

# How Can I Obtain a Domestic Violence Civil Protection Order?

## Make contact with local Domestic Violence Advocate

**Elmore County Domestic Violence Council Crisis Line » (208)-587-3300**

**Jim Meliza-Elmore County Court Assistance Officer » (208)-587-2127 ext. 1263**

- Make an apt w/ your Advocate » they will help you fill out and file your Petition for a Protection Order with the court
- If a Judge is available at the time of filing, they may take up the Petition to grant or deny an Ex- Parte Protection Order at that time
- If a Judge is not available at the time of filing, a court clerk will contact you to inform you of Judge's decision

### If an Ex Parte Order is granted:

1. A Protection Order is granted for a period of up to two (2) weeks
2. A Hearing will be scheduled in which you and the Respondent are expected to appear to argue your case for an extended Order
3. The Sheriff's Office will serve notice upon the Respondent

### If an Ex Parte Order is Denied:

1. The Petition may have been filled out incorrectly **OR** the Judge may have found there was no risk of immediate danger
2. You can re-file and attempt the process again if you choose

## Arrive to Court for your Scheduled Hearing

- Show up on time and with all materials to present your case (see reverse side for tips on presenting your case)
- If you have children or other individuals accompanying you, be prepared to have them wait outside the courtroom
- Advocates are prohibited from being in the courtroom during the hearing, but may wait outside the courtroom for emotional support » keep them informed of your preference
- A Marshal will be present in the courtroom during the hearing.

## The Hearing

1. You will have the opportunity to argue your case and present your evidence
2. The Respondent will have the opportunity to contest the Order
3. You will have the chance to cross-examine, to contradict the Respondent's evidence, and to provide context to issues presented by the Respondent
4. The Judge will either grant or deny the Order

The hearing process is largely dependent on the Respondent's Appearance, meaning...

## If The Respondent Appears with an Attorney

**IF** you want time to seek representation, **THEN** you are entitled to a two (2) week continuance and can ask for one.

**OR**

**IF** you want to proceed on your own, **THEN** you can let the Judge know.

## If the Respondent Appears without an Attorney

**IF** the Respondent would like to obtain counsel, **THEN** the Judge may grant a continuance for the Respondent to do so.

**OR**

**IF** the Respondent does not want counsel and you still want a Protection Order, **THEN** the Judge will set your case for a hearing that day and you will present your case

**OR**

**IF** you no longer wish to pursue the Protection Order, **THEN** you can tell the Judge and they will dismiss the Petition for a Protection Order.

## If the Respondent Fails to Appear

**IF** the Respondent was properly served and fails to appear, **THEN** you will likely be granted a Protection Order by default.

**BUT**

**IF** the Respondent was not properly served, **THEN** the Judge may grant a continuance to allow for proper service. The temporary order will remain in place for an additional two (2) weeks.

# The Hearing: The Five Elements of Presenting Your Case

## 1. Your Testimony

### YOU MUST PROVE:

**THAT** Domestic Violence as defined in Idaho Code 39-6303 has occurred. Domestic Violence is defined as a recent act or threat of:

- ⇒ Physical injury;
- ⇒ Sexual abuse; or
- ⇒ Forced imprisonment

**THAT** the threat is one from:

- ⇒ A family member (current or former spouse, person related by blood, adoption, or marriage);
- ⇒ A Household member (persons who live together or have lived together, have or had a child in common); or
- ⇒ A current or former dating partner

**THAT** you and any other protected person are in immediate and present danger of domestic violence.

## 2. Evidence

Make 3 copies of every document and/or photograph you want the Judge to review.

Present your evidence and use it to support your request for the Protection Order. You must be able to support/speak to the Respondent's temper, behavior, and any other pertinent factors regarding your request.

★ For each piece of evidence you present to support your case, ask the Judge to have the piece of evidence "admitted into evidence".

## 3. Your Witnesses (if any)

**IF** you have witnesses, **THEN** you will have the opportunity to ask your witnesses open-ended questions about any events they witnessed.

★ All witnesses testifying on your behalf must have personal knowledge of all matters they testify about.

## 4. Cross Examination

The Respondent will have the opportunity to question you and any of your witnesses.

Continue to be honest as you answer the cross-examination questions.

You will have the opportunity to question the Respondent and any of their witnesses as well.

## 5. Redirect

### YOU WILL HAVE THE OPPORTUNITY TO:

- Clarify any issues that come up during cross-examination;
- Provide context to anything brought up by the Respondent; and
- Respond to information that is relevant to the Judge's decision regarding the Protection Order.

### Idaho Rules of Family Law Procedure 119 → Kids in Court

- Generally, Judges prefer minor children to sit outside the courtroom during the hearing
- You may ask the Judge to speak with children "in camera" or in chambers
- You may ask the Judge to clear the courtroom and interview children on the record
- Generally, children need to be at least 5 years old, ideally 8 years old or older
- The Judge may not grant the request if the opposing party/Respondent contests

### What is a Protection Order Anyway?

A Protection Order is a Court Order issued for the purpose of preventing violent or threatening acts, or acts of harassment against, or contact, or communication with, or physical proximity to, another person.

- Protection Orders can be granted for a time period of up to one (1) year.
- If the termination of the Protection Order is approaching, you can request the Judge to grant an extension

