

HOW DOES THE PROTECTION ORDER PROCESS WORK?



A GUIDE FOR WORKING WITH YOUR LOCAL COURT

Fourth Judicial District of Kansas

Anderson County

100 E 4th
Garnett, KS
785-448-6886

Coffey County

6th and Neosho
Burlington, KS
620-364-8628

Franklin County

301 S Main
Ottawa, KS
785-242-6000

Osage County

717 Topeka Ave.
Lyndon, KS
785-828-4713

"I need a Restraining Order."

This is what people often say to the Court Clerk when requesting an order to protect them from abuse or stalking. However, this term can be confusing, because a restraining order is only one kind of court order. The following is a brief description of two types of orders where the court may order another person to stay away from you or the family home, provided that certain conditions are met.

PROTECTION FROM ABUSE ORDER PROTECTION FROM STALKING or SEXUAL ASSAULT ORDER

Types of Protection Orders Available: In the following sections you will read information about how to get a protection order. You may see terms that are unfamiliar to you. A glossary of these terms is included at the end of this section. Before seeking a protection order, you may wish to contact a lawyer about your situation. The toll free number for the Kansas Lawyer Referral Service is 1-800-928-3111.

People who have a limited income can call Kansas Legal Services at 1-800-675-5860.

Assistance can also be found at: <http://www.kcsdv.org/pfa.html>

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Protection from Abuse Order

This is the most commonly requested order. It is a civil order from the court telling the family or household member who threatened or assaulted you not to harm you again. Before you can get a Protection from Abuse Order you (known as Plaintiff) and the person you want restrained (known as Defendant) must be intimate partners or household members. This means you and the person you want restrained must meet one of the following requirements:

- You are in a dating relationship (a social relationship of a romantic nature)
- You have been in a dating relationship in the past;
- You are living together;
- You have lived together in the past; or
- You have had a child together.

OR

A parent or an adult living with a child under 18 can file on behalf of the child.

AND

Abuse must have occurred. This means the person you want restrained has done one of the following:

- The person physically hurt you or a minor child on purpose.
- The person tried to physically hurt you or a minor child.
- The person threatened to physically hurt you or a minor child.
- The person engaged in sexual conduct (touching or sexual intercourse) with a minor child less than 16 years of age.

Protection from Stalking or Sexual Assault

This is a civil order from the court telling the person who is stalking you to stop.

Protection from Stalking or Sexual Assault Orders must be filed in the county in which the stalking occurred. You may seek a Protection from Stalking Order for yourself, for your minor child, or a minor child who lives with you.

Before you can get a Protection from Stalking or Sexual Assault Order, stalking or sexual assault must have occurred.

Stalking is an intentional harassment of another person that places the other person in reasonable fear for that person's safety.

Sexual Assault is (1) a nonconsensual sexual act; or (2) an attempted sexual act against another by force, threat of force, duress or when the person is incapable of giving consent.

Harassment means a knowing and intentional course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes that person and that serves no legitimate purpose.

Course of conduct means conduct consisting of **two or more separate acts over a period of time**, however short, that show a continuity of purpose, which would cause a reasonable person to suffer substantial emotional distress.

How to Obtain a Protection Order

The following is a description of the typical procedure for obtaining a protection order. It may be different in your county. This may help you understand why you are required to fill out certain forms, and provide information to the judge. Before seeking a protection order, you may wish to contact a lawyer or advocate about your situation.

Assistance can be found at: <http://www.kcsdv.org/ksresources.html>

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- First decide which protection order best fits your situation
- Request forms from the Clerk of the District Court.
- Fill out the forms as completely as you can. Return the forms to the court staff. The clerk may direct you to someone who can help you with the forms. There is no filing fee.
- You **MAY** be required to give sworn testimony before temporary orders are issued.
- A Temporary Order may be issued after the judge reviews your case. This order is good until the hearing date.
- If the court agrees that you need a temporary protection order, when you leave the court you should have a copy of the Petition for Protective Order and Notice of Hearing and Temporary Orders of Protection. The date and time of your hearing will be included in the papers. You may wish to make additional copies of the order for schools, daycares, etc.
- You will return for the hearing within twenty (20) days. Bring all of your paperwork and any witnesses with you! **If you do not return, your case is dismissed and the temporary order is no longer in effect.**

Please keep in mind that no person may use the procedure provided for in this act more than twice in any twelve-month period, except in the case of abuse of a minor. (K.S.A. 60-3111)

The Judge will decide at a hearing whether to grant the Protection Order. The court can proceed with this hearing if the Defendant is present or if the Defendant is not present and there is proof that the Defendant was served with court papers prior to the hearing. If the defendant has not been served, the court may make a temporary ruling and/or continue your case to another date. Regardless of service, you must continue to come to court, unless the court tells you otherwise.

At the final hearing, you must prove to the court you qualify for the protective order. You can prove you qualify by your own testimony. The judge may ask you to tell the facts about what happened. If you have kept notes about what happened, you should review these before the hearing.

You should come to court prepared with any evidence you have. Evidence could include medical records, photos, taped messages, letters, phone records, police reports or adults who saw or heard what happened. The requirements are listed above in the section on "Protection from Abuse Order" and "Protection from Stalking Order."

Because of your important role it is a good idea to wear neat and well-groomed clothes for the court. Some courts have rules about what are proper clothes. You can ask the court clerk what is correct.

You may have to spend some time at court and you might consider either not bringing your children or bring someone to watch your children while you talk to court staff.

If the defendant was served with the order and did not come to the hearing, the court can hold the hearing and issue a final order. The final order will be given to the defendant. A copy of the signed Protective Order is forwarded to the local sheriff's department for entry in the national protection computer file. This is to ensure that the police or sheriff in any Kansas county or any other state can enforce your order.

**Keep a copy of your order with you for as long as the order is in effect.
It is also recommended you keep extra copies
with a friend and in your car.
This order is valid in any state and anywhere in Kansas.**

COMMONLY ASKED QUESTIONS

What can I ask for under a Protection from Abuse Order?

When you receive a Protection from Abuse Order, if you ask, the Court may order any or all of the following:

- Restrain the defendant from abusing, molesting or interfering with the privacy or rights of the plaintiff or of any minor children of the parties.
- Grant possession of the residence or household to the plaintiff, to the exclusion of the defendant.
- Require the defendant to provide suitable alternate housing for the plaintiff and any minor children of the parties.
- Award custody and establish a parenting plan with regard to minor children.
- Order a law enforcement officer to evict the defendant from the residence or household.

- Order support payments for minor child or spouse.
- Award costs and attorney fees to either you or the defendant.
- Make provision for the possession of personal property (including legal documents) of the parties and order a law enforcement officer to assist in securing possession of that property, if necessary.
- Require the person against whom the order is issued to seek counseling to aid in the cessation of abuse.
- Restrain the defendant from canceling utility service to residence for 60 days.
- Order or restrain any other acts necessary to promote the safety of the plaintiff and the minor children.

What can happen under a Protection from Stalking or Sexual Assault Order?

When you are granted a Protection from Stalking order, the Court may order any or all of the following:

- Restrain the defendant from following, harassing, telephoning, contacting or otherwise communicating with the victim.
- Restrain the defendant from abusing, molesting, or interfering with the privacy rights of the victim.
- Require the defendant to provide suitable, alternate housing for the plaintiff and any minor children of the parties.
- Order or restrain any other acts deemed necessary by the court to protect the victim of stalking.

What should you do if the order is violated?

When you believe a violation of the protection order is occurring and you are afraid, you should call 911 or your local law enforcement agency to request any needed emergency assistance and to make a report of a violation.

What does it mean to be "served" with an order?

A copy of the order and notice of hearing will be given to the defendant by an authorized official.

Why do I need the defendant's address?

The authorized official can find and serve the defendant with the appropriate papers. They can be served at work, home or wherever you think they can be found. Though not required, you may provide a picture to the authorized officials to help them serve the papers.

How long does the final order last?

The final Protection from Abuse order will expire after one year or on the date stated in the order unless you request an extension or modification from the court before the order expires. You may request that the court extend an order for one additional year, or longer under certain circumstances.

If the defendant has violated a valid protection order or been convicted of a person felony against you or a member of your household, you may request the court extend the order for at least two years or up to the lifetime of the defendant. A request to extend an order for more than one year must be personally served on the defendant and the court must hold a hearing

where the defendant may appear, present evidence, and question witnesses.

The clerk of the district court will have the forms you will need to file this motion. To extend a stalking order you must show a continuing threat of stalking.

Can I get a protection order if I am undocumented or from another country?

Yes, you can petition for a protection order. If you are worried about how the order will affect you or your partner's immigration status, talk to an immigration lawyer before filing.

Can a protection order be obtained against a minor (under eighteen)?

Yes. The Protection from Abuse and the Protection from Stalking Acts do not have a minimum age requirement. Tell the clerk if the defendant is under 18 years of age.

Can adults seeking protection ask that this protection extend to their minor children?

Yes. The Protection from Abuse Act states that "a parent or adult residing with a minor child may seek relief under the act." The Protection from Stalking form allows you to enter the names of any children who are being stalked.

What if a minor child is being abused, but the parent is not?

While a minor may not file a petition, a parent may file a petition on the minor's behalf.

Does the Protection from Abuse Order prohibit all forms of contact between the parties?

Different law enforcement officials may interpret court orders differently. You should always refer back to your final order to see what is not allowed. If you want no contact with the defendant, ask the judge to specifically include that in the order.

If I need to have contact with the defendant, what should I do?

If your order does not work for you because your situation has changed, it is important to go back to the court that issued your order and ask for a modification. Many parties need to have contact because of children, divorce proceedings, shared property, counseling sessions, etc. Law enforcement officers may arrest the defendant if they believe the order is being violated.

What if you change your mind and you want your protection order dismissed?

You should contact the clerk of the court, get the necessary papers and ask to dismiss the case.

Why must the court make the order to end the protection order early?

The Protection Order specifically states the date through which it is effective. When the Order was originally signed, law enforcement entered the order in the national protection order computer file. Without a court order terminating the protective order, it cannot be removed from this file before the expiration date. Without a court order ending the protection order, the

defendant could be arrested for violating the protection order even if you don't want this to happen.

Final hearing?

If **you** do not appear in court on the day of the hearing, the protection order will expire and the case will be dismissed. **Also**, to be sure you are safe; the court will seek law enforcement assistance to check on your welfare.

What happens if the defendant does not appear for the hearing?

If the defendant was made aware of the hearing, the court may issue a final order. If the defendant was not aware of the hearing, then a new court date will be set. The plaintiff must return for the hearing. For the temporary order to remain in effect, the court must order that to happen.

If the judge orders the defendant to move, is that temporary or permanent?

The order will say how long it is in effect. Temporary orders are only good for 20 days or until the final hearing. Final orders may be in effect for up to 1 year, and can be renewed for 1 year. If you want the order changed, you must file a motion to modify the order in the court where you got the order.

What is a mutual order?

This is an order which keeps both parties from contacting each other. An order against a plaintiff and defendant (a mutual order) can only be issued when certain steps are followed. A mutual order may have some negative consequences and you may wish to contact an attorney or trained advocate.

Notice: As of February 1, 2016, Protection from Abuse and Protection from Stalking and Sexual Assault cases are considered confidential and not open to the public. Exceptions are that advocates for filers and attorneys for the parties can obtain court information and documents.

SPECIFIC QUESTIONS ABOUT THE FORM

Am I the plaintiff or the defendant?

The person seeking the protection order is the plaintiff. The defendant is the party that will be restrained by the court order.

Does every section have to be filled out completely?

Complete all the sections even if you say "I don't know the answer."

Do I need to list my or other peoples' social security number?

It may be helpful to list social security numbers but it is not required. Any documents with social security numbers and/or dates of birth will be sealed and will only be available to law enforcement.

How do I know if I'm in a dating relationship?

The law defines a dating relationship as a "social relationship of a romantic nature." The judge will decide if your situation fits this definition.

How do I know if I rent or own the home?

You should check the lease agreement and check the deed to the property or the loan papers. If the parties to an action under the protection from abuse act are not married to each other and one party owns the home or household, the court does not have the authority to grant possession of the home to another.

How do I know if a legal action has been filed between the defendant and me? Or involving minor children?

The clerk of the district court in the county in which a legal action may have been filed will have a record of all actions, such as a divorce or paternity action.

What if I don't have the exact dates the abuse occurred?

Give as much information as you have about the dates of the abuse. You can give approximate dates or a period of time.

What is meant by "briefly describe the facts about why you are seeking a Protection Order"?

In a few words tell the court how the defendant abused or stalked you or the children.

Why would I want my contact information confidential?

If you are residing at a shelter or have moved to a safe location that the defendant does not know about, you may not want the defendant to know. The period of immediate time after you have left your abuser may be the most dangerous for you. Keeping your address confidential may keep you safer. If you are requesting a PROTECTION FROM STALKING ORDER, THE COURT IS REQUIRED TO KEEP YOUR CONTACT INFORMATION CONFIDENTIAL. If you are seeking a PROTECTION FROM ABUSE order, you must ask the court to keep it confidential.

What if the stalking has occurred in more than one county? In which county should I file my petition?

Petitions for a stalking protection order must be filed in the county where stalking occurred. If the stalking occurred in two counties, the petition can be filed in either county.

This brochure may not answer all the questions you have. All parties in a protection order case are encouraged to contact a lawyer or advocate.

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Protection from Abuse and Protection from Stalking and Sexual Assault actions are not a substitute for a Divorce/Custody/ or Separate Maintenance action in situations where the parties are married. You should contact a lawyer to determine if you should also file a Divorce / Separate Maintenance action.

Glossary of Terms

ABUSE: means the occurrence of one or more of the following acts between intimate partners or household members:

- (1) Intentionally attempting to cause bodily injury, or intentionally or recklessly causing bodily injury.
- (2) Intentionally placing, by physical threat, another in fear of imminent injury.
- (3) Engaging in any of the following acts with a minor under 16 years of age who is not the spouse of the offender:
 - (a) The act of sexual intercourse; or
 - (b) Any lewd fondling or touching of the person of either the minor or the offender, done to arouse or satisfy the sexual desires of either the minor or the offender or both.

CONTEMPT OF COURT: If a person does not follow the Protection Order, you can go back to the clerk of the court, file the appropriate court papers to ask for that person to be found in contempt of court.

DATING RELATIONSHIP: A social relationship of a romantic nature. The court looks at how long the relationship existed, the nature of the relationship, the frequency of interaction between the parties.

EX PARTE: Only one party is present and the Judge hears only that party's side. The hearing for the Temporary Order is usually Ex Parte, meaning only the Judge and the Plaintiff are in court.

INTIMATE PARTNERS OR HOUSEHOLD MEMBERS: Persons who are or have been in a dating relationship, persons who reside together or who have formerly resided together or persons who have a child in common.

LAW ENFORCEMENT INFORMATION SHEET: This form provides information necessary for law enforcement to enter a protection order on the police computer, to serve papers on the defendant and to notify Plaintiff of service or non-service.

MOTION TO MODIFY PROTECTION ORDER: This is the form used by either party to ask the court to change an existing court Protection Order.

JOURNAL ENTRY OR ORDER OF DISMISSAL: Dismisses a Protection Order and upon receipt of a copy of the dismissal, the sheriff or law enforcement agency will remove the Order from the NCIC system. You can request an order of dismissal by filing a motion to terminate the Order. The Court then decided whether to dismiss the protection order.

PFA: Protection from Abuse

PFS: Protection from Stalking

PRO SE: The party is representing her or himself. One party could be pro se while the other side has hired an attorney.

RETURN OF SERVICE: Form completed by person serving protection order papers on defendant as proof that the defendant was served. The Plaintiff, court and law enforcement need to be notified that service has been accomplished. This form is entered in the court record. The Court cannot hold a hearing until this document is in the court file or presented to the judge.

SEXUAL ASSAULT: (1) a nonconsensual sexual act; or (2) an attempted sexual act against another by force, threat of force, duress or when the person is incapable of giving consent.

STALKING: Stalking means the intentional harassment of another person that places the other person in reasonable fear for that person's safety.