

# Montana Legal Services Association

## Orders of Protection (FAQ)



Providing, protecting, and enhancing access to justice.

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## **Orders of Protection (FAQ)**

In this article, you'll find answers to common questions about Orders of Protection in Montana. Each state has different laws. If you have a question about an Order of Protection from somewhere outside of Montana, this information may not be right for you. You may be able to find free legal help in your state.

We'll answer the following questions:

- What is an Order of Protection?
- Who can get an Order of Protection?
- How can an Order of Protection help me?
- How much does it cost to get an Order of Protection?
- Do I need a lawyer to get an Order of Protection?
- How long does an Order of Protection last?
- What are the steps for getting an Order of Protection?
- What will I have to prove at the hearing?
- What should I do before the hearing to prepare my case?
- What should I do on the day of the hearing?
- What is the order of events in the courtroom?
- What should I do before I leave the courthouse?
- What should I do after I leave the courthouse?
- What's a safety plan?
- I did not get an Order of Protection. What can I do?
- What can I do if the Respondent breaks the order?
- How do I change, extend, or cancel my Order of Protection?
- What happens if I move?

### **What is an Order of Protection?**

An Order of Protection is a court order that is designed to stop violent and harassing behavior. It is meant to protect you and your family members from someone who has harmed or threatened to harm you and of whom you are afraid.

If you have filed for and been granted a Temporary Order of Protection (TOP), the Court will set a Hearing to determine whether or not to keep the TOP in place and change it to an "Order of Protection."

In Montana, Orders of Protection are sometimes called restraining orders though “Order of Protection” is the correct term. When you file an Order of Protection, you are called the Petitioner. The person whom you filed the Order of Protection against is called the Respondent.

### **Who can get an Order of Protection?**

- You can ask the Court for an Order of Protection against a "family member" or "partner" who has physically hurt you or threatened to hurt you and you're afraid will hurt you again.

"Family member" means: mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage. That includes stepchildren, stepparents, in-laws, and adoptive children, and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

"Partner" means: spouses, former spouses, people who have a child in common, and people who have been or are currently in a dating or ongoing intimate relationship. This includes same sex relationships.

- You can also ask the court for an Order of Protection against anyone (whether or not that person is a family member or partner) who has:
  - stalked you,
  - raped you,
  - sexually assaulted you,
  - committed incest with you, or
  - murdered your partner or family member.

To learn more about what the law says who can get an Order of Protection, read Montana Code Annotated (M.C.A.) § 40-15-102. 40 is the Title number. 15 is the Chapter number. And, 102 is the section number.

- It does not matter how much time has passed between when the abuse happened and when you apply for an Order of Protection. If the abuser is in jail, you may ask for an Order of Protection upon their release.
- You may be eligible for an Order of Protection whether or not you have reported the abuse to law enforcement, charges are filed, or you participate in a criminal prosecution.
- It does not matter how old the abuser is and where they live for purposes of getting an Order of Protection.
- Adults can file for Orders of Protection on behalf of minors (people under 18). Minors also can file for Orders of Protection on their own, but the court may appoint adults to represent them if they do so.

### **How can an Order of Protection help me?**

Remember, if you file for an Order of Protection, you are the Petitioner. The person you file against is the Respondent. In your Order of Protection, you can ask the Judge to:

- Order the Respondent not to hurt you
- Order the Respondent not to harass or otherwise disturb you (and/or your children)
- Order the Respondent not to contact you. This means in person, through 3rd parties, through writing, by email, on social media, and by telephone, etc.
- Order the Respondent to stay a specific distance from you, your house and/or your work, as well as your child's daycare and/or school
- Order the Respondent to leave the home that you are both living in
- Order the Respondent to allow you access to your personal property
- Order the Respondent not to own a gun or other dangerous weapons
- Order the Respondent to attend counseling, like batterers' intervention or drug and alcohol counseling

- Order the Respondent to only get supervised visits for your children.  
**Important:** you should not use an Order of Protection to take the place of a Parenting Plan.

To learn more about what the law says you can ask for in an Order of Protection, read §M.C.A. 40-15-201.

### **How much does it cost to get an Order of Protection?**

It does not cost anything to apply for an Order of Protection. There is no fee to have the sheriff's deputy serve the Respondent if the Court grants you one.

### **Do I need a lawyer to get an Order of Protection?**

No. But, just like any other legal issue, it is helpful to have a lawyer if possible. If the other party has a lawyer, it's a good idea to try to get one too.

There are free court forms to help people file for an Order of Protection on their own. There may be an advocate near you who can answer basic questions and help with safety planning at no charge. You can also apply for free legal help.

### **How long does an Order of Protection last?**

When you first apply for an Order of Protection you file a Petition for a Temporary Order of Protection (TOP). The Judge will review your Petition and then decide whether to grant you a TOP based on the information you put in the form. If the Judge grants you a TOP, it will be in effect as soon as the Respondent is served and will last until the Court holds a hearing. The Court should schedule a hearing within 20 days after granting your TOP. A sheriff's deputy will serve the person you file against with a copy of your Petition and a Notice of Hearing.

At the hearing, both sides will get to share their side of the story. After the Petitioner, Respondent, and Witnesses have testified, the Judge will decide whether to change the Temporary Order of Protection (TOP) into a Permanent Order of Protection, and how long it will last. The Judge will decide how long the Order of Protection lasts based on the evidence presented in the hearing.

## What are the steps for getting an Order of Protection?

**Step 1:** Find the forms. You can find the forms at:

- Local domestic violence shelters
- Local Crime Victim Advocate offices
- The Clerk of Court at most Justice, City, Municipal, or District Courts
- Self Help Law Centers.

You can also find forms on [MontanaLawHelp.org](http://MontanaLawHelp.org):

- Write-in-the-blank form to download and fill out by hand
- Interactive form to fill out online and then download.

**Step 2:** Carefully fill out the forms. The write-in-the-blank forms come with instructions. Read them carefully so it's easier to fill out the form. The interactive forms will help you fill them out based on the answers you give in an online interview.

You can keep your new address safe by putting “confidential” where it asks you for your address.

The forms will ask you to describe how the Respondent has abused or threatened to abuse you. You want to be as specific as possible. For each example of abuse, describe:

- **Who:** Say who abused you. Say who was there to see the abuse. It's OK if it was only you and the Respondent during the abuse.
- **How:** Talk about how the Respondent abused you. Be specific about details that you can remember. For example, if the Respondent hit you, say where they hit you on your body. If the Respondent threatened you, say what they said and what they were doing when they threatened you, and how that made you feel.
- **When:** Be as specific as possible about the time the abuse happened. Try to remember the date, day of the week, and/or time it happened. If it happened around a holiday or special event, say it. Don't worry if you cannot remember every detail because that is normal when there is trauma. You can say in your Petition if you are having trouble remembering details because of trauma.
- **Where:** Be specific. Write where you were when the Respondent abused you. For example, say the specific room you were in when the Respondent abused you.

- **What you felt:** You can write how you felt both physically and emotionally. For example, if you were scared for your life during the abuse or threats of abuse, you can describe that in your Petition. You can also describe the physical pain that you felt because of the abuse.

Do not sign the petition. You will need to sign it in front of a notary public. Notaries can often be found in courthouses or at banks.

**Step 3:** File your petition at the courthouse.

You will file your Orders of Protection with the Clerk of Court. You may file your Petition in Justice, City, Municipal, or District Court in the county:

- Where the abuse happened;
- Where you live; or,
- Where you fled to escape the abuse.

All courts can include children as protected individuals in Orders of Protection when the Respondent has abused or threatened to abuse the children.

**Important:** If you and the Respondent are already going to court for a divorce and/or a Parenting Plan, then you should file in the District Court overseeing that case, if the Judge is available. An Order of Protection is not meant to take the place of a Parenting Plan. If you have any questions about where to file, talk to a lawyer.

When you go to the courthouse to file for an Order of Protection, it will be helpful if you bring:

- A picture of the Respondent
- Work and/or home address of the Respondent
- Respondent's phone number
- A description of the Respondent's car
- An ID for yourself if you have one.

**Step 4:** A judge will review your Petition. You will file your Petition with the Clerk of Court. The clerk will then give it to a Judge. The Judge may wish to ask you questions as they read your Petition.

If the judge decides you are in immediate danger of harm, they will issue a Temporary Order of Protection. The order will include a Notice of Hearing that sets a date for a court hearing to determine whether to grant a Permanent Order of Protection.

You will be given a copy of the Temporary Order of Protection and Notice of Hearing. A sheriff's deputy will serve the Respondent with those papers as well. That is why it is helpful to bring in a description and pictures of the Respondent and where the sheriff can find them.

If the judge does not grant you a Temporary Order and you believe that you should be eligible, contact:

- A local domestic violence or victim service program;
- Montana Legal Services Association.

**Step 5: Service of process.** In every court case, the other party will get notice and their day in court. A sheriff's deputy will serve the Respondent with a TOP and Notice of Hearing. Usually the Clerk of Court will give copies of those papers to the Sheriff's Office. But in some places you might have to take them yourself. The TOP is valid as soon as the Respondent is served or has knowledge that it exists.

**Step 6: The Hearing.** The Court will hold a hearing within 20 days from the date you file your Petition. You must go to the hearing. If you do not show up, the Court will dismiss your case, which means that you won't get an Order of Protection.

You need to have an important reason not to go to your hearing, like an illness or a job interview. Call the Court where your hearing will be and ask them to reschedule. Some Courts might make you file a document called a **Motion for Continuance** to reschedule. If your hearing is not rescheduled by the Court you must still go to the originally scheduled hearing or you may not get your Order of Protection.

At the end of the hearing, the Judge will decide whether to change the TOP into a Permanent Order of Protection, and how long it will last. If you need to change anything that you put in your TOP, you can ask the Judge for permission to change it during the hearing. For example, if you forgot to check the box to include your work as a protected place.

We have more information about hearings below, or you can read our article on what happens in an Order of Protection Hearing.

### **What will I have to prove at the hearing?**

The requirements for an Order of Protection change depending on your relationship to the Respondent.

**If the Respondent is your family member, ex, or partner, then you must show the Court:**

1. That you are the victim of a violent crime that the Respondent has committed against you. The crime does not need to be reported to the police.

**Or**

2. That you are “in reasonable apprehension of bodily injury” from the Respondent. The term “reasonable apprehension of bodily injury” is what is used in the law. In layperson terms, this means that a reasonable person in your situation would also be scared of getting physically hurt by the Respondent. This requirement may be harder to prove because it is up to interpretation.

**Example 1:** The police arrested your ex for a Partner Family Member Assault (PFMA) after physically assaulting you. The law says that you may be eligible because you are a victim of partner family member assault.

**Example 2:** Your partner has never been charged with a crime. But your partner has harmed you, or threatened to harm you, and says they will do it again. You have never reported any abuse or threats of abuse from your partner to the police. You will need to show the Judge that it is reasonable to be afraid of physical harm from the Respondent. You also must show that you are in danger if the Court does not give you an Order of Protection.

You can see what the law requires for an Order of Protection in M.C.A. §40-15-102.

**You do not need to have any kind of relationship with the Respondent if you are the victim of:**

- Assault
- Aggravated assault
- Assault on a minor
- Stalking
- Incest
- Sexual assault
- Sexual intercourse without consent

It is not necessary that the Respondent has been criminally charged with one of crimes listed above. It would be a good idea to talk to a lawyer if the Respondent has not been charged with one of the crimes listed above.

You can find the law that lists all of the crimes where you do not need to have any relationship with the Respondent to be eligible for an Order of Protection at M.C.A. §40-15-102 (b). The (b) is the subsection.

You can read our article on [How to Use Evidence in an Order of Protection Hearing](#).

### **What should I do before the hearing to prepare my case?**

The first thing you should do is prepare yourself for seeing your abuser in the courtroom. You can talk with trusted friends or family members to help you get ready to see your abuser again. It is a good idea to talk to a crime victim advocate in your area.

An Order of Protection hearing can be stressful and scary. You can make it less hard by completing a checklist of things to do before the hearing.

Before the hearing it is a good idea to:

1. Double check the date, time, and courtroom of the hearing.
2. Make plans to get to the courthouse at least 15 minutes early.
3. Put together a list of evidence that you may use.
4. Make 3 copies of each document that you plan to use as evidence. For example, if you are using text messages, print out 3 copies of those messages.
5. Put together a list of witnesses that you want to use.
6. Contact your witnesses and make sure they can come to the hearing.
7. Practice your testimony of the 2 worst and most recent times the Respondent abused or threatened to abuse you. If the Respondent has abused you over a long period of time, it may also be helpful to practice talking about the history of abuse, and how that has made you fearful of the Respondent.
8. Come up with a safety plan for when you see the Respondent in court [[link to safety planning](#)]

You can learn more about how to represent yourself in an Order of Protection hearing.

### **What should I do on the day of the hearing?**

Some courthouses have more than one courtroom. You want to make sure that you go to the right courtroom. The courthouse might have a board saying which Judge will be in

which courtroom. If you cannot find out which courtroom you are in, you can ask a Clerk of Court.

There may be several hearings happening in the same courtroom as yours. You will need to wait in the courtroom patiently until your case number is called. The other hearings may take a while. So, make sure that you don't have to be anywhere right away after your hearing in case the other hearings take longer than usual.

Once your case is called, go into the courtroom and find a seat. It is your right to take another seat if the Respondent sits next to you. You can ask the court staff for help in keeping the Respondent away from you.

Here are some tips for the day of your hearing:

1. Show up at least 15 minutes early.
2. Bring a friend or advocate to help you feel safe.
3. Dress like you're going to an important job interview.
4. Always address the Judge as "Your Honor" or "Judge."
5. Be respectful to everyone. That includes the other parent, Judge, Court staff, and other people in the Court.
6. Bring the court documents you and the other parent filed. Make sure the Court papers are organized.
7. Bring your evidence. Make sure that your evidence is organized so that you can easily find it. You don't want to make the hearing more stressful if you have to dig through papers. Make sure to have copies ready for yourself, the court and the other side if you want the judge to look at written evidence or pictures.
8. Bring an outline of what you want to say. You can also bring questions that you want to ask the Respondent.
9. Do not bring your children unless the Court has ordered the children to be there.
10. Wait your turn to speak. You do not want to interrupt the Respondent and especially the Judge.
11. Speak clearly when it is your time. Make sure the Judge and Respondent can understand you. You won't get what you want if the Judge cannot understand or hear you.
12. Ask questions. If you do not understand something, you have the right to ask for more information so that you understand. Just remember to be respectful, as hearings can be stressful.
13. Make sure you understand what to do next before you leave.

## **What is the order of events in the courtroom?**

### **If Respondent doesn't show up:**

If the Respondent does not show up at the hearing, the Judge may grant you an Order of Protection without any evidence beyond what you put in your Temporary Order of Protection (TOP) paperwork. The Judge may still ask you to present your evidence to the Court so they can have it on record.

If you need to change anything that you put in your TOP, you can ask the Judge for permission to change it during the hearing. For example, if you forgot to check the box to include your child's daycare as a protected place, you can ask to add it during the hearing.

### **If the Respondent shows up and agrees:**

If the Respondent shows up and agrees that you should get an Order of Protection, the Judge may give you one without the need for more evidence.

### **If the Respondent shows up and doesn't agree:**

If the Respondent shows up to the hearing with a lawyer, you may ask the court for a "continuance", which means that the hearing will be rescheduled for a later date. You can ask for this extra time so that you can try to find a lawyer to help you.

If the Respondent shows up at the hearing and disagrees with the Order of Protection, the hearing will be a "contested hearing." A contested hearing is when the parties to a case do not agree on an issue and the Judge then decides what should happen. At a contested hearing, both the Petitioner and the Respondent will be able to share their side of the story and present their evidence to the Court.

At the end of the hearing, the Judge will decide whether to change the TOP into a Permanent Order of Protection, and how long it will last. If you need to change anything that you put in your TOP, you can ask the Judge for permission to change it during the hearing. For example, if you forgot to check the box to include your work as a protected place, you can ask to do so during the hearing.

## **What should I do before I leave the courthouse?**

Read through the Order of Protection to make sure everything is correct. The Clerk of Court must give a copy of the Order of Protection to the appropriate law enforcement agencies within 24 hours. But in some areas, you may be responsible for taking the order to law enforcement. You can ask the clerk about their policy for giving that information to the law enforcement.

It is a good idea to find out **when** law enforcement enters the Order of Protection into their database. The database helps law enforcement from different agencies find out about Orders of Protection so they can act quickly if needed.

It's also a good idea to follow your safety plan for leaving. That might mean waiting in the courtroom until the Respondent leaves. You can have a friend or advocate walk you to your car or ride.

## **What should I do after I leave the courthouse?**

An Order of Protection is a court order. It does not guarantee that the Respondent won't do anything or that your fear of them will go away. You can help you and your family be more safe by coming up with a safety plan.

## **What's a safety plan?**

A safety plan is a personalized and practical plan to help you avoid dangerous situations with the Respondent, and lays out the best things to do if you're in danger. Some things that you'll want to include in your own safety plan are:

1. Double check that law enforcement enters your Order of Protection into their database.
2. Make copies of the Order, and keep one for yourself. Give a copy to your children's school or daycare, your work, a reliable neighbor, and other people you trust.
3. Look into getting a Hope Card.
4. Look into the Address Confidentiality Program.
5. Look into the Crime Victim Compensation Fund.
6. Meet with a Crime Victim Advocate to come up with your own plan.

A **Hope Card** is a wallet-sized version of an Order of Protection. It has a picture of the Respondent on it. The Hope Card lets law enforcement in any jurisdiction know that you have a valid, permanent Order of Protection. This may help if there is ever an emergency. Learn more about how to apply for a Hope Card at <https://dojmt.gov/victims/>.

The **Address Confidentiality Program** can help you keep your address safe from the Respondent. Learn more about how to apply for the Address Confidentiality Program at <https://dojmt.gov/victims/>

The **Crime Victim Compensation Fund** helps victims with their crime-related medical costs. Learn more about the victim compensation fund at <https://dojmt.gov/victims/>

There are **Crime Victim Advocates (CVA)** located throughout Montana. CVAs give free, confidential help and services to crime victims. For example, CVAs can help with safety planning, basic questions about court proceedings, victims' rights, compensation, and confidentiality, and more. You can find a crime victim advocate near you at <https://dojmt.gov/victims/crime-victim-advocates/>

Learn more about coming up with a safety plan.

### **I did not get an Order of Protection. What can I do?**

If you are not granted an Order of Protection, there are still some things you can do to stay safe.

It is a good idea to contact one of the domestic violence shelters or CVA in your area to get help, support, and advice on how to stay safe. They can help you come up with a safety plan and help connect you with the resources you need.

You may also be able to reapply for an Order of Protection if you have new evidence to show the court that abuse did occur. You may also reapply if the Respondent abuses or threatens to abuse you again after the hearing.

If you think the Court made a mistake by not giving you an Order of Protection, talk to a lawyer right away.

## **What can I do if the Respondent breaks the order?**

If you believe that the Respondent is breaking the Order of Protection and you feel it's an emergency, call 911 right away. When you are not sure if the Respondent is really breaking the Order, or you don't feel like it's an emergency, you can call your local law enforcement on their non-emergency number. It might be helpful to save that number in your phone.

When the police arrive, it is a good idea to write down the name of the responding officer(s) and their badge number in case you want to follow up on your case. Make sure a police report is filled out, even if no arrest is made. If you have police reports of all violations of the order it may help if you need to ask the court to extend or change the order.

It can be a crime each time the Respondent breaks the order. For example, if the Respondent tries calling you and then shows up to your work, they may be charged with committing two crimes, not one.

It doesn't matter if the Respondent tries to contact you through someone else or in person. Even if you tell the Respondent that you want to talk, they are still not allowed to break the Order of Protection. The Petitioner, the person who asked for the Order of Protection, cannot violate the order.

All Orders of Protection have the following warning:

"Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties of up to \$10,000 in fines and up to a 5-year jail sentence. This order is issued by the court, and the respondent is forbidden to do any act listed in the order, even if invited by the petitioner or another person. This order may be amended only by further order of this court or another court that assumes jurisdiction over this matter."

## **How do I change, extend, or cancel my Order of Protection?**

If you need to change, extend or cancel your Order of Protection, you will need to file a Motion and Affidavit with the Clerk of Court where the Judge issued the order. The Motion asks the Court to consider your request. The Affidavit is a sworn statements of facts that support what you are asking for in your Motion.

You can find the form to ask the Court to change, extend, or cancel your Order of Protection on [MontanaLawHelp.org](http://MontanaLawHelp.org).

## **What happens if I move?**

Federal law says that all law enforcement agencies must give “full faith and credit” to a valid Order of Protection. “Full faith and credit” means that all law enforcement agencies must enforce the order wherever you go in the United States, including U.S. territories and tribal lands. In short, the Order of Protection follows you wherever you go.

It is a good idea to get a hold of the domestic violence or crime victim program in your new area to find out what steps you should take so that your Order of Protection can be enforced. Call the Court where you originally received the order to tell them your new address so that they can contact you if necessary.

## **How do I get more help?**

Montana Legal Services Association (MLSA) provides free civil legal help to low-income people. Contact us to see if you qualify:

- Apply anytime online at [mtlsa.org](http://mtlsa.org);
- Call our Helpline at 1-800-666-6899 (Helpline hours are limited).

## **What help can I find at MLSA?**

- Legal advice and representation;
- Referrals to volunteer attorneys and other providers;
- Self-help clinics and materials.

## **[www.MontanaLawHelp.org](http://www.MontanaLawHelp.org)**

Need legal information or forms? Visit [www.MontanaLawHelp.org](http://www.MontanaLawHelp.org).

Can't find what you want? Use LiveHelp. Click on the LiveHelp icon and get help finding the information you need.

## **[www.MTLA.org](http://www.MTLA.org)**

Find copies of all our brochures online.

They are all available for free download!

This pamphlet is meant to give basic legal information, not legal advice about your problem. The law changes often and each case is different. We recommend you talk to an attorney about your legal problem.