# INSTRUCTIONS FOR PETITION FOR ORDER OF PROTECTION—FILED ON BEHALF OF A CHILD

Under the Indiana Civil Protection Order Act (Ind. Code § 34-26-5), courts can issue orders to protect people from domestic or family violence, stalking, a sex offense, sex grooming, or harassment. These court orders are called "Orders for Protection." There are two (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 protected person (in this case, a minor child) is called the "Petitioner." The Petitioner must file a Petition in a court of record, against the other person, called the "Respondent." There are 2 different Petitions a person can file: one kind allows a person to seek protection for himself or herself, and another allows a representative to ask for protection on behalf of a child. This representative is called the child's "Next Friend." This Instruction booklet explains how to fill out forms for a case in which the Next Friend 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. In order to assist law enforcement in enforcing the Order for Protection you should have the Respondent's date of birth and/or Social Security number and current address. The Respondent's current address may also be necessary for the Court to grant certain forms of other relief.**

Unless the next friend of the Petitioner provides the Respondent's date of birth or social security number, the protection order cannot be entered into certain important databases (NCIC database and IDACS). Even without this information, the protection order will still be included in the Indiana Protection Order Registry.

Even if the protection order cannot be entered into the national Protection Order Registry, it will be valid and enforceable throughout the United States. It is highly recommended that the child's custodian or anyone who has charge of the child, carry the Child's Order For Protection with them at all times, especially when traveling with the child outside the State of Indiana.



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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?**

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;
- A person who has committed stalking or a sex offense against the child;
- A person who has committed sex grooming, which means engaging in a course of conduct involving repeated or continuing contact with the child that is intended to prepare or condition the child for sexual activity; or
- A person who has committed repeated acts of harassment against the child.

**If you are the parent, guardian, or other representative of such a child, you will be known as the child's "next friend" and the child will be known as the "Petitioner" or as "the Child".**

"Domestic or family violence" means, except for an act of self-defense, the occurrence of at least one (1) of the following acts committed by a family or household member:

1. attempting to cause, threatening to cause, or actually causing physical harm to the Child and/or another family or household member;
2. placing the Child and/or a family or household member in fear of physical harm;
3. causing the Child 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;
4. beating, torturing, mutilating, or killing a vertebrate animal without justification with an intent to threaten, intimidate, coerce, harass or terrorize the Child.

Stalking, sex offenses, sex grooming, and harassment are subject to a Protection Order whether or not committed by a household member

The **Respondent** must be either a:

- **Family or household member** of the Child; or,
- Person who has committed stalking, a sex offense, sex grooming, or harassment against the Child.
- In addition, please note that the Respondent may also be a minor child.

The Child/Petitioner and the Respondent are **"family or household members"** if:

- 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 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 was the biological child of the Respondent and was adopted by the Petitioner;
- 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.

**"Stalking"** is defined by Indiana law (Ind. Code § 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 two (2) or more incidents.

"**Harassment**" is defined by Indiana law (Ind. Code § 34-6-2-51.5) as: "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."

**"Impermissible contact"** includes (but is not limited to)

(1) Following or pursuing the victim;
(2) Communicating with the victim in person, in writing, by telephone, by telegraph, or through electronic means;
(3) Posting on social media, if the post:
    (A) is directed to the victim; or
    (B) refers to the victim, directly or indirectly.

"**Sexual activity**" means sexual intercourse, other sexual conduct (as defined in Ind. Code § 35-31.5-2-221.5) or the fondling or touching of the buttocks, genitals, or female breasts. "Other sexual conduct" is defined as an act involving the sex organ of one (1) person and the mouth or anus of another person; or the penetration of the sex organs or anus of a person by an object.

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

- Rape;
- Criminal deviate conduct (repealed);
- Child molesting;
- Child exploitation—Possession of child pornography;
- Vicarious sexual gratification—Performing sexual conduct in the presence of a minor;
- Child solicitation;
- Child seduction;
- Sexual battery;
- Sexual misconduct with a minor;
- Unlawful employment near children by a sexual predator;
- Sex offender residency offense;
- Sex offender Internet offense;
- Inappropriate communication with child; and,
- Serious sex offender entering school property.

In order for a person to ask for an Order for Protection because the Child 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?**

The judicial officer will decide who will be protected from the names listed on the Petition in Paragraph 9 and the names listed on the Confidential Form.

Please be advised that IDACS/NCIC will only allow 9 protected household members per order. If you have more than 9 household members who need protection, a second petition must be filed, and a separate order must grant protection for the additional household members that need protection.

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

The Next Friend 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.

**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 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/center/2645.htm

**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 on behalf of a minor child ("Petition")*—this is the form used by the next friend 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. *Notice of Exclusion Form.* This Notice informs anyone reviewing the Court file that the Confidential Form, a document excluded from public access under Indiana law, has been filed with the Court. This form must be submitted with the Confidential Form at the time the case is filed.
4. *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. Petitions based on harassment alone require notice to Respondent and a hearing within thirty (30) days before ANY relief may be granted.

For all other petitions, 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 of the situations for which 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.

**The Judge can order the following without a hearing unless the Respondent asks for one:**

- Prohibiting the Respondent from committing, or threatening to commit, acts of domestic or family violence, stalking, sex offenses, or sex grooming against the Child, 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.

**The Judge can order the following immediately but will have to hold a hearing 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;
- Giving Petitioner possession of an animal;
- Prohibiting Respondent from taking action against an animal;
- Directing a law enforcement officer to accompany the Child to the parties' home to:
    - Ensure that the Child is safely restored to possession of the home, car, and other necessary personal items—including animals; or
    - Supervise the Child's or the Respondent's removal of personal belongings and animals; and
- Ordering other additional relief.

**The Judge can order the following *only after* serving the Respondent with the petition and holding a hearing:**

- Parenting time—establish rules for parenting time, require that it be supervised by a third party, or deny parenting time altogether if necessary, to protect the safety of the Child;
- Ordering the Respondent to pay money for the benefit of 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;

- Pay the costs and expenses incurred in connection with using a GPS tracking device if one is ordered by the Court;
- 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.
- Allow a Child to continue to use a telephone number for which Petitioner will be financially responsible.

**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. The Clerk, the Court, and other court staff are prohibited from giving you legal advice.

**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 which require an immediate order without giving the other party an opportunity to respond. Court orders are not issued just because a person asks for one. It is important to 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 legal requirements for an *ex parte* order.

**Why might the 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 legal definition of "family or household member."
- The Child does not live in Indiana, the Respondent does not live in Indiana, and the incident did not occur in Indiana.
- The factual allegations do not meet the legal definitions of "domestic or family violence," "stalking," or of a "sex offense."
- The factual allegations do not support a finding of sex grooming.
- 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 include 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 4 copies of the Petition: 1 for a worksheet; 1 for the court's file; 1 copy to be served on the Respondent; and, 1 copy for yourself.
3. You will need 1 copy of the Confidential Form. **Please note: you should have the Respondent's correct name, correct date of birth *or* Social Security number, and correct, current address.** Respondent's date of birth and/or Social Security number is required by federal law to get the Order for Protection into the national 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, he or she will not be held responsible for violating the order. 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. You will need 3 copies of the Notice of Exclusion: 1 for the court's file; 1 copy to be served on the Respondent; and, 1 copy for yourself. This Notice informs anyone reviewing the Court file that the Confidential Form, a document excluded from public access under Indiana law, has been filed with the Court.
5. 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.
c. Check ("X") only the line which best applies to your case in Paragraph 2.a. Read each item carefully and fill in the necessary information. Be specific.
d. Make sure you list all the requested information about every court case in Paragraph 5 involving the Respondent, the Child, and yourself.
e. Regarding Paragraph6: there is no minimum residency requirement for filing a Petition.
f. If you are not represented by an attorney, fill in your public mailing address in Paragraph 7 of the Petition. This address will *NOT* be kept secret, so you should use a mailing address that you feel comfortable having public. The address you place on the Confidential Form, PO-0104 will be kept confidential. If the order has been granted by the court, you may be eligible to obtain a confidential address through the Attorney General's Address Confidentiality Program (ACP). Call the ACP at: (317) 232-6201 or visit: http://www.in.gov/attorneygeneral/3093.htm to get information on how to participate in that program.
g. If you do not list the names of other family or household members you want protected in Paragraph 10 (and also list those people on the Confidential Form), the Child will be the only person protected by the Order for Protection.
h. Remember to sign and date the Petition.

6. 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 if there is a hearing set in the case.
7. Take all of your completed forms 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 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, doctor, babysitter, etc.
2. If the court must hold a hearing on the 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. If you are not sure whether or not you will need something, bring it just in case the Judge wants to look at the information.
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, one (1) copy for a landlord/security guard; one (1) copy for the Child's school, doctor, babysitter, 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. The Clerk, the Court, and other court staff are prohibited from giving you legal advice.
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, you may be arrested, and 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 to allow the Judge to hear your side of the case. If you do not attend the hearing, the Judge can hear the case without you and issue orders in your absence. If you have any witnesses, they must attend the hearing in person in order to testify for your side.