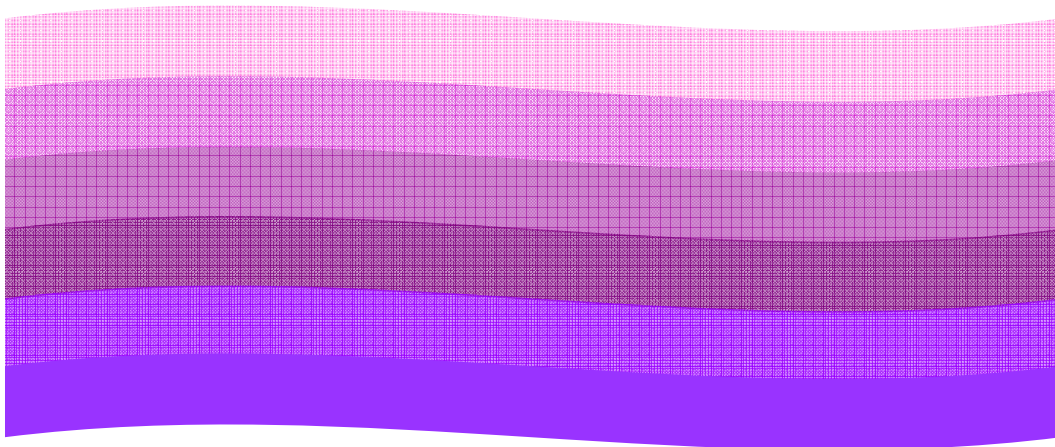


THE O.P. BOOKLET

A step-by-step guide through the
Adult and Child Order of Protection Process



314-664-6699 800-527-1460

www.supportvictims.org



Crime Victim Advocacy Center *of* St. Louis
Legal Advocates for Abused Women Program



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HOW TO USE THIS BOOK

This book is designed to walk you step by step through the process of getting an adult or child order of protection. It is meant for you to use as a “roadmap” through the legal process as you seek your order. It is not meant to be a substitute for legal advice. For specific legal advice for your situation, call LAAW’s Legal Helpline or contact a private attorney.

At the end of this booklet you will find two different indices which are meant to help you as you decide upon your personal safety plan. They are:

- A glossary of legal terms. We have tried to include the common legal jargon you will encounter as you seek your Order of Protection;
- A listing of area courthouses.

You will also find pages detailing the resources available to assist victims of domestic violence in your area. If you need resources for an area not on the list, please call LAAW’s Legal HelpLine.

LAAW LEGAL HELPLINE

314-664-6699

800-527-1460



Crime Victim Advocacy Center and the Legal Advocates for Abused Women Program

Crime Victim Advocacy Center (CVAC)

CVAC is the oldest victim service agency in the nation to serve any and all victims of crime. Beginning in 1972, thousands of victims have received emotional support, advocacy, resources and referrals, crisis response and counseling services. The agency serves victims of any and all crime in the St. Louis Metropolitan area and surrounding counties free of charge.

Legal Advocates for Abused Women (LAAW) Program

In December 2012, LAAW became a program of the CVAC. LAAW has an outstanding record of supporting victims of domestic violence in the St. Louis Metropolitan region, specializing in providing free legal representation to victims of domestic violence who seek Orders of Protection. Additionally, LAAW provides a legal information and crisis line, a Victim Assistance program in the St. Louis City and St. Louis County Courts, and Victim Advocate programs with the St. Louis City Metropolitan Police Department and the St. Louis County Police Department.

LAAW's Legal HelpLine is open Monday through Friday from 9:00 a.m. to 4:00 p.m.,. Volunteers and staff who have been specially trained to assist domestic violence victims are available to do intake for those seeking legal representation, to answer questions about the legal system, and to provide support and resources in a crisis.

CVAC and LAAW services are available to any victims regardless of gender, race, ethnicity or sexual orientation. If you have questions about your legal options, or if you need an attorney for your hearing, please call LAAW's Legal HelpLine at 314-664-6699 or at 800-527-1460.

Proud member of

**United Way
of Greater St. Louis**



YOUR SAFETY PLAN

If you are a victim of domestic violence, you need to have a safety plan before you try to escape. A safety plan combines a practical plan for getting yourself out of harm's way with the use of legal remedies.

Some of the practical things you need to consider include:

1. Where are you going to be safe? A friend's house? A shelter? Where will your children go? Will they be safe at school?
2. Do you have money? Will you have access to a bank account if you leave? Will taking the money from a bank account put you danger?
3. Do you have transportation? Do you need to find a safe place near public transportation?
4. Will you have access to important papers or personal belongings when you leave? Who can keep copies of these for you in case you need them?
5. Are you afraid the abuser will come after you? Will you be in danger when you try to leave?

If you answered “yes” to #5, you may want to consider getting an Order of Protection. This is a court order which orders the abuser to stay away from you.

You may be thinking, “An Order of Protection is a piece of paper. It won't keep me safe if my abuser really wants to hurt me.” That's true, but it may be a crucial step in your safety plan. Having an Order of Protection will ensure that the police respond immediately to your call for help. It can make financial arrangements so that you can afford to leave the abuser. It will also let the abuser know that he/she faces consequences for beating you.

WHAT IS AN ORDER OF PROTECTION?

An Order of Protection (OP) is a court order which requires the abuser to stay away from you. The OP may also:

1. Order the abuser to move out of your home;
2. Order the abuser to have no contact with you by any means at all;
3. Award to you custody of any children you have with the abuser, as well as make child support and visitation orders IF there are no previous orders on these issues;
4. Order the abuser to pay the rent or mortgage on your home, as well as pay maintenance to you;
5. Award to you specific items of personal property;
6. Order the abuser not to dispose of any of your personal property or mutually owned property;
7. Order the abuser to participate in a court-approved treatment program for batterers or for drug users;
8. Order the abuser to pay for any services you have received from a domestic violence shelter;
9. Order the abuser to pay attorney's fees or any court costs;
10. Order the abuser not to possess a gun;
11. Order the abuser to pay your medical expenses for injuries inflicted by the abuser.



CHECKPOINT:

Although an OP may order the items just mentioned, those are not the primary purpose of an OP. The purpose of an OP is to protect someone who is in fear of abuse and to alert the police to respond immediately. If you are not fearful of abuse, there are other ways to accomplish the items mentioned.

You may be wondering what “abuse” is. Abuse includes, but is not limited to:

| | | |
|-----------------|--------------|-------------|
| beating | strangling | shoving |
| hair pulling | harassment | punching |
| suicide threats | slapping | isolation |
| sexual assault | name calling | humiliation |
| threats of harm | stalking | insults |

HOW LONG WILL AN OP LAST?

An OP may last anywhere between 180 days and one year. It may be renewed up to two times for up to one year each time.

CAN I APPLY FOR AN OP?

You may apply for an OP if you're seventeen years old or older, or if you are less than seventeen and emancipated.

WHO CAN I GET AN OP AGAINST?

You can file for an OP against any of the following people*:

- Your spouse;
- Your former spouse;
- Someone you are living with;
- Someone you lived with in the past;
- Someone with whom you share a child;
- Someone you are related to by blood or by marriage;
- Someone with whom you have had a romantic or intimate relationship;
- Another adult who is stalking or harassing you.

*If the abuser is younger than 17, the case will require service on their parent or guardian, and depending on the allegations, the case may be moved to juvenile court.



CHECKPOINT:

If you are divorced from the abuser, the OP cannot change any of the decisions the judge made in your divorce. You can still ask for an OP to keep the abuser away from you, but usually that is all the judge can order in this situation.

If you are in the process of getting a divorce from the abuser, ask your divorce lawyer for advice on what an OP can do for you. If you do not have a divorce lawyer, call LAAW for assistance.

If you have never been married to the abuser but you have children together, you may or may not be able to get child support at your OP hearing. This can be confusing. Call LAAW for advice on how the paternity laws will affect your OP.

WHAT IF I CAN'T AFFORD TO GO TO COURT?

Filing fees and court costs may be assessed against the respondent, but NOT the petitioner. If you file an OP against someone, filing fees may not be assessed against you. However, if someone files an OP against you, filing fees may be assessed against you.

HOW DO I APPLY FOR AN OP?

There are **seven steps** in applying for an OP.

1 Where do I go?

You can go to the courthouse in any of these counties:

- The county where you live;
- The county where the abuse occurred;
- The county where the abuser may be served.

You may choose which of these courthouses to go to.

2 When should I go?

You should go during the courthouse's business hours. These are listed in the back of this booklet.

Every county has a procedure for applying for an OP in emergencies. Your local police or a 24-hour domestic violence hotline can tell you what to do if you need an emergency OP outside of the court's normal hours.

3 What should I take to the courthouse?

- An address where the abuser can be found during the day. The sheriff will have to serve the abuser with your Petition for an OP before the court can have a hearing, so you need to be able to tell the sheriff where the abuser can be found. If you know both the home and work addresses, bring both. It will help if you know what hours the abuser is at work. **(continued on next page)**

3 What should I take to the courthouse? (continued)

- A picture of the abuser.
- A description and the license plate number of the abuser's car.
- Pictures of any injuries that the abuser has inflicted upon you.
- Any police, hospital, or doctor's reports which tell about the abuse.
- The specific dates when attacks occurred, especially the most recent attack.

4 What do I do when I get to the courthouse?

Go to the Clerk's office or to the Adult Abuse office if there is one and tell them you need to fill out a Petition for an OP. They will give you the paperwork and explain it to you. Make sure you fill it out yourself to ensure you ask for all that you need.

5 What do I need to say on the petition?

The Petition will ask you to describe the most recent abuse. Be prepared to describe abuse in detail. Be as specific about the times, dates, and places as you can. The Petition may not give you much room to write, but you can attach additional pages. Ask for more paper if needed. The Petition is the place where you ask the court for everything you want in the final court order.

(continued on next page)

5 What do I need to say on the petition? (continued)

If you don't ask for something in the petition, the court can not give it to you later. If you do not understand what you can ask for, ask an advocate or clerk to explain it to you.

The list at the front of this section under "What is An Order of Protection?" includes some of the things you can ask the court to grant you.

CHECKPOINT:

It is very important to know what you may ask the court to order and to make sure you ask for everything when you fill out the Petition. If you have any questions about what you can ask the court to do, call LAAW or contact a private attorney.

LAAW LEGAL HELPLINE

314-664-6699

800-527-1460



CHECKPOINT:

Sometimes the clerk will not let you write out your own petition, or you may be filing by phone and not able to write your own if you are filing after the courthouse is closed. If this happens, **MAKE SURE YOU READ THE FINAL DRAFT THAT IS GIVEN TO YOU BEFORE YOU SIGN IT!** You are responsible for what it says, and when you sign it, you are swearing as though under oath that what it says is true. If something in the petition is incorrect, you will be held responsible for that.

You also must make sure that the Petition includes everything you want to ask the judge to give you when you go to court for your hearing. If you forget to ask for rent money, for example, or if the clerk doesn't check that box and you don't correct him/her, you will not be able to ask the judge for rent money at your hearing. Again, **READ THE PETITION BEFORE YOU SIGN IT!**

6 What happens after I fill out the petition?

After you fill out the Petition for the OP, the judge will look it over. Sometimes the judge will want to talk to you and ask questions. Other times, the judge will decide whether you need immediate protection based only on what you wrote down in the Petition. This is why it is very important to give the judge lots of details about the abuse when you fill out the Petition. Don't forget to ask for additional paper if you need it to explain the abuse completely.

7 The Ex Parte Order of Protection or Notice of Hearing

After reading your Petition, the judge will decide whether or not you need immediate protection from the abuser.

If the judge thinks you are in immediate danger, you may be given an *Ex Parte Order of Protection*. This is a temporary OP, which lasts only until your court date.

If the judge does not think you are in danger, you will get a *Notice of Hearing*, which simply tells you the date of your hearing and does not offer protection now. At that hearing, the judge may grant an OP.

7 The Ex Parte Order of Protection or Notice of Hearing (continued)

In the Ex Parte OP, the judge may:

- Order the abuser not to abuse you;
- Order the abuser not to enter your home;
- Grant you custody of any children you and the abuser have together;
- Order the abuser not to have any contact with you in any way at all.

If the judge decides to give you an Ex Parte OP, you will get it that day before you leave the courthouse.



CHECKPOINT:

Make sure you have your Ex Parte OP with you at all times from the moment you get it until the day of your hearing. If the abuser violates the Ex Parte OP, you will need to call the police and tell them you have an Ex Parte OP which has been violated. You will need to show the Ex Parte OP to the police when they arrive. The police may or may not be able to serve the abuser when they respond to your call for help. Police officers may choose to serve the abuser but are not required to do so in the state of Missouri.



CHECKPOINT:

Even if the home belongs to the abuser and/or if the abuser pays the rent or mortgage, he/she may still be ordered out of the home. The law allows the judge to order the abuser out of your home if the home is owned or leased by both of you OR if you have lived there together. If you are married to the abuser, the abuser can be ordered out of your home even if it belonged to him/her before you were married.

I HAVE A COURT DATE, NOW WHAT?

Between the time you file your Petition for an OP and your court date, there are three things for you to think about: service; enforcing the Ex Parte OP; and finding an attorney.

1 Service

There must be service on the abuser before the judge can issue a Full OP. This means that the abuser must be served with a summons to come to court on the day of your hearing.

The Sheriff will try to serve the abuser using the information you provided when you filed your Petition. This is why it is important for you to have information about where the abuser can be found when you go to the courthouse to file.

If the abuser has not been served by three days before your court date, the judge will not be able to have your hearing. Look in the section titled “My Court Date” to see what to do if this happens.



CHECKPOINT:

If the abuser knows the sheriff is trying to serve him/her, he/she may hide or have someone lie and tell the sheriff he/she is not at home or at work. The best way to keep this from happening is not to tell anyone that you have filed for an OP. Let the abuser find out when he/she is served and the Ex Parte OP goes into affect.

2 Enforcement of Ex Parte OP

It is up to you to protect yourself by enforcing your Ex Parte OP. It will only work if you call the police **EVERY TIME** the abuser violates it. You should tell them you have an Ex Parte OP when you call for help; they must respond if they know that.

When the police respond to your call for help, they should arrest the abuser and write a report on what happened. If the officer does arrest the abuser, he/she must write a report explaining why they did not. If the abuser has left, they should put out a “wanted” for him or her.

Remember, if the abuser violates the Ex Parte OP and you don’t call the police, he/she will not be afraid to violate it again. The best way to protect yourself is to enforce the Order.

3 Legal Representation

You need to decide whether you want to have a lawyer represent you at your hearing.

The court system is designed to allow you to go to court to get an OP without a lawyer. However, if you have questions about your legal rights, it is always a good idea to contact an attorney. Also, keep in mind that if the abuser appears with an attorney and you do not have one, you may be at a disadvantage.

Many private attorneys handle OPs. If you do not have the money for an attorney, call LAAW to see if you qualify for our free legal representation program. LAAW can also offer referrals to private attorneys who we endorse to handle these cases in an effective manner.



CHECKPOINT:

If you decide to get a lawyer, your lawyer will explain to you what will happen from here on. You may choose to read the rest of this booklet for information, but your lawyer will be able to give you specific information for your situation.

If you decide not to get a lawyer, the rest of this booklet will give you an idea of what will happen next.

THE COURT DATE

There are several situations that can happen on your court date. Each is described below.

If The Respondent Wasn't Served

If the Respondent wasn't served by three days before the court date, the sheriff will return the summons to the court with a statement that the Respondent was not served. This is sometimes referred to as a *non est*. If this happens, you must go to court to ask the judge to have the sheriff try to serve the abuser again and to ask for a new court date.

If you get a new court date, be sure that the judge also extends your Ex Parte OP. The first one expires on your court date, so you need a new one to last until your second court date.



CHECKPOINT:

Sometimes the sheriff will not be able to serve the abuser even after several tries. If this happens, you may need a *special process server*. It is this person's job to find people and serve them. They charge a fee to do so. Your lawyer will help you get one if you need it. If you do not have a lawyer, you may call LAAW for information on special process servers.

LAAW LEGAL HELPLINE

314-664-6699

800-527-1460

If The Respondent Doesn't Show Up

The outcome depends on whether or not the Respondent was served. If he/she was served, then the court can go ahead and issue an OP as long as the Petitioner is present. If there was no service, the previous section applies.

If Neither Person Has a Lawyer

The judge will conduct your hearing. Both of you will tell your story, and the judge will ask any questions he or she has. The judge will then decide whether to issue a full OP.

In some courthouses, there are court staff present whom the judge may ask to speak with both parties to see if an agreement on the terms of the OP may be reached. You do not have to enter into an agreement if you do not feel it is in your best interest—you may always request a hearing in front of the judge.

If the Respondent has a Lawyer and You Do Not

Sometimes when this happens, the judge will ask you if you would like time to get a lawyer. If the judge asks and if you want to get a lawyer now, you will get a new court date, usually in one or two weeks. Be sure the judge extends the Ex Parte OP during this time.

Other times, the judge will not give you more time to find a lawyer, and you will have to represent yourself. This is often a stressful situation. If you do not want to chance having to represent yourself against a lawyer, you should find a lawyer before your court date.

THE HEARING

Every judge has his or her own style of conducting hearings. Some judges will have you simply stand before them and tell your side of the story. Others prefer to have trial-like hearings where you testify as in any other trial and are questioned by the other side as in any other trial.

Your lawyer will prepare you for your hearing. If you decide to represent yourself, you may want to go to the courthouse before your hearing to observe how your judge handles OP hearings so you can be prepared. OP hearings are often held on the same day and at the same time each week by each judge.

Regardless of how the judge handles the hearing, when it is over you will either be granted an OP or it will be denied.

I HAVE MY ORDER OF PROTECTION—HOW DO I ENFORCE IT?

Now that you have a full OP, it is up to you to use it to protect yourself. Read your OP carefully and be sure you understand what it means. Your attorney will explain it to you. If you do not have an attorney, call LAAW to ask for assistance interpreting the OP.

The law says that if an OP is in effect, the police must respond immediately if you make a call for help. Tell the police that you have an OP when you call. They should write a report on the incident and arrest the abuser if he/she is there. Otherwise, they should place a “wanted” out for him/her.

Enforcing your OP is the same as enforcing the Ex Parte OP. You should call the police if the abuser violates it, and you should call the police every time the abuser violates it. Otherwise there will be no consequences to breaking the OP.



CHECKPOINT:

The police and prosecutors will enforce the parts of your OP that keep the abuser away from you, from contacting you, and out of your home. They will also help if the abuser takes your children against the terms of the OP.

If you have provisions in your OP regarding child support or other financial payments, the return of property, or some other order that is not about keeping the abuser away from you or your children, the police do not enforce those provisions. If the abuser is not following those orders, you will need to file a Motion for Contempt. This lets the judge who granted your OP know that the abuser is not following the OP. You will get a court date to go back to court so you can explain to the judge what the abuser is not doing. If the judge agrees with you that the abuser is violating the terms of the OP, the abuser can be fined or jailed until he/she complies with the OP.

Most courts do not provide fill-in-the-blank forms for a Motion for Contempt. These are very technical so if you have the resources you should consider talking to an attorney for assistance filing one of these motions. Contact a private attorney or LAAW if you have questions.

LAAW LEGAL HELPLINE

314-664-6699

800-527-1460

WHAT HAPPENS IF THE ABUSER VIOLATES THE OP?

If the abuser violates the OP by harming you, communicating with you, coming into your home, or taking/not returning your children to you, the police may make an arrest. The first time the abuser is *convicted* of violating the OP it is a misdemeanor. The second time, it is a felony.

If the abuser violates any of the other provisions of the OP, such as by not returning property to you or by not attending substance abuse or Batterer's Intervention classes, the way to enforce the OP is not by calling the police but by filing a Motion for Contempt. This is a Motion which tells the judge that his/her Order is not being followed and asks the judge to penalize the abuser for not following the Order. Some courthouses keep forms for these that you can use, but others do not. Check with the courthouse at which you received the OP to learn if they have forms. If they do not, you will either have to write it yourself or contact an attorney.

WHAT HAPPENS IF I NEED TO CHANGE SOMETHING IN THE OP?

After your hearing, it is possible to change certain portions of the OP. In order to make a change, the court must find that there has been a change in your circumstances since the OP was entered that requires a change to be made. You *cannot* go in to change the OP because you change your mind about something, or because you didn't bring all your evidence to court for the hearing and you want to try again.

To ask for a change, a *Motion to Modify* must be filed. Most courts do not provide forms, so you may want an attorney to help you.

WHAT HAPPENS IF I NEED TO MOVE OUT OF STATE?

An OP is good in every state; you do not need to get a new one if you move. You should contact a domestic violence agency or attorney in both the state you are leaving and the new state before you go to see if you need to do anything to ensure proper enforcement of your OP in the new state. Each state handles this differently.

If your OP gives the abuser visitation rights with your children, keep in mind that he/she keeps these rights even if you move. If you move and deny the visitation you will be in contempt of the court's order, which can result in penalties to you. Check with an attorney or with LAAW before leaving the area if you need to move and your OP gives the abuser visitation.

HOW DO I RENEW MY OP?

If you feel you are still in danger of being abused when the OP is about to expire, you should go to the courthouse to file a *Motion to Renew the Order of Protection*. You need to file this motion about two weeks before the OP will expire. The court will give you a court date before the OP expires. If the court cannot give you a court date before the OP expires, it will usually give you another Ex Parte OP to protect you in the time between when the OP expires and the new court date.

RESOURCE AGENCIES

LEGAL/CRISIS INFORMATION

Legal Advocates for Abused Women 314-664-6699
800-527-1460

SHELTERS

COMTREA 877-266-8732*
Fortress Outreach 314-381-4422
St. Martha's Hall 314-533-1313*
Women's Center 636-946-6854*
Women's Safe House 314-772-4535*
Kathy J. Weinman Shelter 314-423-1117*
Turning Point; *Franklin, Warren Counties* 888-873-7233*
A Friend's Place; *Washington County* 800-663-9929*
Robertson Center; *Lincoln County* 636-462-3355*
Oasis Women's Center; *Illinois* 618-465-1978
Phoenix Crisis Center; *Illinois* 618-451-1008
Violence Prevention Center; *Illinois* 618-235-0892

COUNSELING/CRISIS INFORMATION

Crime Victim Advocacy Center 314-652-3623
ALIVE 314-993-2777*
(Alternatives to Living in Violent Environments)
Life Source Consultants 314-524-0686
Safe Connections 314-531-2003*
YWCA-Sexual Assault Response Team 314-726-6665
314-531-7273*

*indicates a 24 hour hotline

RESOURCE AGENCIES

Court-Based Victim Services

| | |
|--|--------------|
| St. Louis County Prosecutor's Office | |
| Victim Service Division | 314-615-4872 |
| St. Louis City Circuit Attorney's Office | |
| Victim Services Unit | 314-622-4373 |
| St. Charles Victim Assistance | 636-949-7370 |
| Jefferson County Victim Assistance | 636-797-5501 |

Education & Support Services

| | |
|---|--------------|
| Woman's Place | 314-645-4848 |
| ROW(<i>Redevelopment Opportunities For Women</i>) | 314-588-8300 |
| Circle of Safety | 314-241-0077 |

Programs for Batterers

| | |
|-------|--------------|
| AVA | 636-757-2241 |
| RAVEN | 314-289-8000 |

For all other types of crime, you can call
Crime Victim Advocacy Center at 314-652-3623
for information, referrals, counseling, and other assistance.

WHAT IS A CHILD ORDER OF PROTECTION?

A Child Order of Protection (Child OP) is a court order which orders the person who is abusing or stalking your child to stay away. The Child OP may tell the abuser to:

- Stay out of the child's home;
- Pay child support, if he or she is a parent;
- Pay the rent or mortgage on the home the child lives in;
- Attend counseling for child abusers;
- Pay for any treatment the child needs because of the abuse;
- Pay for any services or shelter the child needed because of the abuse.

The Child OP may also specifically give you custody of the child and may set up time for the child and the abuser to visit, if this is appropriate.

How Long Will A Child OP Last?

A Child OP can last anywhere from 180 days to one year. It can be renewed two times.

Who Can Ask for a Child OP?

You may ask the court for a Child OP if you are a parent or legal guardian of the child.

Who Can I Get an OP Against?

You may ask for a Child OP against an adult who is living in the same home with the child or who used to live in the same home with the child. You may ask for a Child OP against a person who is stalking the child.

An adult is a person 17 years of age or older or an emancipated minor. If the person stalking the child is under the age of 17, the case may be transferred to juvenile court.



CHECKPOINT:

Before going further, ask yourself if there is already a court order involving the child for whom you want an OP. If you are divorced, or if a court has made a paternity determination, those orders may have already decided custody. You can call LAAW to ask if your situation will allow you to get a Child OP for your child.

What if I Can't Afford to Go to Court?

Filing fees and court costs are not assessed against Petitioners (those who file) but may be assessed against the Respondent (those who are filed *against*).

How Do I Apply For a Child OP?

There are **eight steps** in applying for a Child OP.

1 **Where do I go?**

The first step to applying for a Child OP is to figure out which courthouse to go to. You can go to the courthouse in any of these counties:

- The county where the child lives
- The county where the child was abused;
- The county where the abuser may be served.

2 **When Should I Go?**

You should go during the courthouse's business hours. These are listed in the back of this booklet. Every county has a procedure for applying for a Child OP. In an emergency during hours when the courthouse is closed, your local police or a 24 hour domestic violence hotline will tell the procedure for applying after hours.

3 What Should I Take to the Courthouse?

- An address where the abuser can be found during the day. The sheriff will have to serve the abuser with your Petition for a Child OP before the court can have a hearing, so you need to be able to tell the sheriff where the abuser can be found. If you know both the home and work addresses, bring both. It will also help if you know what hours the abuser is at work.
- A picture of the abuser;
- A description and the license plate number of the abuser's car;
- Pictures of any injuries the abuser has inflicted upon the child;
- Any police, hospital, or doctor's reports which tell about the abuse to the child.

4 What Do I Do When I Get to the Courthouse?

Some courthouses have special offices set up to help you apply for a Child OP. The list of courthouses in the back of this booklet will tell you if your courthouse has one of these. If it does, go there and ask them to help you fill out a petition for a Child OP. If it doesn't, you should go to the clerk's office. The Clerk will help you fill out the paperwork for the Child OP.

5 What Do I Need To Say On the Petition?

The Petition will ask you to describe the most recent abuse in detail. Be prepared to describe the abuse in detail. Be as specific as you can about the times, dates, and places as you can. The Petition may not give you much room to write, so ask for more paper if you need to.

The Petition is the place where you ask the court for everything you want in the final court order. If you don't ask for it now, the court cannot give it to you later. If you do not understand what you can ask for, ask the advocate or clerk to explain it to you.

The list at the front of this section, under "What is a Child Order of Protection?" lists some of the things you can ask the court to give you.

CHECKPOINT:

It is **very important** to know what you may ask the court to order and to make sure you ask for everything when you fill out the petition. If you have any questions about what you can ask the court to do, call LAAW, or contact a private attorney.

LAAW LEGAL HELPLINE
314-664-6699
800-527-1460



CHECKPOINT:

Sometimes the clerk will not let you write out your own petition or, if you are filing after the courthouse is closed, you may be filing by phone and may not be able to write your own petition. If this happens, **MAKE SURE YOU READ THE FINAL DRAFT THAT IS GIVEN TO YOU BEFORE YOU SIGN IT!** You are responsible for what it says, and when you sign it you are swearing as though under oath that what it says is true. If something in it is incorrect you will be held responsible for that.

6 What Happens After I Fill Out the Petition?

After you fill out the Petition for the Child OP, sometimes the judge will want to talk to you and ask you some questions. Other times the judge will decide whether your child needs immediate protection based only on what you wrote down. This is why it is very important to give the judge lots of details about the abuse when you fill out the Petition.

7 The Ex Parte Child Order of Protection

After reading your petition, the judge will decide if your child needs immediate protection from the abuser. If the judge thinks your child will be in danger between the time you ask the court for a Child OP and when you have your court hearing, you may be given an *Ex Parte Child Order of Protection*. This is a temporary Child OP which lasts only until your court date. If the judge does not think there is danger, or if another court order is in effect, you will get a *Notice of Hearing*, which simply gives you a court date on which to come back so the judge can decide then if a Child OP should be granted. (continued on next page)

7 The Ex Parte Child Order of Protection (continued)

In the Ex Parte OP, the judge may:

- Order the abuser to stop abusing your child;
- Order the abuser out of the child's home;
- Give you custody of your child;
- Order the abuser not to have any contact with the child.

If the Judge decides to give you an Ex Parte Child OP, you will get it that day before you leave the courthouse.

Make sure you have it with you and your child at all times between the time you get it and the day of your court hearing. If the abuser violates the Ex Parte OP, you will need to call the police and tell them you have an Ex Parte Child OP which has been violated. You will need to show the order to them when they arrive.



CHECKPOINT:

The Ex Parte Child OP only works for you until the court date of your hearing. If you do not go to court on your court date, the Ex Parte OP will expire, and your child will not be protected! You must go to court for the hearing to get full protection for your child!

8 The Guardian Ad Litem

If you receive an Ex Parte Child OP, the judge must then appoint either a *Guardian ad Litem* (GAL) or a *Court Appointed Special Advocate* (CASA). The GAL is an attorney appointed to represent your child's interests in the hearing for the Child OP. A CASA is *not* an attorney.

A GAL or CASA's job is to investigate the abuse. They will come to court and will represent your child's interests in court. Between filing and the court hearing, they will need to talk to you and your child (if your child is old enough to talk).



CHECKPOINT:

It is important to understand that the GAL is not your attorney. The GAL's job is to represent your *child's* best interests, not necessarily yours. They may not agree with you regarding what is in your child's best interests. You should consider getting your own attorney to represent your interest. If you are confused about the role of the GAL, call LAAW for information.

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314-664-6699

800-527-1460

SO I HAVE A COURT DATE- NOW WHAT?

Between the time you file your petition for a Child OP and your court date, there are three things for you to think about: service, enforcing the Ex Parte Child OP, and finding an attorney.

1 Service

There must be service on the abuser before the judge can issue a full Child OP. This means that the abuser must be given a summons to come to court on the day of your hearing.

The sheriff will try to serve the Respondent using the information you provided when you filed your Petition. This is why it is important for you to have information about where the Respondent can be found when you go to the courthouse to file.

If the Respondent has not been served by three days before your court date, the judge will not be able to have your hearing. Look in the section titled “My Court Date” to see what to do if this happens.



CHECKPOINT:

If the abuser knows the sheriff is trying to serve him/her with court papers, it is very common for the abuser to hide or have someone lie and tell the sheriff he/she is not at home or work. The best way to keep this from happening is not to tell anyone that you have filed for an OP until after the abuser has been served with your Petition.

2 Enforcement of Ex Parte OP

It is up to you to protect your child by enforcing your Ex Parte OP. It will only work if you call the police EVERY TIME the abuser violates it. You should tell the police you have an Ex Parte Child OP when you call for help; they must respond if they know that.

Remember, if the abuser violates the Ex Parte OP and you do not call the police, he/she will not be afraid to violate it again.

3 Legal Representation

You need to decide whether you want to have a lawyer represent you at the hearing. The court system is designed to allow you to go to court without a lawyer to get a Child OP; however, the laws about child abuse can be confusing. If you are not sure about your rights, it is always a good idea to get legal advice.

Many private attorneys handle Child OPs. If you do not have the money for an attorney, call LAAW for assistance finding an attorney.

If you decide to get a lawyer, your lawyer will explain to you what will happen from here on. You may choose to read the rest of this booklet for information, but your lawyer will be able to give you specific information for your situation.

If you decide not to get a lawyer, the rest of this booklet will give you an idea of what will happen next.

THE COURT DATE

There are several situations that can happen on your court date. Each is described below.

If the Respondent Wasn't Served

If the Respondent wasn't served by three days before the court date, the sheriff will return the summons to the court with a statement that he could not serve the Respondent. This is sometimes referred to as a *non est*. If this happens, you must go to court anyway.

At court, you may ask the judge to have the sheriff try to serve the abuser again and ask for a new court date. If you get a new court date, be sure that the judge also extends your Ex Parte OP. The first Ex Parte Child OP expires on your court date, so you need a new one to last until your second court date.



CHECKPOINT:

Sometimes the sheriff will not be able to serve the Respondent even after several attempts. If this happens, you may need a *special process server*. This is a person whose job is to find people and serve them. They charge a fee for this service. Your lawyer will help you get one if you need it. If you don't have a lawyer, you may call LAAW for information on special process servers.

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314-664-6699

800-527-1460

If the Respondent Doesn't Show Up

It depends on whether or not there was service. If the Respondent was served with your petition, the court can go ahead and issue a Child OP even if the Respondent is not there but you are. If there was no service, the previous section applies.

If Neither Person has a Lawyer

The Judge will conduct your hearing. Both of you will tell your story, and the judge will ask any questions that he/she has. The GAL will also be allowed to ask questions and participate in the hearing. The judge will then decide whether or not to issue a full Child OP.

If the Respondent has a Lawyer and You Do Not

Sometimes when this happens the judge will ask you if you would like time to get a lawyer. If the judge asks and if you want to get a lawyer, you will get a new court date, usually in one or two weeks. Be sure the judge extends the Ex Parte OP during this time.

Other times, the judge will not give you more time, and you will have to represent yourself. This is often a stressful situation. If you do not want to chance having to represent yourself against the abuser's lawyer, you should find a lawyer before the court date.

THE HEARING

Every judge has his/her own style of conducting hearings. Some judges will have you simply stand before them and tell your side of the story. Others prefer to have trial-like hearings, where you testify as in any other trial and are questioned by the other side as in any other trial.

Your lawyer will prepare you for your hearing. You may want to go to the courthouse before your hearing to observe how your judge handles OP hearings so you know what to expect. Some judges will not allow observers in the courtroom for Child OP hearings, so you may have to watch hearings for adult OPs instead.

However the judge handles your hearing, when it is over you will either be granted a Child OP or it will be denied. If it is denied, you may want to discuss your legal options with an attorney.

If you do not have an attorney, you may call LAAW for assistance.

LAAW LEGAL HELPLINE
314-664-6699
800-527-1460

I HAVE MY CHILD OP– HOW DO I ENFORCE IT?

Now that you have a Full Child OP, it is up to you to use it to protect your child. Read your OP carefully and be sure you understand what it means. Your attorney will explain it to you. If you do not have an attorney, call LAAW's crisis line to ask for assistance interpreting the OP.

The law says that if a Child OP is in effect, the police must respond immediately if you make a call for help. Tell the police that you have a Child OP when you call.

Enforcing your Child OP is the same as enforcing the Ex Parte Child OP. You should call the police if the abuser violates it, and you should call the police every time the abuser violates it. Otherwise, there will be no consequences to breaking the Child OP.



CHECKPOINT:

The police and prosecutors will enforce the parts of your OP that keep the abuser away from your child, from contacting your child, and out of your child's home. They will also help if the abuser takes your children against the terms of the Child OP. However, if you have provisions in your OP regarding child support or other financial payments, the return of property, or some other order that is not about keeping the abuser away from your children, the police do not enforce those provisions.



CHECKPOINT:

If the abuser is not following orders regarding child support or other financial payments, the return of property, or some other order that is not about keeping the abuser away from you or your children, you will need to file a Motion for Contempt. This lets the judge who granted your OP know that the abuser is not following the OP. You will get a court date to go back to court so you can explain to the judge what the abuser is not doing. If the judge agrees with you that the abuser is violating the terms of the Child OP, the abuser can be fined or jailed until he/she complies with the OP.

Some courts provide fill-in-the-blank forms for Motion for Contempt, but many do not. If your courthouse does not have forms, contact a private attorney or LAAW if you have questions about filing on of these.

LAAW LEGAL HELPLINE
314-664-6699
800-527-1460

WHAT HAPPENS IF THE ABUSER VIOLATES THE CHILD OP?

If your child's abuser violates the OP by harming the child, coming into the child's home, or by taking/not returning the child, the police may make an arrest. The first time the abuser is convicted of violating the Child OP, it is a misdemeanor. The second time, it is a felony.

If the abuser violates any of the other provisions of the OP, such as by not paying child support or by not attending substance abuse or batterer's intervention classes, the way to enforce the OP is to file a Motion for Contempt. This is a motion which tells the judge that his/her order is not being followed and asks the judge to penalize the abuser for not following the order.

Motions for Contempt are sometimes available as forms at the courthouse, but not always. If your courthouse does not have forms for you to use, you will either have to write it yourself or contact an attorney. Motions for Contempt are very technical, so if you have the resources you should consider talking to an attorney for assistance filing one of these motions. If you do not have an attorney, you may call LAAW for information on filing the motion.

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WHAT HAPPENS IF I NEED TO CHANGE SOMETHING IN THE CHILD OP?

After your hearing, it is possible to change certain portions of the Child OP. In order to make a change, the court must find that there has been a change in your circumstances since the Child OP was entered that requires a change to be made. You cannot go in to change the OP because you change your mind about something, or because you didn't bring all your evidence to court for the hearing and you want to try again.

To ask for a change, a *Motion to Modify* must be filed. Most courts do not provide forms, so you may want an attorney to help you.

WHAT HAPPENS TO MY CHILD OP IF I NEED TO MOVE OUT OF STATE?

An OP is good in every state; you do not need to get a new one if you move. You should contact a domestic violence agency or attorney in both the state you are leaving and the new state before you move to see if you need to do anything to ensure proper enforcement of your OP in the new state. Each state handles this differently.

If your OP gives the abuser visitation rights with your children, keep in mind that he/she keeps these rights even if you move. If you move and deny the visitation you will be in contempt of the court's order, which can result in penalties to you. Check with an attorney or with LAAW before moving if you need to move and your OP gives the abuser visitation.

HOW DO I RENEW MY CHILD OP?

If you feel your child is still in danger of being abused when the Child OP is about to expire, you should go to the courthouse to file a *Motion to Renew Child Order of Protection*. You need to file this motion about two weeks before the Child OP will expire. The court will give you a court date before the OP expires. If the court cannot give you a court date before the Child OP expires, it will usually grant your child another Ex Parte OP to protect your child during the time between when the Child OP expires and the new court date.

LEGAL GLOSSARY

Alias Summons: If you go to court for your hearing and the Respondent has not been served with your petition, the judge will ask if you want to have an “alias summons” or “alias”. What the judge wants to know is whether you want the sheriff to try to serve the Respondent again. If you do, the summons that is sent out is called “alias summons.”

Guardian Ad Litem (GAL): An attorney who is appointed by the judge to represent the best interest of any children involved in a case. A GAL is used in cases where child abuse is alleged by one of the parties.

Harassment: This is the court’s term for a person’s actions which alarm or cause distress to another person and which have no legitimate purpose. There must be more than one incident to be considered harassment.

Non Est: This term is used to indicate that the sheriff was unable to serve the Respondent with the petition.

Paternity: This word is used two different ways by courts. One way that it is used is when the court is asking who is the father of a child. The other way it is used is to mean the actual lawsuit, usually called a “Petition for Paternity, Custody and Support,” that is filed when a child is born to unmarried parents.

If you are the parent of a child who was born out of wedlock, or if you were married at the time your child was born but your husband is/was not the father, the judge for your Order of Protection hearing will want to know if paternity of the child has been legally established. That means in a court, not by a DNA test.

LEGAL GLOSSARY

Petitioner: The “Petitioner” is the person who has filed a petition in court. If you go to the courthouse and file a Petition for an Order of Protection, the court paperwork will list you as the Petitioner.

Respondent: The “Respondent” is the person who must respond to the paperwork filed by the Petitioner. If you have filed a Petition for an Order of Protection, the abuser will be called the “Respondent” in the court paperwork.

Special Process Server: A person who may be hired to serve the court papers on a Respondent. They are not usually hired until the sheriff has tried to serve the Respondent and has not been able to do so. They charge a fee for this service.

COURTHOUSE INFORMATION

Franklin County:

Monday-Friday: 8:00 a.m. – 4:30 p.m.
300 E. Main, Room 301, Union, MO
636-239-6303

Jefferson County:

Monday-Friday: 8:00 a.m. – 5:00 p.m.
300 2nd Street, Hillsboro, MO
636-797-5501

Lincoln County:

Monday-Friday: 8:00 a.m. – 4:30 p.m.
201 Main Street, Troy, MO
636-528-6300

St. Charles County:

Monday – Friday: 8:30 a.m. – 5:00 p.m.
300 N. Second Street, St. Charles, MO
636-949-7900 Ext. 7746 or 636-949-7391
Sat/Sun/Other hours: 636-949-1410

St. Louis City Civil Courts Building:

Monday-Friday 8:00 a.m. – 4:30 p.m.
Holidays: 9:00 a.m. – 12:30 p.m.
10 N. Tucker, 9th Floor, Room 901, St. Louis, MO
314-622-3788

St. Louis County:

Monday-Thursday: 8:00 a.m. – 7:00 p.m.
Friday: 8:00 a.m. – 5:00 p.m.
Saturday: 9:00 a.m. – noon
7900 Carondelet, 1st Floor, Room 156, Clayton, MO
314-615-4725

COURTHOUSE INFORMATION

Warren County:

Monday-Friday: 8:00 a.m. – 4:30 p.m.
104 W. Main Street, Warrenton, MO
636-456-3363

Washington County:

Monday-Friday: 8:00 a.m. – 5:00 p.m.
102 N. Missouri, Potosi, MO
573-438-4171

The following feelings are **normal** reactions to crime and victimization. These, and many other feelings, can be helped through counseling:

- Feeling like you're "crazy" and "alone"
- Feeling overly alert, or "jumpy"
- Feeling like you have no one to talk to, or that no one understands
- Everyone you talk to is either tired of hearing about what happened, or you don't want to burden you friends and family any more by talking about what happened to you
- You can't sleep or you sleep too much
- You can't eat or you eat too much
- You can't seem to stop being mad
- You feel guilty about what happened
- You're sad and nothing seems to make you happy, right now or ever
- You're scared your life will never be the same

It's normal to be angry, upset, worried, or "down" following a crime. But in order to start healing, you must deal with these feelings in a productive way so that you can regain control over your life. Counseling will help you start moving in the right direction, and along with advocacy services, will help you find the best way to deal with the effects of crime.

All of Crime Victim Advocacy Center's counseling is free of charge. **Please call 314-652-3623 with any questions or to make an appointment.**