arrest a person without a warrant, the police officer must give priority to the safety, wellbeing and interests of the victims, whether adult or child.

Bail

A person charged with a family violence offence will not be granted bail unless the judge, court or police officer is satisfied that the release of the person on bail would not be likely to adversely affect the safety, wellbeing and interests of an affected person or affected child.

Police powers to admit a person to bail do not extend to a person charged with a contravention of an FVO or a PFVO.

Sentencing Factors

When sentencing an offender for a family violence offence, the court may consider the fact that the offender knew, or was reckless as to whether a child was present or on the premises at the time of the offence, or knew that the victim was pregnant at the time of the offence, as an aggravating factor.

The court will also consider whether the offender is a suitable candidate for a structured family violence treatment program, which is designed to reduce the likelihood of that person re-offending.

RELEVANT LEGISLATION
Family Violence Act 2004
Justices Rules 2003

CONTACTS
Legal Aid Commission of Tasmania Telephone Advice Service
Ph: **1300 366 611**
Victims Support Services
Magistrates Court of Tasmania

RESOURCES
Magistrates Court of Tasmania - Family Violence

The information contained in this factsheet is not legal advice. If you have a legal problem you should talk to a lawyer before making a decision about what to do. The information in this factsheet is written for people resident in, or affected by, the laws of Tasmania, Australia only. All questions concerning this factsheet to info@legaid.tas.gov.au.