

Montana Legal Services Association

How to Represent Yourself in an Order of Protection Hearing in Montana



Providing, protecting, and enhancing access to justice.

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How to Represent Yourself in an Order of Protection Hearing in Montana

Description: Learn how to represent yourself in an Order of Protection hearing when you are the Petitioner.

Introduction: Learn how to represent yourself 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 have it become an “Order of Protection.”

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

- Guide you through the hearing process
- Give you tips on presenting your case.

In Montana, Orders of Protections are sometimes called restraining orders but “Order of Protection” is the correct term. The Court paperwork for an Order of Protection will always say “Order of Protection.” 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.

When is the hearing scheduled for an Order of Protection?

A hearing is usually scheduled within 20 days after the Respondent is served with the Temporary Order of Protection (“TOP”) and a Notice of Hearing. Make sure the Court has good contact information for you, so that you will know when the hearing is scheduled. You may be able to use contact information for a domestic violence shelter if you are concerned about your safety. Or, you can apply for the Address Confidentiality Program.

Do I have to go to the hearing?

Yes. If you are the one asking the Court for the order of protection, you need to be at the hearing. If you don’t attend, the Court will dismiss your case, which means that you won’t get an Order of Protection.

What if I cannot go to the hearing?

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.

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How do I get ready for the hearing?

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.

It is a good idea to:

1. Bring a copy of the Temporary Order of Protection (TOP) that you filed, it should tell you the date, time, and courtroom for the hearing
2. Double check the date, time, and courtroom of the hearing
3. Make plans to get to the courthouse at least 15 minutes early
4. Put together a list of evidence that you may use
5. 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.
6. Put together a list of witnesses that you want to use
7. Contact your witnesses and make sure they can come to the hearing
8. Practice your testimony of the 2 worst and most recent times the Respondent abused or threatened to abuse you. If 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.

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.

What can I ask for at the hearing?

It is a good idea to know what kind of protections you want in place before your hearing. You need to tell the Judge what you want the Order to say. Remember, if you filed for an Order of Protection, then you will be called the Petitioner. The person you filed an Order of Protection against will be called the Respondent. At the hearing, you can ask the Judge to:

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- 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 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 batterer's 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 Montana Code Annotated (M.C.A.) § 40-15-201. 40 is the Title number. 15 is the Chapter number. And, 201 is the section number.

Decide the evidence you want to use

Evidence is what you show to the Court to prove that the Respondent has harmed or may harm you (and/or your child). This can be your story, the witnesses, documents, photos, or things like torn clothes or a weapon. To learn more, read our article on How to Use Evidence in an Order of Protection Hearing.

What do I need to prove to the Court for an Order of Protection?

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.

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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 beating on 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 and says they will do it again. You have never reported any 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.

Does it matter how long it has been since you were assaulted or abused?

No. The law says that it does not matter how much time has passed between when the abuse or crime happened and when you apply for an Order of Protection.

What happens at the Order of Protection hearing?

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 though may also 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.

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 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.

How to Make Your Case at an Order of Protection Hearing

Your Testimony

The Petitioner will usually testify first. To testify means to make statements that you swear to be true. The Order in which you testify does not mean one side has a better chance of winning. To present your case to the Judge, you may:

- Be sworn in and to testify truthfully;
- Take the witness stand;
- Tell your story and share your evidence;
- Bring in and question witnesses;

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- Ask the Judge for the specific protections that you would like in the Order of Protection.

The Judge may ask you specific questions about the situation. Always refer to the Judge as “Your Honor” or “Judge,” even when answering their questions.

Giving your testimony may be very emotional and stressful. It is OK if you get worked up in court, but you want to remember to be respectful to the Judge and even the Respondent. If you are feeling overwhelmed, take a few deep breaths, remember that you have been through worse, and that you are doing what you need to keep yourself safe. You can try practicing your testimony before your hearing to a trusted friend or family member. You can also write down notes. But, the Judge may ask you to give a copy to the Respondent. So, bring a couple of copies to your hearing.

Your Witnesses’ Testimony

After you testify, the Respondent will be able to ask you questions. The Court calls this “cross examination.” When the Respondent finishes asking you questions, you may bring in and question your witnesses. When you finish with your witness, the Respondent may question, or “cross examine,” your witnesses.

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.

Respondent's Case

After you present your case, the Respondent will get to testify and bring in witnesses. Don't interrupt the Respondent or their witnesses, even if you disagree with what they say. You will have a chance to ask the Respondent questions after they have testified. You will also have a chance to question the Respondent's witnesses after each has testified. Use this time to show that the evidence you disagree with is either wrong or taken out of context.

You can ask the Judge to grant you permission to testify again if the Respondent brings up new issues. The Judge may then grant you permission to testify again.

After you and the Respondent present your cases, the Judge will decide at the hearing whether to grant an Order of Protection for you.

What questions will the Judge ask?

The Judge may ask the Petitioner, Respondent, or any of the witnesses questions while they testify. Usually, a Judge will ask questions in order to clarify statements. 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.

You can learn more about what the law says about Permanent Orders of Protection at M.C.A. § 40-15-205.

Summary

Orders of Protection in Montana are sometimes called restraining orders but "Order of Protection" is the correct term. If you applied for an Order of Protection, then you are the Petitioner. The person you filed against is called the Respondent. The Court usually schedules an Order of Protection hearing within 20 days after the Respondent is served.

If the Petitioner doesn't show up to the hearing, the Order of Protection will likely be dismissed. If the Respondent shows up and doesn't agree, the hearing will be contested. If you cannot show up, call the Clerk of Court ahead of time and ask to reschedule. The Clerk may tell you that you must ask in writing. You can ask to reschedule in writing by filing a "Motion for Continuance."

Usually at a contested hearing, the Petitioner will testify first, then the Respondent can ask questions. Afterwards, the Petitioner can bring in and question witnesses. The

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Respondent can then question those witnesses. After the Petitioner's witnesses testify, the Respondent may testify. The Petitioner will get to question the Respondent. The Respondent may also bring in witnesses to testify. The Petitioner may question the Respondent's witnesses, after the Respondent is done questioning them. It is a good idea to talk over your case with your own witnesses.

If you are the Petitioner, you must show to the Judge that your situation meets certain legal requirements for an Order of Protection. Generally, you must show:

- That the Respondent is your family member, ex, or partner. **And**, 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 afraid of getting physically hurt by the Respondent. This requirement may be harder to prove because it is up to interpretation.

OR

- That you are the victim of assault, aggravated assault, assault on a minor, stalking, incest, sexual assault, or sexual intercourse without consent that the Respondent has committed against you. The crime does not need to be reported to the police.

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 Use Evidence 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 forms on this website to do that. 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 and 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.

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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.

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.