



Orders of Protection

What is an Order of Protection?

An Order of Protection (OFP) is a court order to your abuser (called the “respondent” in court) to stay away from you (the “petitioner”) and to not commit further acts of domestic abuse.

An OFP can also provide other relief to the Petitioner. If the petitioner and the respondent are living together, the court may require the abuser to move out. The court that gives you a TPO is also able to award temporary child custody for the length of the order, even if your abuser now has the child. With a court order, the police also will go with either the petitioner or the respondent to pick up belongings, turn over keys to the residence or car, from the property where the other party is living. The court may order temporary financial support for the victim and children; order the abuser to undergo counseling; or pay for expenses, such as medical bills, caused by the abuse.

Who is eligible for an Order of Protection?

For an Order of Protection based on stalking or sexual abuse, you do not have to have or have had, any type of ongoing relationship with the Respondent. In fact, often in these cases, the Respondent is a virtual stranger.

For an Order of Protection based on domestic violence, the Respondent must be a household member. New Mexico defines a household member as a spouse, former spouse, boyfriend/girlfriend, ex-boyfriend/girlfriend (including same-sex relationships), parent, present or former stepparent, present or former parent-in-law, child, stepchild, grandchild, co-parent of a child or a person with whom the petitioner has had a continuing personal relationship. Cohabitation is not necessary.

How do I get an Order of Protection?

A temporary OFP is the first step in getting a long-term protection order. To get a temporary order, you will need to fill out a short form (petition) describing the abuse and what happened. The form is available at the courthouse or through a domestic violence agency. Fill out the form carefully and accurately, and turn it into the court clerk. There is no charge to file the petition. You may want to have a domestic violence advocate assist you with completing the Petition. You may have to wait several hours for a judge to sign the temporary order. That judge may ask you questions. If at all possible, do not bring small children with you to the courthouse. The TPO is good until a judge makes a decision about a long-term order at a hearing. The hearing is scheduled for no later than ten days after the court issues the TPO. The respondent must be personally served with the temporary order. This means hand-delivered, usually by the sheriff's department. Petitioners should NOT serve Respondents themselves. The temporary order is not valid until the Respondent has been personally served, and will not be enforced.

How does the TPO protect me?

The order allows you to get help from the police and the court if your abuser violates the order. Keep a copy of the order with you at all times. Keep another copy in a safe place. Give copies of the order to people who can help you enforce it, such as your attorney, your employer, your landlord, neighbors or friends, and your children's schools. If you feel comfortable telling your employer what has happened, you should also give your employer a copy of your order. (An employer who fires you for being a victim of domestic violence will be required to pay unemployment benefits to you.)

If the abuser violates the court order, you can call the police. Violating a protection order is a crime and the police may immediately arrest the offender. It may also be contempt of the court and can mean the respondent must pay a fine or spend time in jail.

The TPO lasts only until the court schedules a hearing to see if you are eligible for a permanent order of protection.

Please remember that an Order of Protection is just a piece of paper and cannot fully protect you. We recommend you work with a domestic violence advocate during all steps of the process in order to help protect you.

What happens at the hearing?

At the hearing, the judge decides if the behavior you described is domestic abuse. The judge does this by asking about the domestic violence, sexual assault or stalking. You should have all the evidence you can of what happened—photos, damaged possessions, medical documentation of injuries, etc. If there were witnesses who saw or heard what happened, those witnesses

should attend, too. If the respondent comes to the hearing, the judge may question both of you. Often there will not be evidence available other than each party's testimony about the event that happened.

The Respondent will also have an opportunity to tell his or her side of the story as well. Respondents or their attorneys may question the Petitioner during the hearing as well.

At the hearing, the Court can also make visitation and child support orders. The Court can also order the Respondent to pay you back for medical costs, lost wages, or other expenses associated with the domestic violence. You should bring copies of the expense receipts, a paycheck, or other information you have.

How long does the final protection order last?

Generally, an Order of Protection lasts for one year. You can request a longer Order. A temporary custody order that is part of a protection order expires in six months. To obtain permanent custody of children, you must file additional court papers. (For more information about custody, see LawHelp topic, "Custody of Children".)

Do I need an attorney?

It is always a good idea to get legal advice as soon as possible, especially if you will be going to court. A lawyer can help you organize what you need to say to prove that you need a permanent order of protection. A lawyer can also explain how to subpoena witnesses and how to give evidence in your case.

Normally, you do not need an attorney to represent you when you ask for a temporary Order of Protection. Sometimes it is good to have a lawyer with you at the hearing for a permanent order, however, especially if the abuser has a lawyer. Many domestic violence organizations have advocates that can explain the process to you, or possibly attend the Court hearing for support. Advocates cannot act as a legal representative and cannot speak in the hearing.

You should talk with a domestic violence shelter about how to protect your safety in and around the courthouse when you have your hearing.