

# Getting an Order of Protection

## WHERE DO I GO?

Arkansas Legal Services Partnership has a free form available at: [www.arlegalservices.org/orderofprotection](http://www.arlegalservices.org/orderofprotection). After completing the interactive interview, you will have all the forms that you need to file with the court.

You can also go to the county courthouse where you live, where the abuser lives, or where the abuse happened to file your petition for an Order of Protection. If you are in a shelter, you can go to the courthouse in the county where the shelter is.

**There is NO CHARGE to file the petition.**

You will complete a form or a "petition" asking the judge to issue an Order of Protection. Based on your statements in the petition and evidence you provide, the judge will decide whether to issue the order and what to include in the Order of Protection. Judges can issue an Order of Protection to:

- Keep the abuser away from you at your residence, place of employment, church children's schools, or any other address where you want protection.
- Make your abuser move out of the house if you are living together.
- Decide who will have temporary custody of your children and set up a temporary visitation schedule.
- Order your abuser to pay temporary support for your children and/or yourself.
- Stop the abuser from contacting you except in specific instances that court allows
- Order the abuser to stop from harming, harassing, or molesting you

**If your abuser violates the Order**, you can report it to the police and **the abuser can be arrested**.

**An Order of Protection is not a Restraining Order or No-Contact Order.** Many people are confused about the differences between an Order of Protection, a Restraining Order and a No-Contact Order. If you are being physically harmed or threatened, you

need an Order of Protection. With an Order of Protection, the police can arrest your abuser if he or she violates the order. You do not have to pay anything, and you don't need an attorney to get an Order of Protection.

If you are getting a divorce, your attorney will likely ask the judge to issue a **Restraining Order**, which prevents one spouse from selling the marital property in a divorce and from harassing or bothering the other. A restraining order does not adequately protect you if you are being physically harmed or threatened. The police cannot arrest your abuser for violating a restraining order.

You can have an Order of Protection and a Restraining Order at the same time. A criminal court issues a **No-Contact Order** in criminal cases against an abuser as a condition of release from jail.

## STEP 1: Filing the Petition

To get an Order of Protection, go to the Circuit Clerk's office at the county courthouse in the county where:

- You currently live;
- The abuser currently lives;
- The abuse happened; or
- The domestic abuse shelter you are staying at.

Tell the court clerk you want to apply for an Order of Protection. The clerk will give you a form to complete, called a petition. Fill the petition out as best you can. Victim Assistance Programs and domestic violence shelters have people that can help you complete a petition. You do not need a lawyer to file the petition for an Order of Protection.

### Completing a Petition for an Order of Protection

Where the Order of Protection form asks you to explain what acts the abuser has committed, you must explain what the abuser did to you *physically*. (For example, he or she hit you in the face with a fist or choked you or threw you against the wall.)

You should also describe *threats* of *physical* violence made against you. (For example, he or she threatened to kill you or hit you if you told. You should not explain how the argument started or what the argument was about.) The court will not accept mental abuse as a basis for awarding an Order of Protection so you must clearly describe what the abuser *physically did* or *threatened to do* to you.

You will not be asked to pay anything to file the petition for an Order of Protection or for the sheriff to serve your abuser with the order. The judge will decide later who will pay any fees. Generally, the judge will make the abuser pay. However, if you do not attend the hearing or provide false information, the judge may make you pay the costs of filing the petition and service. It is important to attend all scheduled hearings and tell the truth.

**Your petition must be notarized.** You will need picture identification to show the notary in the clerk's office.

## STEP 2: A Temporary Order

After you give your completed petition to the clerk to file, the clerk will give the petition to the judge to review it. This may happen while you wait or the clerk may tell you to come back later. If the judge decides that you have shown enough information in your petition, the judge will grant a Temporary Order of Protection (also called a Temporary Order or Ex Parte Order). Sometimes the judge will have questions about your petition.

The judge might say that you did not give enough information in your petition to grant an Order of Protection. If this happens, you have the right to have a hearing to explain to the judge in person why you need this order. You may have to ask the clerk to set the hearing. In some rural counties, you may have to go to another county for a hearing. In the meantime, you will not have an Order of Protection.

It is important to give the judge all of the information available in your written petition. Tell the judge what you need in your petition. You may ask that the judge:

- **Leave your home and business addresses off of the petition** that will be given to your abuser
- **Decide who will have custody of the children and set up a visitation** schedule while the Temporary Order of Protection is in effect
- **Order your abuser to pay child support** if he or she is the parent of your children (It is rare that judges will order child support in a temporary order)
- **Order temporary possession of the residence**
- **Allow you to get personal items** from your home
- **Order local law enforcement to go with you** to get personal items or tell your abuser to leave

If the judge gives you a Temporary Order of Protection, make several copies of the signed order. If the Order includes your children, take copies of the Order to their school or daycare. Keep a copy of the Order of Protection with you at all times. If you call the police because your abuser is violating the order, the police will ask to see the order.

If your abuser violates the Temporary Order of Protection by coming to your house, work, or any other address that is listed in the order, call the police and tell them you have an Order of Protection in effect. The police can arrest your abuser for violating the Order of Protection. The police cannot arrest your abuser for violating an Order of Protection until it has been served.

## STEP 3: Extending the Order

The Temporary Order of Protection is valid for no more than 30 days from the date it is issued. Your abuser will be served with a copy of the petition, the Order of Protection, and a summons that tells him or her when to come to court.

Within the 30 days, a hearing will be held so the judge can decide whether to extend the Temporary Order of Protection. **You must attend this hearing.** At the hearing, both sides will be allowed to tell their sides. Both you and your abuser will be allowed to present evidence and witnesses to support your story. Evidence may include medical records, police reports, and photographs of any visible marks left by the abuser. Both sides will have a chance to question each other or any witnesses.

When the judge has heard both sides, he or she will make a decision on whether to extend the Order of Protection. The judge may stop the Order of Protection granted on an emergency basis if he or she does not believe you have shown you are in danger of imminent physical abuse or the judge may extend it for up to two years (or a shorter period). At the end of this period, you may ask the court for another extension as long as you meet the requirements.

You do not have to have a lawyer to represent you at this hearing. However, if your abuser has an attorney, you may want an attorney to represent you.

If your abuser does not appear at the hearing, the court may enter the Order after you tell your story. Because your abuser knows you will be going to court for the hearing, you may want to call the judge's bailiff and ask him or her to escort you in and out of the courthouse.

If the judge decides to extend the Order of Protection, then other issues may also be addressed at the hearing.

- Decide who will have custody of the children and set up a visitation schedule while the extended Order of Protection is in effect
- Order your abuser to pay child support if he or she is the parent of your children, and possibly support to you, if you are married to him or her.
- Order temporary possession of the residence
- Allow you to get personal items like clothing and medications
- Order local law enforcement to go with you to your residence to get personal items or tell your abuser to move out
- Order your abuser to pay court costs/attorney's fees.

**Ask the clerk for a signed copy of the Order of Protection and keep it with you at all times.** You will need to provide copies to your children's school or daycare if they are included in the Order of Protection. Keep copies in places where you might need it.

## FREQUENTLY ASKED QUESTIONS

**Can the Order of Protection be enforced in a county other than where it was issued?** An Order of Protection issued in one county is enforceable in all other counties in Arkansas and throughout the U.S.

**Will my abuser see what I wrote in the petition?** Yes. When the abuser (also known as the respondent) is served with the Temporary Order of Protection, he or she will also receive a copy of the petition where you explained why you need an Order of Protection. You may ask the judge to remove your address from the petition.

**How much does it cost?** You will not have to pay anything to file the petition for an Order of Protection or have the Order of Protection served on your abuser. When the court has the final hearing on the Order of Protection, the judge may order fees to be paid for filing, service and court costs. The judge will order your abuser to pay all costs. There are only two situations when you could be charged any fees, service or court costs: (1) if the judge finds that you provided false information in the petition or (2) if you do not to attend the hearing.

**How will I know if the Order of Protection has been served?** You will need to stay in touch with the sheriff until the Order of Protection is served. If you keep the Temporary Order of Protection with you at all times, it can be served on the spot if your abuser is threatening you and you have to call the police.

**Am I allowed to have contact with my abuser prior to the hearing?** While the temporary order only applies to the abuser, initiating contact with your abuser may indicate to the court that you are not truly afraid for your safety. If you need to get personal items left behind, ask the court to order the police to go with you. If your minor children will visit their father, you may ask a third party do the exchange so you do not have to have contact with your abuser. If this is not possible, consider meeting at a safe location, such as the local police station.

**What if the abuser is not served with court papers prior to the hearing?** Even if the abuser is not served, you must still appear at the scheduled court date. The case will most likely be continued (or postponed), but your temporary order will remain in effect. If you do not appear, your temporary order will be dismissed and you may be ordered to pay court costs.

**How do I prepare for the hearing?** You need to be prepared to tell the court everything that has happened and why you need protection. You need to bring any witnesses or documents that support what you will say. If you can, bring:

- **Witnesses** who have seen violence or heard threats made by your abuser.
- **Police reports.** Report any domestic abuse incident to your local law enforcement as soon as possible and then get a copy of the police report. This is important because it backs up what you are saying and makes an official record of the abuse.
- **Pictures of any visible injuries.** Take pictures when you have visible injuries inflicted by your abuser. These give the court evidence to back up your side of the story.
- **Medical or hospital records** related to your abuse.
- **Wear formal clothes.** You should wear your best clothes for court. Do not wear shorts, tank tops, etc.

If you have children under age 18 and are asking for child support, also bring any available information you have about the abuser's income (for example, a pay stub or last year's tax returns).

It is likely that the court will give visitation rights to the respondent. If you have concerns about your children's safety, you should come to court with an alternate plan for visitation. The court usually will not divide property at the hearing, other than the return of personal items.

**Is it absolutely necessary for me to go to the court hearing?** Yes. If you do not appear, your temporary order will be dismissed and you will no longer have protection. In addition if you fail to appear, the court can make you pay for filing, service and other cost.

**What if my abuser violates the Order of Protection?** Violation of the Order of Protection is a crime. If your abuser does anything that the Order of Protection says he is not supposed to do, you can call the police. Tell them about the Order of Protection and have your copy ready to show them.

The police can arrest your abuser for violation of the Order of Protection. If convicted, the abuser can be sent to jail for up to one (1) year and/or fined up to one thousand dollars (\$1000.00).

You may have to go to court to testify about what the abuser did to violate the Order of Protection. The Order of Protection is not a mutual order. You are not prohibited from going to any location or from participating in any certain conduct.

The order does not become "null" or "void" if you and the abuser reconcile after the final Order of Protection or by any conduct on your behalf. Only a court can dismiss the final Order of Protection once you have filed a petition.

**What if I am getting a divorce or filing criminal charges?** The Order of Protection is different from a divorce, legal separation, or criminal charges. You can get an Order of Protection even if you are filing for divorce or decide to press criminal charges against your abuser.

**What if I get back together with my abuser?** If you and your abuser decide to work things out and you do not want the court to grant a final Order of Protection, you still must attend your scheduled court date to tell the judge that you want the court to dismiss your petition for an Order of Protection. The court may ask you questions about your reasons for wanting to dismiss your petition so that he or she can make sure you are safe and not being forced by your abuser to dismiss the action.

**BE SAFE!** An Order of Protection does not guarantee your safety. Never face your abuser alone. If you do not feel safe in your home, stay with a friend, family member, or at a local shelter.

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*The ALSP Law Series is produced by the Arkansas Legal Services Partnership, a collaboration of the Center for Arkansas Legal Services and Legal Aid of Arkansas, Inc. These nonprofit organizations provide free legal services to eligible Arkansans who meet income, asset, and other guidelines. Legal services may include advice and counsel, brief services, or full representation depending on the situation. Additional information can be found at: [www.arlegalservices.org](http://www.arlegalservices.org). To apply for services, call 1-800-9LAW AID.*

*The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. **Always do what the court tells you to do.***

[www.arlegalservices.org](http://www.arlegalservices.org)