

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 crisis line, 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:

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

You will also find an insert detailing the resources available to a victim of domestic violence in your area. If you need resources in an area which is not on the insert, call LAAW’s crisis line.

**LAAW CRISIS LINE: 314-535-5229
800-527-1460**

Legal Advocates For Abused Women

Legal Advocates for Abused Women (LAAW) is the first domestic violence agency in the greater St. Louis area to specialize in providing free legal representation to victims of domestic violence who seek Orders of Protection.

LAAW’s services include: a crisis line that is open seven days a week; free and sliding scale representation for those seeking orders of protection; a Speaker’s Bureau to educate the public on the issues of domestic violence, Missouri’s Adult Abuse Law, and Orders of Protection; 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 Municipal Courts.

LAAW’s crisis line is open Monday through Friday from 9:00 a.m. to 4:00 p.m., and from 9:00 a.m. to noon on weekends and holidays. Volunteers and staff who have been specially trained to assist domestic violence victims are available to answer questions about the legal system and to provide support and resources in a crisis.

The crisis line volunteers also conduct interviews with victims who call seeking legal representation for their Order of Protection hearing.

LAAW's services are available to any victim of domestic violence. If you have any questions about your legal options, or if you need an attorney for your hearing, call LAAW's crisis line, at 314-535-5229 or at 800-527-1460.

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 are these:

1. Where are you going to go to be safe? A friend's house? A shelter? Where will your children go?
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 in danger?
3. Do you have transportation? Do you need to find a safe place near a bus run or Metrolink?
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 your 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 your 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.” And 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 your abuser. And it will let your abuser know that he or she faces consequences for beating you.

What is an Order of Protection?

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

1. Order your abuser to move out of your home;
2. Order your abuser to have no contact with you by any means at all;
3. Award to you custody of any children you have with your abuser, as well as make child support and visitation orders, if there are no previous orders on these issues;
4. Order your 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 your 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 incurred;

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 are eighteen years old or older, or if you are less than eighteen and emancipated.

Who Can I Get An OP Against?

You can file for an OP against any of the following people; they must be 18 years old or an emancipated minor:

1. Your spouse;
2. Your former spouse;
3. Someone you are living with;
4. Someone you lived with in the past;
5. Someone with whom you share a child;
6. Someone you are related to by blood or marriage;
7. Someone with whom you have had a romantic or intimate relationship;

8. Another adult who is stalking or harassing you.



CHECKPOINT:

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

If you are in the process of getting a divorce from your 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's crisis line for assistance.

If you have never been married to your 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's crisis line for advice on how the paternity laws will affect your OP.

But I Can't Afford to Go to Court!

Filing fees and court costs are not assessed against petitioners (those who file) for Orders of Protection.

How Do I Apply for an OP?

There are seven steps in applying for an OP.

STEP 1: Where do I go?

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

1. The county where you live;
2. The county where the abuse occurred;
3. The county where the abuser may be served.

You may choose which of these courthouses to go to.

STEP 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 during hours when the courthouse is closed. In emergencies only, your local police or a 24-hour domestic violence hotline can tell you what to do.

STEP 3: What Should I Take to the Courthouse?

1. Know 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.
2. A picture of the abuser.
3. A description and the license plate number of the abuser's car.
4. Pictures of any injuries that the abuser has inflicted upon you.

5. Any police, hospital, or doctor's reports which tell about the abuse.
6. Know the specific dates when attacks occurred, especially the most recent attack.

STEP 4: What Do I Do When I Get To The Courthouse?

Go to the Clerk's office or, if there is one, to the Adult Abuse office, 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.

STEP 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 the 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, so 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.

If you don't ask for it now, 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?" 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's crisis line, or contact a private attorney.



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 not able to write your own. 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 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!**

STEP 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 to 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.

STEP 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 your 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. After that hearing, the judge may grant an OP.

In the Ex Parte OP, the judge may:

1. Order the abuser not to abuse you.;
2. Order the abuser not to enter your home;
3. Grant you custody of any children you and your abuser have together;

4. 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 your 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.



CHECKPOINT:

The Ex Parte 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 you will not be protected. You must go to court for your hearing to get full protection!



CHECKPOINT:

Do not think that your abuser cannot be ordered out of your home because it belongs to him/her or because he/she pays the rent or mortgage. 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 your abuser, the abuser can be ordered out of your home even if it belonged to him/her before you were married.

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

If your 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 your abuser knows the sheriff is trying to serve him/her, he/she may hide, or have someone lie and tell the sheriff he or 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 effect.

2. Enforcing Your 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** your 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 not write a report, he/she must write a report explaining why they did not write a report. 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. Do I Need A Lawyer?

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 without a lawyer to get an OP. However, if you have questions about your legal rights, it is always a good idea to contact an attorney.

Many private attorneys handle OPs. If you do not have the money for an attorney, call LAAW's crisis line for assistance.



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.



CHECKPOINT:

If your abuser has guns, especially if he/she is a police officer or has another type of job that

requires carrying a gun, you may wish to talk to an attorney about how this can be addressed at a hearing. Federal law allows the judge to take guns away from the abuser, but this is not always possible when the abuser needs the gun for work. This is a very serious situation, and calling LAAW's crisis line or talking to a private attorney is encouraged.

The Court Date

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

1. What 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. Your lawyer will help you get one if you need it. If you do not have a lawyer, you may call LAAW's crisis line for information on special process servers.

2. What if The Respondent Doesn't Show Up?

It depends on whether or not the Respondent was served. If he/she was served, then the court can go ahead and issue an OP even if the Respondent is not there, but you are. If there was no service, the previous section applies.

3. What If Neither One of Us 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.

3. Uh Oh-The Respondent Has a Lawyer and I Don't!

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, 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 at the same day and time every week by each judge.

However your judge handles the hearing, when it is over you will either be granted an OP or it will be denied.

I Have My OP--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's crisis line 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.

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 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. Contact a private attorney or LAAW's crisis line if you have questions about filing one of these.

What Happens If The Abuser Violates the OP?

If your abuser violates the OP by harming you, communicating with you, coming into your home, or by 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 your 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. These Motions are not usually on forms at the courthouse, so you will either have to write it yourself or contact an attorney.

These are very technical so if you have the resources you should consider talking to an attorney for assistance filing one of these Motions.

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's crisis line before moving 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.

AREA AGENCIES

LEGAL/CRISIS INFORMATION

Legal Advocates for Abused Women

314-535-5229

800-527-1460

SHELTERS

COMTREA

Jefferson County

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

888-873-7233*

New Way Shelter

Washington

800-663-9929

Robertson Center

Lincoln County

636-462-3355

COUNSELING/ CRISIS INFORMATION

ALIVE 314-993-2777*
(Alternatives to Living in Violent Environments)

Life Source Consultants 314-385-8686

Women's Support and Community Services
314-531-2003*

YWCA - Sexual Assault Response Team
314-726-6665

For batterer's counseling
AVA 636-949-9940
RAVEN 314-645-2075

Victim Services

Victim Service Division 314-615-4872
St. Louis County- Prosecutor's Office

Victim Services St. Louis City 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
Redevelopment Opportunities
For Women 314-588-8300

*indicates 24 hour hotline

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:

1. Stay out of the child's home;
2. Pay child support, if he or she is a parent;
3. Pay the rent or mortgage on the home the child lives in;
4. Attend counseling for child abusers;
5. Pay for any treatment the child needs because of the abuse;
6. 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 abuser to visit, if this is appropriate.

How Long Will A Child OP Last?

A Child OP can last for 180 days. It can be renewed two times, for 180 days each time.

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 18 years of age or older, or an emancipated minor.



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 have already decided custody. You can call LAAW's crisis line to ask if your situation will allow you to get a Child OP for your child.

But I Can't afford to Go to Court!

Filing fees and court costs are not assessed against Petitioners (those who file) for Orders of Protection.

How Do I Apply For a Child OP?

There are eight steps in applying for a Child OP.

STEP 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:

1. The county where the child lives;
2. The county where the child was abused;
3. The county where the abuser may be served.

STEP 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 you what to do.

STEP 3: What Should I Take to the Courthouse?

1. Know 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 address, bring both. It will also help if you know what hours the abuser is at work.
2. A picture of the abuser.
3. A description and the license plate number of the abuser's car.

4. Pictures of any injuries the abuser has inflicted upon the child.

5. Any police, hospital, or doctor's reports which tell about the abuse.

STEP 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.

STEP 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.

37

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's crisis line, or contact a private attorney.



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 not able to write your own. If this happens, **MAKE SURE YOU READ THE FINAL DRAFT THAT IS GIVEN TO YOU BEFORE YOU SIGN IT!** You are

38

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 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!**"

STEP 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 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.

STEP 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 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.

In the Ex Parte OP, the judge may:

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

If the judge decides to give you an Ex Parte 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 it to them when they arrive.



CHECKPOINT:

The Ex Parte 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!

STEP 8: The Guardian Ad Litem

If you receive an Ex Parte OP, the judge must then appoint either a *Guardian ad Litem* (GAL) or a *Court Appointed Special Advocate* (CASA). The GAL is a person 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 now 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. You should consider getting your own attorney to represent your interest. If you are confused about the role of the GAL, call LAAW's crisis line for advice.

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 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 at work.

The best way to keep this from happening is to not tell anyone that you have filed for an OP until after the abuser has been served with your Petition.

2. Enforcing Your 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 your abuser violates it. You should tell them you have an Ex Parte 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. The best way to protect your child is to ENFORCE THE EX PARTE OP.

3. Do I Really Need a Lawyer?

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's crisis line 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.

1. What if He 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 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 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. Your lawyer will help you get one if you need it.

If you don't have a lawyer, you may call LAAW's crisis line for information on special process servers.

2. What if The Respondent Doesn't Show Up?

It depends on whether or not there was service. If the Respondent was served with your Petition, then 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.

3. What If Neither One of Us 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.

4. Uh Oh--The Respondent Has a Lawyer and I Don't!

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, 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 your abuser's lawyer, you should find a lawyer before your 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 your judge handles the 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's crisis line for assistance.

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 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 your child, from contacting your child, and out of your home. They will also help if the abuser takes your children against the terms of the 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 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. Contact a private attorney or LAAW's crisis line if you have questions about filing one of these.

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 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 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. These Motions are not usually on forms at the courthouse, so you will either have to write it yourself or contact an attorney. These are very technical so if you have the resources you should consider talking to an attorney for assistance filing one of these Motions.

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's crisis line 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 OP expires, it will usually give your child another Ex Parte OP to protect your child during the time between when the 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 has no legitimate purpose. There must be more than one incident for there to be harassment.

maintenance: This term is commonly thought of as "alimony." It refers to the money paid by one party to support the other.

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 a court has determined paternity of the child.

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, your 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.

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 St.
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 949-7391
Sat/Sun/Other hours: 636-949-1410

St. Louis City-Civil Courts Building

Monday-Friday: 8:00 a.m.-6:30 p.m.
Sat/Sun/Holidays: 9:00 a.m. - 12:30 p.m.
10 N. Tucker, St. Louis, MO
314-622-3788

St. Louis County

Monday -Thursday: 8:00 a.m.- 7:00 p.m.
Fri: 8:00 a.m.- 5:00 p.m., Sat: 9:00 a.m.-
Noon
7900 Carondelet, Clayton, Mo.
314-615-4725

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