

# Civil Protection Orders for LGBT Victims of Domestic Violence: Relevant Case Summaries

**Domestic violence** occurs in same-sex relationships just as in heterosexual relationships. However, LGBT victims of domestic violence are often denied the civil legal remedies that are available to heterosexual victims.

As of the date of this printing, three states (Louisiana, Montana and South Carolina) have protective order statutes that explicitly *deny* LGBT victims standing to seek civil orders of protection by requiring the requisite relationship to be with an individual of the opposite sex.<sup>1</sup> Only one state, Hawaii, specifically extends protection to LGBT victims by including “current or former same sex partners” within its statutory language. The remaining states have protective order statutes that utilize gender neutral language, leaving the protection of LGBT victims of domestic violence up to interpretation by the courts.

Currently, only four states (Florida, Kentucky, Pennsylvania and Illinois) have case law declaring the availability of civil orders of protection to LGBT victims of domestic violence. Two states (Ohio and New Jersey) and the District of Columbia have case law suggesting that civil orders of protection are available to LGBT victims, although the cases themselves do not address that legal question.

## Case Law *Confirming* Availability of CPOs to LGBT Victims of DV

Courts in the following cases have interpreted vague statutory language and determined that

civil orders of protection are available to LGBT victims of domestic violence.

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### **Peterman v. Meeker (Florida)**

855 So.2d 690 (Fla. App. 2 Dist. 2003)

**Holding:** State statute authorizing family or household members to seek domestic violence injunctions applies to same-sex couples.

**Summary:** John Russell Peterman (Appellant) and Nute Meeker (Appellee) were partners for thirteen years and lived together in a house they jointly owned. As their relationship was ending there were a number of violent episodes between the couple. Meeker eventually sought an injunction against Peterman under a statute (§741.30) authorizing family or household members to seek injunctions against domestic violence. Included in the definition of “family or household members” are “persons who are presently residing together as if a family or who have resided together in the past as if a family.” Peterman’s attorney sought to dismiss the petition, arguing that same-sex couples did not qualify as “persons residing together as if a family” because same sex couples cannot marry in the state of Florida. The trial court denied the motion and granted the injunction. Peterman appealed.

On appeal, the court affirmed. The court cited §741.30(1)(e) of the statute, which that states: “No Person shall be precluded from seeking injunctive relieve pursuant to this chapter solely on the basis that such a person is not a spouse.” Therefore, the court concluded that the statute does not exclude persons who otherwise meet the requirements for relief but seek protection from a person of the same sex. The court further cited court cases around the country addressing the issue that have held same-sex partners qualified for protection under domestic violence statutes.

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<sup>1</sup>However, in Louisiana, LGBT victims of domestic violence are entitled to the same relief under the Prevention from Dating Violence Act. See La. Rev. Stat. Ann. §46.2151 (2006). New York, which previously fell into this category, recently amended its protective order to provide more inclusive, gender-neutral language. For more information, see S.8665, 2008 Leg. Sess. (N.Y. 2008), *available at* <http://assembly.state.ny.us/leg/?bn=S08665>.

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**D.H. v. B.O. (Pennsylvania)**

734 A.2d 409 (Pa. Super. 1999)

**Holding:** Same-sex partner was entitled to seek protection under state protection from abuse statute, although the evidence of abuse was insufficient to support the issuance of a protective order.

**Summary:** D.H. (Appellee) sought a protection from abuse order (PFA) against his former lover, B.O. (Appellant), to prevent him from contacting him in any manner. After a hearing, a permanent PFA was issued which enjoined B.O. from contacting D.H. for one year. B.O. appealed, arguing that the PFA order should be vacated because D.H. did not establish the requisite relationship or an act of abuse that would warrant protection under the state statute permitting “sexual or intimate partners” to seek orders of protection. On appeal, the Superior Court of Pennsylvania found the trial court’s record supported the finding that the parties were formerly “sexual or intimate partners.” In his petition for a PFA order, D.H.’s referred to B.O. as his former roommate and homosexual lover, and testified at trial to their former sexual relationship. The Court held this evidence was sufficient to establish the requisite relationship and that D.H. was therefore entitled to seek protection under the PFA statute. Nonetheless, the Court found the evidence of abuse insufficient to justify the issuance of a PFA order. The Court stated that the complained conduct did not amount to an “act of abuse” under the state Protection from Abuse Act because there were no threats of physical injury or other conduct that would place D.H. in reasonable fear of bodily injury.

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**Ireland v. Davis (Kentucky)**

957 S.W. 2d 310 (Ky. App. 1997)

**Holding:** State statute authorizing “member of an unmarried couple” to obtain domestic violence protective order applies to same-sex couples.

**Summary:** John Ireland (Appellant) obtained a domestic violence order (DVO) against his partner Blake Davis (Appellee) pursuant to a state statute permitting family members and “members of an unmarried couple” to seek orders of protection against domestic violence. Several months later, Ireland filed an affidavit alleging that Davis has violated the terms of the DVO and a show cause warrant was issued by a Fayette District Court judge. Another district court judge, however, set aside the arrest warrant and dismissed all of the proceedings, stating he lacked jurisdiction under the domestic violence statutes (KRA 403.715-.785) because Ireland and Davis were a same-sex couple. Ireland appealed.

On appeal, the Fayette Circuit Court affirmed the district court’s dismissal. The Circuit Court found the definition of “member of an unmarried couple” ambiguous and looked to a prior version of the statute which required an unmarried couple to have a child in common in order to be afforded protection. The court concluded that same-sex couples cannot have a child in common and therefore the new statute did not extend protection to such couples. The matter went before the Court of Appeals of Kentucky on discretionary review.

The Court of Appeals reversed the orders of the Fayette district and circuit courts and the case was remanded to the district court for reinstatement of the domestic violence proceedings. The Court found the gender neutral language of the new statute unambiguous, stating that the Circuit Court’s interpretation of the statute would produce results contrary to its purpose. Further, Court noted that to exclude same-sex couples from protection under the statute would be to deny them the same protection that other couples are afforded under the law, although in deciding the case on other grounds it did not address the constitutional argument.

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**Glater v. Fabianich (Illinois)**

252 Ill.App.3d 372 (Ill.App.1 Dist. 1993)

**Holding:** Statute authorizing “family or household members” to seek orders of protection was designed to protect intimate partners and relief is not limited to those related by blood or marriage. Evidence was sufficient to establish common household between former same-sex partners.

**Summary:** Allen Glater (Appellee) sought an order of protection against Anthony Fabianich (Appellant) pursuant to the Illinois Domestic Violence Act. The statute protects family or household members, defined as “persons who share or formerly shared a common dwelling...”. In his petition, Glater stated that he had formerly shared a residence with Fabianich and alleged threats and acts of physical abuse. The Circuit Court issued an emergency order of protection and set the matter for a hearing. At the hearing, Fabianich filed a motion to dissolve the protective order alleging that the parties never shared a common dwelling and that Glater suffered no immediate threat of harm. The trial court found there was sufficient basis to establish a common household between the parties and denied Fabianich’s motion. After hearing testimony on the issue, the trial court entered a plenary order of protection. Fabianich appealed.

On appeal Fabianich argued that his motion to dismiss had been improperly denied, stating again there was no evidence to support the finding that the parties had shared a common dwelling and further, that there was insufficient evidence of abuse. The appellate court disagreed. The Court refused to restrict the statute’s provisions to persons related by marriage or blood, stating that the purpose of the law was to prevent abuse between persons sharing intimate relationships. Further, evidence established that Fabianich had committed abuse or that the potential for abuse existed. Judgment affirmed.

**Case Law *Implying* the Availability of CPOs for LGBT Victims of DV**

The following cases suggest that civil orders of protection are available to LGBT victims of domestic violence in that state, although they do not specifically address that legal question.

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**Richardson v. Easterling (D.C.)**

878 A.2d 1212 (D.C. 2005)

**Summary:** Michael Richardson (petitioner) sought a civil protection order against his former same-sex partner (Aaron Easterling-defendant) to prohibit him from stalking and conduct which he alleged constituted an “intrafamily offense” under the Intrafamily Offenses Act. In his petition, Richardson accused Easterling of threatening to make false reports regarding his sex life and his intentional spread of communicable diseases to law enforcement and to his employer. Further, Richardson alleged that Easterling contacted his coworkers to inform them of his sexual orientation and told them he was knowingly transmitting sexual transmitted diseases. The trial court found that these types of threats, amongst other allegations, did not constitute an “intrafamily offense” and denied Richardson’s petition.

On appeal, the D.C. Court of Appeals reversed. The Court of Appeals acknowledged that it was an undisputed fact that the two men shared a residence and maintained a romantic relationship, and further found sufficient evidence of an intrafamily offense.

**Note:** This case provides a good example of courts’ struggle to recognize of some of the unique characteristics of domestic violence as it manifests in same-sex relationships. Threatening to “out” a person to the community is one of the ways perpetrators of domestic violence maintain control. For a full analysis see Shannon Little, *Challenging Changing Legal Definitions of Family in Same-Sex Domestic Violence*, 19 Hastings Women’s L.J. 259 (2008).

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### **Moore v. Bentley (Ohio)**

Ohio App. 10 Dist. (2004)

**Summary:** Petitioner was issued an ex parte civil protective order against his same-sex partner. On review, the court found that there was not enough evidence to demonstrate fear of imminent serious physical harm that was required for the issuance of a civil protective order. The court did not address the lower court's issuance of an ex parte civil protective order against a same-sex partner as an error.

**Note:** While there are no reported cases addressing the availability of civil order of protection to LGBT victims of domestic violence, Ohio courts have ruled on numerous occasions that its criminal domestic violence statute is not limited to persons of the opposite sex. In *State v. Hadinger*, 573 N.E. 2d 1191 (Ohio App. 1991) the court held that the domestic violence statute is meant to protect all persons who are cohabitating regardless of their sex. The Court stated that to rule otherwise would undermine the efforts of the legislature to safeguard, "regardless of their gender," the rights of victims of domestic violence. In *Austin v. Austin*, 866 N.E.2d 74 (Ohio App. 9 Dist. Feb 20, 2007) the court reaffirmed that the definition of cohabitation does not have to be between a man and a woman, as long as the relationship is "akin to marriage."

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### **Storch v. Sauerhoff (New Jersey)**

334 N.J.Super.266, 757 A.2d. 836 (2000)

**Summary:** Storch (plaintiff) sought a restraining order against her stepmother (Sauerhoff) based on their relationship as former household members. Storch and Sauerhoff lived in separate residences on the same block for eleven years. Sauerhoff argued that the plaintiff was neither a "family member" nor a member of the household. The Court of Appeals disagreed, finding that the stepmother/neighbor was a former or de facto household member.

In examining the term "household member," the court looked at the legislative history of New

Jersey's Domestic Violence Act of 1991. It found that by replacing the word "cohabitant" with the term "household member" the legislature clearly intended to expand coverage of the act to any person who has a close relationship with his or her batterer. Further, the Court stated that the Act "has been further amended to expand the list of persons protected. While the prior law required that victims be cohabitants of the opposite sex, related by blood, the current Act protects unrelated, same-sex persons living together, elderly persons in the care of unrelated persons and any other present or former household member."

### **Case Law Interpreting "Household Member" as it Applies to Roommates**

The following cases suggest an extension of the definition of "household member" to include roommates who are not engaged in an intimate relationship. These cases are relevant as many same-sex couples go through the court system without revealing the romantic nature of their relationship.

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### **Hamilton v. Ali (New Jersey)**

350 N.J.Super. 479, 795 A.2d 929 (2001)

**Holding:** Suitemate in a college dormitory was a "household member" within the meaning of the Prevention of Domestic Violence Act.

**Summary:** John Hamilton (plaintiff) and Richard Ali (defendant) were suitemates in a college dormitory. After an altercation involving physical violence and damage to property, Hamilton sought a restraining order against Ali under the Prevention from Domestic Violence Act. The question before the New Jersey Superior Court was whether a college dormitory suitemate is a "victim" within the meaning of the domestic violence statute. The Court answered in the affirmative, finding that the legislature intended the definition of "household member" to be interpreted broadly when it failed to provide a definition for the term. The Court restated its conclusion in *Storch v. Sauerhoff*, where it stated

that by replacing the word “cohabitant” with the term “household member” the legislature clearly intended to expand coverage of the act to any person who has a close relationship with his or her batterer.

The Court further reached its conclusion by examining case law which states that to qualify as a “household member” the parties must have more than a casual dating relationship but less than the parties residing together. Applying criteria outlined in case law, the Court found that a college dormitory arrangement constitutes a “family-like” setting within the meaning of the Act.

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### **Sommi v. Ayer (Massachusetts)**

51 Mass. App. Ct. 207, 744 N.E.2d 679 (2001)

**Summary:** Samuel Ayer (defendant) lived with Richard Sommi and Samuel Keller (plaintiffs) as a houseguest while attending school. After an argument, Ayer left the home and obtained ex parte restraining orders against the plaintiffs alleging physical and emotional abuse. A few days later, Sommi and Keller obtained ex parte restraining orders against Ayer in another district court. At a hearing on the merits, the district court judge stated that there was “abuse amongst all the parties here, and there will be mutual restraining orders.” However, the judge simply extended the ex parte no contact and stay away orders previously issued to the plaintiffs for one year and declined the Ayer’s request for written findings of fact. Ayer appealed. On review, the issue before the court was whether the restraining orders issued to the plaintiffs against the defendant were mutual restraining orders. Ayer argued that they were and thus should be vacated because the judge failed to make written findings of fact before issuance as required under the Massachusetts statute. The Court of Appeals agreed and vacated the orders.

**Note:** This case is included in these case summaries as it suggests that “household members” under Massachusetts statute applies to former roommates who were not engaged in an intimate relationship.

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### **O’Kane v. Irvine (California)**

47 Cal. App. 4<sup>th</sup> 207 (1996)

**Summary:** O’Kane (plaintiff) and Mark Irvine (defendant) each sublet a bedroom in a home. There was no romantic relationship between them. Following an altercation in which O’Kane alleged Irvine assaulted her, she obtained a temporary restraining order under the Domestic Violence Prevention Act. At the hearing, the trial court issued O’Kane a three-year restraining order. Irvine appealed and the Court of Appeal reversed. The court held that the trial court did not have jurisdiction to issue a restraining order as the parties were not “cohabitants” within the meaning of the Act. Under the Act, “cohabitants” are defined as persons “who regularly reside in the household.” Looking to the legislative history, the Court stated that there is nothing to indicate an intent to include the type of residential arrangement that existed between these parties. Rather, the Court found that the word “household” under the Act was meant to include “a collection of persons, whether related or not, who live together as a group or unit of permanent or domestic character... who direct their attention toward a common goal consisted of their mutual interests.” O’Kane and Irvine did not fit this definition.

**Note:** This case narrows the definition of “cohabitants.” California, however, permits dating partners to seek orders of protection.