

Montana Legal Services Association

How to Use Evidence in an Order of Protection Hearing in Montana



Providing, protecting, and enhancing access to justice.

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“How to Use Evidence in an Order of Protection Hearing in Montana.” This document was prepared by Montana Legal Services Association and is intended only for not-for-profit purposes.

How to Use Evidence in an Order of Protection Hearing in Montana

Description: Learn how to use evidence in an Order of Protection Hearing in Montana when you filed for the Order.

Introduction: Learn how to use evidence in an Order of Protection hearing in Montana when you are the Petitioner. 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.”

If you have a hearing for an Order of Protection in a court in Montana, this article will go over:

- What you should tell the Judge
- Who you may use as witnesses
- What may be considered evidence

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.

Summary – what is evidence?

“Evidence” is what you present in Court to try and prove that the Respondent has harmed, or may harm, you and/or your child. Evidence can be statements given by you and others in Court, called “testimony.” Evidence may also be documents, photos, text messages, or things like torn clothing or damaged property. To qualify for an Order of Protection, you will need to show the Court that you are in danger and need an Order of Protection. You should use your evidence to show that you are in danger from the Respondent.

The following are examples of the types of evidence that may be used to show the Judge that you are in danger and need an Order of Protection.

Your Testimony

You will give your testimony after the Court swears you in to tell the truth. You should tell the Judge why you want the Order of Protection, including why you are afraid of the Respondent. You should include information about times when the Respondent abused you. If there have been many abusive times, focus your testimony on the most recent and the worst. But, if Respondent has abused you over a long period of time, it may

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also be helpful to talk about the history of abuse, and how that has made you fearful of the Respondent.

For each example of abuse that you tell the Judge, describe:

- **Who:** Say who abused you. Say who was there to see the abuse. Tell the Judge if your children saw the abuse. Tell the Judge if one of your witnesses who you brought to testify saw 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, tell the Judge. Don't worry if you cannot remember every detail because that is normal when there is trauma. You can let the Judge know if you are having trouble remembering details because of trauma or if you are nervous.
- **Where:** Be specific. Talk about 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 tell the judge 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 testimony. You can also describe the physical pain that you felt because of the abuse.

Remember, tell the Judge about the worst and most recent times of abuse. When you describe the worst and most recent abuse, talk about the "who, how, when, and where." You can also let the Judge know what you did after these violent incidents or threats like seeking help from law enforcement, a domestic violence shelter, or getting medical help. You can also talk about if there is a history of abuse.

What can I tell the Judge in my testimony?

During your testimony, you can tell the Judge about things the Respondent has done to make you feel in danger for your physical safety or your children's safety.

Abuse

When you talk about abuse that has happened, describe "who, how, when, where, and what you felt."

For example, "The Respondent and I were in our house on June 1, 2018. He got mad and called me names like 'b#@\$.%' He shoved me, my head hit the wall of the kitchen

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and I blacked out. When I came to I was so scared and thought he might kill me and my head was aching. My child saw it all. I did not go to the hospital because I was afraid.”

Even though you are in a court room, it is OK to say curse words when you are repeating what the Respondent said to you.

Threats of Abuse

When talking about threats of abuse, you also want to describe “who, how, when, where, and what you felt”

For example, “I stopped at the stoplight in my car after work on Friday. The Respondent pulled up next to me. When I looked over, he pointed his finger at me like he was pretending it was a gun and he ‘shot’ me. I believed this was a threat that he wanted to kill me because he has said that to me before.”

Past Protective Orders

You may talk about past Orders of Protection that you filed against the Respondent and why you asked for those orders.

For example, “I had a protection order against the Respondent in Wyoming in 2017. I dismissed the order because Respondent promised he would get counseling. He didn’t and now I know that I need to keep the Order of Protection until he finishes counseling and changes his behavior.”

You should tell the Judge about protective orders you have dismissed and explain why. You should make it clear that you do not intend to dismiss the protective order you are requesting now until you feel sure that you no longer need it.

Violence against Others and Animals

You may talk about how the Respondent has abused others or animals to show how you are in danger. Remember, to describe the “who, how, when, where, and what you felt” when you talk about how the Respondent has abused others or animals.

For example, “The Respondent beat up his sister in 2017 in Dillon. He punched her and gave her a black eye. He was arrested and convicted of assault. I was really scared when this happened because I knew that it could be me next.”

You may also talk about how the Respondent has abused animals to make you feel unsafe.

For example, “The Respondent would play a ‘game’ in front of our son. He would pull

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the cat's tail until the cat tried to scratch him. Then the Respondent would punch and kick the cat. Watching the Respondent hurt our cat in front of our son made me feel unsafe."

Testimony of Witnesses

Witnesses may also testify at the hearing. Witnesses will have to swear to tell the truth. Think about the purpose of each witness, and what information they can share with the Court. It is a good idea to choose witnesses who have the most direct knowledge of the abuse or threats of abuse. Witnesses who have not directly seen the abuse, or threats of abuse, may still be helpful by talking about how the abuse has affected you. For example, a witness may talk about times that you were scared, bruised, or missed work because of the abuse. You want to choose witnesses who can help you show the Court that:

- The Respondent committed a violent crime against you,
- You are "in reasonable apprehension of bodily injury" from the Respondent,
- And/or that the Respondent committed one of the crimes listed earlier.

It is a good idea to talk to your own witnesses before the hearing. You will want to go over what you will ask them to make sure that they will be helpful to your case. Remember, you want witnesses who can help you prove to the Court that you need an Order of Protection.

The following are examples of people that you may ask to testify:

- Family, Friends, Neighbors, Public
- Medical Providers, Mental Health Providers, Dentists, Physical Therapists
- Police Officers, Victim Advocates
- Social Service Providers
- Teachers, Clergy

Usually, your witnesses may only talk about things that they actually saw or heard. For example, if your friend saw you **after** you were abused, she may not be able to say, "The Respondent abused my friend." Instead, she may be able to say something like, "My friend was with the Respondent on this day of the week. I picked her up after she called me. When I picked her up, she was scared and had a bruise. She told me that the Respondent gave her the bruise." In this example, the friend did not have direct knowledge of the actual abuse. But, she did have direct knowledge of what her friend said, how she acted when she said it, that she had a bruise, and where her friend was when she picked her up.

Physical Items

You may present physical items as you testify to prove that what you or your witnesses

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say in testimony is true. When you bring in physical items, you will need to ask the Judge to “admit” the evidence. You can say, “Your Honor, please admit this as evidence.” Some examples of items that may be admitted as evidence are:

- Physical injuries
- Torn/bloody clothes
- Damaged property
- Police reports
- Medical records
- Photographs
- Bills/Invoices
- Letters, emails
- Voicemail messages
- Text messages
- Social Media pages
- 911 recordings
- Video recordings

You want to use physical evidence that relates to the examples of abuse that you talk about in your testimony. You may use evidence that relates to the abuse that your witnesses talk about in their testimony.

How can I make sure that the Judge considers my evidence?

The Judge will consider the evidence that they are allowed to consider based on the law. The Respondent (or their attorney) might “object” to some of your evidence. If the Respondent objects, you will be able to explain to the Judge why you think the evidence should be considered. For example, you can tell the Judge how the evidence relates to your testimony or your witnesses’ testimony. You may also have to explain to the Judge what this evidence is and where you got it from before the Judge decides to allow it or not.

How else can I get ready for an Order of Protection Hearing?

Read our other article on How to Represent Yourself in an Order of Protection hearing for more information and tips for going into your hearing.

Summary

Evidence is what you use to show the Judge that you are in danger of the Respondent. Evidence can be testimony about abuse or threats given in Court by you and your witnesses. When talking about abuse or threats, you and your witnesses should always describe the “who, how, when, where, and what you felt.” It is usually best to talk about

the worst and most recent times of abuse. However, if there is a history of abuse, you can include that as well.

You may also use physical evidence to support you or your witnesses' testimony. Evidence can be physical things like police reports, voicemail messages, text messages, damaged property, and other things that you can take with you into Court.

The Respondent or their lawyer may object to your evidence, even testimony. If that happens, try to remain calm, and then tell the Judge why you think it should be considered.

There may be free help for people who are in danger and need an Order of Protection. It is a good idea to contact a crime victim advocate or your local domestic violence shelter if you want help with safety planning. Montana Legal Services Association gives free legal help to eligible clients. If you have any questions at all on Orders of Protection, it would be a good idea to talk to a lawyer.

Take Action:

Learn more about [How to Represent Yourself in an Order of Protection Hearing](#).

Legal Forms:

If you have not already applied for a Temporary Order of Protection (TOP) and want to, you can find the forms on this website. You can download our write-in-the blank one and complete it by hand. Or, you can use our interactive form and answer questions online and then download a completed form. Once you complete the form, you will need to file it with the court.

Follow this link to the write-in-the-blank Petition for Temporary Order of Protection.

Follow this link to the interactive Petition for Temporary Order of Protection.

The Montana Attorney General has forms and information for the Address Confidentiality and Hope Card programs.

Safety Planning:

Safety planning may help you stay safe if the Respondent tries to hurt you, even if you get an Order of Protection.

- Read our article on Safety Planning
- Get help with safety planning from a Crime Victim Advocate near you
- Learn more about safety planning from the National Coalition Against Domestic Violence.

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Legal Help:

Montana Legal Services Association (MLSA) provides free civil legal help to eligible clients. Apply for help to find out if MLSA can help you.

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;
- 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

Need legal information or forms? Visit www.MontanaLawHelp.org.

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

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.