

# Domestic violence

- Expulsion and prohibition of return  
pursuant to Art. 43ff. of the Police Act
- Protective measures under civil law



# Gewalt.Los

# Answers to the most frequently asked questions

The purpose of this brochure is to inform persons who suffer domestic violence of their rights. It also provides answers to general questions about intervention in connection with domestic violence and lists the types of help that are available now or will be so in the future.

## Expulsion and prohibition of return: Art. 43ff. Police Act

### Whom does the law protect?

The law **protects every person who suffers domestic violence**, regardless of whether the violence is exercised by the spouse or partner, parents, relatives or other occupants of the home.

### Where does the new act apply?

It applies to the Canton of St.Gallen: the person who is the victim of violence must reside on the territory of St.Gallen Canton. A similar law exists in the Canton of Appenzell Ausserrhoden.

### What can you do if you suffer violence?

If you or your child suffers violence, you may turn to an agency which provides assistance. In a situation of acute risk, you should immediately seek protection or assistance from the police:



## Emergency telephone number 117

The police are required to render immediate assistance. They determine the circumstances and may order persons who present a danger to others to leave the home/house and immediate environs for ten days and prohibit their return to this area. As a victim of violence, you and your children are as a matter of course entitled to remain in your accustomed environment.

The code of criminal law defines offences against which the State automatically takes action. In such cases, the police are obliged to press charges regardless of the wishes of the victim and to investigate the perpetrator of the act so that he or she can be called to account under criminal law. Then there other offences against which criminal proceedings are taken only at the express request of the injured party. The charge must be brought to the police or examining judge within three months of the date on which the offence was committed.

Serious crimes, such as murder or manslaughter, grievous bodily harm, rape, coercion and deprivation of liberty, are always followed by action in criminal law which is taken automatically, regardless of the relationship existing between the victim and the perpetrator of the crime. In addition, the obligation to open proceedings also applies in cases of simple bodily harm, repeated duress and threats, but only if the action was committed between spouses up to one year after the divorce and, in the case of cohabiting couples (including same sex partners), up to one year after they have ceased living under the same roof. In other cases, criminal charges must be brought specifically for the three offences mentioned above to enable the person who has committed the violent act to

be called to account under criminal law.

In all cases of acts of duress committed on one single occasion, damage to property, breach of the peace, sexual harassment, misuse of the telephone etc., criminal proceedings are brought only at the request of the victim.

As a rule, violence by adults against children is automatically the subject of legal proceedings.

### **What can you do if you become aware of violence in your neighbourhood?**

Once again, you may contact the police.

### **Does expulsion depend on the victim's own wishes?**

No. If a serious threat is made and the victim does not wish the perpetrator to be expelled – through fear or because of concealed threats – the police will nevertheless order the expulsion. In this way, the legislator wishes to provide automatic assistance to the victims of violence.

### **Does the ownership or rental situation of the property make any difference?**

No it does not. The police may expel anybody who is a source of danger, including the owner or sole tenant of the property.

### **Removal of keys. Indication of an address for the service of proceedings.**

When the person who has caused the risk is expelled, the police will remove the keys to the apartment or house from him. The person who is expelled will be asked by the police to indicate an address at which official documents can be served.

### **What is the expelled person allowed to take away?**

The expelled person may take away urgently required objects of a personal nature (e.g. personal documents, clothing, identity papers, medicines, etc).

### **To which places is the expelled person prohibited to return?**

This measure applies to the apartment/house and its immediate surroundings. They include for example, corridors, staircase, cellar, laundry room, courtyard, garden and access or drive leading to the house. When determining the restricted area, the key consideration is effective protection of the victim and the prevention of further escalation of violence. The police must clearly state the protected geographical area in the expulsion order. The expelled person is handed the written expulsion order and the person who is at risk receives a copy.

### **What happens if the perpetrator of violence is unwilling to leave?**

In that case, the police may use force and remove the violent individual.

### **Can expulsion and prohibition of return be imposed, even if the police are only subsequently informed of the violent act?**

Yes. Expulsion and the prohibition of return may also be imposed if the persons affected by violence turn to the police after maltreatment and are afraid of further violence.

### **For how long does the prohibition on return apply?**

The prohibition on return applies for ten days. Within three days of expulsion, it must be checked and approved by a Justice of the Peace. This decision is final. If the police ruling is set aside, the result is that the person who has been expelled will be handed



back the key by the police and may return to the apartment/house. The victim will also be informed of this.

### Can the prohibition on return be extended?

Yes. If the prohibition on return is to last for more than ten days, the endangered person must act and within seven days of the expulsion apply to the civil court for a protection order (see below: extension of protection; order for protective measures by the civil court).

### How is compliance with the prohibition on return verified?

As a general rule, compliance with the prohibition on return is only verified by the police at the request of the endangered person. However, the police may also check compliance at their own initiative. They do so primarily if they believe that the further escalation of violence is a serious risk.

### What can you do if the expelled person fails to comply with the prohibition on return?

In that case, you should immediately call the police (emergency telephone number 117). The police will remove the expelled person, if necessary forcibly. Entry into the home is also a punishable offence – on grounds of failure to comply with an official order – and renders the perpetrator liable for detention or a fine.

### Can the expelled person return when he or she has calmed down?

No. Once the expulsion has taken effect, the expelled person cannot return. Even if the endangered person voluntarily allows the expelled person to enter the home, the expelled person is still committing a punishable offence. If the expelled person needs to fetch urgently required objects from the home, this may only be done in the presence of a police officer.

### Where can you obtain information, support and advice?

Victims of violence may seek advice from



Advisory Centre for Female Victims of Violence  
Victim Aid Foundation Office

**Beratungsstelle Gewaltbetroffene Frauen**  
**Fachstelle der Stiftung Opferhilfe**

**Telefon 071 227 11 44**

Advisory Centre for Aid to Victims  
Victim Aid Foundation Office

**Beratungsstelle Opferhilfe**  
**Fachstelle der Stiftung Opferhilfe**  
(for male victims of violence)

**Telefon 071 227 11 00**

The counselling centre informs, assists and advises you on personal and legal matters. It also helps you to submit a request for an order for protective measure to the civil court. Advice is given without charge. The staff of the counselling centre are covered by an obligation of absolute secrecy. You may suspend counselling at any time.

### **Do you want the Counselling Centre for Assistance to Victims to contact you?**

If so, you must give written consent to the police for your personal particulars to be forwarded to the counselling centre (Form: "Notification pursuant to Art. 6 para. 2 OHG, intervention against domestic violence"). In that case, the counselling centre will contact you but you may also contact the centre later on your own initiative.

### **Where can the expelled person obtain advice?**

The expelled person may contact "Counselling for Men in Case of Violence": this office is attached to the protection and assistance service (see addresses). Information, counselling and assistance are available here free of charge.

If the violent partner wishes to change his conduct, he may address himself to the Counselling Centre known as "cib" or "Men against Male Violence" for advice in St.Gallen (see addresses). The person concerned will have to pay for this counselling.

After examination of the case, participation in a social training programme is also possible. These courses are given by the protection and assistance service.

### **Notification to the guardianship authority**

Where guardianship measures may have to be taken, the police force will report the expulsion as soon as possible to the appropriate guardianship authority. The guardianship authority will check whether child care measures must be ordered in relation to the expelled person. Where children are the victims of violence, the authority will determine whether child protection measures are needed.

## **Police custody under Art. 40ff. Police Act**

### **May the police also take a violent person into custody?**

In principle, yes. The police may take a person into provisional custody if he represents a serious and immediate threat to himself or others and the threat cannot otherwise be averted. Often, the milder measure of expulsion with a prohibition on return will be sufficient to avert or at least to reduce the risk. Generally, when domestic violence occurs, the police will therefore order expulsion. The violent person will be taken into police custody if he is under the influence of alcohol or drugs or had repeatedly perpetrated acts of violence and makes it clear that he will not comply with the ruling on expulsion with a prohibition on return.

### **For how long may the police take a person into custody?**

The person must not be kept in custody for longer than is absolutely essential. If a risk of self-inflicted violence exists, the custody may not last for more than 24 hours. Where the risk is to other persons, the custody may, at the request of the police, be extended by the Justice of the Peace for a maximum of eight days.

### **Can police custody and expulsion with prohibition on return be ordered simultaneously?**

Yes. Even if the violent person is taken into police custody, the police may order expulsion with a prohibition on return as police custody can only be ordered for a short period. In such cases, a prohibition on return is particularly important

as a return to the shared home often results in a further escalation of violence. The victim of violence must be able to decide – without the threat of further attacks – whether to apply to the civil court for a protective order.

### **Relationship between detention for investigation and expulsion**

The question as to whether the person who perpetrates violence is arrested for further investigation after police custody depends on whether criminal proceedings are opened, reasons for detention exist and arrest for further examination is proportionate.

## **Extension of protection: protection order by the civil court Art. 43<sup>quinquies</sup> Police Act**

If you want the prohibition on return to last for more than ten days, you must seek a protection order from the civil court within seven days of the expulsion. In that case, the prohibition on return is automatically extended by not more than ten days to give the court time to decide on your applications. The court immediately informs the police of receipt of the application. The police will notify the persons concerned of the extension. An application for a protection order may also be made without prior intervention by the police. The type of protection measure which is sought will depend on whether or not you are married.

### **How do you apply for protective measures under civil law if you are married to the expelled person?**

In that case, you must make an application as soon as possible but not later than seven days after the expulsion order to the marital protection judge attached to the appropriate court for marital protection measures to be taken. If divorce proceedings are already pending with the court, you may apply for provisional measures. It is important for you to first seek advice to enable you to make the correct applications and submit the necessary documents and evidence. The Counselling Centre for Assistance to Victims in St.Gallen will help you to make the application. It may also determine whether you should have legal representation.

### **What applications can be made?**

- Expulsion from the marital apartment/house
- Prohibition on entry to the apartment/house and immediate environs
- Measures such as prohibited access to the street, district or neighbourhood and ban on any form of contact
- Taking the children into protection
- Determination of visiting rights
- Fixing of children's maintenance and possible maintenance contributions for the spouse
- Allocation of certain property, divisions of assets, etc.
- Free conduct of legal proceedings/advance of legal costs
- Procedural applications such as urgent orders, separate questioning, etc.

### **Does the situation regarding ownership or rental play a role?**

No, it does not. The expulsion order from the home/house may be issued even if the expelled spouse is the owner or sole tenant. The only important factor is that the endangered person has an urgent need of accommodation.

### **How can violence be proved?**

Evidence of violence must be produced. The police expulsion order and the approval decision of the Justice of the Peace, any criminal sentences, police reports on earlier incidents, medical certificates, photos of injuries, threatening letters from the other party, written information from the counselling centres or women's safe houses and, in exceptional circumstances, witness statements by relatives or acquaintances (with the address and indication of the nature of the evidence), but not written reports by private individuals.

### **Will the expelled person be questioned about your applications?**

In principle, yes. The expelled person is entitled to explain his view of the events (legal hearing), to make his own applications and submit evidence of his own. In general, the court will decide after hearing both parties.

### **What are urgent orders?**

If time is pressing, the court may issue provisional orders for the duration of the legal proceedings even without hearing the other party. It may for instance stipulate that the home is provisionally allocated to the endangered person and that the violent individual must not enter the home. However, before the final decision is taken, the expelled person will always be granted a legal hearing. An application should be made for an urgent order relating to allocation of the home and the prohibition on access.

### **Will you be confronted with the expelled person during the legal proceedings**

The court invites both parties to a verbal hearing. If, for psychological reasons, you are unable to meet the partner, an application should be made for separate questioning and for the avoidance of a direct confrontation. In exceptional cases, this will be granted with a medical certificate.

### **Can you be accompanied to the court hearings?**

An employee of the counselling centre may accompany you to court proceedings. The court must be informed in advance. When the sole purpose of the court appointment is to take statements, you are not entitled to be accompanied – not even by an attorney-at-law. In exceptional cases, the court may allow an accompanying person to be present if you explain the reasons.



### **Who will pay the court and any attorney's costs?**

The court and attorney's costs are in principle apportioned on the basis of the outcome of the proceedings; it therefore depends on which party is successful in his applications. If a person is in straightened circumstances, in other words if he does not have sufficient income or assets, he may apply for the other party to advance the cost of the proceedings, insofar as that party is solvent. Otherwise an application must be submitted for the proceeding to be conducted free of charge. A person who lacks resources is advised to make both applications jointly and at the earliest opportunity.

### **What can you do if the expelled person fails to comply with the prohibitions ordered by the court?**

Call the police immediately, referring them to the prohibitions contained in the court decisions. Keep these decisions carefully. The police will remove the offender and take proceedings for failure to comply with an official order at the public prosecutor's office. The police may also take the offender into provisional custody if a serious and immediate threat exists and this cannot be averted in any other way.

### **How can you apply for protective measures under civil law if you are *not* married to the expelled person?**

The situation in this case is so complex that you will always need to seek legal advice. In principle, you may apply to the single judge at the appropriate court for rapid legal protection and seek a prohibition on access to the home and any other protective measures that may be necessary. The guardianship authority and not the court is responsible for matters concerning children.

## **Your own safety is important!**

**The new legal provisions on expulsion provide better protection for the victims and also allow them to stay in their familiar surroundings. However, they do not afford sure protection against violence! In dangerous situations, it may still be important for you and your children to leave the home and seek secure accommodation (e.g. in a women's safe house) at least until the most dangerous period is over. Acts of violence tend to increase on the occasion of separation and divorce.**

**Other factors which increase danger are: possession of arms, use of alcohol and drugs, (suicide) threats or pathological jealousy and concepts of possession. Escaping from a relationship in which maltreatment occurs is a difficult and often lengthy process. You should always organise help and build up a network of support.**



# Emergency card

## for victims of violence in marriage, partnership and the family

### Do you feel unsafe in your relationship?

Are you a victim of violence or do you feel threatened?

### Domestic violence is not a private problem!

Help and assistance are available.

### In an emergency and for immediate help:

Police emergency telephone number



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<b>Local courts:</b>	St.Gallen	071 228 46 00
	Rorschach	071 846 82 50
	Rheintal, Altstätten	071 757 83 00
	Werdenberg-Sargans, Mels	081 720 00 50
	Gaster-See, Uznach	055 285 91 30
	Ober- + Neutoggenb., Lichtenst.	071 988 40 33
	Alltoggenburg-Wil, Wil	071 913 91 61
	Untertoggenburg-Gossau, Flawil	071 394 18 18

If you need counselling and assistance against violence, or if you do not know how to apply to the civil courts for the extension of the duration of protective measures, please contact

**Beratungsstelle Gewaltbetroffene Frauen** → 071 227 11 44  
**Fachstelle der Stiftung Opferhilfe**

(Advisory Centre for Female Victims of Violence)

Teufenerstrasse 11, 9001 St.Gallen

**Beratungsstelle Opferhilfe** → 071 227 11 00  
**Fachstelle der Stiftung Opferhilfe**

(Advisory Centre for Aid to Victims)

(für gewaltbetroffene Männer – for male victims of violence)

Teufenerstrasse 11, 9001 St.Gallen

An appointment should preferably be made by telephone

If children are involved, please contact  
your local authority (Gemeindeverwaltung)

If children and young people are directly affected by violence:

**Kinderschutzzentrum InVia** 071 243 78 02

(Contact and Counselling Centre, Children's Protection Centre)

Falkensteinstrasse 84, 9006 St.Gallen

or if you need urgent protection and safety

**Kinderschutzzentrum Schlupfhuus** 071 243 78 30

(Safe House, Children's Protection Centre)

Claudiusstrasse 6, 9006 St.Gallen

If you must bring yourself and your children  
to safety and need counselling and assistance:

**Frauenhaus St.Gallen**

(Women's House St.Gallen)

can be contacted round the clock

071 250 03 45



If you have suffered physical violence, you should seek medical assistance and obtain a medical certificate. For that purpose

**contact your general practitioner** tel.....

In an emergency call **tel. 144** to obtain details of the duty doctor.

If you have suffered sexual violence, please contact

**Soforthilfe für vergewaltigte Frauen** **079 698 95 02**

(Immediate Help for Women Victims of Rape)

at St. Gallen cantonal hospital within the first three days of the offence (this number can be reached round the clock). You will receive help and medical assistance. Injuries can be treated and illnesses prevented. A forensic medical examination, which is important if you wish to press charges later, can be performed here.

If addiction problems (e.g. alcohol) are involved or you need further assistance (e.g. with educational problems), please contact the

**social counselling office for your region**

You will find the address in the telephone directory or ask the **social office at your local authority**. You may also contact that office if you are in a difficult financial situation following a separation.

For information about self-help groups, e.g. against addiction:

**Kontaktstelle für Selbsthilfegruppen** **071 222 22 63**

(Contact Centre for Self-Help Groups)

[www.selbsthilfe-gruppen.ch](http://www.selbsthilfe-gruppen.ch)

Persons who have been expelled by the police and are the subject of a prohibition on return can obtain information and initial advice without charge from

**Beratungsstelle Häusliche Gewalt** **071 229 26 30**

**für gewaltausübende Personen**

(Advisory Centre on Domestic Violence

for the Perpetrators of Violent Acts)

Oberer Graben 22, 9001 St.Gallen

**Männer gegen Männer-Gewalt** **071 22 333 11**

(Men against Men's Violence)

Vadianstrasse 40, 9000 St.Gallen

E-mail: [ostschweiz@gewaltberatung.org](mailto:ostschweiz@gewaltberatung.org)

**Violence against women and children is not a private problem.**



Koordinationsstelle des Kantons St.Gallen  
gegen häusliche Gewalt  
Oberer Graben 32, 9001 St.Gallen, Tel. 071 229 75 43