

# Order of Protection



Revised 2014.

An Order of Protection is a court form signed by a Judge that orders a person to stop harming, threatening, or intimidating you or your minor child.

## **WHAT KINDS OF CONDUCT CAN AN ORDER OF PROTECTION STOP AN ABUSER FROM DOING?**

An Order of Protection can stop an abuser from (1) **causing physical harm**, (2) **threatening** to cause physical harm, (3) **forcing** someone to do something they don't want to do, (4) engaging in **harassment** that causes someone substantial emotional distress on more than one occasion, (5) **confining or holding** someone against their will, (6) repeatedly **stalking** someone or causing them to be afraid, intimidated or emotionally distressed, and sexually assaulting someone. Also, it also stops an abuser from physically, sexually, or emotionally abusing a child.

Some examples of harassment (number 4 above) that might cause emotional distress include, but are not limited to: someone following you, peering inside you

window or lingering outside your residence.

## **WHO CAN AN ORDER OF PROTECTION BE ENTERED AGAINST?**

If an Order of Protection is based on stalking (see number 6 above), the Order of Protection can be entered against anyone engaged in such stalking.

However, an Order of Protection that is based on abuse (see number 1-5), rather than stalking, can only be entered against a household or family member. This includes an abuser that a person is or was married to. Additionally, a person can file an order based on abuse against any abuser related by blood or marriage, any abuser that a person is living with or has lived with in the past, any abuser a person has been in a romantic or intimate relationship with, and any abuser who has a child in common with the person.

## **WHO CAN FILE A PETITION TO GET AN ORDER OF PROTECTION?**

In order to file a Petition for an Order of Protection, you must be at least 17 years old or be emancipated ('on your own,' such as married or a member of the military).

## **CAN I GET AN ORDER OF PROTECTION FOR MY CHILD?**

Yes, as long as the child is either under the age of 17 years old or is not emancipated, and otherwise meets the requirements for being eligible for an Order of Protection.

## **WHAT TYPES OF ORDERS ARE AVAILABLE?**

A Full Order of Protection prohibits the person who it is issued against from further acts, attempts or threats of abuse or stalking. The petition may request additional relief such as maintenance, child custody, child support and/or visitation. There are also Ex Parte Orders of Protection which offer the same kinds of protections as a Full Order but these Orders are more temporary in nature and are designed to protect the victim before the hearing on the merits occurs.

## **HOW LONG DOES THE ORDER OF PROTECTION LAST?**

A Full Order of Protection is issued for a specific period of time - at least 180 days, but not more than one year.

## **HOW DO I GET AN ORDER OF PROTECTION?**

## **Where do I go to get a Petition form?**

You can go to the Circuit Clerk's Office at the County Courthouse and ask for a "Petition for Order of Protection." Some counties have victim advocates to help you fill out the forms.

## **Who will help me fill out the petition if I can't get an attorney?**

The court clerks will explain how to fill out the form, but they cannot give you legal advice. Also, most counties have victim advocates to help you file your Petition, and they may go to with you to Court.

MMLS assists survivors of domestic assault in filing for an Order of Protection as well. For assistance, contact MMLS at 573-442-0116.

## **How do I fill out the Petition?**

Read the directions carefully and answer the questions honestly. The judge needs to hear about the most recent violent event, the most violent and frightening events, the first violent event and how often the violence occurred. Answer specifically and give dates if possible. It helps to be specific about how your abuser hurt you, why you were afraid then, and why you are afraid now.

## **What if I don't want the Respondent (the abuser) to know where I'm staying?**

You are not required to reveal any current address or place of residence on the Petition. Do not provide this information if doing so will endanger you in any way.

## **Where do I file it?**

You can file the Petition in the Circuit Clerk's Office at the County Courthouse in the county where you live, where the abuse or stalking occurred, or where the abuser lives or works.

## **What does it cost?**

Nothing. It is free.

## **What happens after I file my Petition?**

The Clerk will give your Petition to a Judge, and the Judge may sign an Ex Parte (temporary) Order if the judge finds there is a present danger of abuse against you. You probably won't have to talk to the Judge when you file the Petition. If the judge enters an Ex Parte Order, the Clerk will have a law enforcement officer give (serve) your abuser copies of the Ex Parte Order and the Petition you filed. The Order goes into effect immediately when the Judge signs it.

Whether or not an Ex Parte Order is issued, the Judge will have a hearing within 15 days to decide whether a Full Order of Protection should be issued. The Clerk can tell you the date and time for this hearing. You must attend this hearing and you should bring any witnesses, documents, photos, or other evidence of the abuse with you to the hearing. If you do not attend this hearing, your Petition for Order of Protection will be dismissed.

### **How soon can I get an Ex Parte (temporary) Order?**

The petition will be presented to a judge immediately after filing, so an Ex Parte is usually entered the same day that the Petition is filed.

### **Does the Respondent see what I wrote in the Petition?**

Yes. But, remember, you don't have to include the address of where you are staying or working in the Petition.

### **Do I have to talk to the Judge?**

You probably won't have to talk to the judge when you file the Petition. However, you will speak to the judge at the hearing when the judge decides whether a Full Order of Protection should be issued.

### **HOW DOES THE RESPONDENT (MY ABUSER) GET SERVED WITH THE PETITION?**

A local law enforcement agency will serve the Respondent with the Petition either in-person or by mail.

### **Who serves the Respondent?**

If the judge enters an Ex Parte Order, the Clerk will have a law enforcement officer give (serve) your abuser copies of the Ex Parte Order and the Petition you filed.

## **What if the Respondent doesn't live in Missouri?**

The Court will order out of state service on the Respondent, and he or she will be served with your Petition where he or she resides.

## **HOW DO I PREPARE FOR THE HEARING?**

The best way to prepare for the hearing is to remind yourself of what you alleged in your petition. You will need to put on evidence at the hearing about the abuse or stalking that you described. Often, the best way to do that is to testify to those facts in court. The most successful testimonies in courts occur when parties are able to recall specific instances and dates. Since you are testifying under oath, your entire testimony must be truthful. You should also anticipate any questions the other side will ask you on cross-examination. The most important part of your entire case will be your ability to communicate that you feel fear toward or are threatened by the person you are seeking your Order from.

## **Do I have to go to the hearing?**

Yes, otherwise your case will be dismissed and you will have to re-file with the Court.

## **Do I need a lawyer?**

No. These hearings can be done pro se (without a lawyer). However, the procedural rules of the Court still apply and the Respondent always will have the right to have a lawyer present at the hearing. Also, issues such as child support, division of property, visitation, and custody can arise in these cases. Therefore, it is best to have an attorney who knows the law and procedure of the courtroom to represent your rights and interests.

## **What should I plan to tell the judge?**

You should plan to tell the judge a truthful account of the events alleged in your petition. In domestic abuse cases, many attorneys have their Petitioner clients discuss the first, worst, and last episodes of abuse they have encountered. You should be as specific as possible and recall specific dates and events. When referring to other people, be sure you are clear whom you are speaking about and avoid overusing vague words because they can confuse the Judge. You should be prepared to tell the judge why you are afraid of the adverse party and why you are seeking an Order of Protection from the Court.

## **What do I have to prove?**

You have to prove that you are afraid of the adverse party and that your fear is reasonable based on the facts you alleged in your petition.

## **Do I need witnesses, photos, and police records to prove I was abused?**

Maybe. If you plan to use photos or police records, you will have to follow the Court's procedure to admit them as evidence at the hearing. The best way to use photos and police records as evidence is to consult an attorney for your specific situation. Calling witnesses is a little easier, but if you plan to call a police officer as a witness you will need to subpoena them well in advance of the trial. Many Petitioners (meaning those who filed the petition) think it is a good idea to call a long line of family members who have witnessed the abuse over the years, but that is not always true. Judges tend to discredit family members that serve as your witnesses because they may be biased. The amount of evidence needed to prove a case varies in each situation. However, you do not need to bombard the judge with every possible piece of evidence. Each piece of evidence you present should be crucial to proving an important aspect of your case.

## **What help or relief can I ask for?**

In addition to your Full Order of Protection, you can ask for child support for any mutual children, custody, visitation, maintenance, payment for medical bills, and payment for the mortgage, vehicles, and any property that is immediately necessary for you to function in your daily life. You can also ask that the abuser complete any necessary counseling or rehabilitative programs before he or she is able to have contact with any mutual children. However, if the Order of Protection is sought as the first step to obtaining a divorce, many of these programs will be determined by a court at a later date.

## **WHAT HAPPENS AT THE HEARING?**

At the hearing, the judge will call your case and the parties will walk to the front of the courtroom. You, as the petitioner, will put on your evidence first. This generally occurs after the judge swears you in. Next, you can make a statement and explain your side of the case. This would be the time that you could present pictures or call witnesses. Then the Respondent (the other side) will have the opportunity to cross-examine you and/or your witnesses. This means the Respondent will get the chance

to ask you questions about your testimony in front of the judge. After cross-examination, you can clarify anything that the Respondent may have misstated or you disagree on. Next, the Respondent will put on his or her evidence, if they have any, and the exact same process will take place in reverse. Judges may allow the both parties to ask follow-up questions or give further testimony. Parties may be given an opportunity to make a closing statement after all of the evidence has been presented and the judge will make a decision.

### **When should I ask for a continuance?**

You should ask for a continuance if the Respondent has not been served yet, if you have not had time to find an attorney and you would like to, if you wish to amend your petition and the Respondent has not had adequate time to review the amended petition, or if you need more time to prepare your case and you have not already requested a continuance before.

### **What if Respondent cannot be served?**

If Respondent has not been served, you should still attend the hearing and the judge will continue the case. If there have been several unsuccessful attempts to serve the Respondent, you may need to find a more suitable address or hire a special process server. After three or four continuances, the Judge will likely dismiss your case without prejudice. This means you are free to re-file your petition if Respondent shows up later and you still believe you need protection.

### **Should I agree to settle without a hearing if the Respondent agrees to the Order?**

Respondent always has the right to consent to the Order of Protection without a hearing. This means that the Respondent is not admitting to any of the allegations of abuse but agrees that the court enter a Full Order of Protection for 180 days to one year. However, it is still important to appear in front of the Judge to make sure that a consent ruling is ordered to ensure you actually have the protections. Neither party will need to put on evidence, but the judge will officially enter the consent ruling.

### **How do I enter my testimony and other evidence?**

The Petitioner will have the opportunity to testify as to the facts generally alleged in the petition. Petitioner is not completely restricted to the words in the petition, and

can use experiences outside the petition to show a pattern of domestic violence to some degree. However, all of the things the Petitioner will testify about must somehow relate back to the petition. The Petitioner cannot bring up any statements by other people, other than the Respondent, in his or her testimony because that is hearsay. This includes the statements of police officers. In order to get the statement of a police officer into evidence, the police officer will need to testify at the hearing, which can only occur if the officer is subpoenaed prior to the hearing date. If the Petitioner wants to admit statements from the police report without having the officer present, the Petitioner will need to serve the Respondent or his or her counsel with a copy of the report and a notice that Petitioner intends to use the report at the hearing at least ten days prior to the hearing. To admit most other evidence that is not an out of court statement by someone other than the Respondent, the Petitioner will need to lay foundation and offer the evidence as an exhibit. To offer evidence as an exhibit, Petitioner must bring three copies of the evidence and ask the clerk to mark one copy as an exhibit before the hearing. Before Petitioner discusses the evidence, he or she must give a copy of the evidence to the Respondent or his or her attorney and the Judge. Petitioner must state how they know what the evidence is, what the evidence is and how it relates to the case.

### **If the Judge Enters an Order to protect me, when does it go into effect?**

The Order goes into effect immediately and typically lasts 365 days, but no less than 180 days.

### **CAN I EXTEND OR CHANGE MY ORDER OF PROTECTION?**

It is possible to extend or change your Order of Protection. You will need to file an Affidavit of Changes in Circumstances and a Motion to Modify Adult Abuse/ Stalking Judgment Entry Full Order of Protection.

### **WHAT HAPPENS IF I MOVE AWAY?**

If you move away, your Order of Protection will follow you to another state.

### **HOW DO I ENFORCE MY ORDER OF PROTECTION?**

If the Respondent contacts you in any way, you should call the police. However, if you and the Respondent have a mutual child and Respondent contacts you about



the child only and the contact is reasonable under the circumstances, it may not be a violation of the Order of Protection.

Provided by MMLS – June 2014

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