



ORDERS OF PROTECTION

CROWLEY FLECK PLLP PRO BONO PROGRAM

1 IN 3 WOMEN AND 1 IN 4 MEN HAVE EXPERIENCED SOME FORM OF PHYSICAL VIOLENCE BY AN INTIMATE PARTNER.

- On a typical day, domestic violence hotlines receive approximately 21,000 calls, approximately 15 calls every minute.
- Intimate partner violence accounts for 15% of all violent crime.
- Having a gun in the home increases the risk of homicide by at least 500%.
- 72% of all murder-suicides involved an intimate partner; 94% of the victims of these crimes are female.



BARRIERS TO LEAVING

- Anxiety about a decline in living standards.
- Reinforcement of clergy and secular counselors “saving” the relationship.
- Lack of support by law enforcement.
- Reluctance by prosecutors to prosecute cases.
- Despite use of restraining orders, there is little to prevent the abuser from returning.
- Lack of safe shelters.
- Rationalization that abuser’s behavior was caused by stress, alcohol, or problems at work.
- Isolation from family and friends.



APPROXIMATELY 20% OF THE 1.5 MILLION PEOPLE WHO EXPERIENCE INTIMATE PARTNER VIOLENCE ANNUALLY OBTAIN CIVIL PROTECTION ORDERS.

A study by the American Bar Association found that victims of violence rarely seek restraining orders as a form of early intervention but rather as an act of desperation after they have experienced extensive problems.

_____ COURT, MISSOULA, MONTANA
 JUDGE _____

_____)
 Petitioner, _____))
 vs. _____) CAUSE NO. _____)
 _____))
 Respondent. _____)

WORN PETITION FOR TEMPORARY ORDER OF PROTECTION AND REQUEST FOR A HEARING

Iw requires that Respondent be given a copy of this completed form and all attachments.

request for Temporary Order of Protection. Under oath and as provided by Mont. Code Ann. §40-15-01, I request that the Court issue a Temporary Order of Protection against Respondent. I believe I am in danger of harm if the Court does not issue a Temporary Order of Protection immediately.

rotected Person/s. I am seeking an Order of Protection for (check all that apply):

Myself _____

_____ the following minor child/ren:

Child's name	Children		Age	How child is related to:		Who does the child live with?
	First name	MI		You	Respondent	

_____ her people who have asked to be protected (must be victims of the abuse or have witnessed the abuse):

First Name	First Name	MI	Relationship to Respondent

My residence _____
 or am staying in the city of _____ in _____ County, Montana.
 Respondent lives in the city of _____ in _____ County, State of _____.
 Abuse or offense happened in _____ in _____ County, State of _____.

THERE IS A 21% CHANCE OF AN ESCALATION IN VIOLENT BEHAVIOR AFTER A PROTECTION ORDER IS ISSUED.

Approximately one-half of the restraining orders obtained by women against intimate partners who physically assaulted them were violated.

More than two-thirds of the restraining orders against intimate partners who raped or stalked the victim were violated.

_____ COURT, MISSOULA, MONTANA
 JUDGE _____

_____)
 Petitioner, _____))
 vs. _____) CAUSE NO. _____)
 _____))
 Respondent. _____)

WORN PETITION FOR TEMPORARY ORDER OF PROTECTION AND REQUEST FOR A HEARING

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Myself.

_____ the following minor child/ren:

Child's name	Children			Age	How child is related to:		Who does the child live with?
	First name	MI			You	Respondent	

_____ other people who have asked to be protected (must be victims of the abuse or have witnessed the abuse):


First Name	First Name	MI	Relationship to Respondent

My residency.


I am staying in the city of _____ in _____ County, Montana.

Respondent lives in the city of _____ in _____ County, State of _____.

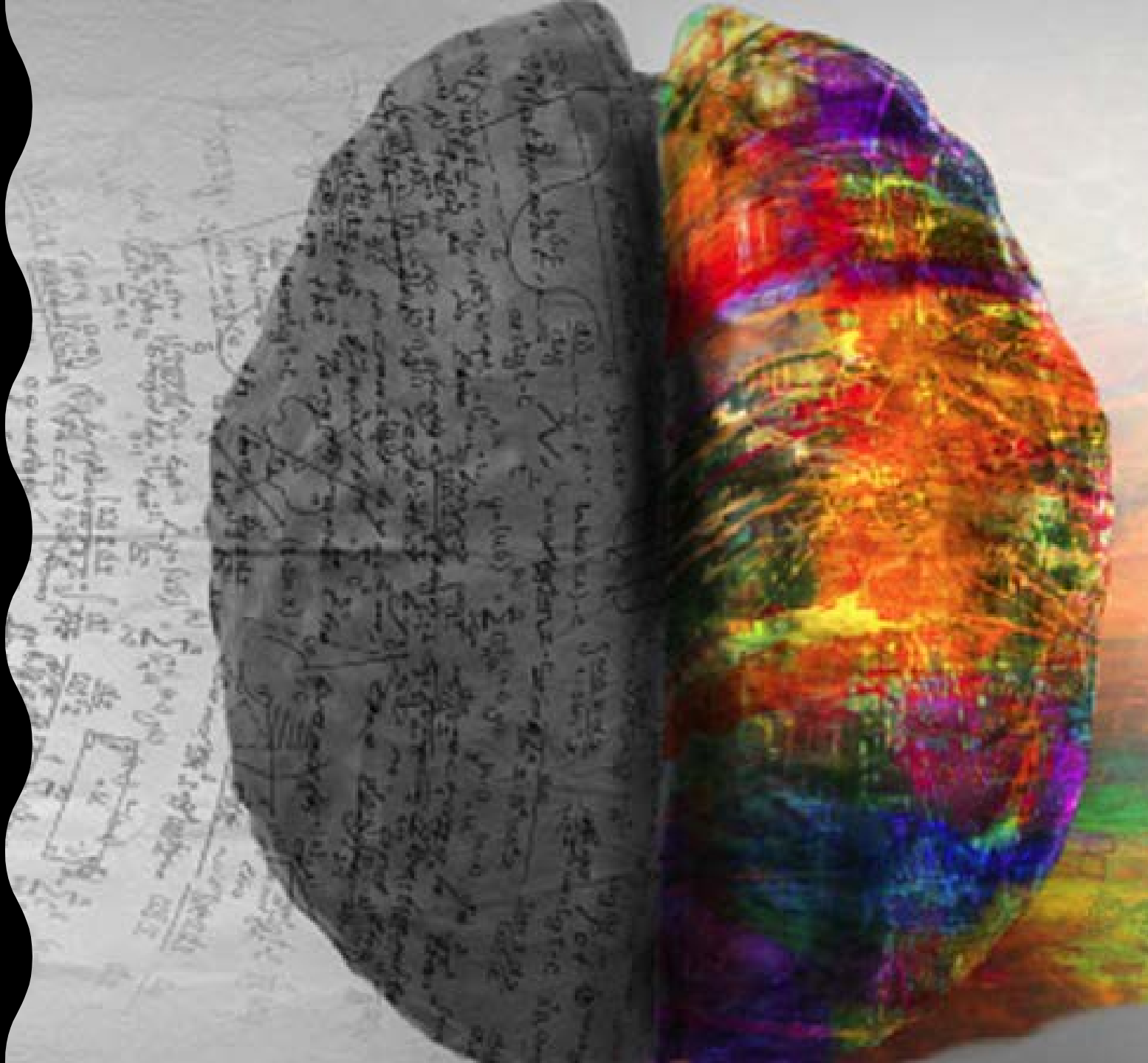
Abuse or offense happened in _____ in _____ County, State of _____.

A hand is shown holding a colorful, textured object, possibly a piece of fabric or a small sculpture, against a background of technical drawings and blueprints. The text is overlaid on the image in a large, white, sans-serif font.

ORDERS OF
PROTECTION ARE
BEING SOUGHT AFTER
ESCALATIONS

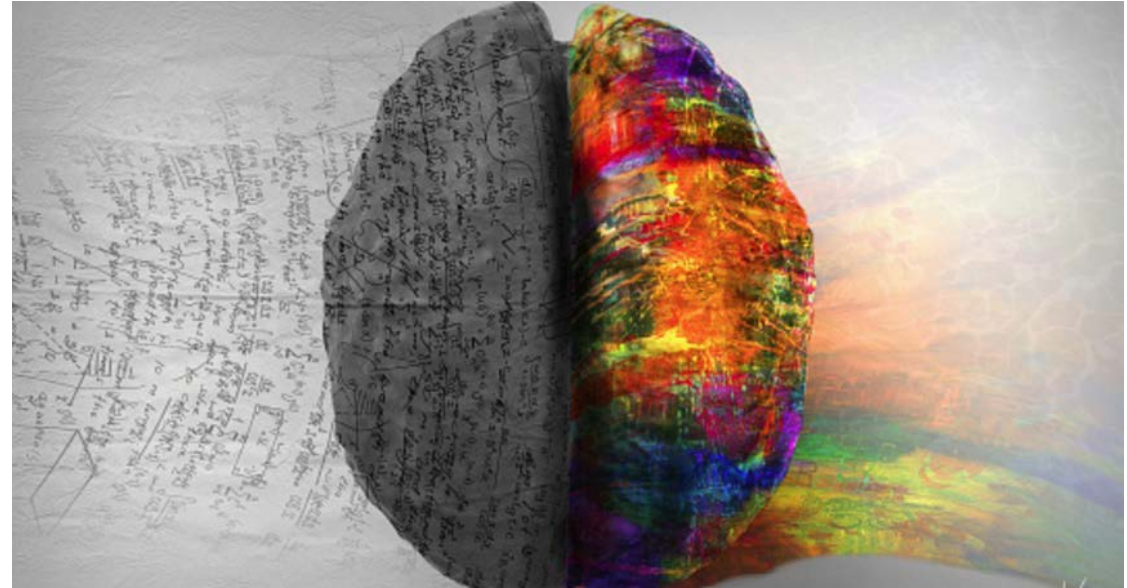
The background features a hand holding a colorful, iridescent object, possibly a piece of fabric or a shell, against a background of faint, handwritten text. The text is mostly illegible but appears to be a list or a set of notes. The overall tone is somber and reflective.

ORDERS OF
PROTECTION ARE
BEING SOUGHT AFTER
TRAUMATIC EVENTS



“The amygdala of traumatized individuals is often overly sensitive, resulting in extreme alertness. These individuals may appear aggressive, as they might be overly sensitive to perceived threats (words or gestures from peers), or withdrawn due to fear of being close to others. It is a self-perpetuating cycle that leaves the individual with heightened sympathetic arousal (‘fight or flight’ response).”

- Psychologist Kimberley Shilson



It's the emotional component of domestic violence that leads to a chronic state of PTSD. Being abused by someone who should be trustworthy and be nurturing leads many women to feel abandoned, betrayed, even crazy. [Depression](#) is by far the most common symptom of domestic violence, and it's also one of the chronic effects of PTSD caused by abuse. The feeling of helplessness and hopelessness that many victims fall prey to has a profoundly undermining effect on their mental and emotional wellbeing.

ORDERS OF
PROTECTION IN
MONTANA



ORDERS OF PROTECTION VS. CRIMINAL PROTECTIVE ORDERS



In Montana, there are two types of orders of protection: a temporary order of protection and a final order of protection.



Not to be confused with a partner of family member assault no contact order or criminal protective order which are attached to criminal proceedings.

Montana Code Annotated 2017

CRIMES
PART 5. OFFENSES AGAINST THE PERSON
Assault and Related Offenses

Partner Or Family Member Assault -- No Contact Order -- Notice -- Violation Of Order -- Penalty

45-5-209. Partner or family member assault -- no contact order -- notice -- violation of order -- penalty. (1) A court may issue a standing no contact order and direct law enforcement to serve the order on a defendant arrested for a violation of **45-5-206** or if the victim is a partner or family member of the defendant, a violation of **45-5-202**, **45-5-213**, or **45-5-215**. The court order may specify conditions necessary to enhance the protection of the person. The court-ordered conditions may include prohibiting the defendant from contacting the protected person in person, by a third party, by telephone, by electronic communication, as defined in **45-8-213**, or imposing up to a 1,500-foot restriction on the defendant to stay away from the protected person's location. Notice of the no contact order must be given orally and in writing by a peace officer at the time that the offender is charged with or arrested for a violation of **45-5-206** or, if the victim is a partner or family member of **45-5-202**, **45-5-213**, or **45-5-215**. One copy of the order must be given to the defendant, and one copy must be filed with the court.

A charge of a violation of **45-5-206** or, if the victim is a partner or family member of the defendant, a violation of **45-5-202**, **45-5-213**, or **45-5-215** must be supported by a peace officer's affidavit of probable cause. A no contact order issued at the time that the defendant is charged with or arrested for a violation of **45-5-206** or, if the victim is a partner or family member of the defendant, a violation of **45-5-202**, **45-5-213**, or **45-5-215** must last for 72 hours or until the defendant makes the first appearance in court. The court order must state:

"You have been charged with or arrested for an assault on a partner or family member. You are not allowed to have contact with _____ (list name and address). Violation of this no contact order is a criminal offense under **45-5-209**, MCA, and may result in your arrest. You may be arrested even if the person protected by the no contact order is not you to violate the prohibitions. This order lasts 72 hours or until the court continues or changes the order."

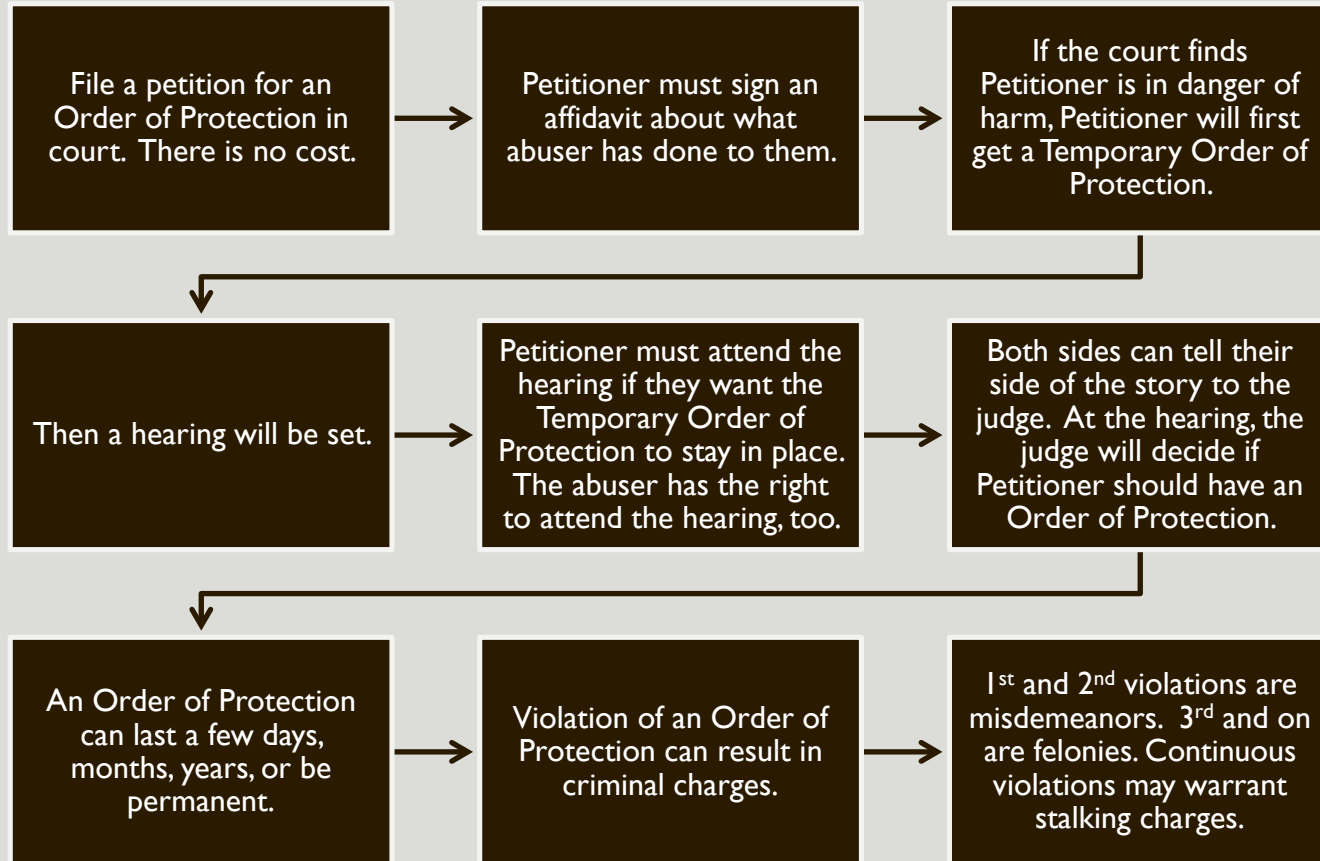
The court shall review and amend, if appropriate, the no contact order at the defendant's first appearance.

A no contact order may be issued by a court with jurisdiction over violations of **45-5-206** or, if the victim is a partner or family member of the defendant, violations of **45-5-202**, **45-5-213**, or **45-5-215** at the time of arrest or at any other appearance of the defendant, including sentencing. The no contact order must be in writing. A copy of the no contact order must be given to the defendant when it is issued by the court. The order must specify the protected persons and prohibited contact, including but not limited to the restriction mentioned in subsection (1).

(2) A person commits the offense of violation of a no contact order if the person, with knowledge of the order, purposely or knowingly violates any provision of any order issued under this section.

CIVIL PROTECTION ORDER:

➔ IT IS THAT SIMPLE



WHO?
 WHERE?
 WHAT?
 HOW?
 NEXT?



OBTAINING A TEMPORARY ORDER OF PROTECTION FOR JUSTICE COURT

NOTE: The filing of a Petition for a Temporary Order of Protection (TOP) begins a substantial legal process in which victim safety is addressed. Violation of the Order is a criminal offense, potentially punishable by a fine and imprisonment. You will be expected to appear for all court hearings. You may seek help from a victim advocate, shelter provider, friend, family member, or lawyer. Please follow the steps below.

DONE?	WHAT TO DO
	Make sure you are eligible for a Temporary Order of Protection (TOP). <ul style="list-style-type: none"> - TOPs are for individuals who feel they are in imminent danger or fear bodily harm. - Judges WILL NOT sign orders if you do not qualify.
	Verify that you will be filing your TOP in Justice Court. <ul style="list-style-type: none"> - You (Petitioner) live in Missoula County, outside Missoula city limits and/or - You or the respondent (the person you need the TOP against) has a pending criminal case in Justice Court that is relevant to your need for the TOP. - *If you and the respondent have or in the past had a parenting plan, dissolution (divorce), or DCFS (CPS) case in Missoula District Court, you should use District Court TOP forms and file them in District Court.
	Make sure you have all of the information that you need. You will need: <ul style="list-style-type: none"> - A personal mailing address. - The full name, address, and date of birth for the respondent.
	Fill out ALL sections of the TOP. <ul style="list-style-type: none"> - Law Enforcement Service Information Sheet - TOP "cover sheet" (1 page) - Petition - Order - Go through the paperwork line by line. - <i>Every part of the order must be filled out or the court will not accept your paperwork.</i>
	Call Justice Court at 258-4871 to determine how to submit your TOP paperwork.
	Take your paperwork to the clerks at Justice Court. <ul style="list-style-type: none"> - Located on the 1st floor of the Missoula County Courthouse at 200 W. Broadway St. - Take a photo ID, for notarizing your signature. - The judge will review your petition to determine if you qualify for the TOP.
	If your TOP is signed, it will be in effect for 20 days or until the hearing scheduled for it. <ul style="list-style-type: none"> - Look for the hearing date in your copy of the TOP. The hearing is the time set aside for the court to determine if the order will continue beyond the initial 20 days.
	Find out if your TOP has been served. <ul style="list-style-type: none"> - Call 258-4788, if the respondent is being served in Missoula County. - <i>The respondent cannot be in violation of the TOP, until s/he is served with it.</i> - If you encounter the respondent before s/he has been served, call 9-1-1 to inform law enforcement where s/he can be served.

If you have any questions, please call the Crime Victim Advocate Program at 258-3830.



CRIME VICTIM **ADVOCATE** PROGRAM
Missoula City-County Relationship Violence Services

OBTAINING A TEMPORARY ORDER OF PROTECTION FOR DISTRICT COURT

NOTE: The filing of a Petition for a Temporary Order of Protection (TOP) begins a substantial legal process in which victim safety is addressed. Violation of the Order is a criminal offense, potentially punishable by a fine and imprisonment. You will be expected to appear for all court hearings. You may seek help from a victim advocate, shelter provider, friend, family member, or lawyer. Please follow the steps below.

DONE?	WHAT TO DO
	<p>Make sure you are eligible for a Temporary Order of Protection (TOP).</p> <ul style="list-style-type: none">- TOPs are for individuals who feel they are in imminent danger or fear bodily harm.- <i>Judges WILL NOT sign orders if you do not qualify.</i>
	<p>Verify that you will be filing your TOP in District Court.</p> <ul style="list-style-type: none">- You (Petitioner) live in Missoula County.- You have had or currently have a parenting plan and/or dissolution (divorce) with the respondent (person you are filing TOP against), or a DCFS (CPS) case in Missoula County.
	<p>Make sure you have all of the information that you need. You will need:</p> <ul style="list-style-type: none">- A personal mailing address.- The full name, address, and date of birth for the respondent.
	<p>Fill out ALL sections of the TOP.</p> <ul style="list-style-type: none">- Law Enforcement Service Information Sheet- TOP "cover sheet" (1 page)- Petition- Order- Go through the paperwork line by line.- <i>Every part of the order must be filled out or the court will not accept your paperwork.</i>

	<p>Get your paperwork notarized.</p> <ul style="list-style-type: none">- You will need photo ID.- District Court has notaries available. They do not charge to notarize TOPs.
	<p>Take your paperwork to the clerks at District Court.</p> <ul style="list-style-type: none">- Located on the 2nd floor of the Missoula County Courthouse at 200 W. Broadway St.- If you are represented by an attorney in your parenting plan and/or divorce case he or she must file your TOP.- A District Court clerk will submit your TOP to the judge for review as soon as possible and will notify you once the judge has made a decision.
	<p>If the court issues the TOP:</p> <ul style="list-style-type: none">- You will need to return to District Court to pick up your copy of the TOP, as well as the respondent's copy for service.- Take the respondent's TOP copy to Civil Process at the Sheriff's Department (also in the courthouse) for service.- The TOP is in effect for 20 days or until the hearing.- Look for your hearing date in your copy of the TOP. The hearing is the time set aside for the court to determine if the order will continue beyond the initial 20 days.
	<p>Find out if your TOP has been served.</p> <ul style="list-style-type: none">- Call 258-4788, if the respondent is being served in Missoula County.- <i>The respondent cannot be in violation of the TOP, until s/he is served with it.</i>- If you encounter the respondent before s/he has been served, call 9-1-1 to inform law enforcement where s/he can be served.

WHO?

1) You can ask for an Order of Protection if the person abusing you or threatening you is a family member, intimate partner, or former intimate partner.

2) You can also ask for an Order of Protection if someone is stalking you, has sexually assaulted you, or has assaulted you, whether or not you have had an intimate relationship with that person.

§ 40-15-102, MCA

WHO?

“The most important thing to know is that leaving is the most dangerous time for a woman. It’s the time when she’s most likely to be killed,” says Anna Marjavi, program manager with **Futures Without Violence**, a national nonprofit aimed at advocacy to end violence against women.

“Often times, abuse will escalate after a survivor leaves because abuse is based on **a cycle of power and control**. When an abuser feels he has lost control over his victim, he often uses violence as a way to coerce his partner to return, or as a form of retaliation for her leaving.”

Talk to a victim advocate.

WHERE?

A petition for Order of Protection can be filed in city, justice, or district court.

If the parties have a family law case happening in district court, the petition must be filed in district court (except in cases of emergency).

A family law case includes dissolution and parenting plans.

§ 40-15-301, MCA

WHAT?

§ 40-15-203, MCA:
Attorney General
to Provide Forms

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MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY

JUDGE _____

_____))
Petitioner,) DEPT. NO. _____
vs.) CAUSE NO. _____
_____))
Respondent.) SWORN PETITION FOR TEMPORARY ORDER OF
PROTECTION AND REQUEST FOR A HEARING)

The law requires that Respondent be given a copy of this completed form and all attachments.

1. **Request for Temporary Order of Protection.** Under oath and as provided by Mont. Code Ann. §40-15-201, I request that the Court issue a Temporary Order of Protection against Respondent. I believe I am in danger of harm if the Court does not issue a Temporary Order of Protection immediately.
2. **Protected Person/s.** I am seeking an Order of Protection for (*check all that apply*):
 - Myself
 - The following minor child/ren:

Last name	Child/ren		MI	Age	How child is related to:		Who does the child live with?
	First name				You	Respondent	

WHAT?

Law Enforcement Cover Sheet

TOP [] OOP []	Cause #:	Expiration Date:	CVA Y [] N []	Phone:
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LAW ENFORCEMENT SERVICE INFORMATION
Please provide as much information as you can. **YOU MUST FILL IN ALL SHADED FIELDS.** If you do not, law enforcement will not order and the form will be returned to the court clerk.

You—Petitioner

Last Name:		First:		
Date of Birth:	Race:	Male [] Female []	SSN or ID:	
Home Address:		City:	State:	Zip:
Phone:		Message Phone:		

Other Persons You Wish Protection For: (Please use back side, if needed)

Last Name:		First:		
Date of Birth:	Race:	Male [] Female []	SSN or ID:	
Home Address:		City:	State:	Zip:

Last Name:		First:		
Date of Birth:	Race:	Male [] Female []	SSN or ID:	
Home Address:		City:	State:	Zip:

Temporary Order of Protection

Temporary Order of Protection Case No.

Temporary Ex Parte Order and Notice of Hearing
 Amended Temporary Order and Notice of Hearing

Court, **Missoula** County
Before the Honorable Judge

Petitioner/Protected Person			Petitioner/Protected Person Identifier	
First	Middle Initial	Last	Date of Birth of Petitioner	Male [] Female []
<input type="text"/>			<input type="text"/>	
<input type="checkbox"/> And/Or on behalf of family members: (List name/year of birth/sex)			<input type="checkbox"/> Other Protected Person/s: (List name/year of birth/sex)	
<hr/>			<hr/>	
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Respondent			Respondent's Identifiers	
First	Middle Initial	Last		
<input type="text"/>			<input type="text"/>	<input type="text"/>

HOW?

Fill out paperwork.

Get paperwork notarized.

Take paperwork to the appropriate court to be submitted to a Judge for review.

If granted, return to Court to pick up order.

Take order to Sheriff's Department for Service.

TOP is in effect for 20 days or until hearing.

**The respondent cannot be in violation of the TOP until they are served with it.

NEXT?

Preparation for a court hearing

FREQUENTLY,
THIS IS WHERE
THE ATTORNEY
COMES IN...

A hand is shown holding a large, colorful, textured object, possibly a piece of fabric or a sculpture, against a background of faint, hand-drawn sketches and diagrams. The text is overlaid on the image in a white, sans-serif font.

THINK ABOUT WHY THE CLIENT
NEEDS YOU.

MATCH YOUR EXPECTATIONS TO
THEIR SITUATION.



IF YOU ARE NOT HELPING DRAFT THE
APPLICATION FOR THE TRO,

READ THE APPLICATION FOR THE TRO.



PREPARE YOUR
CLIENT FOR
THE HEARING

RELEVANT LEGAL ISSUES AT THE HEARING:



- That one of the parties lives in the County
- How the parties know one another
- Prior acts of abuse
- That the other party committed an act of violence, abuse, intimidation, or harassment that will CONTINUE or CAUSE HARM if an order of protection is not granted
- Whether there was any contact from the other party after the TRO was granted
- What specific types of protection does the Petitioner want in the order
- What evidence exists to support that the allegations in the petition are true/not true



EVIDENCE AT THE HEARING:

TESTIMONY:

- PETITIONER
- Respondent—if criminal charges are pending, the Respondent should be advised of rights against self-incrimination
- Other witnesses:
 - Family and friends who have relevant observations
 - Police/law enforcement
 - Medical responders

EVIDENCE AT THE HEARING:



OTHER EVIDENCE:

- Photographs or video of the incident
 - Watch out for surreptitious audio recordings...
 - What is in the video/photo?
 - Who took it?
 - When was it taken?
- Text /Facebook/Email exchanges
 - Double check hearsay exceptions
 - Be prepared to lay foundation through multiple witnesses if needed
- Filed Complaint/Affidavit or Information/Affidavit
 - Request court take judicial notice

RELIEF:

The Temporary Order of Protection may include the following orders:



- Prohibition against violent acts
- Prohibition against communication
- Prohibition from removing children from jurisdiction
- Direction to stay appropriate distance away
- Remove respondent from residence regardless of ownership
- Prohibition from possessing a firearm
- Prohibition from transferring, concealing, encumbering, or otherwise disposing of property
- Direction to transfer possession of use of residence, automobile, or personal property
- Direction to complete violence counseling, and alcohol/drug treatment if appropriate
- Direction for other necessary relief

§ 40-15-201, MCA



OTHER CONSIDERATIONS:

- Length of the order: “Permanent” is generally a misnomer
- Implications on parenting time
- Subsequent dissolution proceedings
- Possession of firearms
- Means for communication for necessary issues

ENFORCEMENT:

LAW ENFORCEMENT WILL
ENTER ORDER INTO NCIC.

FULL FAITH AND CREDIT. BUT
ALSO, MONTANA'S HOPE CARD.

RESPONDENT

Williamson

DOB: 07/12/1969

Sex: Male

Race: White

Height: 6' 1"

Weight: 182

Eyes: Blue

Hair: Brown

Scars/Marks/Tattoos:

None

Protection Order

and certifies that the person named on
this card has a Protection Order on file
in the State of Montana against the individual
above. Violation of the Protection Order
described, is a misdemeanor under §
45-5-626, MCA. Pursuant to
§265 (a), Protection Orders
in other jurisdictions shall be provided

THE HOPE CARD:

The hope cards issued by the state contain information about the person restrained under the order (called the respondent), and any children or other individuals who are protected under the order.

<http://dojmt.gov/victims/hope-cards/>

Theodore Williamson	
Photo Not Available	DOB: 07/12/1969
	Sex: Male
	Race: White
	Height: 6' 1"
	Weight: 182
	Eyes: Blue
	Hair: Brown
Scars/Marks/Tattoos:	
None	
Protection Order	
This card certifies that the person named on the back of this card has a Protection Order on file with the State of Montana against the individual listed above. Violation of the Protection Order, even if invited, is a misdemeanor under §§ 45-5-220 and/or 45-5-628, MCA. Pursuant to Title 18 USC §2265 (a), Protection Orders issued by outside jurisdictions shall be provided full faith and credit.	



QUESTIONS?

MORGAN DAKE: MDAKE@CROWLEYFLECK.COM