

# ORDERS OF PROTECTION - CHILD



Missouri's Child Protection Orders Act provides protective relief for children who have been victims of domestic violence, stalking or sexual assault.

**Chapter 455, Missouri Revised Statutes**

# ORDER OF CHILD PROTECTION

## WHAT IS AN ORDER OF PROTECTION?

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An order of protection is an order issued by a Missouri court pursuant to the Child Protection Orders Act that restrains a person from committing or threatening to commit domestic violence, stalking, or sexually assaulting a child who is 17 years of age or younger. Unlike a restraining order, an order of protection carries criminal penalties for violation. Protection orders issued under the Child Protection Orders Act are effective throughout the state in all cities and counties. There are two types of orders of protection: an ex parte order of protection and a full order of protection.

An **ex parte order** of protection is issued by the court before the person against whom the order is directed has received notice of the petition or an opportunity to be heard in court. It is a temporary order. See more information regarding ex parte orders of protection on page 5.

A **full order of protection** is issued after a hearing on the record when the person against whom the order is directed has received notice of the proceedings and has had an opportunity to be heard. See more information regarding full orders of protection on page 8.

## WHO ARE THE PARTIES?

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### **Petitioner**

A petition for an order of child protection may be filed on behalf of an abused child(ren) by any of the following:

- A parent or guardian of the victim;
- A guardian ad litem or court-appointed special advocate appointed for the victim; or
- The juvenile officer.

The child for whom the petitioner is filing on behalf of must be 17 years of age or younger.

The court will deny the ex parte order and dismiss the petition if the petitioner is not authorized to seek relief.

### **Respondent**

The respondent is a family or household member or an adult alleged to have committed an act of domestic violence, or a person alleged to have committed the act of stalking or sexual assault, against whom a verified petition has been filed. It is this person against whom an order of child protection is directed.

## WHERE IS THE PETITION FILED?

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A petition for an order of protection for a child shall be filed in the county where the child resides, where the alleged incident of domestic violence, stalking, or sexual assault occurred, or where the respondent may be served. Petitions usually are filed in the circuit clerk's office but may be filed in the associate division if provided by local circuit court rule. Any available circuit or associate circuit judge having jurisdiction to hear the petition may enter an order.

Notice that clerks will provide assistance and the location of the office where a child protection petition can be filed will be posted conspicuously in the clerks' offices.

**Notice to Petitioner: Respondent will receive a copy of the petition with service.**

**Filing After Hours:** A petition for an order of protection or a motion for a hearing on a violation of an order of protection may be filed after business hours, on holidays or weekends before a circuit or associate circuit judge in the city or county having jurisdiction to hear the petition. All papers filed in connection with a petition or motion must be certified by the judge or clerk within the next regular business day to the circuit court having jurisdiction to hear the petition.

## WHERE CAN I FIND A PETITION TO FILE WITH THE COURT?

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The circuit clerk's office will provide copies of the forms necessary for the presentation of the petition to the court. Clerks will provide assistance in completing these forms without cost. The location of the office where a petition can be filed will be posted conspicuously in the court building. No filing fees, court costs or bond will be assessed to the petitioner in a domestic violence/stalking/sexual assault action. An attorney is not needed to obtain an order of protection.

Forms also can be found at [www.courts.mo.gov](http://www.courts.mo.gov) by selecting Court Forms > Child Protection Forms.

## WHAT IS DOMESTIC VIOLENCE?

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Domestic violence is abuse or stalking committed by a family household member as defined below:

### **Abuse:**

Includes but is not limited to the occurrence of any of the following acts, attempts or threats of assault, battery, coercion, harassment, sexual assault, and unlawful imprisonment against a person who may be protected pursuant to chapter 455, RSMo. Abuse shall not include abuse inflicted on a child by accidental means by an adult household member or discipline of a child, including spanking, in a reasonable manner.

### **Assault:**

Purposely or knowingly placing or attempting to place another in fear of physical harm.

### **Battery:**

Purposely or knowingly causing physical harm to another with or without a deadly weapon.

### **Coercion:**

Compelling a person by force or threat of force to engage in conduct from which the person has a right to abstain or to abstain from conduct in which the person has a right to engage.

### **Harassment:**

Engaging in a purposeful or knowing course of conduct involving more than one incident that alarms or causes distress to another person and serves no legitimate purpose. The course of conduct must be such as would cause substantial emotional distress to the child. Such conduct may include following another about in a public place or peering in the window or lingering outside the residence of another.

### **Sexual Assault:**

Causing or attempting to cause another to engage involuntarily in any sexual act by force, threat of force, duress, or without that person's consent.

### **Unlawful Imprisonment:**

Holding, confining, detaining or abducting another person against that person's will.

### **Stalking:**

When any person purposely engages in an unwanted course of conduct that causes alarm to another person, or a person who resides together in the same household with the person seeking the order of protection when it is reasonable in that person's situation to have been alarmed by the conduct. As defined in the statute:

- a.) **Alarm** means to cause fear of danger of physical harm.
- b.) **Course of conduct** means a pattern of conduct composed of two or more acts over a period of time, however short, that serves no legitimate purpose. Such conduct may include, but is not limited to, following the other person or unwanted communication or unwanted contact.

# ADDITIONAL DEFINITIONS AS USED IN THE CHILD PROTECTION ORDERS ACT

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**Adult:**

Any person seventeen years of age or older or otherwise emancipated.

**Child:**

Any person under seventeen years of age unless otherwise emancipated.

**Communication:**

Includes, but is not limited to, telephoning, speaking, gesturing, writing, e-mailing, text messaging, faxing, sending gifts, etc.

**Emancipate/Emancipation:**

To release a child from the control, support, and responsibility of a parent or guardian; may include but is not limited to a child marrying or entering the military.

**Family or household member:**

Spouses, former spouses, any person related by blood or marriage, persons who are presently residing together or have resided together in the past, any person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, and anyone who has a child in common regardless of whether or not they have been married or have resided together at any time.

**Intimate Partner:**

With respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

**Order of Protection:**

Either an ex parte order of protection or a full order of protection.

**Pending:**

Exists or for which a hearing date has been set.

**Unemancipated:**

A child under the control, support, and responsibility of a parent or guardian.

## **EX PARTE ORDER OF PROTECTION**

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The petition for an order of protection must be presented to the judge immediately upon filing. The petitioner may fear further harm and want the judge to issue an immediate order of protection before the hearing date. If the judge finds that there is an immediate and present danger of domestic violence, stalking, or sexual assault to a child, an ex parte order of protection will be issued. It is effective when entered and shall remain in effect until there is a valid service of process and a hearing on the petition can be held. An ex parte order of protection is not always granted, but the court may set a hearing date. If an ex parte order is granted, a copy of the order is given to law enforcement and entered into a statewide computerized system that law enforcement use. This is the Missouri Uniform Law Enforcement System, also known as MULES.

**Law enforcement will serve a copy of the ex parte order and the petition on the respondent.** The order is valid and enforceable before it is served. The ex parte order will include a court date for the hearing on the full order of protection.

**NOTE:** An ex parte order of protection will expire after 15 days if there has been no hearing or valid continuance on the petition.

### **Relief Available with an Ex Parte Order of Protection:**

The relief must be requested on the petition, and the judge will consider each request. The ex parte order may include the following relief:

- Temporarily restrain the respondent from committing or threatening to commit domestic violence, stalking, sexual assault, molesting or disturbing the peace of the child victim.
- Temporarily restrain the respondent from entering the family home of the child victim, except as authorized specifically by the court.
- Temporarily restrain the respondent from communicating with the child victim in any manner or through any medium, except as authorized specifically by the court.
- Other terms as the court reasonably deems necessary to ensure the child victim's safety.

### **Appointment of Guardian ad Litem (GAL)**

If the respondent is younger than 17 years old and not emancipated, and an ex parte order is entered, the circuit court will transfer the case to the juvenile or family court division for a hearing on the full order of protection. The court will appoint a guardian ad litem for the respondent if the respondent is not represented by a parent or guardian.

The court also may direct the state Children's Division to conduct an investigation and to provide appropriate services.

### **Should I go to the hearing on the order of protection?**

Yes. Go to court on the hearing date listed on the ex parte order of protection or summons. If the petitioner does not appear in court for the hearing, the case will be dismissed. If the respondent has been served properly and does not appear in court for the hearing, a full order of protection will be issued after the petitioner has presented his/her evidence. The judge may issue the order without hearing from the respondent.

## FULL ORDER OF PROTECTION

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A full order of protection may be granted by the court after a hearing on the petition. Hearings regarding full orders of protection must be conducted on the record (so a transcript may be made). The full order of protection order shall be valid for at least 180 days but no more than one year. If a full order is granted, a copy of the order is given to law enforcement and entered into a statewide computerized system that law enforcement use. This is the Missouri Uniform Law Enforcement System, also known as MULES.

### **Relief Available with a Full Order of Protection:**

The relief must be requested on the petition, and the judge will consider each request.

**Notice to respondent:** If the court finds in favor of petitioner or the respondent defaults, the court may grant any of the following forms of relief:

- Prohibit the respondent from committing or threatening to commit domestic violence or sexual assault, stalking, molesting or disturbing the peace of the child victim.
- Prohibit the respondent from entering the family home of the child victim, except as specifically authorized by the court.
- Prohibit the respondent from communicating with the child victim in any manner or through any medium, except as authorized specifically by the court.
- Award custody of minor children born to or adopted by the parties when the court has jurisdiction over such child and no prior order regarding custody is pending or has been made, and the best interest of the child requires such order to be issued. There is a presumption that the best interest of the child is served by placing him or her in the custody of the non-abusive parent.
- Establish a visitation schedule for the non-custodial parent that is in the best interest of the child. The court can deny visitation if it finds that visitation would endanger the child's physical health, impair his or her emotional development or would otherwise conflict with the best interest of the child, or that no visitation can be arranged that would protect the custodial parent sufficiently from future abuse.
- Award child support when no prior order of support exists in accordance with Supreme Court Rule 88.01 and chapter 452, RSMo.
- Award maintenance in accordance with chapter 452 to the petitioner when the petitioner and the respondent lawfully are married.
- Order the respondent to make or to continue to make rent or mortgage payments on a residence occupied by the child victim if the respondent is found to have a duty to support the child victim or other dependent household members.
- Order the respondent to participate in a court-approved counseling program designed to help stop violent behavior or to treat substance abuse.
- Order the respondent to pay, to the extent that he or she is able, the costs of his or her treatment, together with the treatment costs incurred by the child victim.
- Order the respondent to pay a reasonable fee for housing and other services that have been provided or that are being provided to the child victim by a shelter for victims of domestic violence.
- Order the respondent to pay court costs.
- Order the respondent to pay the petitioner's attorney fees.

***Read the order carefully. If you disobey the order, you can be sent to jail, fined or both.***

### **Renewals**

The court may include in the order a provision that the full order of protection shall renew automatically after one year unless the respondent requests a hearing at least 30 days before the expiration date of the order.

When the original full order of protection did not include an automatic renewal provision, the petitioner may file a motion to renew the order with the court prior to the expiration date of the original order. The court can

renew the full order of protection twice. Each renewal can last from six months to one year. To renew the order, the petitioner must file an application at the same court office before the order expires and go to a hearing. To get a renewal, the petitioner does not need to prove that the respondent is still stalking or abusing the petitioner. Any application should be made at least two weeks before the expiration date indicated on the full order of protection.

The full order of protection may be renewed twice for additional periods not to exceed one year each. If, for good cause, a hearing cannot be held to renew the original full order of protection before it expires, an ex parte order can be issued until the hearing on the renewal motion can be held.

### **Compliance & Enforcement**

The court may schedule compliance review hearings to monitor a respondent's compliance with an order of child protection.

The terms of an order of child protection issued are enforceable by all remedies available at law for the enforcement of a judgment. The court may punish a respondent who willfully violates an order of child protection to the same extent as provided by law for contempt of court.

# NOTICES TO PARTIES

## **VIOLATION OF PROTECTION ORDER**

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The violation of the terms and conditions of an ex parte order of protection or a full protection order that includes domestic violence, stalking, sexual assault, child custody noncompliance, communication initiated by the respondent or entering the petitioner's residence, place of employment or school or being within a certain distance of the petitioner or the petitioner's child shall be a class A misdemeanor. If the respondent previously pleaded guilty or was found guilty of a violating an ex parte or full order of protection within the last five years, the violation shall be a class D felony.

**Be advised that having an order of protection issued against you may have immigration consequences. Violation of an order of protection will have immigration consequences. If you are a non-citizen, you should consult with an immigration attorney prior to proceeding in your case.**

## **FIREARM RESTRICTIONS**

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### **Notice to respondent regarding firearms restrictions**

Pursuant to 18 USC 922

- (g) it shall be unlawful for any person—
  - (8) who is subject to a court order that—
    - (a) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
    - (b) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
    - (c) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
      - (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

## **SUSPENSION OF CONCEALED CARRY ENDORSEMENT**

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Any concealed-carry permit or endorsement issued shall be suspended if the holder becomes ineligible for the concealed-carry permit or endorsement. The holder will become ineligible if he or she is named as a respondent in a valid full order of protection still in effect.

Upon notification of a valid full order of protection issued against the holder ruling the holder presents a risk of harm to self or others, the holder shall surrender the permit or license containing the concealed-carry endorsement to the court, officer or official serving the order.

The official to whom the license containing the concealed carry endorsement is surrendered shall issue a receipt to the licensee on a form approved by the Department of Revenue that will serve as a driver's or non-driver's license and clearly states that the concealed-carry endorsement has been suspended. The official shall then send the license containing the concealed-carry endorsement to the circuit court of the county issuing the order. The concealed-carry endorsement shall be suspended until the order is terminated. Upon termination or expiration of the full order of protection, the court holding the permit or license containing the concealed-carry endorsement shall return such permit or license to the individual.

**If you hold a concealed carry permit or endorsement, you must surrender such to the court, officer or the official serving the full order of protection.**

## **PROCEEDINGS INDEPENDENT OF OTHERS**

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All proceedings under the Child Protection Orders Act are independent of any proceedings for dissolution of marriage, legal separation, separate maintenance and other actions between the parties.

## **NOTICE TO THE PERSON OBLIGATED TO PAY SUPPORT OR MAINTENANCE**

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Per section 452.340, RSMo, effective January 1, 1994, for every order for child support or maintenance entered or modified by the court under the authority of chapter 452, RSMo, or otherwise, income withholding under section 452.350, RSMo, shall be initiated on the effective date of the order unless the court finds there is good reason not to require immediate income withholding or a written agreement between the parties provides for an alternative arrangement.

## **NOTICE OF RENEWAL OF ORDER**

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A full order of protection may be extended for additional periods of time upon application and a court hearing. Any application should be made at least two weeks before the expiration date indicated on the full order of protection. The court, upon finding that it is in the best interest of the parties, may include a provision that any full order of protection for one year automatically renews unless the respondent requests a hearing by 30 days prior to the expiration of the order. If for good cause a hearing cannot be held on the motion to renew or the objection to an automatic renewal of the full order of child protection prior to the expiration date of the originally issued full order of child protection, an ex parte (temporary) order of child protection may be issued until a hearing is held on the motion.