



Filing for an Order of Protection In South Carolina

Our Mission

South Carolina Legal Services is a statewide law firm that provides civil legal services to protect the rights and represent the interests of low-income South Carolinians.

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The following manual was produced by South Carolina Legal Services. It is intended to provide general information based on the law at the time it was developed and does not constitute legal advice or establish an attorney-client relationship between reader and South Carolina Legal Services ("SCLS"). SCLS encourages all people filing legal papers or otherwise pursuing legal actions to seek legal advice if possible. If you are a low income citizen of South Carolina, SCLS may be able to assist you as a client.

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Who can file?

South Carolina law says that you can file for an Order of Protection if you have been a victim of abuse.

"Abuse," under this law, means either:

1. physical harm,
2. bodily injury,
3. assault or the threat of physical harm, or
4. a sexual criminal offense committed by a family or household member.

To file for an Order of Protection in family court, the person who caused the abuse has to be related to you in one of these ways:

1. your husband or wife or former husband or wife,
2. the mother or father of your child, or
3. a person of the opposite sex with whom you live or used to live.

If you don't fit in one of these categories and have experienced some kind of abuse, you may need to file for a restraining order in magistrate's court.

What can an Order of Protection give you?

The Order, if granted by the Judge, can give you the following relief on a temporary basis (6 months to 1 year):

1. Restrain the abuser from abusing you, threatening to abuse you or bothering you in any way.
2. Restrain the abuser from contacting you or communicating with you, coming to your home, work, school or other place that the judge writes in the order.
3. Grant you custody of any children you have with the abuser.
4. Grant visitation with the children: either giving reasonable visitation or denying visitation.
5. Require the abuser to pay child support for any children you have together.
6. Require the abuse to pay spousal support or alimony if you are married to the abuser.
7. Grant you possession of the home you live or lived in.
8. Restrain the abuser or both of you from transferring or destroying any property that

might belong to the other person or that may be marital property.

9. Allow you or the other person to get their personal property and restrict either or both people from destroying personal property. The order can also include that either person will have police assistance in getting their personal property.
10. Award attorneys fees to either person if they had to use an attorney in the Order of Protection case.
11. Grant you any other relief that you have asked for in your petition - e.g. possession of a specific car, a pet, or any other specific requests you have that aren't included in the list above.

This list includes things that are possible. The judge is in control of what relief is actually given. This means that you may or may not be given all the relief you've asked for.

When should you file your Petition?

The sooner you file your **Petition**, the better. You should file the **Petition for Order of Protection** as soon as possible after the abuse has happened; if you feel you need the protection. Some judges may tell you that if you wait to file for an **Order of Protection**, you are not in fear of the abuser or do not need the protection. The sooner you file your **Petition** after something has happened, the sooner you will have your hearing and may be issued an **Order of Protection**.

Where do you file the Petition?

You will file your Petition at the Clerk of Court (family court) in the county:

1. where the abuse happened; or
2. where the abuser lives (unless the person is out of state); or
3. where you last lived with the abuser.



You can also file the Petition where you live or where you are sheltered, but if the abuser lives in another county and your county isn't found in the list above (1-3), then you will also have to fill out another form that moves your case to the county where the abuser lives. The clerk would then transfer the case and the hearing would be held in the other county.

Filling out the Petition



At the top of the form (the caption):

The person who was abused is the **Petitioner**. You will write your name at the top above the word, Petitioner.

The person you are saying abused you is the **Respondent**. You will write his/her name at the top above the word, Respondent.

You will need to put the abuser's Social Security Number (SSN), date of birth, race and sex at the top of the form where indicated. If you don't have the SSN, leave it blank.

You will then need to check the correct box for the following:

1. **Jurisdiction**: why should the case be handled in this county? Check the one that applies, either: the abuse happened in that county, or the person who caused the abuse lives in that county, or the person who caused the abuse and you last lived together in that county.
2. **Address of the Respondent**: you will need to write the entire street address for the Respondent (including apartment or lot number), city and county.
3. **Who was abused**: you will need to write your name here. If you are also saying that your child needs protection, you would also write his or her name in here.
4. **Relationship to abuser**: you will need to check the correct box or boxes that says how you are related to the abuser (whether you are/were married, have a child in common, are/were living together).
5. **What happened**: you will need to write out the specific time, date and place where the most recent abuse happened. If the abuse happened over a period of hours, write when it began. You also need to include details of what happened. If you were actually physically hurt, you need to include this. You need to only write down what the "abuse" is (see definition of "abuse" on page 1). This section is very important so you may need to practice what you are writing on a separate sheet of paper before you write it on the form. If the abuser was arrested for Criminal Domestic Violence (CDV) and you wrote a "victim witness statement," you may want to look back at that to refresh your memory of what happened.
6. **Prior convictions or orders of protection**: If the abuser has any convictions of Criminal Domestic Violence (CDV) or has had other orders of protection against him/her, you will need to check yes and include the dates. If you don't know this information, you may be able to find information for South Carolina on the judicial website (www.judicial.state.sc.us → Records Search). Other states may have similar information available. A victim advocate may also be able to help you find this information.

7. Temporary Relief: you will need to go through each item and check what relief you are asking the court to help you with.

The first 3 (a, b, c) are the actual restraining orders:

- a. Restrain the Respondent from abusing, threatening to abuse, bothering or doing anything else that would put you in fear that the abuser would hurt you.
- b. Restrain and prohibit the Respondent from using, attempting to use, or threatening to use physical force against you that could hurt you.
- c. Restrain the Respondent from communicating with you, trying to communicate with you, coming to your house, job, school or other location.
- d. Custody of children: write in the names of the children you have in common, date of birth and address where the child lives. You will also need to check whether you want the court to grant reasonable visitation or deny visitation. This form doesn't allow you to choose supervised visitation, but you can write that in the last section (m). You will need to be prepared to offer names of people who would be appropriate supervisors.
- e. Child support: check this if you want child support. *File a financial declaration.
- f. Financial support: check this if you want spousal support. This can only be granted if you are married to the abuser. *File a financial declaration.
- g. Possession of the home: check this if you want the court to allow you to stay in the home. Before you check this, make sure you actually want to be in the home and will be safe there. Some people decide that they would rather not be back in the home because the abuser would know where they live. You need to also be prepared to make any payments for the home if the court doesn't grant the financial support you need to stay there.
- h. Restrain the abuser from getting rid of any property that belongs to you or that you jointly own.
- i. Assistance in getting your things or getting back into the house.
- j. Reimbursement of attorney's fees (if you hired an attorney).
- k. Hold a hearing on the Order of Protection within 15 days of filing your petition (or emergency hearing; see l. below): this means that the court will give you a court date that will occur within 15 days.
- l. Hold an emergency hearing within 24 hours: in most cases you should only ask for an emergency hearing if you absolutely need to and cannot find protection or hide from the abuser at all. If the abuser is not served within 24 hours with the papers, you may be required to come back to court every day until he is found and served.
- m. Any additional requests: write in any other things you are requesting (e.g., supervised visitation, possession of car, pets, etc.).

You will need to file

1. The Petition for Order of Protection,
2. The Summons or Notice of Hearing (usually filled out by the clerk),
3. The Financial Declaration (if you are asking for child support or alimony), and

4. The information sheet for the police. You should not fill in the address where you are staying if you don't want the Respondent to be able to access this information. You can provide a mailing address.

*****Make sure to ask the clerk for a copy of what you are filing*****

After you file – what happens?

The Respondent will be served with the paperwork. This means that a sheriff's deputy will hand the paperwork to the Respondent or another adult in the house that can accept the paperwork. The person will receive all of the documents you filed and will have an opportunity to read through these before court. They will have notice of the court hearing and can come to the hearing if they want to.



Getting ready for court

What to bring

1. Any witnesses to the abuse or your injuries after the abuse (have this person ride with you to court to make sure they get there on time).
2. Pictures of your injuries or any damage to the home or property (bring at least 2 copies).
3. Medical reports, not just the discharge instructions, you will need to bring the full medical report with the doctor's "impressions."
4. Any threatening voicemails or text messages (you should record any voicemails onto a separate tape and bring the tape player to court; keep the original messages on your phone).
5. If the police were called and took pictures of injuries, you should get copies of these pictures.

Getting ready to speak to the Court

You will have to speak to the judge about the information in your Petition. You should practice what you are going to say. The judge may ask you a question like: "Why are you asking this court for an Order of Protection?" You will need to answer by saying when the abuse happened and what happened. You should get right to the point by explaining the abuse that caused you to file for the Order of Protection. You should briefly describe what happened right before the abuse occurred, and focus mainly on the actual abuse itself.

If you have asked for visitation to be denied, you need to be prepared to say why. Usually a court will only deny visitation if the abuse occurred in front of the children or if there is some other serious concern that the children are at risk of harm.

Write down what you want to say to the court and bring this with you. If you get nervous, you can always look at what you wrote to help you through the hearing.

The Hearing

Before going in the courtroom:

You should get to the courthouse at least 15 minutes before your hearing is supposed to start. If you are late your case can be dismissed. You need to be dressed appropriately - like you are going for a job interview. You should dress conservatively - no tank tops, short shorts or skirts. You may have to keep your cell phone in the car (unless it is evidence). If you are allowed to have your phone, make sure it is off. If you need to bring in your phone or other tape recorder, tell the security officer that you are bringing it in as evidence in your case.

When you get to the courthouse, check in with a bailiff or deputy to let them know you are there. Let the bailiff know if you are concerned for your safety. A court advocate may sit with you or you can ask a friend to come with you to help you feel comfortable and safe. You can ask to be allowed into a conference room if you want to stay away from the Respondent. Make sure the bailiff knows where you are so you do not miss your case being called.



In the courtroom:

What if.....

The Respondent has an attorney:

You can, and probably should ask the court for a continuance to give you an opportunity to find a lawyer or get your witnesses.

Your witness doesn't come to court:

You can, and probably should ask the court for a continuance so that you can have the witness there.

The judge asks if you and the Respondent will agree to an Order of Protection "without a finding" of abuse:

It is up to you, as the Petitioner, to decide and tell the judge whether you want to agree to this.

A "finding" is what the court writes in at the top of the order if a full hearing is held and the court believes that the abuse happened. An example of a "finding" might be: "The Respondent hit the Petitioner in the face and threatened to kill the Petitioner." An Order of Protection can be granted without this kind of information written down by the judge if both parties agree. If the Respondent agrees to the Order of Protection "without a finding," then all of the restraining orders would be in place (i.e., no harming, abusing, threatening, communicating) and would have the same effect as if there was a "finding." Sometimes having a "finding" written in might be beneficial to the victim in going forward with further family court or criminal actions.

If you want the judge to have a full hearing and want to make sure a "finding" is written on the order, then you would not want to agree to this. If you don't agree to this then you will go forward with the hearing and the judge will then make the decision of whether or not to grant the Order of Protection.

The judge asks you if you would agree to a "mutual restraining order":

It is up to you, as the Petitioner, to decide and tell the judge whether you want to agree to this.

A "mutual restraining order" means that both people, both you and the abuser, would have an order against the other person that says you cannot abuse, threaten or communicate with the other person. *You should carefully think about this before agreeing in court.*



A mutual restraining order means that *you* could be held in violation if you contact the abuser in any way. The abuser may also use this against you later. A mutual restraining order may affect other rights such as your right to purchase or possess a gun. Sometimes, the court will order a mutual restraining order even if you don't agree. This may happen if both sides testify that they were assaulted or both have injuries or were both arrested. If it is too difficult for the judge to tell who the abuser is, a mutual restraining order may be given (even if you disagree).

If the judge wants to issue a mutual restraining order, you can also tell the judge that you want to withdraw your Petition for Order of Protection.

How the hearing is conducted:

1. The judge will usually ask you and the Respondent questions about what happened. Make sure you answer the judge's questions clearly. If the judge doesn't ask questions, you will need to describe the incident that happened that caused you to file for the Order of Protection.
2. Tell the judge if you have witnesses or evidence (pictures, recordings, medical records, etc.).
3. The Respondent will have an opportunity to tell his/her side of the story- be prepared for the Respondent to say something bad about you (e.g., you abused them, you are cheating, etc.).
4. Do not react to what the Respondent says or interrupt while he/she is speaking. If you need to respond, you can politely ask the Court to speak again or "cross-examine" the Respondent (ask them questions directly).
5. After hearing both sides, the judge will make a decision and say what the decision is aloud in court. If you think the judge left something out, you can politely ask the judge about this. For example, if you asked for possession of a certain car and the judge didn't say anything about it, you can stand up and ask the judge about it.



After the hearing - the court granted your order

You will usually need to wait outside the courtroom until a bailiff/deputy comes out with the signed order. You will need to go to the clerk to get your copy. Keep a copy with you at all times and provide a copy to those who should have one (e.g., employer, neighbors, child's school/daycare provider, etc.).

After the hearing - the court denied your order

If your order is denied, and there is no other order in place, such as a "no contact" order in the criminal case, there will be no restraint in place to prevent the abuser from contacting you. You may need to get help from a friend, family member or shelter to make sure you are safe. If the abuser continues to threaten you, harass you or otherwise make you scared, you should call the police.

If you believe the court was legally wrong in denying your order, you can file a "Motion for Reconsideration." This has to be filed within 10 days of the date of your Order. You have to file it with the court and serve a copy on the other side. There are no forms for this, so in most cases, you will need to get help from an attorney for this.

You can also file a new Petition for Order of Protection. If something was wrong about how you

filled out the paperwork or you didn't have your evidence or witnesses, you may want to file again and have a new court hearing.

Dismissing your Order of Protection

You can withdraw/dismiss your Petition for Order of Protection at any time before the court hearing happens. You would need to let the clerk know that you want to do this.

If you've already had your court hearing and want to dismiss the Order of Protection, you will need to file a "Motion to Dismiss" the Order of Protection. The Court will schedule a new hearing that you'll have to attend. You will have to tell the judge that you want to dismiss the Order. The judge may ask you questions about your decision.

Extending the Order of Protection

The Order of Protection will be granted for a time period of 6 months up to 1 year. If, at the end of that time, you feel like you still need protection you can file a "Motion for Extension of Order of Protection". The Court can extend your Order of Protection for "good cause" - most judges say that "good cause" would mean that the Respondent violated the Order at some point or something else has happened since you were given the Order. The Clerk of Court will have the paperwork to extend the Order of Protection.

If you don't file to extend the Order, and you don't have another family court case with a restraining order (divorce or custody), then the Order of Protection and everything in it will go away (including child support, custody, etc.).

Violations of the Order of Protection

If the Respondent has violated the Order of Protection, he/she can be punished in criminal court or family court.

You should report any criminal violations of the Order to the police (i.e., new incident of abuse, calling or threatening). The police can arrest the Respondent for a violation and take the case to criminal court. The Respondent can be sentenced to 30 days in jail if found guilty. Typically, a criminal court will handle any criminal violations of the Order.

You can also ask the family court to find the Respondent in "contempt" for violating the Order by filing a "Rule to Show Cause" with the Clerk of Court. The Court will schedule a new hearing and you would need to testify about the violation. The judge will decide whether to hold the person in contempt. The punishment can range from a warning to community service to a year in jail. Typically, family court will handle any civil violations of the Order (i.e., failure to pay support, failure to pay bills as ordered, etc.).





Frequently Asked Questions

1. I have a "no contact" order from the criminal case. Is that the same as the Order of Protection?

No. A "no contact" order is given as a condition of the bond that the judge gives. It only lasts from the time the person is released from jail until the time of their criminal trial (this can occur in less than 30 days in some cases). It is usually written on the bond sheet. The "no contact" order is not entered into any criminal database like an Order of Protection. The only way for a "no contact" order to be enforced is for the victim of the crime to report if it has been violated and then ask the judge to have the abuser's bond revoked. This does not happen very often.

2. Does it cost anything to file for an Order of Protection?

No. Filing the paperwork is free. The Sheriff's Office will also serve the paperwork on the Respondent for free.

3. Do I have to file a police report to get an Order of Protection?

No. You can file for and be granted an Order even if you haven't called the police. However, it is usually a good idea to call the police if you've been a victim of crime or if you need protection. If you file a police report about the abuse, you will usually be assigned a "victim advocate" who can help explain the Order of Protection process to you.

4. What if I have an ongoing divorce/separation case?

If you already have an ongoing case and need an Order of Protection, you will need to file a "Motion for Further Relief" in that case. If you have an attorney for that case, you should talk to him/her about your situation and tell them that you need protection. If you don't have an attorney for your divorce or separation, you can access the form for the motion on the Court's website: www.sccourts.org/forms.

5. What if I don't know the Respondent's social security number or address?

If you don't know the SSN, you can leave this blank. You will have to have an address for the Respondent so that the Sheriff's Office can serve him/her with the paperwork. If you don't have their address, you may be able to serve them at a family member's home or other location. If you don't have an address at all, the Court will not be able to go forward with the hearing.

6. Do I have to come to the court hearing to get the Order of Protection?

Yes. If you do not come on time for the scheduled court hearing, your case will be dismissed. If something has happened so that you can't come or you are going to be late, you will need to call the court immediately and ask for a "continuance."

7. Can I bring my child with me to court?

Not usually. Most judges do not allow children to be present for court. They may ask you to take your child from the courthouse if you bring them. Some judges may allow you to bring your child in as a witness to the abuse if they are old enough to know about court and could explain what happened. It is up to the judge in each case to make that decision.

8. I am planning on moving out of state - will my Order still be effective?

Yes. Your Order of Protection will be effective inside the United States. You can file for a new Order of Protection in the other state if something else happens while you are there. You may also want to register your Order of Protection with the Clerk of Court in that state.

9. I was served with papers by the Respondent after court - what do I need to do?

If you've been served with court papers (e.g., divorce, separation, custody), you will only have 30 days to respond. There may also be a court hearing scheduled. You should speak with an attorney right away to make sure you protect your rights.

10. I received my Order of Protection. Can I contact the Respondent if the Order isn't mutual?

If you've been granted an Order of Protection which states that the only person restrained is the Respondent, then you could not technically be in violation of the Order. BUT - you should not contact the Respondent in any way. If you begin contacting the Respondent or allowing the Respondent to contact you, this may lead to further unwanted contact by someone who has abused you and may take the opportunity to abuse you further. In some cases, police and judges can be hesitant to enforce the Order of Protection if you have allowed ongoing contact.

RESOURCES

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| <p>South Carolina Coalition Against Domestic Violence and Sexual Assault (SCCADVASA) Hotline 800.260.9393</p> | <p>National Domestic Violence Hotline 800.799.7233</p> |
| <p>Anderson, Greenville, Pickens, Oconee Safe Harbor Hotline 800.298.7229</p> | <p>Cherokee, Spartanburg, Union SAFE Homes, Rape Crisis Coalition Hotline 800.273.5066</p> |
| <p>Abbeville, Laurens, Saluda Laurens Co. Safe Home Hotline 866.598.5932</p> | <p>Chester, Lancaster, York Safe Passage Hotline 800.659.0977 Tender Hearts (York) 803.684.3131</p> |
| <p>Edgefield, Greenwood, McCormick MEG's House 800.447.7992</p> | <p>Richland, Lexington, Kershaw, Fairfield, Newberry Sistercare Hotline 803.775.2763</p> |
| <p>Aiken, Allendale, Barnwell, Jasper Cumbee Center to Assist Abused Persons Hotline 803.641.4162 Barnwell Co. Help Line 803.259.3333</p> | <p>Clarendon, Lee, Sumter YWCA of the Upper Lowlands, Inc. Hotline 803.775.2763</p> |
| <p>Calhoun, Bamberg, Orangeburg CASA/Family Systems Hotline 800.298.7228</p> | <p>Florence, Chesterfield, Marlboro, Darlington, Dillon, Marion, Williamsburg Pee Dee Coalition Hotline 800.273.1820</p> |
| <p>Beaufort, Colleton, Hampton Citizens Opposed to Domestic Abuse Hotline 800.637.7273</p> | <p>Georgetown, Horry Citizens Against Spouse Abuse Hotline 843.448.6206</p> |
| <p>Charleston, Berkeley, Dorchester My Sister's House Hotline 800.273.4673 People Against Rape Hotline 800.241.7273</p> | <p>Most law enforcement agencies also have victim advocates who can help answer questions. You can contact your local sheriff's office or municipality police to reach the victim advocate for each area.</p> |