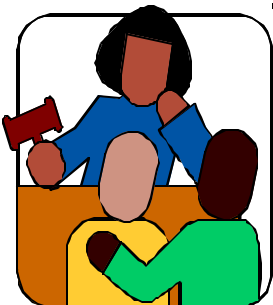
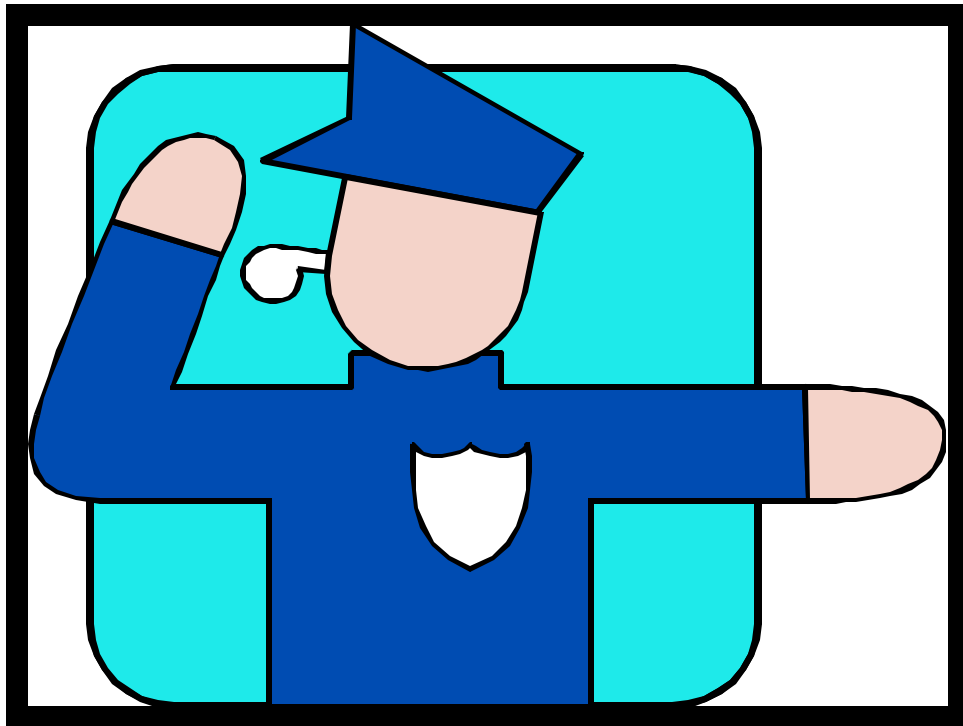


# HOW TO FILE FOR AN ORDER OF PROTECTION IN ILLINOIS©

Police # 3

8/20/99



The Self Help Legal Center  
Southern Illinois University School Of Law  
Carbondale, IL 62901  
(618) 453-3217  
[selfhelp@siu.edu](mailto:selfhelp@siu.edu)

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# Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer,

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Look for these symbols to tell you when to:



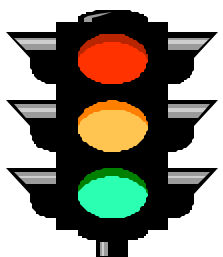
**STOP!**

You need legal representation or advice to continue.



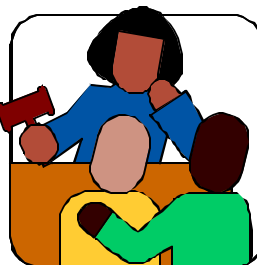
**USE CAUTION!**

This is a complicated step so pay attention.



**GO!**

You can proceed to the next step.



**CHECK IT OUT!**

This issue is discussed in another packet.



# Warning to all readers



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**Before you proceed with using this packet, you should ask yourself the following questions:**

## **1. Have I tried to consult a private attorney?**

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

## **2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?**

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

## **3. Is this something that I can do on my own?**

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

# Free sources of legal help

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## Land Of Lincoln Legal Assistance

Serves these counties: Jackson, Randolph, Perry, Williamson, Saline, Gallatin, Hardin, Alexander, Union, Pulaski, Johnson, Massac & Pope

Phone: (618) 684 - 2282

Toll Free: (800) 642 - 5335

TDD: (618) 684 - 2920

## The Women's Center

Serves these counties: Jackson, Williamson, Franklin, Perry, & Union

Phone: (618) 529 - 2324

Toll Free: (800) 334 - 2094

## Jackson & Williamson County Sheriff's Offices

Phone: 911

## Victim Advocate's Law Enforcement Division

Carbondale Police Department: 457-3200

Jackson County Sheriff: 684-3822

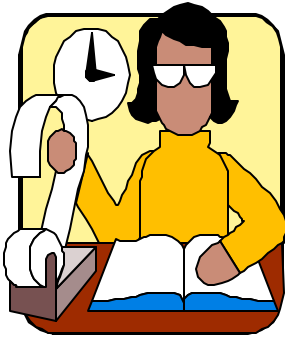
Jackson County State's Attorney: 687-7200

# Who these people are



## Judge:

The judge is the person who presides over the courtroom. In most cases, including order of protection cases, the judge makes all of the final decisions and approves all agreements. When a judge makes a decision or a finding, it has the force of law. The judge also sets and enforces court rules (like dress codes) and in some courthouses, the judge decides when cases are scheduled.



## Circuit Clerk:

The Circuit Clerk is responsible for creating, managing, and updating court files. When you want to put something in a court file, see a court file, or make a copy of something in a court file, you talk to the Circuit Clerk's staff. In some courthouses, the Circuit Clerk also decides when cases are scheduled.



## Sheriff:

The Sheriff's main duty is to keep the peace and to enforce the law. One of his/her roles in the legal system is to "serve" (give notice) to people of pending or upcoming court cases or hearings. The sheriff does this by giving the person a notice called a "summons". The sheriff, as well as your local police officers, also enforces the judge's orders.



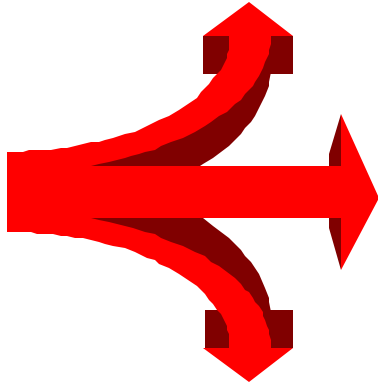
## Attorney:

An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and can represent you in court and in negotiation settlements.



## State's Attorney:

The State's Attorney is an attorney who represents the State of Illinois in criminal cases, including domestic battery. The State's Attorney in Jackson and Williamson Counties have a victim's advocate to help you.



## **Criminal Order of Protection**

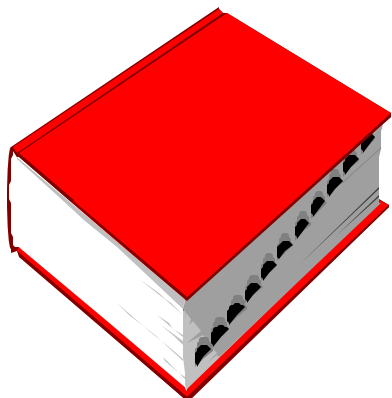
You have the option to pursue an order of protection in criminal court, rather than filing for it in civil court. The Illinois Domestic Violence Act provides for orders of protection in a criminal case as well as a civil case. You must contact the State's Attorney, who will handle most of this process for you.

## **Bond Condition**

A bond condition is available if your abuser has been arrested for domestic battery. This has an automatic stay-away provision which requires your abuser to stay away from you once he/she bonds out of jail. The advantage to this option is that, if he/she violates it, his/her bond will be immediately revoked and he/she will go to jail and may remain there while waiting for the trial on his/her domestic battery charges. This is only available if your abuser has been arrested. You have to let the State's Attorney know you want this almost immediately after the arrest because the State's Attorney needs to tell the Judge before bail is set that you are requesting a bond condition. Bail is often set within 24 hours of the arrest, so you need to contact the State's Attorney as soon after the arrest as possible.

## **Getting an Order of Protection as Part of a Divorce**

You also may opt to petition for an order of protection within a petition for a divorce.



## **domestic battery**

Physical abuse/bodily harm to any family member or member of the household. This is a misdemeanor punishable by up to a year in jail, a substantial fine and/or up to 2 years' probation. After a conviction, if it occurs again, it becomes a felony. The State's Attorney prosecutes this crime.

## **domestic violence**

Physical abuse, verbal abuse, harassment, neglect, interference with personal liberty, and intimidation of a dependent.

## **cycle of violence**

The cycle consists of the violence, followed by the lovey-dovey phase of apologies and gifts and promises to change, followed by the victim going back to the relationship or accepting the apologies and gifts, followed by a calm period, followed by another incident of violence.

## **order of protection**

This is what the victim of domestic violence gets from the courts to keep his/her abuser away from him/her.

## **emergency order of protection**

Order of protection that may be used without providing notice to the respondent when there is a threat of harm to the petitioner. Some remedies are unavailable. It may last up to 3 weeks.

## **interim order of protection**

Order of protection that may be used when there are problems serving the respondent. Some remedies are unavailable to the petitioner. It may last up to 30 days.

## **plenary order of protection**

Order of protection that is used when the respondent has been served. All of the remedies available to the petitioner are possible. It may last up to 2 years.

## **support**

The obligation of the abuser to provide money for the victim to live on.

## **judgment**

A decision or order of the court.

## **jurisdiction**

Whether the court in a particular state has the power to hear a case or to order someone to do something depends upon whether it has "jurisdiction". Jurisdiction can be either over a person or over

# What these legal words mean - cont'd

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a subject. For a state court to have jurisdiction over a person, generally, the person must either reside in the state or have committed an act in the state.

## **venue**

Whether this is the appropriate circuit to file the petition for an order of protection. Basically, this determines whether the petition should be filed in a different circuit than the one you filed in. An example might be that you filed in Jackson County and you should have filed in Williamson County. The instructions to the forms (in the Supplement) will explain this better.

## **respondent**

The person you want the order of protection against.

## **petitioner**

This is you, the person who is filing for the order of protection.

## **minor children**

Children under the age of eighteen.

## **order**

The piece of paper which says what the judge is making the respondent do or not do. You fill this out and the judge either signs it as is or makes changes before signing it.

## **petition for an order of protection**

A written request to the court. A petition begins the process and contains the facts that you are alleging the respondent did to you. In the petition you also must tell the court what relief you want the court to grant you. (You formally repeat this when you fill out the order.) (see above)

## **pro se**

A person who is taking legal action, such as filing a petition for an order of protection, without being represented by an attorney.

## **restricted or supervised visitation**

When a parent poses a threat of physical, mental, or emotional harm to his/her child(ren), the judge can order that the parent's visitation with the child(ren) be supervised or restricted. Supervised visitation means that the parent is not left alone with the child(ren) during visitation and that another person supervises the visitation. Restricted visitation means that the parent's visitation is restricted to a certain time, place, or manner.

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## These definitions are unique to the Illinois Domestic Violence Act:

### **Abuse**

Physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation, but does not include reasonable direction of a minor child by a parent or person acting in place of the parent.

### **Exploitation**

The illegal use of a high-risk adult with disabilities or of the assets or resources of a high-risk adult with disabilities. It includes the misuse of assets or resources of a high-risk adult with disabilities by undue influence, by breach of a fiduciary relationship, by fraud, deception, or extortion, or the use of such assets or resources in a manner contrary to law

### **Harassment**

Knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances and it would cause a reasonable person emotional distress and does cause emotional distress to the petitioner.

a. Certain things will be presumed to cause emotional distress unless sufficiently rebutted by the alleged harasser:

1. creating a disturbance at petitioner's place of employment or school;
2. repeatedly telephoning petitioner's place of employment, home or residence;
3. repeatedly following petitioner about in a public place or places;
4. repeatedly keeping petitioner under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by petitioner or by peering in petitioner's windows;
5. improperly concealing a minor child from petitioner, repeatedly threatening to improperly remove a minor child of petitioner's from the jurisdiction or from the physical care of petitioner, repeatedly threatening to conceal a minor child from petitioner, or making a single such threat following a actual or attempted improper removal or concealment, unless respondent was fleeing an incident or pattern of domestic violence;
6. threatening physical force, confinement or restraint on one or more occasions.

### **High-risk Adult with Disabilities**

A person 18 or older whose physical or mental disability impairs his or her ability to seek or obtain protection from abuse, neglect or exploitation.

## **Interference with personal liberty**

Committing or threatening physical abuse, harassment, intimidation or willful deprivation so as to compel another to engage in conduct from which she or has a right to abstain or to refrain from conduct in which she or he has a right to engage.

## **Intimidation of a dependent**

Subjecting a person who is dependent because of age, health or disability to participation in or the witnessing of: physical force against another or physical confinement or restraint of another which constitutes physical abuse as defined in this Act, regardless of whether the abused person is a family or household member.

## **Neglect**

The failure to exercise that degree of care toward a high-risk adult with disabilities which a reasonable person would exercise under the circumstances and includes but is not limited to:

- A. the failure to take reasonable steps to protect a high-risk adult with disabilities from acts of abuse;
- B. the repeated, careless imposition of unreasonable confinement;
- C. the failure to provide food, shelter, clothing, and personal hygiene to a high-risk adult with disabilities who requires such assistance;
- D. the failure to provide medical and rehabilitative care for the physical and mental health needs of a high-risk adult with disabilities; or
- E. the failure to protect a high-risk adult with disabilities from health and safety hazards.

## **Petitioner**

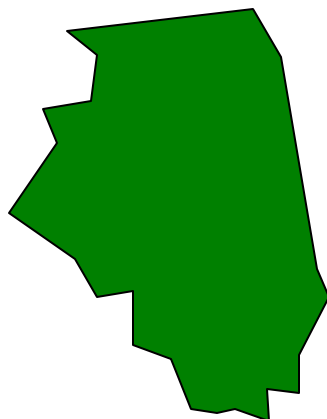
Any named petitioner for the order of protection; any named victim of abuse on whose behalf the petition is brought; or any other person protected by this Act.

## **Physical abuse**

Consists of any of the following: knowing or reckless use of physical force, confinement or restraint; knowing, repeated and unnecessary sleep deprivation; or knowing or reckless conduct which creates an immediate risk of physical harm. It also includes sexual abuse.

## **Willful deprivation**

Willfully denying a person who, because of age, health or disability requires medication, medical care, shelter, accessible shelter or services, food, therapeutic device(s), or other physical assistance, and thereby exposing that person to the risk of physical, mental or emotional harm.



The law which governs most of the area of orders of protections and domestic violence is the Illinois Domestic Violence Act of 1986. It can be found at 750 Illinois Compiled Statutes (ILCS) 60/101 and 725 Illinois Compiled Statutes (ILCS) 5/112A.

## **What the court considers in making a decision to grant an order of protection:**

The court will consider only the information contained in your petition for an order of protection so you need to include as many acts of abuse, harassment, etc., as you can. For some of the remedies the court will use a test called "balancing the hardships." This is how the court decides who gets things like exclusive possession of a house the two of you shared. The court balances the hardships by looking at your and the respondent's situation and deciding which of you would be burdened the most if ordered to move. In other words, it determines which of you would incur the biggest hardship if ordered out of the house. The court will consider such factors as who can more easily find somewhere else to live, who has to work in that area, who, if you do not have children together, has children who live in the house and has all of their belongings there.

## **Who enforces the order of protection once I get it?**

It is the duty of the police or the Sheriff of your county, to enforce an order of protection. As such, if , after you get an order of protection, the respondent violates it, you should call the police or sheriff. **When the respondent violates the order of protection it is best to report it to the police at that time, but you can report it to the police later.**

## **What rights do I have?**

The Bill of Rights of the Illinois Constitution discusses your rights **when the criminal court is involved**. You have the right to be treated fairly and with respect throughout the process; the right to know when court proceedings will occur; the right to communicate with the State's Attorney; the right to make a statement at sentencing; the right to information about conviction, sentencing, imprisonment; and, most importantly, the release of your abuser. You also have the right to have the process move as quickly as possible (this is called quick disposition); the right to protection during the criminal process; the right to be present at any proceedings, including trials, etc.; the right to have an victim's advocate present and you may be entitled to money.

This only applies, as stated earlier, if the proceeding is criminal. You will know it is criminal if the State's Attorney is representing you, rather than you representing yourself or having a different attorney representing you. You cannot bring criminal proceedings against your abuser by yourself. The State's Attorney is the only person who can do this. If you think this may be an option, contact the State's Attorney for the county in which you live. You can find it in the phone book. The State's Attorney can discuss with you whether he/she thinks you have a criminal case.



## Step one: Obtain the necessary forms to start the process.

In the supplement to this packet, you will find several forms for Jackson County and several forms for Williamson county. The forms are:

1. A petition for an order of protection,
2. An emergency order of protection,
3. An interim/plenary order, and
4. A summons.

These forms **are only guides**. You can obtain the actual forms from the Circuit Clerk in the county where you live. In Jackson County, it is at the Jackson County courthouse in Murphysboro. In Williamson County, it is at the Williamson County Courthouse in Marion. If you live somewhere other than these counties, you can look in the phone book. **Do not** use the forms in the supplement to this packet because they may be outdated. Get the current forms from the Circuit Clerk.

## Step two: Fill out your forms

The supplement to this packet contains detailed instructions to fill out the forms listed above. The instructions are specific to either Jackson or Williamson Counties. If you are in a different county, compare the forms of your county with the forms provided. This should help guide you through your own county's forms. Otherwise, try contacting a women's shelter or a victim's advocate from the State's Attorney's office in your county. They should be able to help you. **You must fill out both a petition for an order of protection and an order of protection.**

## Step three: File your documents

You must file your documents with the Circuit Clerk for your county. The Illinois Domestic Violence Act states that the filing fees usually associated with filing a lawsuit must be waived. In other words, it is free.

## Step four: Hearing on Emergency Order of Protection

The Circuit Clerk will tell you when your case will be heard, normally that morning. You must show up at that time. No notice is given to the other party until after the judge rules. You will then have a hearing where you get to testify. This is where you tell the judge what happened and why you need the order of protection. The judge will then rule on whether to grant the order of protection. The general instructions on hearings go as follows:

Bring with you copies of all the documents filed with the Circuit Clerk and any other papers relating to your Petition.

Arrive at least 30 minutes before your hearing. Whatever you do, don't be late. Check the docket or ask the Circuit Clerk exactly what room you will be in. Tell the Clerk or the Judge's Secretary that you are ready to proceed when called and wait for your case number and name to be called.

When the Judge enters the courtroom, stand until you are told to be seated. When your case is called, approach the bench. Always refer to the Judge as "your honor."



Before you begin, the Judge may ask you preliminary questions about your case. Be prepared to answer whether the respondent was served, and if so, when.

To testify, you will need to call yourself as a witness. At this time, the Judge will put you under oath and you will present your testimony. When you testify, your testimony should include:

- your full name and address
- the other party's name and how you know him/her
- the names and birth dates of the children, if any
- where the children live and with whom
- what type of abuse has occurred, explaining each instance in detail
- why you need an order of protection

See step seven to enforce this document though you will need to continue through the steps to seven again to get a plenary order of protection.

## **Step five: Serve your documents**

Take a copy of the summons, the emergency order of protection and a copy of the petition to your local Sheriff's Department. The Sheriff is responsible for serving these documents on the abuser. There is no fee to you for the service of these documents.

## **Step six: Show up for your court date**

The Circuit Clerk will tell you when your case will be heard. You must show up at that time. Unless this is an emergency petition, where no notice is given to the other party until after the judge rules, the alleged abuser will be given notice of when to appear and will either show up or not show up to the hearing. If you have proof that the Sheriff served him/her and he/she does not show up for an interim or plenary hearing, you win by default. If he/she does show up, you have a hearing. You get to testify and so does the respondent. This is where you tell the judge what happened and why you need the order of protection. The respondent gets to tell the judge why you should not get the order of protection and the judge will rule on whether to grant the order of protection. The general instructions on hearings go as follows:

Bring with you copies of all the documents filed with the Circuit Clerk and any other papers relating to your Petition.

Arrive at least 30 minutes before your hearing. Whatever you do, don't be late. Check the docket or ask the Circuit Clerk exactly what room you will be in. Tell the Clerk or the Judge's Secretary that you are ready to proceed when called and wait for your case number and name to be called.

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- your full name and address
- the other party's name and how you know him/her
- the names and birth dates of the children, if any
- where the children live and with whom
- what type of abuse has occurred, explaining each instance in detail
- why you need an order of protection

## Step seven: Enforcing your order

The Sheriff and your local police officers have the duty to enforce most of the provisions of the order of protection. Any of the police enforced remedies are their responsibility. Some remedies, however, are not police enforced. Whether a particular remedy is police enforced or not is indicated on the order. After each remedy, it either reads "police enforced" or nothing. The Sheriff will enter the information from the order of protection into the "leads" computer. This transmits the information throughout the entire state so that other law enforcement officials know about the order of protection.

If the respondent violates one of the police enforced parts of the order, call the police. If the respondent violates one of the non-police enforced parts of the order, call the State's Attorney's office and let them know. Violation of these parts may result in a possible finding of contempt of court. This could subject the respondent to very short jail time or a fine. If he/she violates a police enforced part, it is a misdemeanor. If the respondent violates that particular section again, however, it could be a felony.

## What to do if your Emergency Order of Protection is granted

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1. Take a copy of the Emergency Order of Protection to the Records section of the Sheriff's Department. This will get the Order on record so that as soon as he is served then the Order is in effect no matter where you are in Illinois.
2. Keep a copy on you **AT ALL TIMES**.
3. To have your Emergency Order extended, you will have to go back to court. The date and time of your next hearing is on the bottom of the Emergency Order's first page. If you do not show up for this hearing, the Emergency Order will no longer be valid.
4. Bring the Order of Protection with "Interim" or "Plenary" under the main boxes, **filled out completely**, to the second hearing. You will need to present this Order to Judge if he/she grants an extension of your Emergency Order.
5. When the Judge signs the Order, the Circuit Clerk will make copies of it for you. Take the copies to the same places that you took the Emergency Order. Also, remember to keep a copy of it on you at all times.

## What to do if your Emergency Order of Protection is denied

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1. Take a copy of the petition for an order of protection and the summons to the Sheriff's Department so that it may be served on the respondent.
2. Make sure that you know when your next court date will be. You should be told this information at your initial hearing. If you are unsure of the date, call the Circuit Clerk's office.
5. Bring the Order of Protection with "Interim" or "Plenary" under the main boxes, **filled out completely**, to the second hearing. You will need to present this Order to the Judge.
6. When the Judge signs the Order, the Circuit Clerk will make copies of it for you. Take copies to the records section of the Sheriff's Department as well as your local police department. Also, remember to keep a copy of it on you at all times.



**1. An order of protection will keep my abuser away.**

This, unfortunately, is not guaranteed to happen. If the abuser wants to come near you, an order of protection is not guaranteed to stop him/her. An order of protection is not a shield so do not get lulled into a false sense of security. What an order of protection does do, however, is make it a crime if he/she does violate the Order.

**2. If either my abuser or I leave town, I will then be safe.**

Chances are you will be in the same amount of danger you always were. Not following through with an order of protection because either your abuser or you have left the area gives your abuser the upper hand. In some situations, perhaps the abuse will stop if one of you leaves the area. Some abusers, however, will not let a little thing like mileage get in their way.

**3. He/she says it will never happen again, so it won't.**

Most abusers say this. And most abusers who say it probably mean it at the time. Unfortunately, most do not follow it very often. Statistics show that if it happens once, it will happen again and again and again until the victim breaks the "cycle of violence." Some studies have shown a domestic violence victim leaves the abusive relationship about seven times before finally leaving it for good. Unfortunately, chances are if it has happened once, it will happen again.

**4. I am the only person I know that this is happening to.**

Domestic violence affects victims of every race, every socio-economic level, and every level of education. It is one of our nation's most pervasive problems so you are not alone.

## GET HELP



If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, then doing your own order of protection may be much more stressful than it needs to be. If, however, you have a friend you can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if this proves to be too difficult a task for you, talk to an attorney. If you need help finding an attorney in your area that might do this type of work, contact your local women's shelter, your local state's attorney's office, the Illinois Bar Association, or look in your local phone book or newspaper for a domestic violence support group. Any of these people might know of a good attorney in your area. Just ask around. You would be surprised at how many people are or have been in your situation.

This packet was prepared by the following students of the S.I.U. School of Law:

Sally Sorensen

Angi Scott

Carissa Mahr

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