

## RELIEF AVAILABLE WITH PROTECTION ORDERS



**The Missouri Adult Abuse Act allows a victim of abuse to petition the court for the following types of relief through an Order of Protection. However, these orders are not always granted by the court.**

### EX PARTE ORDER OF PROTECTION (SECTION 455.045, RSMo)

- ▶ Temporarily restrains the respondent from abusing, threatening to abuse, molesting, stalking or disturbing the peace of the petitioner.
- ▶ Temporarily restrains the respondent from entering the premises of the dwelling unit of petitioner when the dwelling unit is: a) jointly owned, leased or rented or jointly occupied by both parties; or b) owned, leased, rented or occupied by the petitioner individually; or c) jointly owned, leased or rented by the petitioner and a person other than the respondent; provided, however, no spouse shall be denied relief under this section by reason of the absence of a property interest in the dwelling unit; or d) jointly occupied by the petitioner and a person other than the respondent; provided that the respondent has no property interest in the dwelling unit.
- ▶ Temporarily restrains the respondent from communicating with the petitioner in any manner or through any medium.
- ▶ Awards temporary custody of minor children where appropriate.

### FULL ORDER OF PROTECTION (SECTIONS 455.050 and 455.075, RSMo)

- ▶ Prohibits the respondent from abusing, threatening to abuse, molesting, stalking or disturbing the peace of the petitioner.
- ▶ Prohibits the respondent from entering the premises of the dwelling unit of the petitioner when the dwelling unit is: a) jointly owned, leased or rented or jointly occupied by both parties; or b) owned, leased, rented or occupied by the petitioner individually; or c) jointly owned, leased, rented or occupied by the petitioner and a person other than the respondent; provided, however, no spouse shall be denied relief under this section by reason of the absence of a property interest in the dwelling unit; or d) jointly occupied by the petitioner and a person other than the respondent; provided that the respondent has no property interest in the dwelling unit.
- ▶ Prohibits the respondent from communicating with the petitioner in any manner or through any medium.
- ▶ Awards custody of minor children born to or adopted by the parties when the court has jurisdiction over such child and no prior order regarding custody is pending or has been made, and the best interest of the child requires such order be issued. There is a presumption that the best interest of the child is served by placing him or her in the custody of the non-abusive parent.
- ▶ Establishes a visitation schedule for the non-custodial parent that is in the best interest of the child. The court can deny visitation if it finds that visitation would endanger the child's physical health, impair his or her emotional development or would otherwise conflict with the best interests of the child, or that no visitation can be arranged that would sufficiently protect the custodial parent from future abuse.
- ▶ Awards child support, when no prior order of support exists.
- ▶ Awards income maintenance, for no more than 180 days, to the petitioner when the petitioner and the respondent are lawfully married.
- ▶ Orders the respondent to make or to continue to make rent or mortgage payments on a residence occupied by the petitioner if the respondent is found to have a duty to support the petitioner or other dependent household members.
- ▶ Orders the respondent to pay the petitioner's rent at a residence other than the one previously shared by the parties if the respondent is found to have a duty to support the petitioner and the petitioner requests alternative housing.
- ▶ Orders the petitioner be given temporary possession of specified personal property, such as automobiles, checkbooks, keys and other personal effects.
- ▶ Prohibits the respondent from transferring, encumbering, or otherwise disposing of specified property mutually owned or leased by the parties.
- ▶ Orders the respondent to participate in a court-approved counseling program designed to help batterers stop violent behavior or to participate in a substance abuse treatment program.
- ▶ Orders the respondent to pay a reasonable fee for housing and other services that have been provided or that are being provided to the petitioner by a domestic violence shelter.
- ▶ Orders the respondent to pay court costs.
- ▶ Orders the respondent to pay the cost of medical treatment and services that have been provided or that are being provided to the petitioner as a result of injuries sustained to the petitioner by an act of domestic violence committed by the respondent.
- ▶ Orders one of the parties to pay the other's attorney's fees.

**MISSOURI ADULT ABUSE ACT AT A GLANCE**

	<b>ADULT ORDERS</b>	<b>CHILD ORDERS</b>
<b>WHO CAN OBTAIN RELIEF?</b>	(§455.010) Any <b>adult</b> , defined as a person 18 years of age or older or otherwise emancipated. This person is called the petitioner.	(§455.501 & §455.503) Any <b>parent, guardian, guardian ad litem, court-appointed special advocate, or juvenile officer</b> on behalf of a child (any person under 18 years of age). This person is called the petitioner.
<b>WHOM CAN THEY OBTAIN RELIEF AGAINST?</b>	(§455.010) A <b>family or household member</b> (a spouse, a former spouse, adults related by blood or marriage, adults residing together or who resided together in the past, an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, or adults who have a child in common, regardless of whether they have been married or have resided together) or an <b>adult stalking</b> the victim. This person is called the respondent.	(§455.501 & §455.505) A <b>former or present household member</b> (an adult living in the same household or previously living in the same household), an <b>emancipated child</b> or a <b>person stalking</b> a child. This person is called the respondent.
<b>WHAT ACTS BY THE ABUSER FORM THE BASIS FOR RELIEF?</b>	(§455.010) <b>Abuse</b> , which includes, but is not limited to, the occurrence of any of the following acts, attempts, or threats against a person who may be protected under the Adult Abuse Act: <b>assault, battery, coercion, harassment, sexual assault or unlawful imprisonment. Stalking</b> also is covered by the Adult Abuse Act.	(§455.501) <b>Abuse</b> , which involves any <b>physical injury, sexual abuse or emotional abuse</b> inflicted on a child other than by accidental means by an adult household member, or <b>stalking</b> of a child. Discipline, including spanking, administered in a reasonable manner is not to be construed as abuse.
<b>WHAT RELIEF IS AVAILABLE?</b>	(§455.045) <b>Ex Parte Order of Protection.</b> (§455.050) <b>Full Order of Protection.</b>	(§455.520) <b>Ex Parte Child Order of Protection.</b> (§455.523) <b>Full Child Order of Protection.</b>
<b>WHAT IS THE PROCEDURE FOR OBTAINING RELIEF?</b>	(§§455.015 - 455.032) <b>Petitioning</b> court for Order of Protection. (§455.035) <b>Obtaining Ex Parte</b> Order of Protection if there is an immediate and present danger. An <i>Ex Parte</i> Order of Protection is not always granted, but the court always should set a hearing date. (§455.040) <b>Hearing</b> on Full Order of Protection held within 15 days after petition is filed, unless there is good cause for a continuance.	(§§455.503 - 455.510) <b>Petitioning</b> court for Child Order of Protection. (§455.513) <b>Obtaining Ex Parte</b> Child Order of Protection if there is an immediate and present danger. An <i>Ex Parte</i> Order of Protection is not always granted, but the court always should set a hearing date. (§455.516) <b>Hearing</b> on Full Child Order of Protection within 15 days after petition is filed, unless there is good cause for a continuance.

## MISSOURI ADULT ABUSE ACT (CONTINUED)

	ADULT ORDERS	CHILD ORDERS
<b>HOW LONG CAN AN ORDER LAST, AND IS IT RENEWABLE?</b>	<p>(§455.040) An Order of Protection lasts for a <b>minimum of 180 days</b> and a <b>maximum of one year</b>. It can be renewed twice; each renewal can last up to one year. No new incident of abuse is required if the order is renewed before the old one expires.</p>	<p>(§455.516) A Child Order of Protection can last for a <b>minimum of 180 days and a maximum of one year</b>. The order can be renewed twice; each renewal can last up to one year. No new incident of abuse is required if the order is renewed before the old one expires.</p>
<b>WHAT HAPPENS IF ANOTHER COURT MAKES A CUSTODY ORDER?</b>	<p>(§455.060) The portion of the Order of Protection relating to <b>custody, visitation, support and maintenance</b> is no longer valid, but the prohibitions regarding abuse remain in effect.</p>	<p>(§455.528) The portion of the Order of Protection relating to <b>custody, visitation, support and maintenance</b> is no longer valid, but the prohibitions regarding abuse remain in effect.</p>
<b>CAN AN ORDER BE MODIFIED?</b>	<p>(§455.060 &amp; §455.065) <b>Yes</b>. Upon the filing of a motion and a showing of changed circumstances.</p>	<p>(§455.528 &amp; §455.530) <b>Yes</b>. Upon the filing of a motion and a showing of changed circumstances.</p>
<b>ARE PROTECTION ORDERS FROM OTHER STATES ENFORCEABLE IN MISSOURI?</b>	<p>(§455.067) <b>Yes</b>. The Adult Abuse Act provides that orders from other states must be given “full faith and credit” in Missouri. A procedure for registering foreign orders is contained in the statute. However, registration does not have to occur for such orders to be enforced.</p>	<p><b>Uncertain</b>. No statutory or legal precedent at this time. Child orders might be covered by the federal Violence Against Women Act. Consult an attorney.</p>
<b>WHAT HAPPENS IF AN ORDER IS VIOLATED?</b>	<p>(§455.085 &amp; §455.090) The violator can be <b>arrested</b> and <b>prosecuted</b> for a crime. Arrestable violations of the terms and conditions of a protection order include abuse, stalking, disregard of child custody provisions, communication initiated by the respondent, or entrance upon the premises of the petitioner’s dwelling unit.</p> <p>If the violation involves the failure to surrender custody of a minor child to the person to whom custody is awarded, the violator must be arrested and the <b>child turned over</b> to the custodial parent.</p> <p>A <b>contempt of court</b> action can be brought in the issuing court and the violator can be held in contempt of court. (This sometimes results in a fine and can include jail time.)</p> <p>The court may schedule compliance review hearings to monitor the respondent’s compliance with the order, whether or not there has been a violation.</p>	<p>(§455.538 &amp; §455.524) The violator can be <b>arrested</b> and <b>prosecuted</b> for a crime. Arrestable violations of the terms and conditions of a protection order include abuse, child custody and entrance upon the premises of the victim’s dwelling unit.</p> <p>A <b>contempt of court</b> action can be brought in the issuing court and the violator can be held in contempt of court. (This sometimes results in a fine and can include jail time.)</p> <p>If the violation involves failure to surrender custody of a minor child to the person to whom custody is awarded, the violator must be arrested and the <b>child turned over</b> to the custodial parent.</p> <p>The court may schedule compliance review hearings to monitor the respondent’s compliance with the order, whether or not there has been a violation.</p>

## DOMESTIC VIOLENCE ASSAULT CRIMES



**The Missouri General Assembly in 2000 established separate crimes for domestic assault. These new categories of assaults acknowledge elements of power and control, and they include enhanced penalties for prior or persistent offenders.**

### FIRST-DEGREE DOMESTIC ASSAULT (SECTIONS 565.063, 565.072 RSMo)

#### Definition

A person commits the crime of domestic assault in the first degree if he or she attempts to kill or knowingly causes or attempts to cause serious physical injury to a family or household member or an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the actor, as defined in section 455.010, RSMo.

#### Punishment

Domestic assault in the first degree is a Class B Felony, unless the offender inflicts serious physical injury on the victim, in which case it is a Class A Felony.

**Prior offender** (1 prior offense within 5 years): Class A Felony; no probation or parole if serious injury inflicted.

**Persistent offender** (2+ previous offenses within 10 years): Class A Felony; no probation or parole.

### SECOND-DEGREE DOMESTIC ASSAULT (SECTIONS 565.063, 565.073 RSMo)

#### Definition

A person commits the crime of domestic assault in the second degree if the act involves a family or household member or an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the actor, as defined in section 455.010, RSMo, and he or she attempts to cause or knowingly causes physical injury by any means, including use of a deadly weapon or dangerous instrument, or by choking or strangulation; or recklessly causes serious physical injury; or recklessly causes physical injury with a deadly weapon.

#### Punishment

Domestic assault in the second degree is a Class C Felony.

**Prior offender** (1 prior offense within 5 years): Class B Felony.

**Persistent offender** (2+ previous offenses within 10 years): Class A Felony.

### THIRD-DEGREE DOMESTIC ASSAULT (SECTION 565.074, RSMo)

#### Definition

A person commits the crime of domestic assault in the third degree if the act involves a family or household member or an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the actor, as defined in section 455.010, RSMo, and he or she attempts to cause or recklessly causes physical injury; or with criminal negligence causes physical injury by means of a deadly weapon or dangerous instrument; or places the victim in apprehension of immediate physical injury by any means; or recklessly engages in conduct which creates a grave risk of death or serious physical injury to the victim; or knowingly causes physical contact knowing the other person will regard the contact as offensive; or knowingly attempts to cause or causes the isolation of such family or household member by unreasonably and substantially restricting or limiting such family or household member's access to other persons, telecommunication devices or transportation for the purpose of isolation.

#### Punishment

Domestic assault in the third degree is a Class A Misdemeanor.

**Persistent offender** (2+ previous offenses within 10 years): Class D Felony. The offenses may be against the same family or household member or against a different family or household member.

#### DEFINITIONS

Class A Felony	10-30 years or life imprisonment
Class B Felony	5-15 years imprisonment
Class C Felony	7 years imprisonment or less
Class D Felony	4 years imprisonment or less
Class A Misdemeanor	A term of imprisonment not to exceed 1 year