

Orders of Protection

Mont. Code Ann. §§ 40-15-101 to 40-15-408

Shannon Fuller, Domestic Violence Attorney
Montana Legal Services Association

What are Orders of Protection?

- An Order of Protection is a Civil Order issued by the court to limit the behavior and contact of someone who harms or threatens to harm another person. It is used to address various types of safety issues, including, but not limited to situations involving domestic violence, stalking, and assault. MCA § 40-15-201.
- Even though an Order of Protection is a Civil Order, there are criminal repercussions for someone who violates it, including fines and jail time!

Orders of Protection vs.
Restraining Order vs.
No Contact Order

- MCA § 40-4-121: A temporary restraining order is issued by a court to *restrain* parties from selling or hiding property and assets during a dissolution proceeding. Although this term is commonly used by people when they refer to an Order of Protection, in the legal world they ARE different!
- MCA § 45-5-209: A court may issue a 72-hour standing no contact order against a defendant charged with Partner/Family Member Assault. This may prohibit the defendant from contacting the protecting person, and may impose a 1,500-foot restriction on the defendant to stay away from the protected person's location.
- No Contact Order: Similar to an Order of Protection; however *both* parties are restrained from contacting each other (goes both ways). Also, instead of criminal repercussions, parties must report violations to the court.

Who is eligible for an Order of Protection?

- MCA § 40-15-102(1): Victims, or persons in reasonable apprehension of bodily injury by a *partner or family member*, of one of the following offenses: assault, intimidation, criminal or negligent endangerment, kidnapping, or unlawful restraint; or
- MCA § 40-15-102(2): Victims of assault, stalking, or various sex crimes may file *regardless* of their relationship with the offender.
- MCA § 40-15-102(3): Parents or guardians may file on behalf of a minor child

Trivia

- Tom requests an Order of Protection against a former co-worker, Dave. Tom states that Dave has been following him around town and calls his cell phone upwards of a hundred times a day. Although Tom reports that he cannot sleep at night, he has not reported Dave's stalking to the police. Should Tom's request for an Order of Protection be granted?
 - a) No. Montana law requires the respondent to be a partner or family member.
 - b) Yes. Neither a familial relationship nor a report to law enforcement is necessary for a court to grant an Order of Protection in cases of stalking.
 - c) No. Montana law requires Tom to report the alleged crime to law enforcement before an order is granted, and he did not do that.
 - d) None of the above.

Answer

- B. There is no familial relationship required when the petitioner is the victim of stalking (MCA § 40-15-102(2)(a)).
- Under MCA § 40-15-102(5): A petitioner is eligible for an order of protection whether or not:
 - (a) the petitioner reports the abuse to law enforcement;
 - (b) charges are filed; or
 - (c) the petitioner participates in a criminal prosecution

Trivia #2

- Sarah was a long-term survivor of domestic abuse, and was able to leave her abuser 6 months ago. However, she still has recurring nightmares from the abuse, and keeps chairs propped under her door handles to keep anyone from coming through the door. She recently saw her abuser at the gas station, and although he didn't say anything, she was so terrified by the look he gave her that she ran out without buying her groceries. He always told her if she left him that he would find her and kill her, and she believes he will follow through with that threat. Sarah wants to file for an order of protection, but was told she wouldn't qualify because the abuse didn't happen recently. Is she right?
 - a) Yes. Sarah is not eligible for an order of protection because she is not in "imminent danger."
 - b) Yes. Sarah was not married to her abuser, so she is not eligible.
 - c) No. Sarah meets the familial requirements of the statute, and she reasonably fears for her safety.

Answer

- C. Sarah would most likely qualify for an Order of Protection, because she meets the familial relationship required by the statute. In addition, the length of time between the abusive incident and the petitioner's application for an order of protection is irrelevant, as long as the petitioner is in "reasonable apprehension of bodily injury." MCA § 40-15-102(6).

Where do you file for an Order of Protection?

- Municipal Court (City): Most Orders of Protection are filed in municipal court. In 2014, over 400 OPs were filed in the Missoula Municipal Court alone!
- Justice Court: Many Orders of Protection are filed in Justice Court as well.
- District Court: When there is an ongoing dissolution or parenting plan case, the victim MUST file in District Court. When a party appeals an Order of Protection, it is also sent to District Court.
- MCA § 40-15-301(1): Municipal, City, Justice, and District courts all have concurrent jurisdiction over Orders of Protection. However, only district courts have the authority to issue custody orders.
- There is no cost to file for an Order of Protection

OP Procedure

- 1) Petitioner files a Petition for Temporary Order of Protection. In this petition, they tell the court what has happened that has made them fear for their safety.
- 2) The court reviews the Petition, then determines whether to grant or deny. The court must find that the “petitioner is in danger of harm if the court does not act immediately.” MCA § 40-15-203(2)
- 3) If the Temporary Order of Protection is granted, the court sets a hearing to occur within 20 days. A copy of the TOP is sent to law enforcement agencies, and the Respondent is served with a copy as well.
- 4) Within 20 days of granting the TOP, the court must have a hearing where both parties have a chance to tell their side of the story. At the end of the hearing, the court determines whether to continue the TOP (make it a permanent Order of Protection), or to dismiss the TOP.

Why the Petition for TOP is so important!

- Clients need to be very detailed when filling out the Petition. This is what the court looks at to decide whether a TOP is necessary to protect the client. If the Petition is vague or doesn't have enough information, the court may not grant it!
- Example of Petition for TOP can be found on the Montana Department of Justice website at:
<https://dojmt.gov/victims/forms/>

Temporary Order of Protection (TOP)

- The court may issue the TOP, without notice to the Respondent, if the court finds that harm may result to the Petitioner if an immediate Order is not issued.
- Respondent is served with a copy of TOP
- A hearing must be conducted within 20 days of issuance of the TOP. The Respondent can file an affidavit asking for an earlier hearing date.
- Example TOP can be found on the Montana Department of Justice website at:
<https://dojmt.gov/victims/forms/>

Hearing

- If the Petitioner does not show up, the TOP is dismissed.
- If the Respondent does not show up, a permanent Order may be granted.
- Petitioner presents her case first, including any evidence or witnesses on her behalf
- Respondent then presents his case, including any evidence or witnesses on his behalf
- After both sides have gone, the court makes the decision to either grant the Order of Protection, or to dismiss. The judge needs to determine that it is more likely than not that the abuse occurred in order to grant permanent OP.

Permanent Order of Protection

- “Permanent” does not mean for life!
- Permanent Orders of Protection can be for any length of time. Often a judge will grant for six months or one year, then the Petitioner must come back to renew it.
- Copies of the permanent OP are given to local law enforcement, and they are entered into a national database. *Why?*

Scope of relief in a TOP and OP

The court can order any of the following:

- Respondent shall not commit or threaten to commit acts of violence against Petitioner
- Respondent shall not harass, contact (directly or indirectly) with the Petitioner or his/her family
- Respondent shall not take the children out of the court's jurisdiction
- Respondent shall stay at least 1500 feet away from Petitioner, her home, workplace, school, or vehicle.
- Respondent shall not possess firearms
- Respondent shall not sell or destroy Petitioner's belongings
- Respondent shall give Petitioner possession of certain items (personal, vehicle, even residence)
- A peace officer to help Petitioner/Respondent pick up belongings
- Respondent to complete violence counseling, alcohol or chemical dependency counseling
- Any other relief deemed just and proper
- MCA § 40-15-201(2)

Hope Cards

- HOPE cards: Wallet-sized Orders of Protection that are given to the Petitioner to carry on her at all times. If law enforcement needs to verify the OP, she has it with her!
- Hope Cards have a photo of the Respondent, and other identifying information including name, birth date, sex, race, eye and hair color, height, weights, tattoos or other distinguishing characteristics.

Are Orders of Protection valid in other states?

- Absolutely!
- Under the Full Faith and Credit Act, every state must recognize Orders of Protection issued in other states.
- Example: Claire has an Order of Protection against Dave that was issued in Washington, but moves to Montana. The Respondent follows her and attempts to contact her. Montana police can charge the Respondent with violation of the Order of Protection!

Do you need an attorney to file for a TOP?

- NO (but it sure can be helpful)!
- The process is set up so people can represent themselves. The goal is to make it as easy as possible for someone to get the help they need.
- No court filing fees for filing a TOP
- Many agencies will assist someone wishing to file for a TOP (domestic violence shelters, crime-victim advocates)
- Often a client is afraid to face her abuser in court- that is when an attorney is very helpful. It helps to shift the power imbalance that often occurs in abusive relationships.

What services MLSA offers

- We can:
 - Assist client in filling out Petition for TOP
 - Send advice letters with informational brochures
 - Give advice calls on representing self in court
 - Full service representation- represent client through the whole process

Orders of Protection

Enforcement in the Criminal Justice System

John W. Parker
Cascade County Attorney

Jane's Goals

- Peace of Mind
- Preventing Future Crimes
- Preserving the Victim's Physical Space

Case Dynamics

- Fact patterns span a wide continuum
- At one extreme, cutting the brake lines of a domestic violence victim the day of the sentencing hearing
- At the other extreme, “innocent” drive-bys on a busy street, pushing the limits

Charging Decision

- Misdemeanor protection order violation
- Felony stalking for repeat offenses

Preparing the Case

- Determining how to present the facts to judge or jury
- Evaluating the permissible scope of the evidence.
Many valuable facts may not be admissible?
Transaction rule?
- Articulating a theme: victims have rights.
- Again, peace of mind, right to physical space

Understanding the Offender's Mindset

- Frequently able to identify a “borderline” area that offends/harasses the victim while still colorable as innocent conduct
- Manipulative: able to portray offender's image to others (mutual friends, jurors, the Court) as friendly and reasonable
- Experienced in using these tactics

Case Challenges

- Insufficient evidence
- Reluctant victims in some cases
- Courts very wary of the “on-off” switch issue; appearance of the victim seeming to manipulate the situation

Possible Outcomes

- Global plea agreement
- Plea agreement on the standalone charge depending on strength of the evidence
- Dismissal

Possible Outcomes

- At a minimum, the investigation and arrest provides for a cooling period/de-escalation of the event itself
- Court-ordered counseling
- Behavior modification?

Questions