INSTRUCTIONS FOR PETITION FOR ORDER OF PROTECTION—FILED ON BEHALF OFA CHILD

Under the Indiana Civil Protection Order Act (IC 34-26-5), courts can issue orders to protect people from domestic or family violence, stalking, or a sex offense. These court orders are called "Orders for Protection". There are 2 kinds of Orders for Protection—an Ex Parte Order for Protection, which is issued without a hearing, and an Order for Protection Issued After a Hearing. Orders for Protection normally last 2 years, unless the Judge decides on a different duration.

The person asking for the Order is called the "Petitioner." The Petitioner needs to file a Petition in a court of record, against the other person, called the "Respondent." There are 2 different kinds of Petitions a person can file: one kind allows a person to seek protection for himself or herself, and another kind allows a Petitioner to ask for protection on behalf of a child. This Instruction booklet explains how to fill out forms for a case in which the Petitioner is seeking protection on behalf of a child, ***not*** for himself or herself. If you want to apply for an Order for Protection for yourself, please ask the Clerk of the Court for the proper Instruction booklet and Petition.

IMPORTANT NOTICE: In order to file a case, you *must* have the Respondent's:

- **Correct name;**
- **Correct date of birth *or* Social Security number; and,**
- **Correct, current address.**

This Instruction booklet explains how to fill out the Petition and Confidential Form. It also contains some Instructions for Respondents. These Instructions cannot cover all of the problems and questions that may arise in a particular case. If you do not know what to do to protect your rights, you should see an attorney.

GENERAL INFORMATION

Who can get a court order under this law?

The Indiana Civil Protection Order Act was passed to promote the protection and safety of all victims of domestic or family violence, sexual assault, and stalking, and to prevent future violence against such victims. In order to apply for protection under this law, a **Petitioner** needs to have been a victim of:

- **Domestic or family violence**;
- **Stalking**; or,
- A **sex offense**.

However, a parent, guardian, or other representative may file a Petition for an Order for Protection on behalf of a child against a:

- **Family or household member who commits an act of domestic or family violence; or**
- **A person who has committed stalking or a sex offense against the child.**

If you are the parent, guardian, or other representative of such a child, you will be known as the "Petitioner" and the child will be known as the "Child Who Needs Protection" or as "the Child".

"Domestic or family violence" means one or more of the following acts was committed by a **family or household member**:

1. *attempting* to cause, *threatening* to cause, or *actually causing* physical harm to another family or household member;
2. placing a family or household member in fear of physical harm;
3. causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress—in other words, forcing someone to engage in a sexual act against the person's will; and,
4. stalking and sex offenses are included in this definition.

The **Respondent** must be either a:

- **Family or household member** of the Child Who Needs Protection; or,
- Person who has committed stalking or a sex offense against the Child Who Needs Protection.

A **"family or household member"** is someone who has one of these kinds of relationships with the Child Who Needs Protection:

- The Child and the Respondent are now dating each other, or used to date each other;
- The Child and the Respondent are now engaged in a sexual relationship with each other, or used to be in a sexual relationship with each other;
- The Child Who Needs Protection and the Respondent have a child in common;

- The Child and the Respondent are related by blood or adoption (for example, they are a brother and sister with the same parents);
- The Child and the Respondent are now related to each other by marriage, or used to be related to each other by marriage (for example, they are a step-brother and a step-sister);
- The Child and the Respondent are now, or used to be, in one of these kinds of relationships:
    - The Respondent is or was the Child's guardian;
    - The Child is or was the Respondent's ward;
    - The Respondent is or was the Child's custodian;
    - The Respondent is or was the Child's foster parent; or,
    - A similar relationship.
- Finally, a "family or household member" could mean a minor child (under age 18) of a person in one of the kinds of relationships described above.

"Stalking" is defined by Indiana law (IC 35-45-10-1) as: "A knowing or intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened." The term "course of conduct" means 2 or more incidents.

As used in the stalking law, "**harassment**" means: "Conduct directed toward a victim that includes but is not limited to repeated or continuing **impermissible contact** that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include statutorily or constitutionally protected activity, such as lawful picketing pursuant to labor disputes or lawful employer-related activities pursuant to labor disputes."

As used in the stalking law, **"impermissible contact"** includes (but is not limited to):
"Knowingly or intentionally following or pursuing the victim."

A "**sex offense**" means one of the following crimes under Indiana law (IC 35-42-4):

- Rape;
- Criminal deviate conduct;
- Child molesting;
- Child exploitation;
- Vicarious sexual gratification;
- Child solicitation;
- Child seduction;
- Sexual battery; or,
- Sexual misconduct with a minor.

In order for a person to ask for an Order for Protection because he or she (or the Child Who Needs Protection) was a victim of stalking or a sex offense, it is not necessary for

criminal charges to actually be filed. However, a victim of one of these kinds of crimes should always seek help from the police or sheriff and the prosecutor.

Are the Child's family or household members covered by an Order for Protection?

Yes, as long as each person's name is listed on the Petition in Paragraph 9 and is listed on the Confidential Form.

What if the Child needs an Order for Protection against more than one (1) Respondent?

The Petitioner should tell the Clerk how many Respondents he or she is filing against. The Clerk has to create a new and different court case for each Respondent—there can be only one Respondent per case. So, make sure the Petitioner has the correct number of Petitions, Confidential Forms, etc.

What if the Respondent is a juvenile?

If the Respondent is under 18 and still lives at home (is not "emancipated"), any court of record can hear the Petition. If a hearing is set, the case may be transferred to juvenile court.

Will the Child Who Needs Protection have to come to court?

If a hearing is necessary, the Child may have to attend—especially if the Child is the only person who witnessed the Respondent's conduct. You should consult with an attorney. If you do not have an attorney, the lawyer referral service of your local bar association may be of some help.

What do you need to get the Order for Protection or to object to one?

You will need to get the correct forms from the Clerk of the court, or from this Web site: **http://www.in.gov/judiciary/forms/po.html**

What forms must be used for this kind of case?

Here is a list of some of the different kinds of forms in a protective order case and the function of each form. If you want a complete list, ask the Clerk or go to the Web site.

1. *Petition for an Order for Protection and Request for a Hearing—Filed by Person Seeking Petition ("Petition")*—this is the form used by the Petitioner to ask the Judge to issue an Order for Protection and also to ask for a hearing, if a hearing is required by law. The Petitioner uses this form to explain to the Judge why the Petitioner needs an Order for Protection for the Child, to describe what happened, and to list every kind of relief the Petitioner is asking for.
2. *Confidential Form*—this is the form used by the Petitioner and the Clerk of the court to record important information about the people involved in the case. The

information on this form is entered into a computer that law enforcement officers (police, sheriff, etc.) can access. The information on this form is confidential according to state law. The only people who will have access to it are law enforcement officers, prosecutors, and court and clerk staff. This form must be submitted with the Petition at the time the case is filed.

3. *Respondent's Verified Request for a Hearing*—once a Respondent has received a copy of the Petition and the Ex Parte Order for Protection, he or she can ask the Judge to set the case for a hearing. The Respondent should use this form to make that request.

Will the case automatically be set for a hearing?

It depends on what the Judge orders. Some Ex Parte Orders for Protection do not require a hearing—although a Respondent can ask for one within 30 days of receiving a copy of the Ex Parte Order for Protection. If a Petitioner asks for certain things, or if the Judge orders certain things, then a hearing must automatically be set. Here is a list of the different kinds of things a Judge can order and whether the law requires a hearing. Remember, the Respondent can always ask for a hearing, as long as the request is made within 30 days of receiving a copy of the Ex Parte Order.

Things that don't require a hearing unless the Respondent asks for one:

- Prohibiting the Respondent from committing, or threatening to commit, acts of domestic or family violence, stalking, or sex offenses against the Child Who Needs Protection, or the Child's family or household members;
- Prohibiting the Respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with the Child;
- Ordering the Respondent to stay away from the Child's residence, school, place of employment, or other places; and,
- Ordering the Respondent to stay away from places where the Child's family or household members regularly go.

Things that can be ordered by the Judge right away, but that require a hearing to be held within 30 days:

- Evicting the Respondent from the Child's home;
- Ordering the Respondent to give the Child the possession and use of:
    - A home they both share;
    - A car or other motor vehicle;
    - Other necessary personal items;
- Ordering other additional relief.

Things that can only be ordered by the Judge once a hearing has been held:

- Parenting time—establish rules for parenting time, require that it be supervised by a third party, or deny parenting time altogether;
- Ordering the Respondent to pay money to the Petitioner and/or the Child for various things, such as:
    - Attorney fees;

  - Rent/mortgage payments;
  - Child support/maintenance;
  - Medical expenses, counseling, shelter, repair or replacement of damaged property;
- Prohibiting the Respondent from possessing firearms, ammunition, or deadly weapons; and,
- If the Respondent owns a firearm, ammunition, or a deadly weapon, ordering the Respondent to surrender those items to a local law enforcement agency for the duration of the Order for Protection.

Should you see a lawyer?

In general, you have the right to file a Petition and to defend against one and go to court with or without an attorney. Because your situation may involve unique problems, you may want to consult with an attorney. Whether or not you have a lawyer, the other party may have one.

What does the phrase "ex parte" mean?

The term "ex parte" means "one-sided." A basic principle in our legal system is that **all sides** to a dispute get to present their case to a judge before the judge makes a decision on the case and issues an order or a ruling. All parties to a case have a **right to be notified** that a legal action is being taken against them, and they have a **right to be heard** and to dispute the action in court.

An ex parte order is contrary to this principle. It is issued after the judge has only heard one side of the case, and before the opposing side even has notice that legal action is being taken against them. An ex parte order is rare in the justice system. Ex parte orders are granted by courts in exceptional circumstances.

Are Ex Parte Orders for Protection automatically issued?

No. As just explained, ex parte orders are only granted in exceptional circumstances. Court orders are not issued just because a person asks for one. It is important that you pay attention to every detail in filling out your Petition for an Ex Parte Order for Protection. The Judge who reviews the Petition will carefully examine the information in the Petition to determine if the situation meets the statutory, or legal, requirements for an ex parte order.

Why might my Petition for an Ex Parte Order for Protection be denied?

There are many reasons why the Ex Parte Order for Protection might be denied. Some of the most common reasons include:

  - The parties do not fit the statutory, or legal, definition of "family or household member".

- The parties do not meet Indiana residency or employment requirements.
- The factual allegations do not meet the statutory, or legal, definitions of "domestic or family violence", "stalking", or of a "sex offense".
- The allegations are vague. They lack a clear and understandable description of the time, place, or acts of the incident.
- If you are relying solely on what another person saw or told you, a failure to have a sworn affidavit from that other person.

INSTRUCTIONS FOR PETITIONERS

What steps need to be taken to get the court order?

1. **There are no fees associated with this kind of case. You should not be asked to pay a filing fee, a service of process fee, a witness fee, or a subpoena fee.**
2. You will need 5 copies of the Petition: 1 for a worksheet; 1 for the court's file; 1 copy to be served on the Respondent; 1 copy for the Child; and, 1 copy for yourself.
3. You will need 1 copy of the Confidential Form. **Please note: you *must* have the Respondent's correct name, correct date of birth *or* Social Security number, and correct, current address.** If you do not have this information, the court and clerk will ***not*** be able to file this case for you. A numeric identifier (a date of birth or a Social Security number) is required by state and federal law in order to get the Order for Protection into the computer database. Every law enforcement officer in the state of Indiana and the United States has access to this computer database. In order for your order to be enforceable by the police, sheriff, or court, it needs to go into the computer. A correct, current address is required so that the Respondent can be served with copies of the court's orders and other papers. If the Respondent is not served with those copies, the order cannot be enforced by the police, sheriff, or court. Service is very important. It tells the Respondent about the order and about the hearing (if one has been set). Without service, there will not be a court hearing (if one has been set) and your Ex Parte Order will expire unless the Judge extends it.
4. Fill in the Petition. Some courts may require that the Petition be typewritten. **The Petition is a public document. A copy of the Petition will be kept in the Court's file. Also, if an Ex Parte Order for Protection is granted or if the case is set for a hearing, a copy of the Petition will be sent to the Respondent.**
   a. Fill in the name of the county where the case will be filed and the court name.
   b. Fill in your name and the Respondent's full name. Remember, you will need one Petition for each Respondent. Fill in the name of the Child Who Needs Protection.
   c. Check ("X") all blanks that apply to your case. Read each item carefully and fill in the necessary information. Be specific.
   d. Regarding Paragraph 5: there is no minimum residency requirement for filing a Petition.
   e. If you are not represented by an attorney, fill in your public mailing address in Paragraph 6 of the Petition. This address will ***not*** be kept secret, so you should use a mailing address that you feel comfortable having public. If you want to use the Attorney General's Address Confidentiality Program, call that office at: (317) 232-6201 to get information on how to participate in that Program.

f. If you do not list the names of other family or household members you want protected in Paragraph 9 (and also list those people on the Confidential Form), the Child will be the only person protected by the Order for Protection.

g. Remember to sign and date the Petition.

5. If you are seeking an Order for Protection based on information given to you by other people (for example, a neighbor who saw the Respondent hurt the Child), and not on the basis of what ***you*** personally observed, you must attach to the Petition affidavits by the people who do have personal knowledge of the facts that support the granting of an Order for Protection. Also, those people will have to appear in court in person, as witnesses, to testify for you if there is a hearing set in your case.
6. Take all of your completed forms and all copies to the Clerk's office. The Clerk will tell you where to take your papers.

What if the Judge issues an Ex Parte Order for Protection?

1. If the Judge signs the Ex Parte Order for Protection, take the original and all copies to the Clerk. At some point, the Clerk will place a case number on all of the papers. The Clerk will file-stamp the copies (showing the date of filing). The clerk will keep some copies and give you some copies. The Clerk will also keep the Confidential Form.
2. If you get an Ex Parte Order for Protection, make sure you get several copies from the clerk that are file-stamped and that have the judge's signature on them. Think about how many copies of the Order you will need: 1 to carry with you; 1 copy to give to the Child; 1 copy for a landlord/security guard; 1 copy for the Child's school, etc.
3. If the court must hold a hearing on your Petition, make sure you know the correct date and time of the hearing before you leave the Clerk's office. Make sure you have the court's telephone number so that you can call ahead a few days before the hearing and confirm the court date and time.

How should I prepare for a hearing?

1. If the court holds a hearing on your Petition, go to the court hearing with any and all evidence you might have. If there are any witnesses to the Respondent's conduct, they must also be at the hearing.
2. If the Judge issues an Order for Protection Issued After a Hearing, make sure to get enough signed, file-stamped copies for yourself, the Child, etc.

INSTRUCTIONS FOR RESPONDENTS

1. If you are served with a *Petition for an Order for Protection and Request for a Hearing* and an *Ex Parte Order for Protection*, you should promptly seek legal advice. If you have no attorney, the lawyer referral service of your local bar association may be helpful.
2. Read the papers served on you very carefully. The *Ex Parte Order for Protection* will forbid you from doing certain things, and may order you to do certain other things. **If you disobey the court's orders, criminal charges may be filed against you.**
3. If you wish to oppose the Petition or Order, or want to request your own Order for Protection, or if you want the court to have a hearing on the Petition and Order, you must go in person to the Clerk of the court that issued these papers. If you want to oppose the Petition or Order, you must do that at a hearing—the judge must hear your side of the case. To request a hearing, get a form from the Clerk entitled, "Respondent's Verified Request for a Hearing" and fill it out completely. You should not be charged a fee to file this form with the court. If you want to ask for your own Order for Protection, you will need to follow the "Instructions for Petitioners" and file a separate case.
4. If there is a hearing, you need to be there in person so that the Judge can hear your side of the case. If you do not attend the hearing, the Judge can go ahead and hear the case without you. If you have any witnesses, they must attend the hearing in person in order to testify for your side.