



Order of Protection Packet

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Order of Protection Fact Sheet

Introduction

An order of protection:

- keeps the abuser away from you at your home, job, church, school, your child's school or daycare, or any other address where you want protection
- makes your abuser move out of the house if you are living together
- decides who will have temporary custody of your children and sets up a temporary visitation schedule
- orders your abuser to pay temporary support to you or your children
- stops the abuser from contacting you, although the court may allow specific instances for contact
- orders the abuser to stop harming or harassing you
- helps you get your personal possessions

Domestic Abuse

Domestic abuse means physical harm, bodily injury or assault, or someone making you afraid of physical harm. You do not have to be physically hurt to be the victim of domestic abuse. If someone makes you afraid by threatening that you are going to be hurt or assaulted, that can be considered abuse.

Domestic abuse can also mean any sexual behavior between family members or people in the same house that constitutes a crime (such as rape or sexual contact with a minor—someone who is under 17 years old) in Arkansas.

Eligibility

It is against the law to abuse someone who is a family member or who lives or used to live in the same house.

A household or family member could be a:

- spouse: a husband or wife (currently married or divorced)
- boyfriend or girlfriend (current or past dating relationship)
- parent
- child
- person related by blood within the fourth degree of consanguinity (such as an uncle or grandparent)
- person who lives or used to live in the house (or cohabitate)
- couple who has a child together

Filing

You can go to a circuit clerk in the county in which you reside, where the person who is abusing you lives, or where the abuse happened, to obtain the forms, which are the Petition for Order of Protection and Affidavit. Many domestic violence shelters and some prosecutor's offices also have victim advocates who can assist you with filing your petition and affidavit.

Once you have completed the petition and affidavit, you are ready to file. If you are staying at a shelter, you can go to the county courthouse where the shelter is.

Fees

There is no charge to file an Order of Protection. The clerk will look at the form to make sure you have filled everything out. You do not have to put your physical address on the petition, but the court will need a mailing address.

The Judge May Not Grant Your Order

The judge may have questions about your petition. The judge may also say that you did not give enough information in your petition.

If the judge finds claims of domestic abuse that require immediate protection, the judge can sign an immediate Ex Parte Order of Protection. This is only a temporary order of protection. You will have to show up for a hearing within about 30 days so the judge can decide if you need to have a permanent order of protection and, if you do, how long it should last. You need to attend this hearing.

You have the right to explain to the judge why you need the order of protection. You may have to ask the clerk to set a hearing. The court is required to schedule the hearing within 30 days. If the court refuses to set a hearing, or if it sets a hearing outside the 30 days, this violates the statute and you can request free legal help to get a hearing set.

At the hearing, you can represent yourself, hire an attorney, or apply for free legal help by calling legal services at 1-800-952-9243. You can also ask the court to pay your attorney's fees.

Hearing

At the hearing, you will have a chance to testify. You can also call other witnesses to speak on your behalf. You can call your abuser to the stand and ask questions. You can cross-examine



any witnesses that the abuser brings to testify. You can make an opening statement and a closing statement to the judge. The hearing is your chance to present any evidence about the abuse and why you need an order of protection. If you represent yourself in court, you will have to follow all the rules of civil procedure and evidence at the hearing.

Your Abuser Will Know About It

You will have to let the respondent, or the abuser, know about the hearing. The respondent has the right to be there and explain to the judge why you do not need an order of protection.

You will have to tell the judge why you are afraid of the abuser and why you need to keep the abuser away from you or your child.

When you have the temporary order of protection, take it to the sheriff. The deputy can serve the person listed as the respondent in your order of protection. The deputy will need as much information as you can give them so they can find the abuser and serve the abuser with the court hearing. The sheriff will not charge you for this service.

If your abuser is not served, you should still attend the hearing. You can ask to the judge to extend the ex parte order of protection for 30 days so you can complete service. If the abuser is not served within that 30 days, then the order of protection may be dropped.

Preparing

You should wear your best formal clothes for court. No shorts. When you go, bring:

- witnesses: anyone who has seen the abuse or heard threats made by your abuser
- police reports: kept copies of any police reports of any domestic abuse, which should have been reported to the police as soon as possible
- pictures: taken and kept, preferably in color, if your abuser has inflicted any visible injuries
- medical records: kept copies of any medical records related to your abuse
- financial documents: information about your income and the abuser's income if you are asking for child support
- court records (if you are divorced)

Orders of Protection vs. Restraining Orders vs. No-Contact Orders

You can have an order of protection, restraining order, and no-contact order at the same time and against the same person.

Orders of Protection

If you are a victim of domestic abuse, you need an order of protection. If you have an order of protection, the police can arrest your abuser if that person violates the order. Violating an order of protection is a class A misdemeanor.

You do not have to pay anything and you do not need an attorney to get an order of protection. Having an attorney can help, but you can file the petition yourself and represent yourself at the hearing.

Restraining Orders

If you are getting a divorce, then you or your attorney might ask the judge to issue a restraining order. This stops one spouse from selling marital property in a divorce, and it also stops one spouse from harassing or bothering the other person.

No-Contact Orders

A criminal court issues a no-contact order. It is done in criminal cases against abusers as a condition of bail release from jail.

Violations

If the person abusing you comes to your house, your job, or any address that you listed in the order of protection, call the police. Tell the police you have an order of protection. They will ask to see a copy of the order. You should have multiple copies of the signed order and one kept with you at all times. (Give copies to your employers and your children's school or daycare.) The police can arrest your abuser for violating an order of protection.

You can also ask the prosecutor to file criminal contempt charges on the abuser. You can also file civil contempt charges on the abuser to have the abuser pay a fine or be placed in jail. You can also ask the court to extend your order of protection.

This fact sheet is a collaboration of the Center for Arkansas Legal Services and Legal Aid of Arkansas, Inc. These nonprofit organizations provide free legal assistance to eligible Arkansans who meet income, asset, and other guidelines. Legal assistance may also include advice and counsel, brief services, or full representation depending on the situation. For more information about civil legal aid in Arkansas, please visit arlegalservices.org. For information specific to Legal Aid of Arkansas, Inc., visit arlegalaid.org. Apply for services online or by calling 1-800-9-LAW-AID (1-800-952-9243).

The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.

**Content provided by:
Legal Aid of Arkansas, Inc.**

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Order of Protection Instructions

Where to Go

The Circuit Clerk in the county in which you reside has the forms. For a complete list, you can visit the Arkansas Judiciary website.

You can also go to the county courthouse where you live, where the abuser lives, or where the abuse happened to file your petition for an Order of Protection. If you are in a shelter, you can go to the courthouse in the county where the shelter is. There is no charge (you do not have to pay filing fees) to file the petition. You will complete a form, or a "petition," asking the judge to issue an Order of Protection. You will also complete an "affidavit." Both forms should be provided to you. Based on your statements in the petition and affidavit and evidence you provide, the judge will decide whether to issue the order and what to include in the Order of Protection.

Why Judges Issue Orders of Protection

Judges can issue Orders of Protection to:

- keep the abuser away from you at your residence, place of employment, church, children's schools, or any other address where you want protection
- make your abuser move out of the house if you are living together
- decide who will have temporary custody of your children and set up a temporary visitation schedule
- order your abuser to pay temporary support for your children or yourself
- stop the abuser from contacting you except in specific instances that court allows
- order the abuser to stop from harming, harassing, or molesting you
- order a civil standby for you to retrieve your personal possession

If your abuser violates the Order, you can report it to the police and the abuser can be arrested.

Orders of Protection vs. No-Contact Orders vs. Restraining Orders

Many people are confused about the differences between an Order of Protection, a Restraining Order, and a No-Contact Order.

Orders of Protection

If you are a victim of domestic abuse, you need an order of protection. If you have an order of protection, the police can arrest your abuser if that person violates the order. Violating an order of protection is a class A misdemeanor.

You do not have to pay anything and you do not need an attorney to get an order of protection. Having an attorney can help, but you can file the petition yourself and represent yourself at the hearing.

Restraining Orders

If you are getting a divorce, then you or your attorney might ask the judge to issue a restraining order. This stops one spouse from selling marital property in a divorce, and it also stops one spouse from harassing or bothering the other person.

No-Contact Orders

A criminal court issues a no-contact order. It is done in criminal cases against abusers as a condition of bail release from jail.

Step 1 – Filing the Petition

To get an Order of Protection, go to the Circuit Clerk's office at the county courthouse in the county of one of the following, where:

- you currently live
- the abuser currently lives
- the abuse happened
- the domestic abuse shelter you are staying at is

Tell the court clerk you want to apply for an Order of Protection. The clerk will give you a form to complete called a petition. Fill the petition out as best you can. Victim Assistance Programs and domestic violence shelters have people who can help you complete a petition. You do not need a lawyer to file the petition for an Order of Protection.

Completing a Petition for an Order of Protection

Where the Order of Protection form asks you to explain what acts the abuser has committed, you must explain what the abuser has done to you physically. (For example, they hit you in the face with a fist, choked you, or threw you against a wall.)

You should also describe threats of physical violence made against you. (For example, they threatened to kill you or hit you if you told. You should not explain how the argument started or what the argument was about.) The court will not accept mental, emotional, or financial abuse as a basis for awarding an Order of Protection, so you must clearly describe what the abuser physically did or threatened to do to you.



You will not be asked to pay anything to file the petition for an Order of Protection or for the sheriff to serve your abuser with the order. The judge will decide later who will pay any fees. Generally, the judge will make the abuser pay, if anyone. However, if you do not attend the hearing or provide false information, the judge may make you pay the costs of filing the petition and service. It is important to attend all scheduled hearings and tell the truth.

Your Petition Must Be Notarized

You will need picture identification to show the notary in the clerk's office. You will complete your affidavit at the same time, which must also be notarized.

Step 2 – Temporary Order

After you give your completed petition and affidavit to the clerk to file, the clerk will give the petition to the judge to review it. This may happen while you wait or the clerk may tell you to come back later. If the judge decides that you have shown enough information in your petition, the judge will grant a Temporary Order of Protection (also called a Temporary Order or Ex Parte Order). Sometimes the judge will have questions about your petition.

The judge might say that you did not give enough information in your petition to grant an Order of Protection. If this happens, you have the right to have a hearing to explain to the judge in person why you need this order. You may have to ask the clerk to set the hearing. In some rural counties, you may have to go to another county for a hearing. In the meantime, you will not have an Order of Protection. It is important to give the judge all of the information available in your written petition. Tell the judge what you need in your petition.

You may ask that the judge:

- leave your home and business addresses off the petition that will be given to your abuser
- decide who will have custody of the children and set up a visitation schedule while the temporary order is in effect
- order your abuser to pay child or spousal support (if married) if they are the parent of your children (it is rare that judges will order child support in a temporary order)
- order temporary possession of the residence
- allow you to get personal items from your home
- order local law enforcement to go with you to get personal items or tell your abuser to leave

If the judge gives you a Temporary Order of Protection, make several copies of the signed order. If the Order includes your children, take copies of the Order to their school or daycare. Take a copy of the Order to your place of employment. Keep a copy of the Order of Protection with you at all times. If you call the police because your abuser is violating the order, the police will ask to see the order.

If your abuser violates the Temporary Order of Protection by coming to your house, work, or any other address that is listed in the order, call the police and tell them you have an Order of Protection in effect. The police can arrest your abuser for violating the Order of Protection. Violating an Order of Protection is a Class A Misdemeanor, which can be enhanced to a felony for a second violation after a conviction on the first violation. The police cannot arrest your abuser for violating an Order of Protection until it has been served.

Step 3 – Extending the Order

The Temporary Order of Protection is valid for no more than 30 days from the date it is issued. Your abuser will be served with a copy of the petition, the affidavit, the Order of Protection, and a summons that tells them when to come to court.

Within the 30 days, a hearing will be held so the judge can decide whether to extend the Temporary Order of Protection. You must attend this hearing. At the hearing, both sides will be allowed to tell their sides. Both you and your abuser will be allowed to present evidence and witnesses to support your story. Evidence may include medical records, police reports, photographs of any visible marks left by the abuser, and financial records if asking for support. Both sides will have a chance to question each other or any witnesses.

When the judge has heard both sides, they will make a decision on whether to extend the Order of Protection. The judge may stop the Order of Protection granted on an emergency basis if they do not believe you have shown you are in danger of imminent physical abuse, or the judge may extend it for anywhere from 90 days (the minimum) to 10 years (the maximum). At the end of this period, you may ask the court for another extension as long as you can prove you are still in imminent danger.

You do not have to have a lawyer to represent you at this hearing. However, if your abuser has an attorney, you may want an attorney to represent you. If your abuser does not appear at the hearing, the court may enter the Order after you tell your story. Because your abuser knows you will be going to court for the hearing, you may want to ask the judge's bailiff to escort you in and out of the courthouse.

If the judge decides to extend the Order of Protection, then other issues may also be addressed at the hearing.

- deciding who will have custody of the children and set up a visitation schedule while the extended Order of Protection is in effect
- ordering your abuser to pay child support if they are the parent of your children, and possibly support to you if you and the abuser are married
- ordering temporary possession of the residence



- allowing you to get personal items, like clothing and medications
- ordering local law enforcement to go with you to your residence to get personal items or tell your abuser to move out
- ordering your abuser to pay court costs or attorney's fees

Ask the clerk for a signed copy of the Order of Protection and keep it with you at all times. You will need to provide copies to your children's school or daycare if they are included in the Order of Protection. Keep copies in places where you might need it.

FAQ

Can the Order of Protection be enforced in a county other than where it was issued?

An Order of Protection issued in one county is enforceable in all other counties in Arkansas and throughout the U.S.

Will my abuser see what I wrote in the petition?

Yes. When the abuser (also known as the Respondent) is served with the Temporary Order of Protection, they will also receive a copy of the petition and affidavit where you explained why you need an Order of Protection. You may ask the judge to remove your address from the petition.

How much does it cost?

You will not have to pay anything to file the petition for an Order of Protection or have the Order of Protection served on your abuser.

When the court has the final hearing on the Order of Protection, the judge may order fees to be paid for filing, service, and court costs. The judge may order your abuser to pay all costs. There are only few situations when you could be charged any fees, service, or court costs: (1) the judge finds that you provided false information in the petition, (2) you do not to attend the hearing, or (3) upon your request to dismiss.

How will I know if the Order of Protection has been served?

You will need to stay in touch with the sheriff until the Order of Protection has been served. If you keep the Temporary Order of Protection with you at all times, it can be served on the spot if your abuser is threatening you and you have to call the police.

May I have contact with my abuser prior to the hearing?

While the temporary order only applies to the abuser, initiating contact with your abuser may indicate to the court that you are not truly afraid for your safety. If you need to get personal items left behind, ask the court to order the police to go with you. If your minor children will visit their father, you may ask that a third party do the exchange so you do not have to have contact with your abuser. If this is not possible, consider meeting at a safe location, such as the local police station.

What if the abuser is not served with court papers prior to the hearing?

Even if the abuser is not served, you must still appear at the scheduled court date. The case will most likely be continued (or postponed), but your temporary order will remain in effect. If you do not appear, your temporary order will be dismissed and you may be ordered to pay court costs.

How do I prepare for the hearing?

You need to be prepared to tell the court everything that has happened and why you need protection. You need to bring any witnesses or documents that support what you will say.

If you can, bring:

- witnesses who have seen violence or heard threats made by your abuser
- police reports, having reported any domestic abuse incident to your local law enforcement as soon as possible and then having gotten a copy of the police report—this is important because it backs up what you are saying and makes an official record of the abuse
- pictures of any visible injuries, having taken pictures when you have had visible injuries inflicted by your abuser—these give the court evidence to back up your side of the story (preferably print these pictures out in color)
- medical or hospital records related to your abuse
- formal clothes to wear—you should wear your best clothes for court, and do not wear shorts, tank tops, or flip flops

If you have children under age 18 and are asking for child support, also bring any available information you have about the abuser's income (for example, a pay stub or last year's tax returns), as well as for spousal support.

It is likely that the court will give visitation rights to the Respondent if you are married. If you have concerns about your children's safety, you should come to court with an alternate plan for visitation. The court usually will not divide property at the hearing, other than the return of personal items.

Is it absolutely necessary for me to go to the court hearing?

Yes. If you do not appear, your temporary order will be dismissed and you will no longer have protection. In addition, if you fail to appear, the court can make you pay for filing, service, and other cost. Some counties will issue a warrant for your failure to appear.

What if my abuser violates the Order of Protection?

Violation of the Order of Protection is a crime. If your abuser does anything that the Order of Protection says they are not supposed to do, you can call the police. Tell them about the Order of Protection and have your copy ready to show them.

The police can arrest your abuser for violation of the Order of Protection. If convicted, the abuser can be sent to jail for up to one year or fined up to \$1,000.



You may have to go to court to testify about what the abuser did to violate the Order of Protection. The Order of Protection is not a mutual order. You are not prohibited from going to any location or from participating in any certain conduct.

The order does not become “null” or “void” if you and the abuser reconcile after the final Order of Protection or by any conduct on your behalf. Only a court can dismiss the final Order of Protection once you have filed a petition.

What if I am getting a divorce or filing criminal charges?

The Order of Protection is different from a divorce, legal separation, or criminal charges. You can get an Order of Protection even if you are filing for divorce or decide to press criminal charges against your abuser.

What if I get back together with my abuser?

If you and your abuser decide to work things out and you do not want the court to grant a final Order of Protection, you still must attend your scheduled court date to tell the judge that you want the court to dismiss your petition for an Order of Protection. The court may ask you questions about your reasons for wanting to dismiss your petition so that they can make sure you are safe and not being forced by your abuser to dismiss the action.

Safety

An Order of Protection does not guarantee your safety. Never face your abuser alone. If you do not feel safe in your home, stay with a friend, with a family member, or at a local shelter. There is a safety plan available on our website to help you.

Our website also contains information about Domestic Violence Shelters in your area who you can assist you. There are also Victim Advocates in Prosecutor’s offices, if you have filed criminal charges, who may be able to assist you.

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