

# COVID-19: Apprehended Domestic Violence Orders (ADVOs) – Advice for defendants

FACTSHEET

*This factsheet explains how COVID-19 changes will affect you if there is an ADVO against you.*

**You may be worried or confused about how COVID-19 will affect you. Sometimes a crisis can make legal problems worse or new problems might develop. Legal Aid NSW understands that there will be a lot of questions about your existing criminal matters, new charges, ADVOs, going to court and getting legal advice. This series of fact sheets will give you helpful information and contacts to assist you to manage all the changes that are happening in our community.**

## What has changed because of COVID-19?

The NSW Government has passed emergency laws because of the COVID-19 pandemic. The laws started on 25 March 2020 and will stay for 6 months at least.

NSW Courts have changed the usual way they deal with ADVO applications to reduce the risk of the spread of COVID-19.

## What has stayed the same?

All existing ADVOs are enforceable. This applies to provisional, interim and final ADVOs. This means that you must follow the conditions in the ADVO.

## What happens now with police issued provisional ADVOs orders?

NSW Police have the power to give you an on-the-spot ADVO. These are called provisional ADVOs. During COVID-19, provisional ADVOs may last for up to 6 months, rather than the usual 28 days.

A provisional ADVO from the police:

- Starts when it is given to you. This is called being served with the order.
- Stays in force until:
  - it is revoked, or
  - the court makes an interim order, or
  - the application for the final order is withdrawn or dismissed.

A breach of a provisional ADVO is a criminal offence and has a maximum penalty of 2 years jail or a fine up to \$5,500, or both.

## What happens once a provisional order is taken out during the COVID-19 period?

### I don't have a related criminal charge

If the provisional ADVO does not have a related criminal charge, the order will be listed at court 3 months after the provisional order is made.

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## I have a related criminal charge

If the provisional ADVO has a related criminal charge, the order will be listed on the same date the charge is first listed. On that date, the criminal charge and the ADVO will be adjourned for 8 weeks.

## The police have applied for another provisional ADVO

If a new DV incident happens before the court date, the police might apply for a fresh provisional ADVO with stronger protections for the protected person. It is important to follow the conditions of the most recent provisional ADVO. You can apply to a court to change the conditions if you think they are not necessary or there are too many restrictions on you.

## I don't agree with what's happening with the final ADVO

If you don't agree to a final ADVO being made by the court, the court will set a timetable for filing and service of evidence by both you and the protected person. The police will try to serve their evidence on you by email or post. You may lodge your evidence with the court by email. The evidence must be lodged by the date set by the court.

No new ADVO applications will be listed for hearing at this stage.

## Can I make an application to change or revoke an ADVO?

You can apply to make a change to an ADVO, this is called a variation. You can make this application if you think:

- That some of the original orders are no longer needed, or
- There are too many limits on you, and you want one or more of the orders removed.

The court will accept urgent applications to vary or revoke a final ADVO during the COVID-19 pandemic. There are different rules depending on whether you want to vary a provisional ADVO or a final ADVO.

## How do I apply to change a provisional ADVO?

You can apply to the court to vary a provisional ADVO.

- You must do this before the court date listed on the provisional ADVO.
- If a child under 16 is one of the protected persons on the ADVO, only the police can make the application.

An application to vary a provisional ADVO must be:

- Served on Local Area Command (LAC) of the police who applied for the ADVO. The contact details of the LAC will be on the provisional order served by police.
- Made at the same court where the ADVO is listed. The court will be listed on the original paperwork the police gave you when they served the ADVO.

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## How to I apply to change a final ADVO?

- An application to vary a final ADVO can be filed in any Local Court.
- You must give notice of the application to the police if they applied for the order in the beginning.

If you think your application to vary the ADVO is urgent:

- Contact the court by email.
- List why you want to make the application.
- Give reasons for why it is urgent.
- Make sure the court has your contact details and contact the court by telephone or email should these change.

You can find [court email addresses and phone numbers](#) on the NSW Local Courts website.

You will get an automatic email reply from the court to let you know your email has been received and actioned. You can also call the Courts Service Centre on 1300 679 272.

If the magistrate agrees your application is urgent, the court will tell you by email how the court will deal with the application. The application may be dealt with by written submissions if all the parties agree to do it that way.

## I have an ADVO court date, what do I do?

### Hearing:

- ADVO hearings listed before 1 May 2020 will be re-listed to be heard at a later date. The court will contact you with a new court date.
- If you have a related criminal charge:
  - you should speak to your lawyer or contact the court about when you need to go to court.
  - if you do not have a lawyer to represent you when your matter is given a new hearing date, you are expected to attend court in person.

### Mention:

- You and the protected person can tell the court about your situation in writing or by email. This will happen instead of going to court in person.
- Consent orders, these are orders when you both agree, may be made without you and the protected person going to court in person.
- If the application for a final ADVO is not agreed, the matter should be adjourned. The adjournment will be 3 months for standalone ADVOs and 8 weeks for charge matters.

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## What other changes have happened?

There have been changes to the length of time an ADVO can be in place. This is not related to the COVID-19 pandemic. These changes started on 28 March 2020.

There are two important changes:

- The standard length of an ADVO has increased from 12 months to 2 years. The court has to consider certain things when it sets the length of the ADVO.
- A court can now make an indefinite order against you if you are over 18. To get an indefinite order, police must satisfy the court that there is a significant and ongoing risk of death or serious physical or psychological harm to the protected person or their children. Also, the police must show that a fixed term order would not be able to deal with the risk to the protected person.

## Where can I find more information?

Visit the LawAccess NSW website for [more information about varying an ADVO](#).

There is also a series of [factsheets about COVID-19 and the law](#) available on the Legal Aid NSW website to assist you to manage all the changes that are happening in our community.

## How can I get help?

For free legal help call 1300 888 529 or [call your local Legal Aid NSW office](#).

There is also a series of factsheets about COVID-19 and the law available [on the Legal Aid NSW website](#) to assist you to manage all the changes that are happening in our community.

If you need an interpreter, call the Translating and Interpreting Service on 131 450 and ask for LawAccess NSW. If you find it hard to hear or speak, call the National Relay Service on 133 677 and ask for LawAccess NSW or visit [www.relayservice.gov.au](http://www.relayservice.gov.au).

This factsheet is intended as a general guide to the law. Do not rely on this information as legal advice. We recommend you talk to a lawyer about your situation. This information is correct at the time of writing, however, it may change.

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