

How to Obtain an Order of Protection

Glossary:

Petitioner / Plaintiff

Is the person filing / petition for an Order of Protection.

Respondent/ Defendant:

Is the person the Order of Protection is against.

Filing Steps:

1. The Petitioner obtains Order of Protection Packet from either City Court, Justice Court, or District Court.
2. The Petitioner fills out the packet completely and waits to sign the packet until in front of a notary.
3. The Petitioner files the packet with the Court Clerk
4. The Court Clerk then files the packet and gives to the Judge for review and signature.
5. The Judge will either grant or deny the Temporary Order of Protection
6. If granted, the Court Clerk will send the Respondents documents to the Sheriff's Office for service and will contact the Petitioner letting them know it was granted and the date of the hearing.
If denied, the Court Clerk inform the Petitioner of the denial.
7. At the hearing the Judge will decide the outcome of the Temporary Order of Protection; either extend the order for a determined length of time or dissolve the order.
8. IF extended, the order will be in effect until the expiration date.

What is an Order of Protection?

The purpose of an Order of Protection is to promote the safety and protection of all victims of partner and family member assault, victims of sexual assault, and victims of stalking (see last page for Descriptions of Abuse). The victim must petition the courts for a Temporary Order of Protection.

What does an Order of Protection do?

An Order of Protection prohibits the offender from threatening to hurt an adult victim or child.

It also:

- Directs the offender to leave the home and prohibits the offender from contacting the victim directly or indirectly by any means.
- Prevents the offender from transferring any property except in the usual course of business.
- Prohibits the offender from being within a set distance (determined by the court) of the victim, any named family members, and workplaces or other specific sites.
- Gives victims possession of necessary personal property.

How to get an Order of Protection?

The Petitioner obtains an Order of Protection packet from either City Court, Justice Court, or District Court. The Petitioner fills out the packet complete and signs the packet in front of a Court Clerk or Notary. The Petitioner files the packet with the Court Clerk and obtains a case number with the representing judge.

The Petitioner may apply for a Temporary Order of Protection if:

- They are in reasonable apprehension of bodily injury by their partner, and/or family member.
- or
- They are a victim of assault, intimidation, criminal, or negligent endangerment, and/or stalking.

*If you are a minor, your parent, guardian, or other representative may file a petition for a Temporary Order of Protection on your behalf against the Respondent.

The Temporary Order of Protection will be issued for up to 20 days: after that time, a hearing will be held to determine whether the Order of Protection should be kept in effect. The Respondent will get notice of the hearing. The Respondent will have the right to appear and contest the order. **The Petitioner must appear at the hearing to request an extension, or the Order will be discontinued.** If the Respondent has received notice of the hearing, and decided to not appear then the court will rule on the extension of the Order without the Respondent present. The Order is then referred to as a Permanent Order of Protection.

Preparing for the Hearing:

The Petitioner will need to decide what relief they want the court to grant them. The Petitioner is asking a judge to grant an order of Protection against the Respondent. The Petitioner will need to specifically tell the judge what they want the Order to say.

The Petitioner will decide what evidence to bring to the hearing. It is the Petitioner's responsibility to keep all their evidence organized.

Evidence can be:

- The Petitioner's testimony
- The testimony of witnesses
- Documents
- Photos
- Objects

*All electronic evidence must be printed out.

What Happens at the Hearing?

If the Respondent does not appear at the hearing, the judge may grant an Order of Protection for the Petitioner without considering the evidence.

If the Respondent appears and agrees that an Order of Protection should be granted, the judge may grant an order of Protection without considering the evidence.

If the Respondent appears and disagrees that an Order of Protection should be granted, the judge will ask for both parties to state their case.

The Hearing:

The Judge will ask the Petitioner to state their case for the record first.

The Petitioner:

- Will be sworn in to testify truthfully
- Take the stand
- Present evidence and have witnesses testify
 - Petitioner should have questions prepared ahead of time for the witnesses
 - Questions should be asked of the witnesses to testify to their knowledge of the need for the Order of Protection
- Ask for relief needed
- The Judge may ask specific questions about the case

After the Petitioner is finished, the Respondent will then be able to state their case for the record.

The Respondent:

- Will be sworn in to testify truthfully
- Take the stand
- Present evidence and have witnesses testify
 - Petitioner should have questions prepared ahead of time for the witnesses
 - Questions should be asked of the witnesses to testify to their knowledge to the need of the Order of Protection
- The Judge may ask specific questions about the case

After both the Petitioner and the Respondent finish presenting their cases, the Judge will make a decision to either grant or deny a Permanent Order of Protection.

What if the Respondent violates the Order of Protection?

Violation of an Order of Protection is a crime. The Petitioner should contact local law enforcement immediately.

The Petitioner should keep documentation of violations of Orders of Protection.

You have the right to appear in court on your own to request a Temporary Order of Protection. However, the following resources are available in your community to help you through this process: **Victim Witness Coordinator, Katelyn Lavender 222-4139, County Atty's Office (406-222-4150) or ASPEN (406-222-8154).**

They can also assist you in filling out the temporary order of protection application if need.

Stay in contact with the Clerk of Court for information about your case. The Clerk's number is: 406-222-4170

You should always keep copies of your Order with you. It is a good idea to always carry one in your purse or wallet, as well as having a copy at work and at your children's schools.

DESCRIPTIONS OF ABUSE

To qualify for a Temporary Order of Protection, you must satisfy at least one of the situations below and describe in detail on page 3 and 4 of the Temporary Order of Protection application.

1. **PARTNER FAMILY MEMBER ASSAULT** – Respondent, who is my partner or a family member, caused bodily injury to me, used a weapon to cause bodily injury to me, or cause me to rear bodily injury.
2. **ASSUALT** – Respondent cause bodily injury to me, had physical contact of an insulting or provoking nature, or cause me to fear bodily injury. (Assault can include use of a weapon against you.)
3. **INTIMIDATION** – Respondent threatened me with physical harm or confinement, so I would obey him/her.
4. **ENDANGERMENT** - Respondent created a risk of death or serious bodily injury to me.
5. **KIDNAPPING/RESTRAINT** – Respondent held me against my will and interfered with my liberty.
6. **ARSON** – Respondent burned my property or place me in danger of death or bodily injury by fire or explosives.
7. **INCEST** – I am a family member of Respondent, and he/she had sexual contact with me.
8. **SEXUAL ASSAULT** – Respondent had sexual contact with me without my consent.
9. **SEXUAL INTERCOURSE WITHOUT CONSENT** – Respondent had sexual intercourse with me without my consent.
10. **STALKING** – Respondent cause me emotional distress or fear of death or injury by relatedly following me harassing me, or threatening me in person, by phone, by text, by mail or some other method.
11. **DELIBERATE HOMICIDE OR MITIGATED DELIBERATE HOMICIDE** – Respondent killed by partner or family member.

HANDOUT / PROCEDURE FOR CIVIL BENCH TRIAL

1. The Judge will announce the case and may make general comments
2. Both parties may make an opening statement. This statement is not testimony. The opening statement must be an overview of what is expected to be shown by the testimony of the case. The statement is not testimony and can be waived without any effect on your case. **NOTHING IN THE OPENING STATEMENT WILL BE CONSIDERED IN THE COURT'S DECISION.** Both the Plaintiff/Petitioner and the Defendant/Respondent may testify as their own witness.
3. The Plaintiff/Petitioner will call a witness to the stand. The Judge will administer the oath.
 - a. The Plaintiff/Petitioner will question the witness.
 - b. The Defendant/Respondent may question the witness about the information just covered.
 - c. The Plaintiff/Petitioner may question the witness again. (Can be omitted).
 - d. The Defendant/Respondent may question the witness again **IF THE PLAINTIFF/PETITIONER DID** under (c) above.

This procedure will be followed for each witness. The Plaintiff/Petitioner will then rest his/her/their case. After all the Plaintiff/Petitioner's witnesses have testified and all evidence is submitted, the Judge may dismiss the case at this time, if the Plaintiff/Petitioner has not met the standards of proof and upon motion of the Defendant/Respondent.

4. The Defendant/Respondent may call a witness to the stand and follow the same procedure, as listed above, with the exception that the Defendant/Respondent will question his/her/their witnesses first. The Plaintiff/Petitioner will question next, etc. The Defendant/Respondent will then rest his/her/their case after all the Defense witnesses have testified and all the Defense evidence is submitted.
5. The Plaintiff/Petitioner may call additional (rebuttal) witnesses.
6. The Judge may question any witnesses through the trial.
7. Physical evidence (exhibits) such as contracts, rental agreements, photos, and other papers need to be submitted during the presentation of your side of the case (*provide copies for the court and give to the Judge as your exhibits*).
 - a. These are the same documents you provided to the opposing party prior to the day of the trial (3 copies to the court at trial (1 for you to refer to, 1 for the opposing party(ies) and 1 for the court).
 - i. **Exception:** Is for Temporary Order of Protection hearings or Small Claim trials. These are provided at the time of hearing/trial to the court and opposing parties.
 - b. All documents must have "foundation" before being admitted as evidence by the Court. Foundation means that there must be a witness, in court, who can testify as to the authenticity of the document, i.e., the keeper of the business records, author or co-author of a contract, person who actually took the photos.
 - c. Statement and letters, even notarized, are not allowed as evidence. Personal sworn testimony is always best evidence.
8. The Plaintiff/Petitioner will make an initial closing statement, and the Defendant/Respondent will follow. This statement is not testimony, nor is it a rehash of the testimony. This statement is simply a conclusion of the testimony and evidence already presented. Since the closing statement is not testimony, it may be waived without any effect on your case. **NOTHING IN THE CLOSING STATEMENTS WILL BE CONSIDERED IN THE COURT'S DECISION.**

9. The Judge will make a decision based on the preponderance of the evidence presented at trial

FAILURE TO APPEAR FOR TRIAL may result in dismissal of your claim or a judgment filed against you.

IN THE _____ COURT
STATE OF MONTANA

COUNTY OF _____

)	
)	No. _____
Petitioner,)	
)	SWORN PETITION FOR
v.)	TEMPORARY
)	ORDER OF PROTECTION
)	AND REQUEST FOR HEARING
)	
Respondent.)	

The law requires that Respondent be given a copy of this completed form and all attachments.

1. **Request for Temporary Order of Protection.** Under oath and as provided by Mont. Code Ann. § 40-15-201, I request that the Court issue a Temporary Order of Protection against Respondent. I believe I am in danger of harm if the court does not issue a Temporary Order of Protection immediately.
2. **Protected Person/s.** I am seeking an Order of Protection for *(check all that apply)*:
 - Myself
 - The following minor child/ren:

Child/ren	Age	How child is related to:		Who does child live with?
		You	Respondent	

Other people you would like to be protected (*first and last names and relationship to both you and Respondent*): _____

3. **Residence.** I live or am staying in the City of _____,
County of _____, State of _____.
The Respondent lives in the City of _____,
County of _____, State of _____.
The abuse happened in the City of _____,
County of _____, State of _____.

(Check all that apply).

- The Respondent does not live with me.
- I live with the Respondent at _____
- I have left a residence where I lived with the Respondent. I want to return:
 - to live at that residence
 - to get personal belongings
 - other (*describe*): _____
- A business is run from the home.
Type of business (*describe*): _____
The business is run by: me Respondent both me and Respondent

4. **Relationship.** (*Please check all that apply to the relationship between the Respondent (the person you want restrained) and you or the person(s) for whom you are seeking protection*)

- I (or the person I want protected) have/has a relationship with Respondent as follows:
 - Married
 - Were married, but are now separated
 - Divorced
 - Are currently dating or having an ongoing intimate relationship
 - Live together
 - Lived together in the past
 - Have a child and/or children together
 - Is a family member or a former family member of Respondent
 - Dated or had an ongoing intimate relationship in the past

If a dating relationship please describe:

Nature of relationship _____

Length of time of the dating relationship _____

How often saw each other _____

Time since relationship ended _____

Victim of Sexual Assault/ Stalking/ Other: *(describe how you know Respondent)*

I am the parent, guardian or other person supervising the welfare of a child less than 16 years of age and request that Respondent, who is a person over 18 years of age and who has no legal right of supervision or control over the child, to stop contacting the child because I believe that the contact is not in the child's best interests as set forth in MCA § 45-5-622 (4).

5. Information about the violence. Please explain what the Respondent did to you (and/or the person you want protected). Be specific. Write down places and dates as well as you can remember. It does not matter when the abuse happened or whether you reported it to the police. But you must tell the judge why you are afraid now.

A. RECENT ABUSE

Date of the most recent abuse: _____

Who was there? _____

Where did it take place? _____

What did the Respondent do or say that made you (and/or the person you want protected) afraid? _____

Did the Respondent use or threaten to use a gun or other weapon? If yes, list how: _____

Describe any injuries: _____

Did the police come? Yes No

6. Firearms *(Check all that apply)*

To the best of your knowledge, does Respondent currently possess firearms?

No Yes

Where are the firearms located? _____

7. Other Court Cases *(Check all that apply)*

A divorce, legal separation or custody case between me (and/or the person I want protected) and Respondent has been filed in _____ County, State of _____

Is the family law case listed above still pending? Yes No

Did the Court issue a parenting plan? Yes No

A criminal charge of _____ was filed against me or Respondent in _____ Court in _____ County, State of _____

List any other cases that you (and/or the person you want protected) or Respondent are or have been involved in: _____

I ask the Court to Order the Following:

1. Respondent shall not commit or threaten to commit acts of violence against me (and/or the person I want protected) and the following people including family members: _____

2. Respondent shall not harass, annoy, disturb the peace of, telephone, email, contact, or otherwise communicate, directly or indirectly, with me (or the person I want protected), and the following family members, other victims of the abuse, or witnesses to the abuse: _____

3. Respondent shall not take the following child/ren out of this County or State:

4. (List the distance, up to 1500 feet, that you want Respondent to stay away from you and/or the person you want protected and the places you check below).

Respondent shall stay at least _____ feet from:

Me (Petitioner)

Minor child/ren _____

Other people: _____

My home (if you want the location of your home to be secret, do not list)

My job or workplace: _____

My vehicle: _____

The child/ren's school and/or child care: _____

Other places (describe): _____

5. Respondent used or threatened me with firearms. Respondent shall not possess these firearms (describe): _____

6. Respondent shall not take, hide, sell, damage or dispose of property belonging to me (and/or the person who I want protected) or Respondent or both of us.

7. Respondent shall give me (or the person I want protected) possession or use of the following items (items may include the residence, automobile and other essential personal property no matter who owns it): _____

8. I (and/or the person I want protected) need a peace officer to help get possession of the property listed in Number 7, or I request that a peace officer come with Respondent when picking up his/her property or belongings.

9. The Court should order Respondent to complete violence counseling, which may include alcohol or chemical dependency counseling or treatment, if appropriate.

10. The Court should order the following to provide for the safety and welfare of me and/or the person I want protected, and family: _____

11. Parenting of Child/ren

Note: Justice and City and Municipal Courts can protect minor children by listing them on the Order of Protection. Although these courts can provide short term visitation plans, they cannot make parenting plans. If you need a parenting plan, you need to file an action in your local District or Tribal Court.

(Choose one)

- Parenting of children does not apply in this case.
- The protections I have asked for in Paragraph 2 will keep Respondent away from the children. Therefore a visitation schedule is unnecessary.
- I want the children listed in Appendix A to have parenting time with Respondent. I am attaching Appendix A that says what visitation schedule I want. *(Fill in and attach Appendix A).*

12. Other Relief: The Court should order other protection as it deems just and proper.

I SWEAR UNDER OATH OR AFFIRM I HAVE READ THIS APPLICATION, OR HAVE HAD IT READ TO ME, AND THE FACTS STATED IN THIS APPLICATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I ALSO UNDERSTAND THAT PROVIDING FALSE INFORMATION IS A CRIME.

Date: _____ Signed: _____
Petitioner

NOTARY SEAL OR JUDGE'S SIGNATURE

STATE OF MONTANA)
: ss.
County of _____)

SUBSCRIBED AND SWORN to before me this ___ day of _____, 20__.

JUDGE/CLERK/NOTARY

(For use by notary)

(signed)
Name _____ (printed)
Notary Public for the State of Montana.
Residing at _____
My Commission Expires _____

APPENDIX A

In this form, you will tell the Judge how the temporary visitation will take place under safe and peaceful conditions. You must have a very good reason before the Judge will deny the Respondent visitation. The visitation schedule will be temporary. For permanent parenting arrangements, you must file an action with your local District or Tribal Court.

Parenting schedules generally include:

- visits that take place on a regular basis;
- visits that vary in length depending on the ages and needs of the children.

Children (*List all children, whether or not you have asked that they be protected by the Order of Protection*):

Children	Age	How child is related to You	Respondent	Who does child live with?	State(s) where child lived in the last 6 months?

CHECK the visitation option that you want.

I request the following visitation schedule:

Supervised visits (*List why, and supervised by whom*):

Neutral drop off and pick up location:

Transportation provided by:

I request the Respondent have no visitation with the children because:

PRAECIPE

IN THE JUSTICE COURT, THE COUNTY OF PARK, IN THE STATE OF MONTANA.

Plaintiff(s)/Petitioner(s)

Case Number: _____

Vs.

Defendant(s)/Respondent(s)

To the agency: Park County Sheriff's Office

- Type of papers to serve:** Summons & Compliant Answer with Counter Claim
 WRIT and Notice to Levying Officer WRIT or Possession
 Temporary Order of Protection & Petition for Temporary Order of Protection,
 Permanent Order of Protection
 Other _____

Please serve the attached papers to (Name of Defendant(s) or Respondent(s):

Physical Address: _____

Phone number(s): _____

Place of Employment (if known): _____

Address and Phone number of employer: _____

Name and Signature of Plaintiff(s)/Respondent: _____

Address: _____

Phone number(s): _____

Email Address _____

Dated this _____ **day of** _____, 20____.

LAW ENFORCEMENT SERVICE INFORMATION

Confidential

Please provide as much information as you can. **YOU MUST FILL IN ALL THE SHADED AREAS.** If you do not, law enforcement will not serve your order and the form will be returned to the court clerk.

You (Remember you MUST fill in all the shaded areas):

Last Name:		First:		Middle Initial:	
Date of Birth:	Race:	Male: <input type="checkbox"/> Female: <input type="checkbox"/>		Social Security No.:	
Home Address:		City:	State:	Zip:	
Home Phone No.:			Message Phone No.:		
Work Name and Address:				Phone No.:	
Name of Relative or Friend Not Living With You:				Phone No.:	

Other Persons You Wish Protection For: (Please use additional page, if needed)

Last Name:		First:		Middle Initial:	
Date of Birth:	Race:	Male: <input type="checkbox"/> Female: <input type="checkbox"/>		Social Security No.:	
Home Address:		City:	State:	Zip:	
Last Name:		First:		Middle Initial:	
Date of Birth:	Race:	Male: <input type="checkbox"/> Female: <input type="checkbox"/>		Social Security No.:	
Home Address:		City:	State:	Zip:	
Last Name:		First:		Middle Initial:	
Date of Birth:	Race:	Male: <input type="checkbox"/> Female: <input type="checkbox"/>		Social Security No.:	
Home Address:		City:	State:	Zip:	
Last Name:		First:		Middle Initial:	
Date of Birth:	Race:	Male: <input type="checkbox"/> Female: <input type="checkbox"/>		Social Security No.:	
Home Address:		City:	State:	Zip:	

The Person Against Whom You Are Seeking the Order:

Last Name:		First:		Middle Initial:	
Date of Birth:	Race:	Male: <input type="checkbox"/> Female: <input type="checkbox"/>		Social Security No.:	
Home Address:		City:	State:	Zip:	
Home Phone No.:			Message Phone No.:		
Height:	Weight:	Hair Color:	Eye Color:		
Describe any tattoos or scars:					
Employer:			Phone No.:	Work Days/Hours:	
Address:			City:	State:	Zip:
Name of Relative or Friend:				Phone No.:	
Make & Model of Car:				Year:	Color:

License Plate No.:	State:
--------------------	--------

Additional Important Information:

Has this person been convicted of a crime? YES [] NO [] Don't Know []	If YES, What?
Does this person have any weapons? YES [] NO [] Don't Know []	
Do you consider this person dangerous? YES [] NO []	
Places this person may be found:	

Include written directions or a map if a street address is not available. Without sufficient address information, service of the order may be delayed or may not be possible.

Please use this space for any additional information (i.e. Additional Protected Family Members)