

Missouri's Domestic Violence Act provides protective relief for victims of cyberstalking, domestic violence, stalking or sexual assault.

Chapter 455, Missouri Revised Statutes

ADULT ABUSE / STALKING ORDER OF PROTECTION

WHAT IS AN ORDER OF PROTECTION?

An order of protection is an order issued by a Missouri court pursuant to the Domestic Violence Act that restrains a person from cyberstalking, abusing, stalking, sexually assaulting, or harassing another person. Unlike a restraining order, an order of protection carries criminal penalties for violation. An order of protection is valid in every state and should be upheld by law enforcement in every state. There are two types of orders of protection: an ex parte order of protection and a full order of protection.

An **ex parte order** of protection is issued by the court before the person against whom the order is directed has received notice of the petition or an opportunity to be heard in court. It is a temporary order. See more information regarding ex parte orders of protection on page 5.

A **full order of protection** is issued after a hearing on the record when the person against whom the order is directed has received notice of the proceedings and has had an opportunity to be heard. See more information regarding full orders of protection on page 6.

WHO ARE THE PARTIES?

Petitioner

A family or household member who has been a victim of domestic violence, or any person who has been the victim of cyberstalking, stalking or sexual assault, who has filed a verified petition pursuant to the provisions of section 455.020, RSMo.

Respondent

The respondent is the family or household member alleged to have committed an act of domestic violence, or person alleged to have committed an act of cyberstalking, stalking or sexual assault, against whom a verified petition has been filed. It is this person against whom an order of protection is directed.

WHO CAN FILE A PETITION?

Any person who has been subject to domestic violence by a present or former household member, or who has been the victim of cyberstalking, stalking or sexual assault, may seek relief under the Domestic Violence Act by filing a verified petition alleging such cyberstalking, domestic violence, stalking, or sexual assault by the respondent. The court will deny the ex parte order and dismiss the petition if the petitioner is not authorized to seek relief.

WHERE IS THE PETITION FILED?

The petition must be filed in the county where the petitioner resides, where the alleged incident of domestic violence occurred or where the respondent may be served.

Notice to Petitioner: Respondent will receive a copy of the petition with service.

Filing After Hours: A petition for an order of protection or a motion for a hearing on a violation of an order of protection may be filed after business hours, on holidays or weekends before a circuit or associate circuit judge in the city or county having jurisdiction to hear the petition. All papers filed in connection with a petition or motion must be certified by the judge or clerk within the next regular business day to the circuit court having jurisdiction to hear the petition.

WHERE CAN I FIND A PETITION TO FILE WITH THE COURT?

The circuit clerk's office will provide copies of the forms necessary for the presentation of the petition to the court. Clerks will provide assistance in completing these forms without cost. The location of the office where a petition can be filed will be posted conspicuously in the court building. No filing fees, court costs, or bond will be assessed to the petitioner in a cyberstalking/domestic violence/stalking/sexual assault action. An attorney is not needed to obtain an order of protection.

Forms also can be found at www.courts.mo.gov by selecting Court Forms > Adult Abuse Forms.

WHAT IS DOMESTIC VIOLENCE?

Domestic violence is abuse or stalking committed by a family or household member as defined below:

Abuse:
Includes but is not limited to the occurrence of any of the following acts, attempts or threats of assault, battery, coercion, harassment, sexual assault, and unlawful imprisonment against a person who may be protected pursuant to chapter 455, RSMo.

Abusing a Pet:
Purposely or knowingly causing, attempting to cause, or threatening to cause physical injury to a pet with the intent to control, punish, intimidate, or distress the petitioner.

Assault:
Purposely or knowingly placing or attempting to place another in fear of physical harm.

Battery:
Purposely or knowingly causing physical harm to another with or without a deadly weapon.

Coercion:
Compelling a person by force or threat of force to engage in conduct from which the person has a right to abstain or to abstain from conduct in which the person has a right to engage.

Harassment:
Engaging in a purposeful or knowing course of conduct involving more than one incident that alarms or causes distress to another person and serves no legitimate purpose. The course of conduct must be such as would cause substantial emotional distress to the petitioner. Such conduct may include following another about in a public place or peering in the window or lingering outside the residence of another.

Sexual Assault:
Causing or attempting to cause another to engage involuntarily in any sexual act by force, threat of force, duress, or without that person's consent.

Unlawful Imprisonment:
Holding, confining, detaining or abducting another person against that person's will.

Stalking:
When any person purposely engages in an unwanted course of conduct that causes alarm to another person, or a person who resides together in the same household with the person seeking the order of protection when it is reasonable in that person's situation to have been alarmed by the conduct. As defined in the statute:

(a) **Alarm** means to cause fear of danger of physical harm.
(b) **Course of conduct** means two or more acts that serve no legitimate purpose including, but not limited to, acts in which the stalker directly, indirectly, or through a third party follows, monitors, observes, surveils, threatens, or communicates to a person by any action, method, or device.

ADDITIONAL DEFINITIONS AS USED IN THE DOMESTIC VIOLENCE ACT

Adult:
Any person 17 years of age or older or otherwise emancipated.

Child:
Any person younger than 17 years of age unless otherwise emancipated.

Communication:
Includes, but is not limited to, telephoning, speaking, gesturing, writing, e-mailing, text messaging, faxing, sending gifts, etc.

Emancipate/Emancipation:
To release a child from the control, support, and responsibility of a parent or guardian; may include but is not limited to a child marrying or entering the military.

Family or household member:
Spouses, former spouses, any person related by blood or marriage, persons who are presently residing together or have resided together in the past, any person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, and anyone who has a child in common regardless of whether or not they have been married or have resided together at any time.

Intimate Partner:
With respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

Order of Protection:
Either an ex parte order of protection or a full order of protection.

Pending:
Exists or for which a hearing date has been set.

Pet:
A living creature maintained by a household member for companionship and not for commercial purposes.

Unemancipated:
A child under the control, support, and responsibility of a parent or guardian.

EX PARTE ORDER OF PROTECTION

The petition for an order of protection must be presented to the judge immediately upon filing. The petitioner may fear further harm and want the judge to issue an immediate order of protection before the hearing date. If the judge finds that there is an immediate and present danger of cyberstalking, domestic violence, stalking, or sexual assault, an ex parte order of protection will be issued. It is effective when entered and shall remain in effect until there is a valid service of process and a hearing on the petition can be held. An ex parte order of protection is not always granted, but the court may set a hearing date. If an ex parte order is granted, a copy of the order is given to law enforcement and entered into a statewide computerized system that law enforcement use. This is the Missouri Uniform Law Enforcement System, also known as MULES.

Law enforcement will serve a copy of the ex parte order and the petition on the respondent. The order is valid and enforceable before it is served. The ex parte order will include a court date for the hearing on the full order of protection.

NOTE: An ex parte order of protection will expire after 15 days if there has been no hearing or valid continuance on the petition.

Relief Available with an Ex Parte Order of Protection:
The relief must be requested on the petition, and the judge will consider each request. The ex parte order may include the following relief:

- Temporarily restrain the respondent from committing or threatening to commit cyberstalking, domestic violence, molesting, stalking, sexual assault, or disturbing the peace of the petitioner.
- Temporarily restrain the respondent from entering the premises of the dwelling unit of petitioner when the dwelling unit is:
  (a) jointly owned, leased or rented or jointly occupied by both parties; or
  (b) owned, leased, rented or occupied by petitioner individually; or

(c) jointly owned, leased or rented by petitioner and a person other than respondent; provided, however, no spouse shall be denied relief under this section by reason of the absence of a property interest in the dwelling unit; or

(d) jointly occupied by the petitioner and a person other than the respondent; provided that the respondent has no property interest in the dwelling unit.

- Temporarily restrain the respondent from communicating with the petitioner in any manner or through any medium.
- A temporary order of custody of minor children where appropriate.
- A temporary order of possession of pets where appropriate.
- Order the respondent to pay a reasonable amount for the petitioner's attorney fees incurred prior to the commencement of the proceeding, throughout the proceeding, and after entry of the judgment.
- Other terms as the court reasonably deems necessary to ensure the petitioner's safety.

Appointment of Guardian ad Litem (GAL)
If the respondent is younger than 17 years old and not emancipated, and an ex parte order is entered, the circuit court shall transfer the case to the juvenile or family court division for a hearing on the full order of protection. The court shall appoint a guardian ad litem for the respondent if the respondent is not represented by a parent or guardian.

The court also may direct the state Children's Division to conduct an investigation and to provide appropriate services.

Should I go to the hearing on the order of protection?
Yes. Go to court on the hearing date listed on the ex parte order of protection or summons. If the petitioner does not appear in court for the hearing, the case will be dismissed. If the respondent has been served properly and does not appear in court for the hearing, a full order of protection will be issued after the petitioner has presented his/her evidence. The judge may issue the order without hearing from the respondent.

The court will allow a person to testify by video conference at a civil trial involving a domestic assault offense if the person testifying is the victim of the offense. If you are the victim and want to appear by video conference, contact the local court for more information.

FULL ORDER OF PROTECTION

A full order of protection may be granted by the court after a hearing on the petition. Hearings regarding full orders of protection must be conducted on the record (so a transcript may be made). The full order of protection order shall be valid for at least 180 days but no more than one year unless after an evidentiary hearing the court makes specific written findings that the respondent poses a serious danger to the physical or mental health of the petitioner or of a minor household member of the petitioner. If, after an evidentiary hearing, the court makes specific written findings that the respondent poses a serious danger to the physical or mental health of the petitioner or of a minor household member of the petitioner, the protective order shall be valid for at least two years and not more than ten years. If a full order is granted, a copy of the order is given

to law enforcement and entered into a statewide computerized system that law enforcement use. This is the Missouri Uniform Law Enforcement System, also known as MULES.

Relief Available with a Full Order of Protection:
The relief must be requested on the petition, and the judge will consider each request.

If a full order of protection is granted, all temporary orders shall continue in the full order of protection and shall remain in full force and effect unless otherwise ordered by the court.

Notice to respondent: If the court finds in favor of petitioner or the respondent defaults (does not appear in court for the hearing), the court may grant any of the following forms of relief:

- Prohibit the respondent from committing or threatening to commit cyberstalking, domestic violence, molesting, stalking, sexual assault, or disturbing the peace of the petitioner, including violence against a pet.
- Prohibit the respondent from entering the premises of the dwelling unit of the petitioner when the dwelling unit is:

  (a) jointly owned, leased or rented or jointly occupied by both parties;
  (b) owned, leased, rented or occupied by the petitioner individually; or
  (c) jointly owned, leased or rented by the petitioner and a person other than the respondent; provided, however, no spouse shall be denied relief under this section by reason of the absence of a property interest in the dwelling unit; or
  (d) jointly occupied by the petitioner and a person other than the respondent; provided that the respondent has no property interest in the dwelling unit.
- Prohibit the respondent from communicating with the petitioner in any manner or through any medium.
- Award custody of minor children born to or adopted by the parties when the court has jurisdiction over such child and no prior order regarding custody is pending or has been made, and the best interest of the child requires such order to be issued. There is a presumption that the best interest of the child is served by placing him or her in the custody of the non-abusive parent.
- Establish a visitation schedule for the non-custodial parent that is in the best interest of the child(ren). The court can deny visitation if it finds that visitation would endanger the child's physical health, impair his or her emotional development, or otherwise would conflict with the best interest of the child, or that no visitation can be arranged that would protect the custodial parent sufficiently from future abuse.
- Award child support when no prior order of support exists in accordance with Supreme Court Rule 88.01 and chapter 452, RSMo.
- Award income maintenance in accordance with chapter 452, RSMo, for no more than 180 days, to the petitioner when the petitioner and the respondent lawfully are married.

- Order the respondent to make or to continue to make rent or mortgage payments on a residence occupied by the petitioner if the respondent is found to have a duty to support the petitioner or other household members.
- Order the respondent to pay the petitioner's rent at a residence other than the one previously shared by the parties if the respondent is found to have a duty to support the petitioner and the petitioner requests alternative housing.
- Order the petitioner be given temporary possession of specified personal property, such as automobiles, checkbooks, keys and other personal effects.
- Prohibit the respondent from transferring, encumbering or otherwise disposing of specified property mutually owned or leased by the parties.
- Order the respondent to participate in a court-approved counseling program designed to help batterers stop violent behavior or to participate in a substance abuse treatment program.
- Order the respondent to pay a reasonable fee for housing and other services that have been provided or that are being provided to the petitioner by a domestic violence center.
- Order the respondent to pay court costs.
- Order the respondent to pay the cost of medical treatment and services that have been provided or that are being provided to the petitioner as a result of injuries sustained to the petitioner by an act of domestic violence committed by the respondent.
- Order a wireless service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers of any children in the petitioner's care to the petitioner, if the petitioner is not the wireless service accountholder.
- Award possession and care of any pet(s), along with any moneys necessary to cover medical costs that may have resulted from abuse of the pet(s).
- Order the respondent to pay the petitioner's attorney fees, including sums for legal services, incurred prior to the commencement of the proceeding, throughout the proceeding, and after entry of judgment.

Read the order carefully. If you disobey the order, you can be sent to prison, fined or both.

Renewals
The court may, upon finding that it is in the best interest of all parties, include in the order a provision that any full order of protection shall be automatically renewed for any term of renewal of a full order of protection unless the respondent requests a hearing at least 30 days before the expiration date of the order. A finding by the court of a subsequent act of cyberstalking, domestic violence, stalking, or sexual assault is not required for a renewal order of protection.

When the original full order of protection did not include an automatic renewal provision, the petitioner may file a motion to renew the order with the court prior to the expiration date

of the original order. The court can renew the full order of protection. To renew the order, the petitioner must file an application at the same court office before the order expires and go to a hearing. To get a renewal, the petitioner does not need to prove that the respondent committed a subsequent act of cyberstalking, domestic violence, stalking, or sexual assault. Any application should be made at least two weeks before the expiration date indicated on the full order of protection.

If, for good cause, a hearing cannot be held to renew the original full order of protection before it expires, an ex parte order can be issued until the hearing on the renewal motion can be held.

If the court at an evidentiary hearing made specific written findings that the respondent poses a serious danger to the physical or mental health of the petitioner or of a minor household member of the petitioner, the renewed protective order may be renewed periodically and shall be valid for at least 180 days and not more than 1 year from the expiration date of the previously issued full order of protection.

If the court has made specific written findings that the respondent poses a serious danger to the physical and mental health of the petitioner or of a minor household member of the petitioner, the renewed protective order may be renewed periodically and shall be valid for at least two years and up to the life of the respondent.

How does the court determine whether a respondent poses a serious danger to the physical or mental health of the petitioner or minor household member of the petitioner?

In determining whether a respondent poses a serious danger to the physical or mental health of the petitioner or of a minor household member of the petitioner, the court shall consider all relevant evidence including, but not limited to:

- The weight of the evidence;
- The respondent's history of inflicting or causing physical harm, bodily injury, or assault;
- The respondent's history of stalking or causing fear of physical harm, bodily injury, or assault on the petitioner or a minor household member of the petitioner;
- The respondent's criminal record;
- Whether any prior full orders of adult or child protection have been issued against the respondent;
- Whether the respondent has been found guilty of any dangerous felony under Missouri law; and
- Whether the respondent violated any term or terms of probation or parole or violated any term of a prior full or temporary order of protection and which violated terms were intended to protect the petitioner or a minor household member of the petitioner.

If the court finds that a respondent poses a serious risk to the physical or mental health of the petitioner or a minor household member of the petitioner, the court shall not modify such order until a period of at least two years from the date of the original full order was issued and only after the court makes specific written findings after a hearing held that the respondent has shown proof of treatment and rehabilitation and that the respondent no longer poses a serious danger to the child victim.

Compliance & Enforcement
The court may schedule compliance review hearings to monitor a respondent's compliance with an order of protection.

The terms of an adult abuse/stalking order of protection issued are enforceable by all remedies available at law for the enforcement of a judgment. The court may punish a respondent who willfully violates an order of protection to the same extent as provided by law for contempt of court.

NOTICES TO PARTIES

VIOLATION OF PROTECTION ORDER

The violation of the terms and conditions of an ex parte order of protection or a full protection order that includes cyberstalking, domestic violence, stalking, sexual assault, child custody noncompliance, communication initiated by the respondent, or entering the petitioner's residence, place of employment or school or being within a certain distance of the petitioner or the petitioner's child shall be a class A misdemeanor. If the respondent previously pleaded guilty or was found guilty of violating an ex parte or full order of protection within five years of the date of the subsequent violation, the violation shall be a class E felony.

Be advised that having an order of protection issued against you may have immigration consequences. Violating an order of protection will have immigration consequences. If you are a non-citizen, you should consult with an immigration attorney prior to proceeding in your case.

FIREARM RESTRICTIONS

Notice to respondent regarding firearms restrictions:
Pursuant to 18 U.S.C. § 922

(g) it shall be unlawful for any person—
(8) who is subject to a court order that—
(a) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
(b) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
(c) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

SUSPENSION OF CONCEALED CARRY PERMIT

Any concealed carry permit issued shall be suspended if the holder becomes ineligible for the concealed carry permit. The holder will become ineligible if he or she is named as a respondent in a valid full order of protection still in effect.

Upon notification of a valid full order of protection issued against the holder ruling the holder presents a risk of harm to self or others, the holder shall surrender the permit to the court, officer or official serving the order.

Upon termination or expiration of the full order of protection, the court holding the permit shall return such permit to the individual.

If you hold a concealed carry permit, you must surrender the permit to the court, officer or official serving the full order of protection.

PROCEEDINGS INDEPENDENT OF OTHERS

All proceedings under the Domestic Violence Act are independent of any proceedings for dissolution of marriage, legal separation, separate maintenance and other actions between the parties and are in addition to any other available civil or criminal remedies, unless otherwise specifically provided in statute.

NOTICE TO THE PERSON OBLIGATED TO PAY SUPPORT OR MAINTENANCE

Per section 452.340, RSMo, effective January 1, 1994, for every order for child support or maintenance entered or modified by the court under the authority of chapter 452, RSMo, or otherwise, income withholding under section 452.350, RSMo, shall be initiated on the effective date of the order unless the court finds there is good reason not to require immediate income withholding or a written agreement between the parties provides for an alternative arrangement.

NOTICE OF RENEWAL OF ORDER

A full order of protection may be extended for additional periods of time upon application and a court hearing. Any application should be made at least two weeks before the expiration date indicated on the full order of protection. The court, upon finding that it is in the best interest of the parties, may include a provision that any full order of protection shall be automatically renewed for any term of renewal of a full order of protection unless the respondent requests a hearing at least 30 days prior to the expiration of the order. If, for good cause, a hearing cannot be held on the motion to renew or the objection to an automatic renewal of the full order of protection prior to the expiration date of the originally issued full order of protection, an ex parte (temporary) order of protection may be issued until a hearing is held on the motion.

FULL FAITH AND CREDIT (SECTION 455.067, RSMO, AND U.S.C. § 2265 (2006))

Since 1994, the Violence Against Women Act's full faith and credit provision (18 U.S.C. § 2265) has required every jurisdiction in the United States to recognize and enforce valid protection orders. Any order of protection issued by any other state, tribe, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia shall be given full faith and credit throughout the state in all courts, and by all law enforcement officials and agencies, and all public officials and shall be enforceable in the same manner as any order of protection issued by a court in this state.