

St. Louis County

LAW ENFORCEMENT MANUAL

Re: Domestic Violence

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The 2011 revisions of Chapter 455 and other updates/changes/additions are in red font and denoted with “RSMo 2011.” These legislative changes were enacted on August 28, 2011.

The 2012 manual updates/changes/additions are in green font.

The 2013 manual updates/changes/additions are in blue font.

I. Statement of the Problem, Purpose and Contents

A. The Problem

1. Some Concerning Statistics

a. United States

Domestic Violence (“DV”) is a significant problem throughout the United States. The National Violence against Women Survey estimated that women are raped or physically assaulted by intimate partners 1.3 million times each year. (Tjaden and Thoennes, National Institute of Justice and the Centers for Disease Control and Prevention, 2000). In this country, 1,640 women were murdered by intimate partners in 2007. (Catalano, Smith, Snyder and Rand, 2009). According to a recent study, 24% of women will experience domestic violence in their lifetimes. (The Behavioral Risk Factor Surveillance Study; Center for Disease Control and Prevention, 2008). **Moreover, more than one million adults in the United States are stalked each year by current or former intimate partners. (K. Baum et. al, Stalking Victimization in the United States, Bureau of Justice Stat. Special Report (2009)).**

b. Missouri

22% of Missouri women reported being physically hurt by an intimate partner at some point in their lives. (Mo. Department of Health and Senior Services, 2007). In 2009, 36,943 incidents of domestic violence were reported to law enforcement officers. (Mo. Statistical Analysis Center, 2009). That same year, 43,820 Adult Orders of Protection were filed in Missouri. (Mo. Office of the State Court Administrator, 2010). These numbers are staggering enough; however, they do not come close to measuring all of the acts of domestic violence in this state, as most such acts go unreported. (The National Coalition Against Domestic Violence, citing Violence in Marriage by I.H. Frieze and A. Browne, 1989). It is estimated that only 25% of all physical assaults and only 20% of all rapes are reported to law enforcement officers. (Tjaden and Thoennes, 2000). **(Some studies, such as the National Crime Victimization Survey, estimate that only 10% of all domestic violence incidents are reported.)**

c. St. Louis County

St. Louis County is hardly immune to the problem of domestic violence. The County rate of domestic violence is consistent with the Missouri statistics. The St. Louis County Police Department responded to 3,790 domestic violence calls in 2009; this does not include any of the calls responded to by the municipal police departments. (ALIVE: “Uniform Crime Statistics.”)

That same year, 5200 adult/child petitions for orders of protection were filed in St. Louis County. Addressing DV can get especially complicated in St. Louis County: the 62 police departments (for 92 municipalities) have, not surprisingly, drastically different approaches to DV calls.

Some departments have staff dedicated to DV matters; other departments, despite the many statutory mandates, do not seem to treat DV cases any differently than they would treat routine assault matters.

2. Some Consequences of Domestic Violence

a. Effects on Children

Leading experts estimate that, each year, **approximately 15.5 million children** are exposed to domestic violence in the United States. **Moreover, seven million children live in households in which severe domestic violence has occurred.** [Charles Whitfield, “Violent Childhood Experiences and the Risk of Intimate Partner Violence in Adults,” 18 J. Interpersonal Violence 166 (2003)]. Those children in homes where there is domestic violence against parents/caregivers are fifteen times more likely to be victims of physical abuse themselves than those children in homes without domestic violence. [Edleson, J.L., Ellerton, A.L., et al., “Assessing Child Exposure to Adult Domestic Violence,” Children and Youth Services Review, 29(7), 961-971 (2007); Osofsky, J.D., “The Impact of Violence on Children,” The Future of Children: Domestic Violence and Children (1999)]. The long-lasting direct effects of abuse are hardly surprising. What one may find surprising are the indirect effects of physical abuse -- when a child “merely” witnesses the violence...

i. Psychological Effects

A child’s witnessing domestic violence can have an alarming effect on his/her psychological development. Childhood exposure to domestic violence often causes increased displays of aggressive behavior, increased emotional problems (such as depression and/or anxiety), lower levels of social competence, and poorer academic functioning. Children who have witnessed domestic violence often exhibit the same levels of post-traumatic stress disorder as those children who had been direct victims of physical abuse. In many instances, severe emotional trauma is evident in untreated children many years after they have been removed from their abusive environments. [Fantuzzo, J.W. & Mohr, W.K., “Prevalence and Effects of Child Exposure to Domestic Violence,” The Future of Children (1999)].

Domestic violence can have very gender-specific psychological effects on children. The leading predictor of violent behavior in men is their witnessing domestic violence as a child. (“Startling Statistics,” Break the Cycle, 2006). Boys who witness domestic violence are twice as likely (as boys who do not witness DV) to be perpetrators themselves. (Straus and Gelles, Physical Violence in American Families: Risk Factors and Adaptations to Violence..., 1990).

Women who indicated that they had witnessed domestic violence as children reported higher psychological distress and worse social adjustment than those women who had not witnessed such violence. Furthermore, girls who have witnessed domestic violence are more likely to be victims of domestic violence in their own adult relationships. Such re-victimization may lead to greater difficulties in adulthood due to the domestic violence’s causing and/or hastening the development of mental health challenges, such as post-traumatic stress disorder and depression. [Davis, J. & Briggs, E., National Violence against Women Prevention Center (2003)].

ii. Physiological Effects

Perhaps what is most shocking about a child’s witnessing domestic violence is the impact on his/her physiological development. When a child is exposed to such extreme stress, even if at a very young pre-verbal age, his/her brain’s chemical changes (caused by the trauma of the domestic violence) can severely disrupt or alter the brain development processes. [Lehman, C., “Abuse Said to Interfere with Child Brain Development,” Psychiatric News 37(1), 23 (2004)]. More specifically, such emotional trauma “can cause antisocial behavior by over-excitation of the limbic system, the primitive midbrain region that regulates memory and emotion, and the prefrontal cortex, which is associated with judgment, consequential thinking and moral reasoning.” [“The Neurobiology of Child Abuse,” Training and Research Institute (2004)]. Furthermore, recent research done by Harvard and Kumamoto (Tokyo, Japan) Universities found that people who had witnessed DV between their parents eventually developed a significantly smaller visual cortex (which processes information in the brain from the eyes).

b. Health Concerns

As with children, severe and frequent abuse by an intimate partner can cause serious health problems for adults, both physically and psychologically. Outside of the health conditions typically associated with physical violence (i.e., bruises, abrasions, broken bones, etc.), such abuse creates chronic stress which affects the endocrine and immune systems. Consequently, domestic violence can cause ailments such as fibromyalgia, irritable bowel syndrome, gynecological disorders, pregnancy difficulties (like low birth weight babies and perinatal deaths), sexually transmitted diseases (including HIV/AIDS), central nervous system disorders, gastrointestinal disorders and heart/circulatory conditions.

Furthermore, domestic violence can cause female victims to be much more likely to attain serious ailments [strokes (80%), heart disease (70%) and asthma (60%)] than women who have not experienced domestic violence. [Centers for Disease Control and Prevention, “Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence Morbidity and Mortality Weekly Report” (2008)].

In addition, intimate partner violence – whether sexual, physical, or emotional – can lead to various psychological problems for victims (similar to those previously described with child victims). These include (but are not limited to) depression, suicidal behavior, anxiety, low self-esteem, post-traumatic stress disorder, sleep disturbances and emotional detachment. (National Coalition against Domestic Violence & Centers for Disease Control and Prevention). Women who have experienced domestic violence are 70% more likely to drink heavily than women who have not experienced domestic violence. (Same 2008 Centers for Disease Control article from previous cite.)

c. Shelter Crisis

As the number of victims of domestic violence has increased over the years, the number of available beds in Missouri’s shelters has unfortunately not increased at the same rate. In 2009, 10,506 women and their children (and some men) received shelter from the Missouri domestic violence shelters; however, many people were turned away because the shelters were full -- amounting to 15,106 women and their children (and some men). (“2009 Statistics,” Missouri Coalition against Domestic and Sexual Violence). This 2009 figure represents a 60% increase over the number of people that were turned away during the previous year...

The shelter situation in St. Louis County is very concerning. With more than one million inhabitants, St. Louis County has only one domestic violence shelter, the Kathy J. Weinman Shelter. The Weinman Shelter has only 50 beds (which are used not only for victims, but for their children too). In 2009, the shelter served 168 victims of domestic violence (and their families). That same year, the Weinman Center turned away 1719 requests for shelter. (Weinman Center Statistics).

The St. Louis metropolitan area outside of St. Louis County does not fare much better. There are only three additional shelters: Bridgeway (St. Charles), St. Martha’s Hall (St. Louis City) and the Women’s Safe House (St. Louis City). Between the three of them, only 88 people can be housed each night. The shelter shortage is very apparent when one considers that the smaller Kansas City metropolitan area has more than twice the bed spaces as the St. Louis County metropolitan area. Needless to say, the shelters are nearly always filled to capacity. More than half of the people that were turned away from Missouri shelters were from the St. Louis region.

The shelter crisis continues to worsen. In 2009, the number of people who were turned away from Missouri shelters, due to the unavailability of bed spaces, represented a 60% increase over the previous year's numbers. The Bridgeway shelters have received 89% more requests for shelter in 2009 than they had received in 2008.

To address some of this huge shortcoming, St. Louis agency ALIVE ("Alternatives to Living in Violent Environments") provides a "Nights of Safety" motel sheltering program. While this program is a much needed safety net for the community, a motel clearly does not provide the ideal placement for troubled, frightened adult and child victims of domestic violence.

d. Costs

The costs associated with domestic violence are staggering. The health care costs (for both medical and mental health care services) of domestic violence in the United States **ten years ago and the** additional costs in productivity losses -- associated with injuries and premature death - - are estimated to have **totaled \$8 billion per year.** [Wendy Max et al., "The Economic Toll of Intimate Partner Violence against Women in the United States," 19 Violence and Victims 359 (2004)].

Victims of intimate partner violence lost nearly 8 million days of paid work **each year** because of the violence perpetrated against them by current or former intimate partners. This loss is the equivalent of more than 32,000 full-time jobs and almost 5.6 million days of household productivity as a result of violence. (National Coalition against Domestic Violence & Centers for Disease Control and Prevention).

B. Purpose and Contents of this Manual

The purpose of this manual is to provide a reference to statutes, rules, procedures, programs and resources relating to DV. A greater awareness of such information will hopefully encourage a more unified and more sensitive approach to the handling of domestic violence matters in St. Louis County.

This manual includes the following:

1. A description of the types of Orders of Protection ("O/Ps") and the available relief. **(Section II).**
2. A description of the authorized process to obtain an O/P, including the "after hours" process, as prescribed by the Missouri Supreme Court. Special emphasis is given to the law enforcement component to this process. Numerous related forms are provided. **(Sections III and IV).**

3. A description of the law enforcement and courthouse procedures after a judge signs the Order of Protection. This section pays particular attention to electronic systems that law enforcement agencies use to share O/P information. **(Section V).**

4. The mandated procedures that local police must follow relative to DV cases. Some of the procedures pertain to:

- a. probable cause issues [Sect. 455.085.2, Revised Statutes of Missouri (“RSMo”)];
- b. designations regarding “primary physical aggressor(s)” (Sect. 455.085.3, RSMo);
- c. refusal to surrender custody of children (Sect. 455.085.7 & 8, RSMo);
- d. returning to the scene with reports of prior violations (Sect. 455.080.1, RSMo);
- e. standards and priorities (Section 455.080.2, RSMo);
- f. domestic crisis teams (Sect. 455.080.3, RSMo);
- g. informing the abused of judicial remedies and shelters (Sect. 455.080.4, RSMo);
- h. provision of transportation (Sect. 455.080.5, RSMo);
- i. recognition of foreign O/Ps (Sect. 455.067, RSMo);
- j. timely compliance with the Missouri Uniform Law Enforcement System (“MULES”) (Sect. 455.040.3, RSMo); and
- k. an officer’s responsibility to encourage petitioners to file an O/P (Sect. 455.085.2, RSMo). **(Section VI).**

5. A description of the police procedures relating to child victims of abuse/neglect. **(Section VII).**

6. A description of the additional statutory provisions that protect elderly victims of abuse. **(Section VIII).**

7. A description of the newly formed Domestic Violence Court and its criminal and civil contempt proceedings. (Law enforcement officers should make themselves aware of the contempt process which gives DV victims a new recourse if the respondent should violate the O/P.) **(Section IX).**

8. A listing and description of the domestic assault criminal offenses (and related offenses) that carry enhanced sentencing provisions (more than the traditional assault charges) solely because of the relationship between the victim and the offender. Furthermore, this manual includes a listing of the provisions relating to the aforementioned DV offenses that allow for additional sentencing enhancements if the offender had prior convictions for state DV offenses (and typically not for municipal DV offenses nor standard state assault offenses). **(Section X).**

9. A description of the requirements and the challenges related to victimless prosecutions. **(Section XI).**

10. A listing and description of firearms statutes (both state and federal) that related to DV. **(Section XII).**

11. A listing of other federal offenses (that can be triggered because of alleged acts of DV). **(Section XIII).**

12. A brief description of immigration policies that pertain to DV. **(Section XIV).**

13. A brief general description of the rights afforded to victims of crimes in Missouri. **(Section XV).**

14. A listing of resources for domestic violence victims and offenders. **(Sections XVI and XVII).**

15. A flow chart that describes the various considerations behind the issuance of an *ex parte* order of protection **(Attachment 1).**

II. Orders of Protection – Statutory Requirements and Relief

Chapter 455 of the Revised Statutes of Missouri provides for two separate causes of action: an **Adult Abuse Order of Protection** (“AOP”) and a **Child Order of Protection** (“COP”). Chapter 455 also addresses the two types of Orders of Protection for each cause of action. An ***Ex Parte Order of Protection*** is “an order of protection issued by the court before the respondent has received notice of the petition or an opportunity to be heard on it.” [Sects. 455.010 (4) and 455.501 (5), RSMo.] A **Full Order of Protection** is “issued after a hearing on the record in which the respondent has received notice of the proceedings and has had an opportunity to be heard.” [Sects. 455.010 (6) and 455.501 (6), RSMo.]

As described in this section, the differences between the causes of action involve more than the age of the alleged victim. Both the requirements necessary to attain protection and the available terms of relief are different for each cause of action. Further, there are significant differences in the relief that can be provided by an *Ex Parte* Order and a Full Order for the same cause of action. This section addresses these differences and similarities. [Experts agree that, in most instances, orders of protection are not meaningless pieces of paper. Between 30 percent and 77 percent of victims report that receiving the order immediately stops the violence. Even when offenders violate the protective orders, the orders are often effective at decreasing the severity and frequency of the violence. T. K. Logan and Robert Walker, “Civil Protective Order Outcomes: Violations and Perception of Effectiveness,” 24 J. Interpersonal Violence 675, 677 and 687 (2009).]

Many petitioners do not return to court to obtain a full order because the respondents’ actions have stopped, suggesting that merely “being the subject of the court’s attention can influence the perpetrator(s)’ behavior.” [Susan L. Keilitz et al, National Center for State Courts Civil Protection Orders: the Benefits and Limitations for Victims of Domestic Violence (Pub. No. 201) (1997).] Of course, many victims do not return to court because of the respondents’ threats and abuse ... (The ways to enforce orders of protection are discussed further in this manual.)

A. Ex Parte Orders of Protection

1. Threshold Issues – Prerequisite Information

Ex parte petitions will not necessarily be reviewed by judges – unless they satisfy certain statutory obligations. A petitioner cannot obtain any *ex parte* relief whatsoever unless she/he meets the threshold requirements described in this section. The failure to meet all of the first three (four, if a COP) requirements warrants an outright dismissal. The failure to meet the last three requirements may warrant dismissal or merely mean that the selected county for filing is not the appropriate place to do so. If the petitioner satisfies all of the stated requirements, she/he can proceed to address the further considerations in the flow chart and outline (See Attachment 1, at the end of this manual).

a. Necessary Relationship between Parties

i. Domestic Violence ¹ (Abuse) Allegation

¹ The statutory definition of “domestic violence” is “abuse or stalking committed by a family or household member.” Section 455.010 R.S.Mo. 2013. The use of the term “domestic violence” for this type of protective order is confusing as it contrasts with “stalking.” However, as the following sections will demonstrate, the “domestic violence” stalking requires the respondent to be a family or household member, whereas the (simple) “stalking” allegation appears to be reserved for situations where the respondent is not a family or household member.

aa. Adult Order of Protection (“AOP”) – Respondent’s relationship to Petitioner: present or former “family or household member” (“FHM”) (i.e., spouse, relative by blood or marriage, cohabitant, individual in a continuing social relationship of a romantic or intimate nature with Petitioner, or person who has a child in common with Petitioner, regardless of whether the parties have been married or have resided together). As of 2013, the definition of FHM also includes “child.” Sections 455.020.1 and 455.010(7), RSMo 2013.

bb. Child Order of Protection (“COP”) – Respondent’s relationship to child: present or former “household member” (see definition above). Sections 455.505.1 and 455.010(7), RSMo 2011. (Note – no mention of “family member” here – but the definition of “household member” is the same as the above definition of FHM.)

ii. Stalking allegation

aa. AOP -- No relationship necessary. Section 455.020.1, RSMo 2011.

bb. COP -- No relationship necessary. Section 455.505.1, RSMo 2011.

b. Age of Alleged Victim

i. AOP (Petitioner) -- 17 years of age or older (unless otherwise emancipated). Section 455.020.1, RSMo 2011. (Presumably as of the date of the filing . . .)

ii. COP (Child) -- Younger than 17 years of age. Section 455.505.1, RSMo 2011.

c. Age of Respondent

i. AOP – Any age. Section 455.020.1, RSMo 2011.

ii. COP – Any age. Section 455.505.1, RSMo 2013. (From 2011 to 2013, a respondent for a COP could be any age for stalking allegations, but had to be an adult for domestic violence allegations.)

d. Special COP Requirement as to the Relationship between Petitioner and the Child -- Petitioner must be a parent, guardian, guardian ad litem, court-appointed special advocate, or a juvenile officer of the child. Section 455.503.2, RSMo.

e. Location of Petitioner (JURISDICTION #1)

i. AOP – Must be present within the state of Missouri (“permanently or on a temporary basis”). Section 455.032, RSMo.

ii. COP -- No such requirement.

f. Location of Respondent’s Actions (JURISDICTION #2)

i. AOP-- Must “have occurred, have been attempted, or have been or are threatened within the state of Missouri.” Section 455.032, RSMo.

ii. COP-- No such requirement.

g. Venue

i. AOP – In the county where Petitioner resides, where the alleged act of [domestic violence](#) occurred, or where Respondent can be served (as opposed to where Respondent resides...). Section 455.015, RSMo. Supp. 2013. [Domestic violence](#) is defined as “abuse or stalking committed by a family or household member.” 455.010 RSMo. Supp. 2013. A COP covers both abuse and stalking. Whether there is a different venue for stranger stalking for AOP and stalking by a family or household member is unclear.

ii. COP – In the county where the child resides, where the alleged incident of “domestic violence” or stalking occurred, or where Respondent may be served. Section 455.503.1, RSMo Supp. 2013. This language appears to be broader for COPs, because it includes the county wherein the incident of “domestic violence or stalking” occurred, not just where the incident of “domestic violence” occurred. This remains a bit unclear, though, as “domestic violence” includes “stalking” by a family or household member.

If the criteria are met for all seven of these requirements, proceed to the Flow Chart, Attachment 1, at the back of this manual, for additional considerations.

(Checklists – that address all the above “qualifiers” -- are available for officers to determine if the judge can even consider the petitions. See Addendum D.)

2. Necessary Allegations to Attain a Hearing

The law is somewhat unclear on what the petitioner must include in her/his petition to cause the court to set the matter for a hearing.

On the one hand, it would seem logical that the petitioner must at least allege whatever is necessary to ultimately get relief at the hearing. (As is indicated in Subsection II.B.1.b, the petitioner must prove at the hearing that the respondent abused or stalked her/him.) Consequently, it would seem that the petitioner must at least allege abuse or stalking in her/his petition.

On the other hand, the petitioner may arguably proceed to her/his hearing without satisfactorily pleading abuse or stalking in her/his petition. The order of protection statutes do not provide any authority for a court to dismiss an order of protection petition outright – even if the allegations are woefully inadequate for relief at a full hearing. It would seem, therefore, that every petition would warrant a hearing. This extremely cautious approach seems to be preferable ...

3. Necessary Allegations to Attain Ex Parte Relief

To obtain *ex parte* relief, the petitioner must allege:

- **for AOPs: “good cause shown” (e.g., an “immediate and present danger of abuse”) in the petition.** Section 455.035.1, RSMo.

- **for COPs: “good cause shown” in the petition and no prior or pending order of custody or the respondent is less than seventeen years of age.** Section 455.513.1, RSMo 2011.

For both AOPs and COPs: other than an “immediate and present danger of abuse” to the petitioner or child, it is unclear as to what other situations would constitute “good cause.” It would seem logical, however, that “good cause shown” would include an “immediate and present danger of stalking.” It is necessary, therefore, to consider the meaning of the words “abuse” and “stalking” ...

a. What is “Abuse”?

Chapter 455 provides detailed descriptions of acts that constitute “abuse.” “Abuse” includes, but is not limited to, the occurrence of any of the following acts, attempts, or threats against a person who may be protected, pursuant to Chapter 455:

- **Assault:** “Purposely or knowingly placing or attempting to place another in fear of physical harm.” Section 455.010(1) (a), RSMo.

- **Battery:** “Purposely or knowingly causing physical harm to another with or without a deadly weapon.” Section 455.010(1) (b), RSMo. However, the definition of “abuse” shall not include abuse inflicted on a child by accidental means by an adult household member or discipline of a child, including spanking, in a reasonable manner. Section 455.010(1), RSMo 2011.
- **Coercion:** “Compelling another by force or threat of force to engage in conduct from which the latter has a right to abstain or to abstain from conduct in which the person has a right to engage.” Section 455.010(1) (c), RSMo.
- **Harassment:** “Engaging in a purposeful or knowing course of conduct involving more than one incident that alarms or causes distress to an adult or child and serves no legitimate purpose. The course of conduct must be such as would cause a reasonable adult or child to suffer substantial emotional distress and must actually cause substantial emotional distress to the petitioner or child.” Section 455.010(1) (d), RSMo.
Some examples of harassing conduct include “following another about in a public place or places,” or “peering in the window or lingering outside the residence of another.” Note that “[c]onstitutionally protected activity is not meant to be included here.” Section 455.010(1) (d), RSMo.
- **Sexual Assault:** “Causing or attempting to cause another to engage involuntarily in any sexual act by force, threat of force, or duress.” Section 455.010(1) (e), RSMo.
- **Unlawful Imprisonment:** “Holding, confining, detaining or abducting another person against that person’s will.” Section 455.010(1) (f).

Although the statute provides that **other acts of “abuse”** can be considered, the statute does not provide any guidelines for determining what other acts would constitute “abuse.” Nonetheless, the scope of acts that can be deemed to be “abuse” by the current statute (as described above) is extremely broad, encompassing most unwanted acts between two people. NOTE: the 2011 provisions revised the definition of COP “abuse” – the definition is now the same as AOP “abuse” (as described above).

b. What is “Stalking”?

Chapter 455 defines “stalking” as “when any person purposely and repeatedly engages in an unwanted **course of conduct** that causes **alarm** to another person when it is reasonable in that person’s situation to have been alarmed by the conduct.” Section 455.010(13), RSMo.

i. “Course of conduct”

“Course of conduct” is a “pattern of conduct composed of **repeated acts over a period of time, however short**, that serves **no legitimate purpose**.” Section 455.010(13) (b), RSMo.

aa. “Repeated”

“Repeated means “two or more incidents evidencing a continuity of purpose.” Section 455.010 (13) (c), RSMo. The case law seems to suggest that the respondent’s “second act” must occur during a separate encounter between the parties. The appellate courts generally frown on counting a series of events that occur consecutively as a “course of conduct” (despite the definition’s inclusion of the term “however short” when describing the permissible time between acts...).

bb. “No legitimate purpose”

There needs to be a distinction made between those situations that involve legitimate activities that arguably cause alarm in and of themselves, and those situations that involve legitimate activities that generate acts that serve no legitimate purpose. The stalking statutes rule out the former situations. Indeed, the respondents have the right to engage in legitimate activities such as exchanging children pursuant to a visitation schedule, collecting rent and acting as a bodyguard. These activities may cause alarm (both subjectively and objectively) but they serve legitimate purposes.

The latter situations, however, are more problematic. While the respondents have the right to be engaged in the described legitimate business matters, they obviously cannot make threatening and inappropriate remarks while engaged in the legitimate activities. Such actions go beyond the scope of any legitimate activity. They are clear examples of stalking.

ii. “Alarm”

“Alarm” is the **“fear of danger of physical harm.”** Section 455.010(13)(a), RSMo. The petitioner must establish “alarm” in both a subjective and objective sense. First, the respondent must have actually caused the petitioner to have fear of danger of physical harm. Second, that fear must be that which a reasonable person would have. [The appellate courts have recently suggested that the victim be alarmed in all of the incidents that comprise stalking.](#) Moreover, recent appellate decisions have found that “fear of danger of physical harm” is not from the following:

- annoying behavior;
- behavior that is merely “stressful”;
- “vulgar or boorish” behavior;
- the threat of losing one’s job; or
- the threat of litigation.

Such behavior or threats cannot be the basis for a stalking petition.

The courts are often plagued with AOPs that allege “stalking” by neighbors. In many instances, the **“neighborly” disputes** are very upsetting, perhaps causing much unnecessary stress. However, the acts oftentimes do not cause “fear of danger of physical harm” nor would they cause a **reasonable person** to suffer from such fear. Even if no reasonable cause for alarm is alleged, the judge must order that a summons be issued. The request for an O/P **cannot** be denied outright. [\(While unclear, there does not seem to be authority to do so ...\)](#) Sects. 455.010(13) and 455.010(1) (d), RSMo 2011. The courts are very concerned that some neighbors may have their hopes for relief built up (perhaps because they were told that the courts can provide the relief they need) – and consequently knocked down when their claims are presented to a judge [at a full hearing](#). In some instances, such a result could empower the abusive neighbor...

iii. Other options – if the respondent is/was a “family or household member”

As can be seen, much has to be [alleged](#) to successfully [obtain an *ex parte* order of protection in a](#) stalking case. Petitioners have a lesser burden when presenting certain abuse allegations that have similar elements to a stalking allegation.

If the respondent is deemed to be a “family or household member,” the petitioner could consider filing her or his petition on the basis of one form of abuse – “**assault.**” “Assault” is defined as “purposely or knowingly placing or attempting to place another in fear of physical harm.” Section 455.010 (1) (a), RSMo.

Another possibility, if appropriate, would be **attempted “battery.”** The requisite intent would be much less than that of stalking ... Note that, unlike the situation with stalking, neither an assault nor an attempted battery has any subjective or objective fear test (as to the victim) requirement. The only issue relates to the respondent’s intentions.

If the parties are “family or household members,” the petitioner could consider another form of “abuse”: “**harassment.**” Harassment requires the petitioner to establish that the respondent’s course of conduct would cause a reasonable adult to suffer “substantial emotional distress” and actually cause such distress to the petitioner. While such requisite proof is significant, it is less than the necessary proof of “reasonable fear of danger of physical harm.” This distress need not be so severe “as to be unendurable by the average person.”

For definitions of these forms of abuse, see the preceding Subsection II.A.3.

4. Court Options

a. If No Allegation of Abuse or Stalking is Made

If an allegation of abuse or stalking is not made, *ex parte* relief cannot even be considered. Nonetheless, a hearing should be set. **The judge should issue a summons to the respondent (to appear in court for the full hearing). The statutes provide the trial courts with no authority to dismiss the petitions outright.**

b. If Abuse /Stalking is Alleged and Good Cause is Established

If an allegation of **domestic violence** or stalking is made and upon “good cause shown,” the court may issue an *ex parte* order and **should** set the matter for a hearing. Sections 455.035.1, 455.513.1, and 455.505.1, RSMo Supp. 2013. Even if the petitioner demonstrates “good cause,” the judge has the discretion to deny the *ex parte* relief.

c. If Abuse/Stalking is Alleged and Good Cause is Not Established

If the petition does not establish an “immediate and present danger of abuse,” the judge **should** issue a summons to the respondent (to appear in court for the full hearing). Sections 455.035.1 and 455.513.1, RSMo.

5. Available Relief

The purpose of an *Ex Parte* Order of Protection is to protect the petitioner (or child) from acts of domestic violence or stalking committed by the respondent. Sections 455.045 and 455.520.1, RSMo Supp. 2013. The *Ex Parte* Order may provide any of the following types of relief:

a. Restrain the Respondent from Committing or Threatening to Commit Domestic Violence, Stalking, Molesting, or Disturbing the Peace of the Petitioner.

Sections 455.045(1), and 455.520.1(1), RSMo Supp. 2013.

[NOTE: Section 455.010, RSMo provides no definition of "molesting" or "disturbing the peace."] [ALSO NOTE: This restriction applies to both adult and child orders of protection – although the COP statute fails to explicitly authorize the judge from prohibiting stalking. However, the judge has the authorization to include any additional terms he or she deems necessary to ensure the petitioner’s safety. Section 455.520.1, RSMo 2011. See Subsection II.A.5.e]

b. Restrain the Respondent from Entering the “Dwelling Unit of Petitioner” [COPs: “Family Home of the Victim”]. Sections 455.045(2) and 455.520.1(2), RSMo.

[NOTE: For COPs, in order for the judge to remove the respondent from the residence, the court must make certain findings (as described in the Flow Chart, Attachment 1, at the end of this manual). These required findings are not necessary when the court considers excluding the respondent from the home in a Full Order of Protection. Section 455.523, RSMo]

c. Restrain the Respondent from Communicating with the Petitioner [the Victim] in Any Manner or through Any Medium. Sections 455.045(3) and 455.520.1(3), RSMo 2011.

d. Establish a Temporary Order of Custody of the Parties’ Children. Sections 455.045(4) and 455.520.1(4), RSMo.

There are many considerations that the court must make relating to the issuance of a custody term:

i. Paternity

Of course, if the petitioner is the father, he cannot obtain any custody rights until paternity has been established. (See endnote “I” of the flow chart, which addresses how a father could establish paternity...)

ii. Prior/pending custody order

In general, judges may not include a custody provision in an order of protection if custody had been awarded on a previous occasion. For *ex parte* AOPs, a judge may arguably not address custody if an action for dissolution of marriage has been filed or if custody has been previously ordered. Section 455.060.6, RSMo 2011.

For COPs, a court may not issue an *Ex Parte* Order of Protection if a “prior order regarding custody is pending or has been made.” (Note that the existence of such a prior order does not prevent the court from issuing a Full Child Order of Protection. In such an instance, the court merely cannot issue a custody term. Section 455.523.2, R.S.Mo.). Section 455.513.1, RSMo. “Pending” is defined as “exists, or for which a hearing date has been set.” Section 455.010(10), RSMo 2011. The revised COP statute appears to provide for one unusual exception: when the respondent is less than 17 years old. Section 455.513.1, RSMo 2011. However, Section 455.513.4 states that if the respondent is under 17 years old, the court may issue an *ex parte* order and shall transfer the case to juvenile court for a hearing on a full order. Section 455.513.4 RSMo Supp. 2013.

Subject to these conditions, the court may issue an *ex parte* order if there is “good cause shown in the petition.” “Good cause” for purposes of the statute means “immediate and present danger of abuse to a child.” Section 455.513.4 RSMo Supp. 2013.

[One other exception: See Section 452.755.1, RSMo 2011, regarding “temporary emergency custody” matters.]

iii. Visitation

Unlike the relief available from a Full Order of Protection, the *Ex Parte* Order’s statutory provisions are silent on the issue of visitation. However, it is difficult to envision how the trial court could award physical custody of a child to one parent and in every instance, never allow the other parent to have any sort of visitation with his/her children. In many instances, an award of custody to one parent would seem to warrant the granting of visitation rights to the other parent.

iv. Domestic violence considerations

In determining its custody award, the court must adhere to the Chapter 452 requirements (*re*: considerations and specific findings) when a finding of domestic violence has been made. Sections 452.375.2(6) and 452.375.13, RSMo. The court is required to consider all relevant factors, including the presumption that the best interests of the child will be served by placing the child in the custody of the non-abusive parent. If, however, there is evidence that both parents have engaged in abusive behavior, the court shall not consider this presumption and may appoint a guardian *ad litem* or a court-appointed special advocate to represent the child. Section 455.050.5, RSMo.

e. Provide any Additional Terms “as the Court Reasonably Deems Necessary to Ensure the Petitioner’s Safety.” Sections 455.050.1 and 455.520.1, RSMo 2011.

(See Sub Section II.B.3.j of the next Section.)

6. When Does the Ex Parte Order Take Effect?

“An *ex parte* order of protection (entered prior to a hearing before a judge) ... shall take effect when entered and shall remain in effect until there is valid service of process and a hearing held on the motion.” (For both AOPs and COPs). (This is also the situation for full orders of protection. See Subsection II.B.3.j.)

“Failure to serve an *ex parte* order... on the respondent shall not affect the (order’s) validity or enforceability.” (Sects. 455.035, 455.513.1, RSMo).

[NOTE: This does not mean that a respondent who was unaware of the O/P can be arrested for allegedly violating the O/P. However, as soon as he/she is notified of the O/P (which is usually done by serving him/her with a copy thereof), he/she can be arrested immediately upon his/her committing a recognized criminal violation.]

7. Setting the Full Order of Protection Hearing

a. Must be Set within 15 Days

When issuing the *Ex Parte* Order, the judge must set the full hearing within fifteen days of the petitioner’s filing her/his petition. For “good cause shown,” the judge may allow additional time to hear the matter. Sections 455.040.1 and 455.516.1, RSMo. The failure to have a timely full hearing (without good cause) dissolves the O/P after the fifteenth day – but does not take away jurisdiction from the judge to hold the full hearing.

b. The Respondent May Seek to Expedite the Hearing Setting

Chapter 455 does not have any provision that authorizes the respondent to move up his or her full hearing court date. However, according to Missouri Supreme Court Rule 92 (which addresses injunctions), upon the service of a temporary restraining order on the respondent, the respondent has the right to request an expedited hearing. In the event that the respondent is granted an expedited hearing, that hearing may occur upon one day's notice to the petitioner. Rule 92.02(b). The Missouri Supreme Court has indicated that the rule is "applicable to orders issued under the (Adult Abuse) Act."

8. Juvenile Respondents

The 2011 legislative revisions provide for O/P relief against juvenile respondents. In most instances, when a petitioner seeks an O/P against a person who is under the age of 17 years old, the judge signs an *ex parte* O/P and transfers the matter to the juvenile court. Section 455.035.3, RSMo Supp. 2013. Any petitioner can obtain an O/P against a juvenile respondent whether the allegation involves abuse or stalking. Section 455.020.1, RSMo Supp. 2013.

If a respondent is under 17 years old, unless he or she is emancipated, service of process for the *ex parte* O/P must be made upon the respondent's custodial parent or guardian, or upon a court-appointed guardian ad litem. That person on whom the order is served must appear and bring the respondent to the court at the ordered time and place. Section 455.035.2, RSMo Supp. 2013.

9. Public Access to the Order

As of Jan. 1, 2010, information about *Ex Parte* Orders of Protection is no longer available to the public (on "Case.net"). Such information is available to law enforcement agencies under "Secure Case.net.") Furthermore, only active *Ex Parte* Orders are available electronically to law enforcement.

B. Full Orders of Protection

1. What Constitutes a Full Hearing?

a. Constitutional Guarantees

Before the entry of a full order of protection, the court must hold a full hearing. Section 455.040, RSMo. As the case law indicates, the judge must ensure that certain basic rights be provided at all hearings.

These rights are elementary – the right to have adverse witnesses sworn and cross-examined and the right to present evidence (through witnesses and documents). Such rights must be afforded during both the initial hearing (to determine whether or not an O/P should be issued) and any subsequent hearing to determine the specific terms of the order (e.g., the amount of child support, the custodial/visitation arrangements, etc...).

The court’s failure to ensure that such rights are provided warrants a reversal and remand (for an evidentiary hearing). (In one recent case, the court inappropriately directed its own inquiry — to the exclusion of any of the parties’ input — on the issues of child custody and support, after the parties stipulated to the entry of a full order of protection without such terms.)

Of course, a respondent can waive his or her rights to participate in a full hearing as described above.

b. Burden of Proof

At the hearing, to attain an order of protection, the petitioner must prove, by a preponderance *of the evidence*, that the allegations of abuse or stalking against the respondent are true. Section 455.516.1, RSMo. A preponderance of the evidence is defined as “that degree of evidence that is of greater weight in opposition to it; that is, evidence which as a whole shows the fact to be proved to be more probable than not.”

c. Special COP Considerations

The hearing for a full Child Order of Protection may be open or closed, at the discretion of the court, on the basis of the best interest of the child. Section 455.516.1, RSMo.

The court may allow as evidence any *in camera* videotape made of the testimony of the child in accordance with Section 491.699, RSMo. Section 455.516.1, RSMo.

The provisions of Section 491.075, RSMo, relating to the admissibility of statements of a child under the age of 14, are applicable (requiring a separate hearing to determine whether the out-of-court statements have a “sufficient indicia of reliability,” which would warrant their admission). (Note: There is no requirement for such a hearing at an AOP proceeding.) Section 455.516.1, RSMo.

2. Court Discretion

For Adult O/Ps, the court has **limited discretion**. Section 455.040.1, RSMo indicates that if the adult petitioner has proved by a preponderance of the evidence that the respondent abused or stalked her/him, **and the respondent cannot show that his or her actions were otherwise justified under the law**, a Full O/P shall be issued. This would be the case, regardless of:

- the remoteness of the proven incident;
- the severity of the assault;
- the level of fear that the petitioner has.

(NOTE: the Missouri appellate courts disagree on whether or not the judge must issue the full order when abuse or stalking has been proven – no matter what the circumstances are, even if there is no “immediate and present danger of abuse” – as is required to attain an *ex parte* order of protection.)

(NOTE: 2013 legislation clearly authorized judges the discretion to deny a full order of protection if abuse were proven in very limited circumstances: in those situations in which the respondent has demonstrated that his/her actions were lawful – e.g., self-defense.)

For Child O/Ps, however, if the petitioner has proved the allegations of domestic violence against the respondent by a preponderance of the evidence, the court may issue a Full O/P. Section 455.516.1, RSMo 2011.

Of course, if the petitioner has not proven that the respondent has committed an act of abuse or stalking, the petition must be denied. Sections 455.035 and 455.513, RSMo.

3. Available Relief

The purpose of a Full Order of Protection is to protect the petitioner (or child) from acts of “domestic violence” (**which is defined as “abuse or stalking committed by a family or household member”**) or stalking committed by the respondent. Sections 455.050.1, 455.523.1, and 455.010 RSMo Supp. 2013.

In addition to all of the relief that can be given from an *Ex Parte* Order of Protection (*see* Subsection II.A.5), the Full Order of Protection may also include the following types of relief:

- a. **Establish a Visitation Schedule for the Parties’ Child.** Sections 455.050.3(2) and 455.523.2(2), RSMo.

[NOTE: For AOPs and COPs, a court cannot change a prior or pending order of custody (*see* Sections 455.050.3(1) and 455.523.2(1), RSMo), but case law has established that it can change the visitation arrangements.]

[NOTE: While the court is generally prohibited from changing the prior or pending custody arrangements for a full order of protection (Sections 455.060.6 and 455.523.2(1), RSMo 2011), the court arguably may restrict a respondent from communicating with his/her child by any means or through any medium (Sections 455.050.1(3) and 455.523.1(3), RSMo 2011). Thus, a respondent who had previously been awarded custody of his/her child could arguably (and illogically perhaps) receive a COP that prohibits him/her from having any communication with the child, while at the same time, the previous custody order remains intact.]

[NOTE: In developing a visitation schedule/parenting plan, the court must always adhere to the Chapter 452 requirements (*re*: specific findings and special considerations to ensure that the victim is protected) when a finding of domestic violence is made. Sections 452.400.1(3) and (4), RSMo.)]

b. Provide an Award of Child Support.

Sections 455.050.3(3) and 455.523.2(3), RSMo.

c. Provide an Award of Maintenance.

Sections 455.050.3(4) and 455.523.3(4), RSMo.

d. Order the Respondent to Pay the Petitioner's Rent/Mortgage.

Sections 455.050.3(5) and (6) and 455.523.3(5), RSMo.

e. Order the Respondent to Give the Petitioner Temporary Possession of Specified Personal Property. (AOPs only). Section 455.050.3(7), RSMo.

f. Prohibit the Respondent from Transferring, Encumbering or Otherwise Disposing Specified Property. (AOPs only). Section 455.050.3(8), RSMo.

g. Order the Respondent to Participate in a Batterer Intervention Program and/or Substance Abuse Treatment Program (AOPs only); or Order the Respondent to Participate in a Counseling Program to Help Child Abusers Stop Violent Behavior and/or to Treat Substance Abuse. (COPs only). Sections 455.050.3(9) and 455.523.2(6), RSMo.

h. Order that the Respondent Pay the Petitioner's Medical Treatment.

Sections 455.050.3(12) and 455.523.2(7), RSMo.

i. Order the Respondent to Pay “Court Costs” and Fees.

Sections 455.050.3 (11) and 455.536, RSMo. The COP provisions authorize the court to order the respondent to pay a reasonable amount for the cost of “maintaining any (COP) proceeding.” Section 455.536, RSMo. For both AOPs and COPs, “court costs” include GAL fees.

Respondents can also be ordered to pay the petitioners’ attorney’s fees incurred **prior to the commencement of the proceeding or after the entry of the judgment.** Sections 455.075 and 455.536, RSMo. Such fees include appellate attorney’s fees. (In awarding fees, a limited evidentiary hearing is necessary to allow the court to determine the parties’ financial resources, among other issues.)

Note that “no filing fees, court costs or bonds” can be assessed against the petitioner in an AOP and a COP. Sections 455.027 and 455.504.2, RSMo. Trial courts are consequently prohibited from ordering petitioners to pay any GAL fees. Furthermore, there is no authority for the courts to order the petitioner to pay any of the respondent’s attorney’s fees.

j. Provide Any Additional Terms “as the Court Reasonably Deems Necessary to Ensure the Petitioner’s] [or Child’s] Safety.” Sections 455.050.1 and 455.523.1, RSMo 2011. Some examples might include:

- restraining the respondent from entering the school and/or place of employment of the petitioner/child;
- prohibiting the respondent from having any contact or communication with the children and/or pets of the petitioner/child;
- restraining the respondent from being within a certain distance of the petitioner/child; and
- ordering the respondent to give away/sell all of his/her firearms.

[NOTE: Similar to the *Ex Parte* O/P, the Full O/P immediately takes effect when signed, regardless of when the respondent is served/notified otherwise. Sections 455.035.1, 455.040.2, 455.513.1 and 455.516.2, RSMo.]

The respondent must be given **notice** of the terms that the petitioner wants in her/his O/P. The petitioner must ask for such relief in her/his petition. Section 455.050.4, RSMo. Failure to seek certain relief arguably prohibits the court’s consideration of it. Section 455.050.4, RSMo.

However, if the respondent fails to object to the court’s consideration of non-pled relief, the court can consider such relief. (Yet, this may be problematic if the respondent is in default...) The court can also allow the petition to be amended. The judge can also continue the matter to give the respondent ample opportunity to address the issue. *See* Missouri Supreme Court Rule 55.33 (b).

4. Duration

The **duration** of a Full Order of Protection must be from **180 days to one year**. Sections 455.040.1 and 455.516.1, RSMo.

5. No Mutual Orders

The court cannot enter an order of protection that contains provisions that prohibit both parties from abusing/communicating with each other. Section 455.050.2, RSMo. (This restriction only applies to AOPs). Note one exception: if both parties have petitions before the court, the judge can order each party to not abuse or communicate with the other party.

6. Retention of Jurisdiction

The court retains jurisdiction over the full order of protection for its “entire duration.” The court may schedule compliance review hearings to monitor the respondent’s compliance (in batterer intervention programs, for example). Sections 455.090.1 and 455.524.1, RSMo.

7. Public Access

The public has access to most Full Orders of Protection – assuming that the responsible police departments expediently and accurately enter the correct information into REJIS/MULES (which is eventually transmitted to the FBI’s National Crime Information Center). Dismissed and lapsed Full Orders of Protection are accessible on “Case.net,” the server that allows the general public to inquire about court proceedings. **Information relating to orders of protection that are transferred to the juvenile court is inaccessible to the public. The “records of the juvenile court,” however, may be open to inspection to:**

- the juvenile officer;
- officials at the child’s school;
- law enforcement officials, prosecuting attorneys;
- “any person or agency having or proposed to provide care, custody, or control, or to provide treatment of the child”;

- a parent or guardian of the child; and
- a guardian *ad litem* for the child. Section 455.800, RSMo 2011.

8. Renewals/Extensions

a. Automatic Renewals

Sections 455.040.1 and 455.516.1, RSMo 2011, provide for the automatic renewal (extension) of a full order of protection **that lasts one year** upon a finding that it is, in the court’s perception, **“in the best interest of the parties.”** (The statute provides no guidance for the court about what to do if it determines that the renewal is not in the best interests of one of the parties.)

The respondent may file an objection to the renewal and request a hearing – but he/she must do so at least thirty days prior to the expiration of the order. Sections 455.040.1 and 455.516.1, RSMo 2011. The statute is silent about what the respondent must prove at the hearing to prevail. The petitioner’s address may be confidential, making it difficult for the respondent to serve her/him. Nonetheless, such service of process shall take priority over service in most other actions. Sect. 455.040.4, RSMo 2011. The statute seems to indicate that the petitioner is entitled to no further renewals. The renewal can last from 180 days to one year.

b. Non-automatic renewals

If the judge does not authorize an automatic renewal, Sections 455.040.1 and 455.516.1 RSMo provide for **two additional renewals** of the Full Order of Protection. Each renewal must last **at least 180 days**, but no longer than one year.

The statutes provide no guidance as to whether or not the petitioner must prove anything new at all at her/his renewal hearing. The statute only provides that “[a] finding by the court of a subsequent act of abuse is not required for a renewal order of protection.” Sections 455.040.1 and 455.516.1, RSMo 2011.

Case law, however, provides some guidance on this issue. The appellate courts have affirmed the trial courts’ renewals of orders of protection when:

- i. **a petitioner proves by a preponderance of the evidence that “the expiration of the full order will place (the) petitioner in an immediate and present danger of abuse”;** (the same standard as is required to obtain an *ex parte* order. *Nenninger v. Smith*, 400 S.W.3d 400, 404 (Mo. App. W.D. 2013) or

ii. the “circumstances forming the basis for the initial order continue to exist.” *See Vinson v. Adams*, 192 S.W.3d 492, 495 (Mo. App. E.D. 2006).

c. Lapsed Orders of Protection

If a petitioner fails to file for a renewal before the original order lapses, she/he can only seek a new order of protection – which would require her/him to prove that a new act of abuse or stalking had occurred since her/his receiving the full order of protection. This concern does not pertain to those situations in which the petitioner’s hearing is held after the order’s expiration date, as long as the petitioner filed her/his request for renewal before the expiration date: “if for good cause a hearing cannot be held on (a timely) motion to renew or the objection to an automatic renewal of the Full Order of Protection prior to the expiration date of the originally issued Full Order of Protection, an *Ex Parte* Order of Protection may be issued until a hearing is held on the motion.” Sections 455.040.1 and 455.516.1, RSMo.

C. Modifications

After notice and a hearing, the court may modify an Order of Protection at any time, upon a subsequent motion filed by either party, the guardian *ad litem* or the court-appointed special advocate. An affidavit showing a change in circumstances sufficient to warrant the modification should accompany the motion. Sections 455.060.1 and 455.528, RSMo 2011.

Any request to change a custody or visitation arrangement can only be granted if the modification would be in the child’s best interest. Sections 455.065.2 and 452.410, RSMo. Unlike a custody modification, there is no need to establish a change of circumstances for a visitation modification. Section 452.400, RSMo.

D. Terminations of Orders of Protection

1. Subsequent Order of Custody, Dissolution of Marriage, Paternity or Legal Separation

If a decree of dissolution of marriage, legal separation, or paternity is entered after the issuance of a Full Adult O/P, then all provisions of the O/P shall terminate, except those provisions which:

- enjoin the respondent from abusing, molesting, stalking, or disturbing the peace of the petitioner; and

- enjoin the respondent from entering the premises of the dwelling of the petitioner, as described in the order of protection, when the petitioner continues to reside in that dwelling unit (unless the respondent is awarded possession of the dwelling unit pursuant to a decree of dissolution of marriage or legal separation); and
- require the respondent to participate in a court-approved counseling program. Section 455.060.4, RSMo. (No such provision for Full COPs.)

Similarly, any order for child support, custody, temporary custody, visitation or maintenance entered in an Adult or Child Order of Protection shall terminate, upon the issuance of a subsequent order that addresses such terms, pursuant to Chapter 452 (which is the Dissolution/Custody Chapter) or any other Missouri statute. Sections 455.060.2 and 455.528.2, RSMo.

2. Petitioner's Dismissal

The petitioner in an Adult Abuse action may file to dismiss her/his O/P at any time. If a petitioner files a motion to terminate an order of protection, the court may inquire of the petitioner or others in order to determine whether or not the dismissal is truly voluntary. Section 455.060.5, RSMo Supp. 2013. The court is no longer required to hold a hearing to make this determination.

(Note that the 2011 revisions changed the provision that had authorized an *automatic* termination immediately upon the petitioner's filing her/his motion.)

(Note that, unlike the situation with an AOP, there is no authority for the petitioner to dismiss a COP. The petitioner, of course, may move to modify the terms of the O/P.)

In St. Louis County, the court gives all "dismissing petitioners" a document that explains the following:

a. She/he has other alternatives besides dismissal. She/he may modify or remove some of the terms of the Order without having to completely dismiss the Order. (For example, she/he may seek to allow the respondent to see their children more frequently than the visitation plan had originally provided, but still have an O/P forbidding the respondent from entering the marital residence . . .)

b. Her/his full dismissal of the Order of Protection may make future inappropriate acts on the part of the respondent more difficult for the police to address. As indicated in Section VI.A.2.a of this manual, the police must prioritize petitioners' reports of violations of their Orders of Protection. (Sect. 455.080 RSMo.)

Furthermore, the police have the authority to arrest a respondent who has committed an act of [domestic violence](#) in violation of the Order of Protection, regardless of whether or not the violation occurred in the officer's presence. (Sect. 455.085.1, RSMo. [Supp. 2013](#)). *See Subsection VI.C.2.* These advantages are not provided to domestic violence victims who do not have pending O/Ps.

c. She/he may speak with an advocate before filing the dismissal. The petitioner may be coerced into seeking a dismissal. She/he may be ignorant of options other than returning to her abuser. She/he may be unaware of the possibility of developing a safety plan. The St. Louis County Family Court strongly encourages all “dismissing” petitioners to speak with an advocate before making such an important decision.

d. She/he may return to court to re-file.

The “dismissing” petitioner must be aware of the court's responses to her/his motion to dismiss:

i. If she/he dismisses her petition or *ex parte* order (before the matter is in front of the judge for a full hearing), she/he may return at anytime – in a week, a day, an hour, for re-file. The court understands the cycle of violence. There is never a filing fee.

ii. If she/he dismisses her/his Full Order of Protection, she/he can return to the Adult Abuse Office within thirty days and seek to set aside the dismissal. Also, if the respondent commits another act of abuse or stalking after the dismissal has been granted, the petitioner may return to the Adult Abuse Office and re-file on that day, the next day, the next week and/or anytime beyond that to file for a new order of protection. This request can be made at any time.

e. Only the petitioner can truly gauge the danger of her/his situation.

For the sake of her/his protection – or her/his children's protection – she/he may have little choice but to dismiss the O/P. As unpalatable as it may seem, she/he may suffer even more if she/he refuses to seek a dismissal. For this reason, the court should be careful not to impose its value system on anyone.

(However, by suggesting that the petitioner speak with an advocate, the court can at least be sure that the petitioner is given an opportunity to independently make her/his own decision, not solely because of the influence imposed on her/him by the respondent.)

E. Foreign Orders of Protection

According to the Full Faith and Credit Act, Missouri law enforcement officers **must recognize all full Orders of Protection** from other states, tribes and other United States territories. 18 U.S.C. Section 2265(b) (2); Section 455.067.1, RSMo. Non-Missouri orders shall be “enforceable in the same manner as any order of protection issued by a court in this state.” (Of course, the reverse is true as well: Missouri O/Ps are recognized in all other states, Washington, D.C., tribes and U.S. territories.)

There is no requirement that the petitioner locally register the out-of-state order or attain a Missouri “order of recognition.” To get the necessary protection from a foreign order in Missouri, a petitioner need only:

- 1. PROVIDE A CERTIFIED COPY OF THE ORDER; and**
- 2. PROVIDE A SWORN STATEMENT/AFFIDAVIT, ASSERTING THAT THE COPY OF THE FOREIGN ORDER IS A TRUE AND ACCURATE COPY.**

The petitioner can get the affidavit form from one of the clerks at the Adult Abuse Office. [One exception to the general rule of recognition of foreign decrees relates to military protection orders. Such orders are enforceable only on the base where they were issued.]

It is not necessary for the petitioner to get the two documents if the law enforcement officer can verify the existence of the order through the National Crime Information Center (NCIC) system.

F. Juvenile Court

If the respondent is younger than seventeen years of age, the case shall be transferred to the juvenile court. Sections 455.035.3 and 455.513.4, RSMo 2011. This new provision raises some concerns/questions:

- **The statute fails to indicate the point in time at which one should consider the respondent’s age to determine whether or not the case should be transferred to the juvenile court.** The date of the filing? The date of the first alleged act of DV? The date of the most recent alleged act? (Of course, the old law provided no guidance either, when age was an issue as well, but in a different respect...)
- **The pertinent statutory provision only authorizes transferring to the juvenile court those files in which *Ex Parte* O/Ps were issued.** What about those cases involving juvenile respondents, in which summonses were issued?

- **For *Ex Parte* AOPs and COPs, the parent, guardian or GAL must be served – not the juvenile respondent.** Sect. 455.035.2, RSMo 2011, Supp. 2013. This is not the situation for full orders (both AOPs and COPs) – defaulting juveniles apparently can be served directly (or be sent via certified mail) a copy of the full order.
- **O/P proceedings at the juvenile court “shall be kept confidential” and may only be opened for inspection by certain designated officials, including law enforcement officials.** Sect. 455.800, RSMo 2011. However, to be enforceable, O/Ps must be entered into REJIS/MULES, accessible to the law enforcement community. Section 455.040.3, RSMo. The new provisions give no indication that juvenile matters should be entered any differently into MULES – or treated any differently by law enforcement. Unlike O/Ps with adult respondents, the Full O/Ps that are transferred to the juvenile court are not accessible to the public. (Furthermore, no *Ex Parte* Order – whether an AOP or COP, whether in juvenile court or not – is accessible to the public.)
- **If a juvenile respondent is not “represented” by a parent or guardian, the court must appoint him/her a GAL (for AOPs, but apparently not COPs).** Sect. 455.035.3, RSMo 2011. (“Represent” in this context is not defined and appears to mean “accompany.”) The court would therefore not know if a GAL needs to be appointed until the case was called for a hearing (so unlike GAL appointments for the petitioning child in a COP, the GAL appointments for juvenile respondents need not be made at the time of the issuance of the *ex parte* order or summons).
- **The statutes provide no indication as to whether or not the renewals and modifications would remain in juvenile court after the respondent “ages out.”**

III. How to File for an *Ex Parte* (Temporary) Order of Protection

Persons seeking orders of protection should visit the St. Louis County Circuit Clerk’s Adult Abuse Office in the St. Louis County Courthouse, located on the Plaza Level at 7900 Carondelet Avenue in Clayton, Missouri, 63105. This office provides a safe environment with a well-trained staff, able to assist the petitioners in filling out the necessary paperwork to complete their Petitions for Orders of Protection. (These documents are in **Addendum A**, A1-A12). Advocates are also available to assist petitioners in completing the forms and obtaining various services, including safety planning.

Detailed, clear instructions accompany the forms that the petitioner must complete. The petitioner must be mindful to:

- A. **Bring as much information as possible about the respondent**, in order to assist the sheriff's office in finding and serving him/her. **If the respondent is under 17 years of age, the petitioner should attempt to bring to the Adult Abuse Office information about the respondent's parent(s) or guardian(s). Names and addresses should suffice. (The sheriff's office must serve the respondent's parents.);**
- B. **Select the correct petition(s) to file.** The petitioner should consider:
 1. Whether or not there was an act of abuse or stalking against her/him (warranting an Adult O/P).
 2. Whether or not there was an act of abuse (no recognition of stalking) against a child (warranting a Child O/P).
 3. In certain circumstances, whether or not it may be appropriate for her/him to file both an Adult O/P and a Child O/P.
 4. Whether or not the respondent's acts against one child warrant Child O/Ps for all of the children in the household and/or in respondent's custody. Separate Child O/Ps – one for each child – would be necessary.
- C. **Provide detailed accounts** (including dates and locations) of all the respondent's acts of abuse;
- D. **Request all relief she/he seeks** against the respondent. The judge typically cannot grant relief that was not sought by the petitioner at the outset.

The clerks in the Adult Abuse Office are responsible for providing information to petitioners regarding how they can obtain **notification of service of the ex parte orders upon the respondents**. In most instances, such notification is required if the petitioner makes the request and complies with simple directives. (*See Subsection V.F*).

The Adult Abuse Office has the following regular business hours: Mondays through Thursdays, 8am to 6pm; Fridays, 8am to 5pm; and Saturdays, 9am to noon. During these hours, clerks are also available by phone, at (314) 615-4725.

At all times, including after regular business hours, the Adult Abuse Office provides an **informational recording** at **(314) 615-8086**. The recording states the regular business hours and directs callers to contact their local police departments whenever there is an emergency. The recording also informs callers about "after hours" procedures: if the petitioner seeks an order of protection outside the hours in which the Adult Abuse Office is open, she/he has options other than waiting for the next available time for the office to open. (*See Section IV below*.)

The St. Louis County Family Court has written an informational brochure describing the O/P process in St. Louis County. A copy of the brochure (“**Are you or Your Child a Victim of Abuse?**”) is attached in Addendum A. To get brochures, please contact the St. Louis County Family Court Domestic Violence Court Coordinator at (314) 615-4642.

IV. Orders of Protection – “After Hours”

A. When the Adult Abuse Office Is Closed

When regular staff is not available to assist persons seeking orders of protection, a timely responsive “after hours” process is available for those individuals seeking ex parte relief. Although the public should be encouraged to seek orders during regular business hours if possible, **“after hours” relief is always available for those with urgent needs for protection.** Such relief is available twenty-four hours a day, seven days a week. (Officers should note that the advantage to filing during office hours is that the Adult Abuse Office typically has advocates available, who can both assist petitioners in completing the necessary forms and provide petitioners with much information relating to available resources, including safety plans.)

B. Judicial Availability

Section 455.030.4, R.S.Mo. provides that the Missouri Supreme Court shall develop guidelines that ensure that verified petitions for O/Ps be filed and processed. The Supreme Court’s “Guidelines for Judicial Availability for Orders of Protection” require that judicial officers be available in each circuit (by phone, fax or e-mail) “to consider verified (i.e., taken under oath) petitions for an order of protection filed on court holidays, evenings and weekends.” (See **Addendum D, D34.**)

C. Law Enforcement Availability

The Supreme Court Guidelines’ requirement of judicial availability for orders of protection implies that all police departments have a knowledgeable representative available on a twenty-four hour basis as well. **The guidelines require that each police department designate “at least one individual to be available on court holidays, evenings and weekends to assist with the completion of petitions for an order of protection.” Further, these individuals are expected to “have persons available (who are) capable of administering oaths and affirmations necessary to verify petitions for . . . order(s) of protection filed on court holidays, evenings and weekends.”**

(Thus, if the department is unable to provide an officer “after hours,” it must, at the very least, be able to refer petitioners to other police departments that can do so...)

The circuit clerk will assist the police departments in their efforts to ensure that officers are available to administer oaths and affirmations necessary to verify petitions for “after hours” O/Ps.

Section 483.080, R.S.Mo. gives each clerk of the Circuit Court the authority to appoint deputy clerks who, after taking an oath, “may in the name of their principals perform the duties of clerk.” Each appointment becomes a matter of record with a certificate of appointment signed by both the clerk and the special deputy.

Since April, 2010, the Circuit Court Clerk has deputized approximately 400 officers from the St. Louis Co. Police Dept., the local college police departments and **every** municipal police department in St. Louis County. **Addendum D** contains a listing of all of the municipal police departments and the names of the officers who serve as contacts (with their e-mail addresses and telephone numbers). (List # 1). Every department now has the ability to provide deputized officers to assist petitioners “after hours.” **Addendum D** further provides a listing of the departments that can give petitioners the assistance that they need when they live in municipalities with departments that cannot provide assistance at the time when a petitioner contacts her/his department. (List #2). (The Domestic and Family Violence Council expresses its gratitude to the St. Louis County Police Department and the Hazelwood Police Department in particular for volunteering to provide such valuable assistance.) The addendum also provides information pertaining to the obtainment of orders of protection in St. Louis City. (List #3).

Addendum D provides officers with checklists to assist them determine whether or not the St. Louis County Circuit Court can provide relief to the petitioners, given specific information about the parties and the sites of the alleged acts of violence. (List #4). The addendum also provides recommended signage for all police departments – some for the law enforcement officers (to be posted inside the department) and some for the visiting citizens. (List #5).

D. Necessary Forms

All necessary forms for filing Orders of Protection are included in this manual’s **Addendum A** (in particular, A1 – A10) (available electronically) and have been provided to all police departments within St. Louis County (both County and municipal). Both the adult and child order of protection petition forms are available on line on the St. Louis County Circuit Court website, www.stlouisco.com/circuitcourt. (When on the web page, one should click on “Domestic Violence Court” and then select “Court Forms.”)

This manual sets forth guidelines for the completion of the petition packet and the protocol for processing the petitions outside of normal business hours. **Addendum A** includes the following:

1. *Adult Abuse Act Notice (A1)*;
2. *Child Protection Act Notice (A2)*;
3. *Instructions for Completing a Petition for an Adult Order of Protection (A3)*;
4. *Instructions for Completing a Petition for a Child Order of Protection (A4)*;
5. *Adult Abuse/Stalking Order of Protection Petition Form (A5)*;
6. *Petition for Child Order of Protection Form (A56)*;
7. *D.V. Court Risk Assessment Form (A7)*;
8. *Family Court Tracking Sheet/Case Type Description Form (A8)*;
9. *Confidential Case Filing Information Sheet (A9)*;
10. *Service Information (for Respondents under the Age of 17) (A10)*;
11. *Petitioner's Financial Statement Form (A11)*; and
12. *Facsimile Filing Cover Sheet (A12)*.

E. "Deputized" Police Procedures re Orders of Protection

1. Receiving Petitions

The petitions [both AAOPs (A3) and COPs (A4)] must be signed under oath. (The officer simply has the petitioner raise her/his right hand and then asks: "Do you swear or affirm that the statements in this Petition are the truth to the best of your knowledge and belief?") Therefore, a notary or other person capable of administering an oath – such as a deputized police officer -- must be available to assist persons seeking relief through an *Ex Parte* Order. **Such a notary or deputized clerk should fill out the two lines under the petitioner's signature (i.e., the date line and the clerk's signature line).**

NOTE: Missouri's new statewide petition forms (#s A3 and A4 above) fail to provide designated lines/spaces for the clerk to sign her/his name. The deputized clerk should sign his/her name at the bottom anyway. The financial statement form (#A9 above), however, does have lines/spaces at the bottom for the clerk's signature.

(NOTE: The Circuit Clerk regularly trains and certifies all "Special Deputy Circuit Clerks" – those designated officers from each police department with the specific duty of administering oaths to persons filing petitions.)

[NOTE re COPs: The petitioner no longer needs to complete a separate petition for each child. All of the children can now be addressed in one COP petition.]

The officer should make a preliminary inquiry to determine whether or not the petitioner can even get relief from the St. Louis County Circuit Court. The pertinent check lists are included in Addendum D. (See List #4.) If the check list makes it clear that the petitioner should be filing elsewhere, the officer should encourage the petitioner to take the necessary steps to do so.

2. Obtaining the Ex Parte Order

a. Upon receipt of the sworn petition, the officer should **call the Intake Department** at the St. Louis County Department of Justice Services [(314) 615-5794] to let the Intake Department know that the officer will soon be faxing an O/P petition and other pertinent documents.

b. The officer should then **fax the following completed sworn documents** along with the fax cover sheet form (all forms provided by the Circuit Clerk in this manual) to the St. Louis County Justice Center at (314) 615-0179 for review by the Duty Judge. On the fax transmittal form, the officer should note whether or not the respondent is immediately available to the officer for service.

The completed forms to be faxed are:

- i. The Petition(s) (A3 and/or A4);
- ii. The D.V. Court Risk Assessment Form (A7);
- iii. The Family Court Tracking Sheet/Case Type Description Form (A8);
- iv. The Confidential Case Filing Information Sheet (A9);
- v. Petitioner's Financial Statement (A11); and
- vi. The Fax Cover Sheet (A12).

c. The officer should mail the above original forms to the Adult Abuse Office (Plaza Level, St. Louis County Courthouse, 7900 Carondelet Ave., Clayton, MO 63105).

F. Clerks' Procedures

1. The Bonding Clerk

a. The Bonding Clerk (also known as the Intake Clerk), is located at the St. Louis County Justice Center. After receiving all required forms, he/she shall contact the **Duty Clerk/Judge**, as indicated by the courthouse judicial "duty" roster. All phone numbers/pager numbers are provided to the Bonding Clerk.

b. The Bonding Clerk will **read the allegations to the Duty Clerk/Judge**. The judge may issue an *Ex Parte* Order or a summons. Of course, the judge could also deny the Petition outright, dismissing the case. (If the clerk is on call, the Bonding Clerk will contact the Court Division Clerk who will, in turn, contact the judge for verbal authorization.)

c. If the judge orders an *Ex Parte* Order of Protection, the **Bonding Clerk** will **complete the Order and Judgment form** in accordance with the verbal authorization.

d. The Bonding Clerk will then **sign the order** (printing the judge's name below the signature line) and **fax a copy of the order to the police department** that has been assisting the petitioner. The *Ex Parte* Order MUST include a case number, court division number, and scheduled hearing date (information which is received from the Adult Abuse Office Clerk).

e. If only a summons is ordered by the judge, the petition will be forwarded on the next business day to the Adult Abuse Office Clerk, who will issue the summons and assign a case number, division and hearing date.

2. The Adult Abuse Clerk

a. After picking up the completed forms from the Justice Services Bonding Clerk, the Adult Abuse Office Clerk will present the order to the authorizing judge for signature.

b. If the Adult Abuse Office has not received a faxed copy of both the executed return of service and the petition by the next business day following the issuance of the court's order, the Adult Abuse Office Clerk shall obtain the order and issue a copy of the order to the sheriff for service upon the respondent.

V. Orders of Protection – After the Return of the Signed Order **(both during and after hours).**

A. Listing of Electronic Service Providers

Before describing the electronic O/P process, it is important to be aware of the electronic data sharing systems that are involved. The following are the systems used in Missouri that pertain to the O/P process:

1. **“JIS” (Justice Information System)** is run by the Missouri Office of the State Courts Administrator (OSCA). Information relating to court cases is fed into JIS by court personnel;

2. **“MULES” (Missouri Uniform Law Enforcement)** is run by the Mo. Highway Patrol. MULES acts as the “host system” for Missouri law enforcement agencies not on the REJIS (see below) network. MULES houses databases that include wanted and missing persons records, criminal history data, order of protection histories, etc... As the “host system” for the state of Missouri, MULES also acts as the primary message switch, allowing both MULES and REJIS users access to data from the Mo. Dept. of Revenue, systems from other states, NCIC (see below) and I.I.I. (see below, under NCIC). All O/Ps issued by state courts are currently held in the MULES database;

3. **“REJIS” (Regional Justice Information Service)** is a regional data sharing system servicing many agencies in the St. Louis area as well as the Kansas City Police Department (as of 2011). With regards to O/Ps, REJIS provides an interface to view and modify the O/P records contained in the MULES database. REJIS clients are required to comply with all MULES and NCIC (see below) rules for data sharing;

4. **“NCIC” (National Crime Information Center)** is run by the Federal Bureau of Investigation (FBI). NCIC is a two-part system. The first part of the system is the database that contains a wide variety of records entered by and available to local, state, tribal, federal and international law enforcement agencies. This database includes an O/P file that allows law enforcement agencies from throughout the country to view Missouri O/Ps. The second part of NCIC is “I.I.I.” (Interstate Identification Index), which is a nationwide index that lists state and federal criminal history data on any given individual. This index provides law enforcement agencies with vital information regarding addresses, prior arrests, convictions, fugitive statuses, missing persons and alias identifications.

5. **“Case.net”** is a server that allows the general public to inquire about JIS case records, which includes information about docket entries, parties, judgments and changes in court proceedings. Information on this public accessible website is available to anyone;

6. **“Secure Case.net”** is a server that provides more information than Case.net, providing law enforcement agencies and prosecuting attorneys (and some child care agencies) access to information about criminal cases (such as arrests and suspended impositions of sentences), *ex parte* orders of protection and other cases that are closed to the public and not available on Case.net.

B. Receiving the Ex Parte Order

1. Upon receipt of the O/P, the **Court Clerk enters the information into JIS** (and then the information is automatically transmitted to both REJIS and MULES) and **faxes the order to the responsible police department** (i.e., the police department of the municipality where the petitioner resides.)

As required by Sec. 455.040.3, RSMo, the faxing must be done on “the same day as the order is granted.” When the MULES/REJIS operator receives the faxed copy of the signed order (which will come either from the Court Clerk during business hours or the Bonding Clerk/Intake Officer “after hours”), the operator will review the order for all required information.

2. The police department will **make and distribute copies** of both the signed order and the petition to the following:

a. **the petitioner** (Of course, if the petition was filed during regular business hours, the clerk will provide the Order to the petitioner, who would be waiting in the courthouse);

b. **the respondent** at the time of his/her service. Service upon the respondent must be made at least three days prior to the hearing. **Service of the petition, ex parte order and full order shall take priority over service in other actions, except those of a similar emergency nature.** Sect. 455.040.2, RSMo. The local law enforcement agency shall notify the clerk when no more service attempts are planned. Sect. 455.038, RSMo.;

c. **the court**, which will receive the return of service information on its copy;

d. **the police department** for the jurisdiction where the petitioner resides [The determination of the appropriate police department is made by the Adult Abuse Office, which bases its decision on which agency patrols the petitioner’s address. The AAO then enters the order under the agency’s **Originating Reporting Agency Identifier (“ORI”)** (department designation/identifier).] [This police department is responsible for entering information into REJIS/ MULES, pursuant to Section 455.040, RSMo].

3. The police department responsible for maintaining the electronic record upon receipt of the faxed copy of the O/P should do the following:

a. **Inquire** -- by court case number or “SHP” (State Highway Patrol) number -- **about the existence of the electronic record** relating to the O/P.

b. If the electronic information is not present, the agency shall immediately **“create an electronic record”** in the REJIS/MULES system. The agency’s creation of a record makes verification (as described below) unnecessary; however, the process of “packing” the record (as described below) should still be completed.

c. If the electronic information is present, the law enforcement agency should **“pack” the record** with information relating to the respondent’s criminal history records, any applicable “caution codes,” alias names, previous names and other identifier information. After the packing process, the responsible agency must engage in a **verification process**, in which the law enforcement agency reviews the case file data for accuracy – and then makes the case information available in MULES (which is then consequently viewed through REJIS) -- and therefore, accessible to all law enforcement departments. The law enforcement agency must enter the relevant information within twenty-four hours from the time the order is granted. (See Sect. 455.040.3, RSMo.)

(Once the information is verified, the electronic information is automatically transmitted from REJIS to MULES and then to NCIC.) REJIS will be notifying the agency every 24 hours to remind the law enforcement officer of his/her need to verify the information.

(**Note:** Child Orders of Protection are entered directly into JIS and faxed to the appropriate police department. Upon receipt, the agency shall manually enter the information into the REJIS/MULES System.)

4. **ALL “UNVERIFIED” ORDERS ARE ACCESSIBLE ONLY TO THOSE IN THE RESPONSIBLE DEPARTMENT.** No one else has access. Therefore, it is critical that the law enforcement agency verify and accept the electronic order as soon as possible.

5. On those rare occasions in which the Adult Abuse Office inadvertently fails to send the appropriate paperwork (including the order) to the appropriate police department, the information may still successfully pass from JIS to MULES/REJIS. The REJIS system will then notify the department of the **outstanding order that awaits its verification/acceptance**. If this happens, the law enforcement staff should contact the Adult Abuse Office to get the order.

6. If REJIS or the Adult Abuse Office erroneously notifies the wrong department (e.g., if the petitioner does not reside in the police department’s municipality/jurisdiction), the department should contact the Adult Abuse Office immediately so that **the correct department can be notified**. The Adult Abuse Office clerk must then enter the correct ORI and send the appropriate paperwork to the correct agency. (This will allow the correct/responsible agency to enter the information under its ORI.)

7. As of Jan. 1, 2010, **information about *Ex Parte* Orders of Protection is no longer available to the public** on Case.net (but as indicated, such information is available to law enforcement agencies under “Secure Case.net.”) (Mo. Supreme Court Operating Rule 2.04). Furthermore, only active *Ex Parte* Orders are available electronically to law enforcement...

(NOTE: REJIS has developed a flow chart and a detailed step-by-step guide that describes and illustrates the entire electronic O/P process. See Addendum G.)

C. Receiving the Full Order of Protection

1. As to the **distribution of copies**, the procedure is the same as in paragraph 2 of Subsection B in this Section (above) except:

a. There is no need for the police department to make a copy for petitioner because she/he will receive her/his copy in court.

b. If the respondent appears in court, the police department will not need to serve him/her.

2. As to the **entry of information into MULES**, the police department must enter the Full Order's terms within twenty-four hours of receipt of the Order (no different than with an *Ex Parte* Order).

3. **Information about Full Orders of Protection is available on Case.net.**

NOTE: the previously mentioned flow chart and guide – Addendum G – describes the Full O/P process as well.

D. Receiving the Renewed Full Order of Protection

The *Ex Parte* and Full O/P procedures as described in Subsections V.B & C (above) are the same for renewals.

E. Receiving a Foreign Order of Protection

Operators may enter foreign orders of protection via MULES or REJIS (similar to the procedure used to manually enter Missouri O/Ps, with the additional fields and conditions applicable to foreign orders). The order should be in the National Crime Information Center (NCIC) System. If an order is not in the NCIC System, the petitioner need only provide a certified copy of the order (and his/her sworn statement/affidavit, asserting that the copy of the foreign order is a true and accurate copy) to get the necessary protection. (Sect. 455.067.1, RSMo).

F. Information to Be Provided to Petitioners Regarding Service on Respondents

1. Ideally, when a law enforcement agency serves a respondent, it should immediately enter the service information (e.g., date, time, address, etc...) into REJIS (which is then forwarded to MULES and JIS). The **Missouri Victim Automated Notification System** program (MOVANS) then should automatically notify the petitioner (and her/his attorney, if petitioner wishes) in real time, when the respondent has been served.

2. **MOVANS**, however, is **not available** to those petitioners:

a. in **Child Order of Protection cases** (because the MOVANS grant -- from the federal Office of Justice Programs and the Missouri Dept. of Public Safety -- solely addresses Adult Orders of Protection);

b. who use **certain municipal police departments** for service. (This can be very problematic, as petitioners may actually sign up for MOVANS and rely on MOVANS' representation that the petitioners will receive notification -- when certain municipal police departments do not routinely report service information, even though they have access to REJIS.);

c. **when the O/P is not granted**. (This includes not only the judge's outright dismissal of the petition, but also a denial of ex parte relief with the issuance of a summons to appear at the hearing for the full order.)

d. who **do not sign up for the MOVANS assistance**. Petitioners must register their O/P in order to participate in the program.

3. The Adult Abuse Office should inform the petitioners about the MOVANS program when they are filing their petitions. After hours, the police department would ideally provide such information as well (but only if the department is capable of reporting/entering the service data for notification purposes.)

4. **MOVANS notifies petitioners via telephone and/or e-mail**. (Petitioners can designate as many phone numbers and e-mail addresses as they would like.) When registered by phone, the petitioner can access information about her/his case by entering a four digit PIN that she/he creates. During the phone notification, MOVANS remains anonymous to the recipient and will not divulge any information until the PIN is entered. The respondent clearly cannot discover if the petitioner has registered for MOVANS services.

Upon request, MOVANS also gives updates on determinations at court proceedings -- such as continuances and dismissals.

5. Thirty days prior to the expiration of the Full O/P, **MOVANS will notify the petitioner of the expiration date**, informing her/him that a request for an extension must be filed before then.

6. The toll free number for MOVANS is **1(866) 5MO-VANS**. The MOVANS websites are **www.vinelink.com** and **www.registervpo.com**. MOVANS' informational brochure relating to Orders of Protection is in **Addendum F**.

7. Note that **MOVANS is also a service available for domestic violence victims in the criminal system**. Victims can be notified of changes in offender custody status and court dates. The informational brochure relating to criminal matters is in **Addendum F**.

8. For *Ex Parte* AOPs (but note, not COPs), when the respondent is younger than 17 years of age, the child's parent, guardian or GAL must be served – not the juvenile himself/herself. (Sect. 455.035.2, RSMo 2011). This is not the situation for full orders of protection – juveniles apparently can be served directly (or be sent via certified mail) a copy of the full order. (Sect. 455.040.2, RSMo.)

9. In most instances, the **St. Louis County Sheriff's Department** is responsible for serving the respondents. When an *Ex Parte* Order of Protection has been served by a St. Louis County Sheriff's Department deputy, **the service information must be entered into a MULES database** within 24 hours of service upon the respondent (Sect. 455.038, RSMo 2011), which triggers notification of the petitioner (for those previously requesting such notification) through the MOVANS victim notification service. Sheriff's Department deputies do not attempt direct notification of petitioners for service of any order of protection.

Petitioners may always contact the Sheriff's Department themselves to determine whether or not the respondents have been served. The Sheriff's Department's telephone number is (314) 615-4724.

10. If the respondent is served outside of St. Louis County:

a. **Within the State of Missouri** (by the sheriff's office of the county where the respondent resides/works): the office serving the O/P should enter the service information into MULES, which will electronically transmit the information to REJIS, JIS and MOVANS. The serving agency will then send the service return to the Adult Abuse Office. [But note that this procedure has not been followed by many Missouri sheriff's offices. Instead of entering the information as mandated, many sheriffs' offices merely send the service return to the Adult Abuse Office (which then enters the information into JIS, days after service...)]

b. **Outside of the State of Missouri:** the out-of-state agency (which has no access to MULES) is expected to send the service documents to the AAO clerk, who then enters the information into JIS.

11. In some instances, the petitioner makes arrangements with a **special process server** to serve the respondent. The special process server often contacts the petitioner directly, immediately upon service. The special process server needs to ensure that the service information is entered by supplying – as soon as possible -- the appropriate service documents to the Adult Abuse Office. Once the court enters the service information (provided by the special process server) into JIS, the service information should be available on MOVANS.

12. For the rare occasions in which **the respondent is served with the *Ex Parte* Order and Petition by the police officer**, the officer should transmit via fax – as soon as possible – a copy of the Petition, *Ex Parte* Order and executed return to the Adult Abuse Office.

(These rare occurrences include when a respondent gets arrested subsequent to a petitioner's calling the department because she/he has seen the respondent near her/his residence; or when a respondent gets arrested by a particular department and his/her record reveals the presence of an *Ex Parte* Order; or when the respondent is incarcerated in the department's jail, etc.)

13. In **instances in which service efforts have been unsuccessful**, the local law enforcement agency (or any other governmental agency responsible for serving *ex parte* O/Ps) shall notify the circuit clerk when the agency has decided not to make any more service attempts. (Sect. 455.038, R.S.Mo.) (Note that REJIS and MULES will share only the most recent service information on the active electronic record visible to law enforcement.)

14. If the serving (or packing) officer obtains **additional "personal identifiers"** on the respondent, the officer can send that information to the Adult Abuse Office so that it could be included in the court file. This information could be included in subsequent orders, assisting the serving officers in locating the respondent in the future when necessary.

15. Sect. 455.040.2, RSMo, provides that a defaulting respondent may be notified of the Full O/P by either service or certified mail. However, if certified mail is used, MOVANS cannot be used effectively: notification to the petitioner that the respondent has been made aware of the court's issuance of the O/P would obviously not be able to be done until after the Adult Abuse Office received the certified mail return receipt (and then the petitioner would still not be notified until the information is ultimately entered into MULES many days later...).

G. Other Information that Law Enforcement Officers/Personnel Must Enter into REJIS/MULES (e.g., Dismissals, etc. . .)

The responsible law enforcement agency (i.e., the department of the municipality where the petitioner resides) must enter/verify not only *Ex Parte* and Full Orders of Protection, but case **continuances** (entry updated to reflect new court dates and times), **status changes** (entry updated to reflect whether or not *Ex Parte* Orders have become Full Orders) and **dismissals**. Such information will be provided to the agency via fax from the Court Clerk. These modification updates should be sent to the responsible agency within 24 hours of the court's issuance of the change to ensure that the modification can be made to the MULES record. (A few days following the expiration date on the record, MULES locks the record from modification; if the modification that shows the new hearing/expiration date is not made in a timely fashion, the record must be cleared and re-entered by the law enforcement agency.)

A notice of expiration or of termination of any order of protection shall be issued (by the Court Clerk) to the “local law enforcement agency and to the law enforcement agency responsible for maintaining MULES.” The law enforcement agency responsible for maintaining MULES shall enter such information into the system. (Section 455.040.3, RSMo.)

Note that even **after the Full Order expires**, information about the Order of Protection is available at REJIS for the agency of record. The record is no longer available for general law enforcement electronic inquiry in Case.net, REJIS and MULES. Records cleared out of MULES remain in an “inactive” status in its database for five years after the expiration of the O/P (at which time they are purged). While in this inactive status, any inquiring NCIC operator can view the records.

When an O/P is either found to be in error, dismissed by the court or expunged, the operator should immediately cancel (purge) the record from MULES or NCIC, ensuring that no agency can view any such information.

VI. Statutory Provisions Relating to Police Action

The pertinent Missouri statutes describe the necessary police procedures when responding to DV calls. Officers should note that much of this statutory procedure is mandatory, not discretionary.

A. Law Enforcement Agencies’ Responses to Alleged Incidents of Abuse

1. Agencies **may** establish procedures to ensure that dispatchers and officers can be informed of any recorded prior incident of abuse involving the abused party.

2. Agencies **shall** apply the same standard for responses to alleged incidents of abuse as to similar offenses involving strangers. The presence of any of the following factors warrants the police officer’s immediate response:

a. When the caller indicates that violence is imminent or in progress; or

b. When a protection order is in effect; or

c. When the caller indicates that incidents of domestic violence have occurred previously between the parties.

3. Agencies **may** establish domestic crisis teams.

4. Officers at the scene **shall** inform the abused party of available judicial remedies for relief from adult abuse and of available shelters for victims of domestic violence.

5. Officers at the scene **shall** provide or arrange for transportation for the abused party to a med. facility for treatment of injuries and/or to a place of shelter or safety. (Sect. 455.080, RSMo).

B. Law Enforcement Reliance on Order

A law enforcement officer **may rely on a copy of any order of protection issued pursuant to Chapter 455** (the O/P statutes as described in Section II) or a certified foreign order of protection from any source in determining the necessary action to be taken. An Order of Protection issued in the State of Missouri shall be effective in all municipalities and counties within the State (and within the United States). Any order of protection issued by any other state, territory or possession of the United States is valid in the State of Missouri. (Sections 455.083, RSMo).

C. Provisions Relating to Arrests

1. When There is No Order of Protection

When an officer has **probable cause** to believe that a party has committed an act amounting to abuse, the officer may make an arrest, whether or not the offense has occurred in his/her presence.

If the officer **DECLINES** to make an arrest, the officer **shall** make a written report that includes the reason(s) why no arrest was made and any other pertinent information. (The statutory provision suggests that reports must be written for all declined arrests pursuant to calls pertaining to allegations of abuse or assault. Other allegations that call for no arrest do not seem to warrant an officer report . . .) Such documentation may prove to be very helpful for future prosecutions...

Any officer subsequently called to the same address within twelve hours after the initial call, who finds probable cause to believe that the abusive party committed an offense against the same or any other household member, **shall** arrest the abusive party for the subsequent offense.

Refusal of the victim to sign a complaint shall not prevent an arrest. (Section 455.085.1, RSMo).

2. When There is an Order of Protection

If an officer has **probable cause** to believe that a party against whom a protective order has been entered -- and who has notice of the same -- has committed an "act of abuse," the officer **shall** arrest the offender, whether or not the violation occurred in the presence of the officer. (Section 455.085.2). The statute does not require the officer to make an arrest for violations other than "acts of abuse." (*The pertinent criminal violations are described in **Subsection X.C** of this manual.*)

3. Determination of "Primary Physical Aggressor"

The arresting officer need not arrest both people at the scene when both individuals claim to have been assaulted. The officer shall attempt to identify the "**primary physical aggressor**," which is defined as the most significant, rather than the first, aggressor.

In determining this designation, an officer should consider:

- a. the intent of the law to protect victims of domestic violence from continued abuse;**
- b. the comparative extent of injuries inflicted or of serious threats creating fear of physical injury;**
- c. the history of domestic violence between the persons involved.**

No investigating law enforcement officer “shall threaten the arrest of all parties for the purpose of discouraging requests of law enforcement intervention by any party.”

(Section 455.085.3, RSMo).

4. Custody Violation

If an order of protection awards **custody of the minor children** to the petitioner, and the respondent fails to surrender the child(ren), the officer **shall** arrest the respondent and turn the child(ren) over to the petitioner. (Section 455.085.5, RSMo).

5. Immunity

A law enforcement officer who makes an arrest in **good faith reliance** on these provisions **shall** be immune from **liability in any civil action alleging false arrest, false imprisonment or malicious prosecution**. (Section 455.085.4, RSMo).

VII. Child Victims of Abuse or Neglect

A law enforcement officer may take a child into “**judicial custody**” (previously known as “emergency protective custody”) if he/she has “reasonable cause to believe that the (child) is in imminent danger of suffering serious physical harm or a threat to life.” When taking a child into “judicial custody,” the officer must notify the Children’s Division (formerly known as the Division of Family Services) and make a reasonable effort to advise the parent(s)/guardian(s) of the situation. [Mo. Supreme Court Rule 123.01.a (2)].

Within twelve hours of taking the child into custody, the officer shall notify the juvenile officer in writing of the identity of the juvenile and the facts and circumstances that caused the officer to believe that the juvenile was in imminent danger of suffering serious physical harm or threat to life.” [Mo. S. Ct. Rule 123.02.a and b].

[For more details on juvenile proceedings, refer to Chapter 211, RSMo; Missouri Supreme Court Rule 123; and the Family Court’s manual entitled “**A Unified Approach to Child Abuse and Neglect Investigation, Child Protection and Treatment**,” available through the Family Court’s Child Protective Services Department (by calling 314-615-2906).]

Of course, as previously mentioned, a parent/guardian may file a **Petition for an Order of Protection on behalf of a child** whenever that child has been subject to abuse by a present or former household member or a person stalking the child. (Sect. 455.505.1, RSMo, Supp. 2013) In many instances, the judge who receives the O/P petition will order the Children’s Division to investigate the case and submit a report to the court prior to the O/P Full Hearing.

The previously mentioned “after hours” relief (as described in **Section IV**) is available for both adults and children. **In addition to seeking child orders of protection for emergencies involving children, parents/guardians should contact the Children’s Division immediately.**

Note that **law enforcement officials are “mandatory reporters.”** In other words, if an officer “has reasonable cause to suspect that a child has been or may be subjected to conditions or circumstances which would reasonably result in abuse or neglect,” he/she “shall immediately report or cause a report (hotline) to be made” to the Children’s Division. Sect. 210.115.1, RSMo.

The Missouri Child Abuse and Neglect Hotline number is (1) (800) 392-3738. From outside Missouri, the phone number is (573) 751-3448.

The St. Louis County Children’s Division has four offices. To determine the appropriate branch, please refer to **Addendum E**. The branches, their addresses and their telephone numbers are as follows:

1. Page Service Center, 9900 Page Ave., St. Louis, MO - (314) 264-7700
2. Jennings Service Center, 8501 Lucas and Hunt, St. Louis, MO - (314) 877-2550
3. South Service Center, 7545 S. Lindbergh, Ste.110, St. Louis, MO - (314) 416-2700

These offices are open from 8:00 a.m. to 4:45 p.m., Monday through Friday. The Missouri Child Abuse and Neglect Hotline is answered 24 hours a day, every day of the year. The hotline staff has access to a list of on-call C.D. employees for every office, representing every county in Missouri, in case of emergencies.

VIII. Elder Abuse

Missouri legislators recognized the need to provide special attention to elderly victims. As will be described in the “Criminal DV Offenses” section (Section X), the sentencing range for various assaults is enhanced when the victim of an assault is “elderly.” (See Subsection X.A.4). Moreover, an elderly victim may not only seek to obtain a traditional order of protection, she/he may seek additional relief ...

The Missouri Department of Health and Senior Services (“D.H.S.S.”) established an intervention program to respond to reports of elder abuse (and neglect and exploitation). An individual can anonymously report suspected abuse in Missouri (by a person, firm or corporation) by calling the Missouri Elder Abuse and Neglect Hotline [(800) 392-0210 or (800) 392-8819 (T.D.D.)] When in receipt of the report, the D.H.S.S. must conduct a hearing to determine whether or not the “victim” is facing a likelihood of further serious physical harm and is in need of protective services. (Section 660.260, RSMo) If such services are necessary, the department will evaluate the victim’s needs.

If the victim consents to the services, the department can provide “social casework,” counseling, assistance in locating and receiving alternative living arrangements and assistance in locating and receiving “necessary protective services.” (Section 660.260, R.S.Mo.) If the victim is unable to consent to the services, the director of the Department of Social Services can seek a guardian for him/her. Section 475.075 (11), RSMo.

If the guardian refuses to provide necessary services to the victim, the director shall inform the court (that has supervisory jurisdiction over the guardian). The court “may take such action as it deems necessary and proper to insure that the eligible adult is able to meet his essential human needs.” Section 660.280, RSMo.

If the D.H.S.S. investigates such reports of elder abuse (through the procedure described above) and substantiates the allegations, the department must “promptly report the incident to the appropriate law enforcement agency and prosecutor and shall determine whether protective services are required.” If the department is unable to substantiate whether abuse occurred “due to the failure of the operator (of the nursing home?) or any of the operator’s agents or employees to cooperate with the investigation, the incident shall be promptly reported to appropriate law enforcement agencies.” Section 565.186, RSMo.

IX. Domestic Violence Court

A. General Description

To better address domestic violence victims’ need for protection in our community, the Family Court of St. Louis County formed a specialized civil Domestic Violence Court. The Domestic Violence Court centralizes the handling of domestic violence cases, in order to better achieve tangible outcomes for both victims and offenders.

The Domestic Violence Court staff and judges place an emphasis upon judicial monitoring and community collaboration in order to enhance victim safety and impose offender accountability.

The DV Court currently has **four** O/P judges (Judges Beach, Borbonus, Essner, **and** McKee) and two Post-O/P (Contempt) judges (Judges Burton and Ribaud).

B. Objectives

The DV Court's mission is simple: to better protect both the DV victim and her/his children and to better hold the offender accountable. This section describes how these goals will be implemented.

1. Protecting the Victim

Individuals experiencing domestic violence face serious risks when choosing to leave abusive relationships and/or file for Orders of Protection. The abusers often grow more dangerous upon discovering that they have lost control of their victims. To increase victim safety, the St. Louis County DV Court offers local domestic violence agencies the opportunity to provide **advocacy**, both at the time when the petitioner files a petition for an O/P and at the time of the court hearing. Advocacy services include basic crisis counseling, safety planning (which includes referrals to shelters and other community services), long-term counseling, provision of legal resources, transportation, job training, and other types of assistance.

Many DV victims return to their abusers and their abusive environment because they have no means of supporting themselves. Victims' attainment of **economic independence** is one of the best means by which they can finally escape and remain apart from their abusive partners. The DV Court currently works in collaboration with **MERS/Goodwill's ACCESS Program**, which provides victims with job and life skills training, employment placement and some limited education.

2. Protecting the Child

Children who have witnessed domestic violence often have voices that go unheard. Such children are recognized as victims too. (As described in Subsection I.A.2.a., both the psychological and the physiological trauma from witnessing the physical abuse of others can be severe.) Volunteer attorneys are routinely appointed as "court custody attorneys" or **guardians ad litem** ("GALs") to represent children, to ensure that their interests are protected. (Note that while all alleged child victims of abuse are statutorily mandated to have an appointed GAL, children who have witnessed DV are arguably not statutorily assured of such representation.) The GALs often develop custody and visitation plans that aim to keep the parent victims *and* the children safe. The St. Louis County **Court Appointed Special Advocates ("CASAs")** have also committed to provide highly trained volunteer advocates to the DV Court when requested.

3. Holding the Offender Accountable (BIPs, Contempt Proceedings, etc...)

When Orders of Protection are granted, the offenders will be ordered to immediately cease the behavior(s) that has harmed or threatened the victims. In most cases, offenders will be prohibited from having any contact (including any form of communication) with the victims at all.

a. Support

Victims may also request **financial support** from offenders. DV judges will typically order the offenders to provide child and/or spousal support, rent/mortgage payment as well as other expenses.

The DV Court also assists respondents in attaining **job training and education**. The Fathers' Support Center is partnering with the DV Court, to provide such services to the respondents. Many fathers will be given the opportunity to develop the necessary skills to enable them to support their children.

b. Batterer Intervention Programs

The DV Court judges frequently order the offenders to complete **Batterer's Intervention Programs** ("BIPs"), which typically last 26 to 52 weeks. BIPs provide a curriculum intended to help the offenders stop the abuse by teaching them essential skills for functioning in healthy relationships. Judges monitor the offenders' progress through regular **compliance dockets**, ensuring that the offenders are successfully participating in the programs.

c. Contempt Proceedings

Before the commencement of the DV Court, one of the biggest challenges for judges who handled O/P dockets related to the limited enforcement of their orders. A national study showed that approximately 50% of the O/Ps obtained by women against their intimate partners who had physically assaulted them were violated. The percentage of violations was even greater when the petitioners obtained O/Ps for acts of sexual assault and stalking. (Tjaden and Thoennes, same cite as in Subsect. I.A.1.a).

Of course, orders of protection are more likely to protect victims if they have "teeth." Offenders are likely to violate orders unless there are strong disincentives for them to not do so. Carolyn Williams, "Not Everyone Will 'Get It' Until We Do Advocating for an Indefinite Order of Protection ...," 40 Ariz. St. L.J. 371, 377 (2008).

In the Domestic Violence Court, those offenders who do not comply with the terms of the Order of Protection (e.g., violate the prohibition against abuse, contact and communication; fail to comply with the BIP provisions, etc...) will be facing **indirect criminal contempt proceedings [pursuant to Mo. Sup. Ct. Rule 36.01(b)]**. A finding of contempt could result in significant consequences, including fines or jail time. Experienced volunteer family attorneys represent the petitioners and respondents in these complex proceedings.

The parties learn from the judge about the contempt process immediately after his/her issuance of a Full Order of Protection after the hearing. If the judge grants the Full Order, he/she provides a document entitled “**What to Do if Your Order of Protection Has Been Violated**” to both parties. The document also refers the parties to two other documents, “**Questions and Answers about Filing a Motion for Contempt**” and “**Questions and Answers about Responding to a Motion for Contempt**”. [These three documents – and the Motion for Contempt form -- are all available on the St. Louis County Circuit Court website, which is at www.stlouisco.com/circuitcourt. (When on the website, one can click on “Domestic Violence Court” and then select “Court Forms.”) (The documents are also in **Addendum A.**)]

Law enforcement officers should familiarize themselves with the contempt process – and equip themselves with the appropriate forms. They should direct the complaining victims to the Domestic Violence Court.

C. Informational Brochure

The Domestic Violence Court has produced an informational brochure describing the Court as above. A copy of the brochure is attached in **Addendum A**. To get brochures, one should contact the Domestic Violence Court Coordinator at (314) 615-4642.

X. Criminal Domestic Violence Offenses

Legislation has been enacted that provides for harsher sentences for DV offenders – and repeat DV offenders. The criminal offenses and respective penalties are listed below. (Of course, many Chapter 566 sexual offenses may be pertinent. Chapter 566 does not, however, provide for harsher sentences because of the intimate partnership relationship – perhaps because of the already harsh sentencing ranges. Note that in 2013, most sexual offense crimes were renamed and restructured.)

This section also refers throughout to an addendum – **Addendum B** -- that lists many appellate decisions that interpret some of the statutory provisions, often establishing a relatively low burden of proof for particular elements of the crimes.

A. Domestic Violence Assaults

1. **Domestic Assault in the First Degree** (Sect. 565.072, RSMo) (See Addendum B, a summary of case law pertaining to domestic violence offenses, Subsection A).

a. 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” as defined in Section 455.010 RSMo (In 2012, the definition of “family or household member” expanded to include not only adults but children as well.) (See Sect. II.A.1.a.i.aa.) (See Subsection A of the “Domestic Violence Offenses Case Law” -- Addendum B -- to see how Missouri case law broadly interprets “serious physical injury.”)

b. Domestic Assault in the First Degree is a **Class B felony** (which has a range of punishment of 5 years to 15 years in the Missouri Department of Corrections), unless in the course thereof, the defendant inflicts **serious physical injury** to the victim, in which case, it is a Class A felony (10 years to 30 years or life). (As is the situation for all of the domestic assault charges, the range of punishment is further enhanced for “prior domestic violence offenders.”)

(Note that a “traditional” assault charge with attempts to cause serious physical injury and no recognized relationship between the victim and the defendant only warrants a charge of Assault in the Second Degree, a Class C felony).

2. **Domestic Assault in the Second Degree** (Sect. 565.073, RSMo) (See Addendum B, Subsection B).

a. A person commits the crime of Domestic Assault in the Second Degree if the act involves a “family or household member,” as defined in Section 455.010, and he or she:

i. attempts to cause or knowingly causes **physical injury** to such family or household member by any means, including but not limited to, the use of a deadly weapon or **dangerous instrument**, or by choking or strangulation; or
(See Subsection B of Addendum B to see how Missouri case law interprets “physical injury.”) (Also, see Subsection B again of Addendum B to see the extensive list of items that the Missouri Appellate Courts have broadly deemed to be “dangerous instruments.”)

ii. recklessly causes **serious physical injury** to such family or household member; or

iii. recklessly causes **physical injury** to such family or household member by means of a deadly weapon.

b. Domestic Assault in the Second Degree is a **Class C felony** (1 day to 7 years). (Note that a “traditional” assault charge with **physical injury** and no recognized relationship between the victim and the defendant is Assault in the Third Degree, a Class A misdemeanor.)

3. **Domestic Assault in the Third Degree** (Sect. 565.070, RSMo) (*See Addendum B, Subsection C*).

a. A person commits the crime of Domestic Assault in the Third Degree if the victim of the act is a family or household member as defined in Section 455.010 RSMo, and:

i. the person attempts to cause or recklessly causes physical injury to such family or household member (not sure how this is different from Dom. Assault 2nd – see Subsection B); or . . .

ii. with criminal negligence, the person causes physical injury to such family or household member by means of a deadly weapon or **dangerous instrument**; or

iii. the person purposely places such family or household member in **physical injury** by any means; or . . .

iv. the person recklessly engages in conduct which creates a grave risk of death or **serious physical injury** to such family or household member; or . . .

v. the person knowingly causes physical contact with such family or household member, knowing the other person will regard the contact as **offensive**; or . . .

vi. the person knowingly attempts to cause **isolation** of such family or household member by unreasonably and substantially restricting or limiting such person’s access to other persons, telecommunication devices or transportation, for the purpose of isolation.

b. Domestic Assault in the Third Degree is a **Class A misdemeanor** (1 day to 1 year).

c. A person who has pled guilty to or been found guilty of the crime of Domestic Assault in the Third Degree more than two times against any family or household member, as defined in 455.010(5), RSMo, is guilty of a Class D felony (1 day to 4 years) for the third or any subsequent commission of the crime of Domestic Assault. There is no requirement that all three (or more) offenses described in this subsection be against the same family or household member to trigger this enhancement.

[NOTE: The statutes that address the three degrees of domestic assault were amended in 2012. The statutory language that recognized victims who were “adult(s) (are) or (have) been in a continuing social relationships of a romantic or intimate nature with the actor(s)” was deleted. The 2012 definition of a “family or household member” in Sect. 455.010, RSMo, however, specifically includes “any person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim.” Therefore, this amendment does not make any substantive change with respect to the application of the domestic assault statutes to certain victims or perpetrators.]

4. Elder Abuse

Similar to the abuse of an intimate partner, the abuse of an “elderly” person triggers stiff penalties in Missouri:

a. Elder Abuse 1st Degree (Sect. 565.180, RSMo) (*See Addendum B, Subsection A*)

- i. **Necessary intent:** same as for Domestic Assault in the 1st Degree.
- ii. **Specific victim:** any person sixty years of age or older or an “eligible adult.”

An “eligible adult” is:

- aa. An individual between the ages of 18 and 59...
- bb. Who has a “disability” (i.e., a mental or physical impairment that substantially limits one or more life activities) and ...
- cc. Is unable to protect his/her own interests or adequately perform or obtain services which are necessary to meet his/her essential human needs.
- iii. **Sentencing considerations: Class A felony** (10 years to 30 years or life).

b. Elder Abuse 2nd Degree (Sect. 565.182, RSMo) (*See Addendum B, Subsection B*)

- i. **Necessary intent:** same requirements as for Domestic Assault 2nd except:
 - aa. The attempt to cause or knowingly cause physical injury must be done by means of a deadly weapon or dangerous instrument and...
 - bb. The offender must recklessly or (2012 change: not “and”) purposely cause serious physical injury.
- ii. **Specific victim:** same as for Elder Abuse in the 1st Degree.
- iii. **Sentencing considerations: Class B felony** (5 years to 15 years).

c. Elder Abuse 3rd Degree (Sect. 565.184, RSMo) (*See Addendum B, Subsection C*)

- i. **Necessary intent:**
 - aa. knowingly cause or attempt to cause physical contact, knowing that the person will regard the contact as harmful or provocative; or...

bb. purposely engage in conduct involving more than one incident that causes grave emotional distress; or...

cc. purposely or knowingly place in apprehension of immediate physical injury; or...

dd. intentionally fail to provide care, goods or services, causing a reasonable person to suffer physical or emotional distress; or...

ee. knowingly act or fail to act in a manner which results in a grave risk to life, body or health.

ii. **Specific victim:** same as for Elder Abuse in the 1st and 2nd Degrees.

iii. **Sentencing considerations: Class A misdemeanor** (1 day to 1 year).

(NOTE: For any of the Elder Abuse charges, there is no need to establish any relationship between the victim and the defendant.)

d. Financial Exploitation of the Elderly/Disabled (Sect. 570.145, RSMo 2013)

i. **Necessary Intent:** knowingly by deception, intimidation, undue influence or force obtain control over the elderly or disabled person's property with the intent to permanently deprive the victim of the use, benefit or possession of his or her property thereby benefitting such person or detrimentally affecting the victim.

5. Abuse or Neglect of a Child (Sect. 568.060, RSMo 2012)

a. **Necessary Intent** for Sect. 568.060.1(1) abuse: knowingly cause a child to "suffer physical or mental injury" or place the child in a situation in which the child "may suffer physical or mental injury" – "as the result of the abuse or neglect." A person is also guilty of this offense if he/she "recklessly causes a child ... to suffer from abusive head trauma." (2013). (NOTE: child abuse is no longer vaguely defined as the "infliction of "cruel or inhuman punishment.")

b. **Specific Victim:** the victim must be less than 18 years old.

c. **Sentencing Considerations:**

i. **Class C felony.** The offense of abuse or neglect of a child is generally a class C felony, with no eligibility for probation or parole until the defendant has served at least one year of such sentence.

ii. **Class B felony.** Abuse or neglect of a child is a Class B Felony if the defendant has previously been found guilty of a child abuse offense in any jurisdiction, or the "injury inflicted on the child is a serious emotional injury or a serious physical injury."

The definition of “serious emotional injury”: an “injury that creates a substantial risk of temporary or permanent medical or psychological damage, manifested by impairment of a behavioral, cognitive or physical condition.” [NOTE: To establish such emotional injury, it would seem that expert testimony would be necessary.] [Sect. 556.061 (27)].
The definition of “serious physical injury”: a physical injury that “creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.” *Id.* The defendant must serve at least five years of such sentence before he/she is eligible for probation or parole.

iii. Class A felony. Abuse or neglect of a child is a Class A Felony if “the injury is a serious emotional injury or a serious physical injury,” the child is less than 14 years old, and the injury is the result of “sexual abuse” or “sexual exploitation.” **The offense is also a Class A felony if the child dies as a result of his injuries.** The defendant is not eligible for probation on parole for such an offense until he/she has served at least fifteen years of his/her sentence.

(Note that the neglect of a child is the failure of one responsible for the care, custody and control of a child to provide the “care reasonable and necessary to maintain the physical and mental health of (that) child, when such failure presents a substantial probability that death or physical injury or sexual injury would result.” Section 568.060.1 (4), RSMo).

B. Stalking and Harassment

Some DV- related offenses do not require particular types of victims (such as family/household members or elderly or disabled). The sole focus is on the action of the offender. Any victim will suffice . . .

I. Stalking (Sect. 565.225, RSMo) (*See Addendum B, Subsection F*)

a. Necessary intent: purposely harasses or follows with the intent of harassing.

i. Definition of “**harass**”: “to engage in a **course of conduct** (i.e., two or more acts) directed at a specific person that serves no legitimate purpose, that would cause a reasonable person under the circumstances to be frightened, intimidated or emotionally distressed.” [Sect. 565.225.1(3)].

ii. Note that this definition of “harass” is different than the definition of “harass” in the Harassment statute. (Sect. 565.090).

iii. Note that the definition of “stalking” as it pertains to a cause of action for an order of protection is different: “alarm” (i.e., “fear of danger of physical harm” – rather than “emotional distress”) – must be established. [Sect. 455.010(10)].

b. Stalking may become “aggravated” if:

- i. the defendant makes a “**credible threat**” (i.e., “a threat communicated with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety, or the safety of his or her family, or household members or domestic animals...” [Sect. 565.225.1(2)]; or
- ii. at least one of the acts constituting the course of conduct is in **violation of an order of protection** (and the defendant has received notice of the O/P); or
- iii. at least one of the acts constituting the course of conduct is in **violation of a condition of probation, parole, pre-trial release, release on bond pending an appeal**; or
- iv. at any time during the course of conduct, the **victim is 17 years old or younger and the defendant is 21 years old or older**; or
- v. the defendant has **previously been found guilty** of domestic assault, violation of an order of protection, or “any other crime where the other person was the victim.” [Sect. 565.225.3, RSMo – in 2008, this statute was significantly expanded (as described above) in response to a 2006 cyber-bullying tragedy involving 14 year-old Megan Meier. Attempts to enact similar federal legislation – “The Megan Meier Cyberbullying Prevention Act” – have been futile, as of the date of this manual’s revision.]

c. Sentencing Considerations:

- i. **Stalking (non-aggravated): Class A misdemeanor** (1 day to 1 year). [Second or subsequent offense within 5 years of a previous finding/plea of guilt – Class D felony (1 day to 4 years)].
- ii. **Aggravated Stalking: Class D felony** (1 day to 4 years). [Second or subsequent offense within 5 years of a previous finding/plea of guilt – Class C felony (1 day to 7 years)].

2. Harassment (Sect. 565.090, RSMo) (*See Addendum B, Subsection G*)

a. Necessary Intent: Varies with the particular act of harassment (as described below).

b. Acts of Harassment:

- i. knowingly **communicates a threat** to commit any felony to another person and in so doing, frightens, intimidates or causes emotional distress to such other person; or...
- ii. when communicating with another person, knowingly uses **coarse language that is offensive** to “one of average sensibility” and thereby puts such person in reasonable apprehension of offensive physical contact or harm; or...

iii. knowingly frightens, intimidates, or causes emotional distress to another person by **anonymously making a telephone call or any electronic communication**; or...

iv. **knowingly communicates with another person who is, or purports to be, 17 years old or younger** and, in so doing and without good cause, recklessly frightens, intimidates or causes emotional distress to such other person; or...

v. without good cause, **engages in any other act** with the purpose to frighten, intimidate, or cause emotional distress to another person, causes such person to be frightened, intimidated, or emotionally distressed, and such person's response to the act is one of "average sensibilities," considering the age of such person.

(Note that, unlike the situation for Stalking, there is no need to prove a pattern or course of conduct. One act alone is sufficient.)

Note that in 2012, the Missouri Supreme Court found that one provision of the harassment statute -- that criminalized "repeated unwanted communication to another person" -- was unconstitutionally overbroad. [*State v. Vaughn*, 366 S.W. 3d 513, 521 \(Mo. banc 2012\)](#).

c. Sentencing Considerations:

i. **Class A misdemeanor** (1 day to 1 year).

ii. If the Harassment is motivated by the "race, color, religion, national origin, sex, sexual orientation, or disability of the victim," the violation is a Class D felony (1 day to 4 years). (Sect. 557.035.2, RSMo).

(Sect. 565.090, RSMo – in 2008, this statute was also significantly expanded in response to the 2006 Megan Meier cyber-bullying tragedy.)

C. Violations of Orders of Protection

Certain violations of orders of protection can constitute criminal offenses. This subsection addresses the specific violations. (Sects. 455.085.7, 455.085.8 and 455.538.4(1), RSMo; also see Addendum B, Subsection H).

1. The Actual Violation

Only certain violations are criminally recognized, relating to the following:

a. Abuse: As defined in Section 455.010(1), RSMo 2011 the following acts of abuse are recognized:

- i. assault (placing in fear of physical harm);
- ii. battery (causing physical harm);
- iii. coercion (compelling conduct to occur);
- iv. harassment (engaging in repeated conduct that alarms/distresses);

- v. sexual assault (forcing or using duress to cause another to engage in any sexual act);
- vi. unlawful imprisonment (holding, confining, detaining or abducting against will); and
- vii. attempts or threats to commit these acts.

(See Subsection H of the “Domestic Violence Offenses Case Law” -- Addendum B-- to see the appellate courts’ detailed interpretation of the word “abuse.”)

b. Stalking

As defined in Sect. 455.010(13), RSMo, stalking occurs when there is:

- i. **Purposeful and repeated engagement in an unwanted course of conduct that causes alarm to the victim, and ...**
- ii. **“It must be reasonable in the (victim’s) situation to have been alarmed by the conduct.”** (It may be easier to establish stalking than to establish “emotional abuse.”)

c. Child Custody

The adult abuse statute gives very little guidance as to what acts would constitute a “child custody” violation. Some scenarios seem plausible, but others seem extreme:

- i. Failing to return a child in accordance with a detailed parenting plan;
- ii. Returning a child in an untimely fashion (Three hours late? Five minutes late? One day early?);
- iii. Failing to make decisions in accordance with the legal custody provisions in a pending parenting plan (e.g., making unilateral decisions about the child’s health, education and welfare when without authority to do so).

(NOTE: There is no mention about visitation in the statute. Can one assume that “custody” includes “visitation”?) [(NOTE ALSO: Other criminal charges may be more appropriate to address such issues (e.g., Interference with Custody, Parental Kidnapping, and Child Abduction—Sect. 565.150, 565.153 & 565.156, RSMo).)]

d. Communication Initiated by the Respondent

e. Entrance upon the Premises of the Victim's (Petitioner's/Child's) Dwelling.

f. Entrance upon the Premises of the Victim’s (Petitioner’s/Child’s) Place of Employment.

g. Entrance upon the Premises of the Victim’s (i.e., Petitioner’s/Child’s) School.

h. Being within a Certain Distance of the Petitioner or a Child of the Petitioner.

Sects. 455.085.7, 455.085.8 and 455.538.4 (1), RSMo 2011.

(Note that the 2011 revisions made the O/P violations the same for AOPs and COPs. The COP violations have expanded considerably. Also, the last three violations (“f” through “h”) are new. They pertain to some of the terms that a judge can now include in all orders to “ensure the petitioner’s safety.”

2. Violations not Addressed

Not all violations of O/P’s are recognized by the criminal statutes. Despite specific authorization (in Sect. 455.050 and Sect. 455.523, RSMo) of the following terms (to be included in a full O/P), Sect. 455.085.8 and Sect. 455.538.4, RSMo, do not criminalize the respondent’s failure to:

- a. pay child and/or spousal support;
- b. pay rent or mortgage;
- c. pay petitioner’s medical costs (related to the injuries);
- d. obtain counseling, anger management, drug/alcohol treatment; and
- e. return or refrain from touching certain marital property; or
- f. refrain from “molesting or disturbing the peace of Petitioner.” (Standard language in O/P’s).

3. Notice

The State must establish that the defendant had notice of the Full Order of Protection. Notice can either be actual or legal. (*See pp. Subsection H of the “Domestic Violence Offenses Case Law” – Addendum B – for a case law analysis of the meaning of “notice.”*)

4. Sentencing Considerations

a. Class A misdemeanor (1 day to 1 year) for:

- i. violation of Adult O/Ps (for both ex parte and full orders).**
- ii. violation of Child O/Ps (for both ex parte and full orders).**

b. Enhancement – increasing sentencing range:

i. Class D felony: Plea/finding of guilt of O/P violation (*ex parte* or full) in any division of the circuit court within five years of the date of the pending violation can enhance the offense from a Class A misdemeanor (one day to one year) to a Class D felony (one day to four years.) (Sections 455.085.7, 455.085.8 and 455.038.1(1), RSMo 2011).

Note that, until 2011, there were no sentencing enhancements for repeat COP offenders (only available for repeat AOP offenders...)

ii. Non-Missouri prior offenses : A plea/finding of guilt of an O/P violation from another state *would seem to NOT* suffice.

iii. Municipal violations: Such municipal offenses would seem to suffice (as the statute indicates “any division of the circuit court.”). A demonstration that the defendant had legal representation (or knowingly waived such representation) would seem necessary...

5. Another Option – Contempt

As was addressed in the Domestic Violence Court section (Section IX), the petitioner does not have to rely on the prosecutor to get relief. She/he can file a motion to hold the respondent in contempt for any violation. The Domestic Violence Court has “user- friendly” forms for the petitioner who claims that the respondent violated the “no abuse,” contact and/or communication restrictions of the O/P.

6. Double Jeopardy

One issue involving criminal violations of orders of protection relates to double jeopardy. Both the United States and Missouri constitutions indicate that no person shall “be subject for the same offense to be twice put in jeopardy of life and limb.” U.S. Const. Amend.V.

One principle of double jeopardy relates to “lesser included offenses.” Missouri codified these principles, holding that “when the same conduct of a person may establish the commission of more than one offense, he may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if ... [o]ne offense is included in the other.” Section 556.041, RSMo.

The appellate court for the Eastern District of Missouri recently held that a defendant could not be convicted of both stalking and the criminal violation of a protective order (in which the violation was the act that constituted stalking). The court held that “it is apparent that the offense of violation of a protective order is included in the offense of ... stalking because proof of the same conduct is required to sustain both convictions.” State v. Smith, 370 S.W. 3d 891, 895 (Mo. App. Ed. 2012). Consequently, the court set aside the criminal violation of the protective order on double jeopardy grounds.

Another Missouri appellate court arrived at a different result, holding that “the crime of stalking by harassment and the crime of violating an order of protection have different elements.” State v. Stewart, 343 S.W. 3d 373,377 (Mo. App. S.D. 2011). (Indeed, to convict the defendant of stalking, the jury must find that he caused the victim to have “substantial emotional distress.” To convict the defendant of criminal violation of an order of protection, the jury must find him to have caused the victim “alarm.”) Hopefully, the Missouri Supreme Court will resolve this difference in opinion between the appellate courts.

XI. Victimless Prosecutions in DV Cases

Prosecutors face a special challenge with domestic violence cases: many abused victims understandably do not cooperate with the prosecution of their offenders. In many instances, the victims return to their abusers. In other instances, the victims wish to have no contact whatsoever with their abusers, opting to not participate in the prosecution, out of fear that further acts of violence – out of retaliation – would occur. Prosecutors therefore often must choose between compelling uncooperative victims to participate in the prosecution (if they are fortunate enough to be able to locate such victims) or proceed with victimless prosecutions.

A. Exceptions to the Hearsay Rule

Until recently, prosecutors did not need to completely rely on the testimony of the victim to prosecute DV cases. In many instances, they could introduce, through other witnesses, certain statements attributed to the victim without having to rely on the victims' testifying. Certain out-of-court statements – by their very nature are deemed to be “inherently truthful” -- and therefore are admissible as “exceptions to the hearsay rule.” These statements include the following:

1. Excited Utterances.

“[W]here the statement is made under the immediate and uncontrolled domination of the senses as a result of the shock produced by the event, the utterance may be taken as expressing the true belief of the declarant.” [*State v. Kemp*, 212 S.W.3d 135, 146 (Mo. banc 2007); *State v. Bennett*, 218 S.W.3d 604,610 (Mo.App. S.D. 2007).]

2. Statements for Purposes of Obtaining Medical Diagnosis or Treatment.

The statements were made “in connection with the diagnosis and treatment . . . and discomfort (the victim) was experiencing. They were related to the (victim's) then present experience, not to past events.” [*State v. Wyble*, 211 S.W.3d 125, 131 (Mo. App. W.D. 2007).]

3. Dying Declarations.

Statements will be admitted only if they were made “while the declarant believed that his or her death was imminent and that there was no hope of recovery.” [*State v. Hayes*, 88 S.W.3d 47, 63 (Mo. App. W.D. 2002); *State v. Smith*, 32 S.W.3d 532, 547 (Mo. banc 2000).]

4. State of Mind Declarations.

In these instances, the statements are admissible to demonstrate the officers' subsequent conduct only (e.g., investigation, etc . . .) – not for the truth of the matter. [*Edwards v. State*, 200 S.W. 3d 500, 512 (Mo. banc 2006); *State v. Hoover*, 220 S.W.3d 395, 406-07 (Mo. App. E.D. 2007).]

B. The Confrontation Clause - and *Crawford v. Washington*

Despite the admissibility of certain out-of-court statements (as stated above), trial judges must be mindful of the Confrontation Clause, as noted in the United States Constitution: “In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” (Sixth Amendment). The Missouri Constitution’s Confrontation Clause has nearly identical language [Article I, Section 18 (a)].

The Confrontation Clause can be an obstacle to the admission of traditionally admissible out-of-court statements. Otherwise, “leaving the regulation of out-of-court statements to the law of evidence would render the Confrontation Clause powerless to prevent even the most flagrant inquisitional practices.” [*Crawford v. Washington*, 541 U.S. 36, 50-51 (2004).] Additional scrutiny is necessary.

In the momentous *Crawford* decision, the United States Supreme Court gave teeth to the Confrontation Clause, allowing the admission of “**testimonial**” out-of-court statements from a non-testifying individual only if the **witness is unavailable**, and the defendant had a **prior opportunity to cross-examine** the witness. [*Crawford* at 68]. (Emphasis added.)

This manual will briefly address the meaning of some of these highlighted *Crawford* terms. (For a more detailed analysis of *Crawford*, see *Addendum C*.)

1. The meaning of “Testimonial”

a. Factors to Consider

Two years after its *Crawford* decision, the United States Supreme Court provided some guidance for the meaning of “testimonial.” The case of *Davis v Washington*, 126 S.Ct. 2266 (2006), established that a statement is most likely testimonial if:

- i. it is descriptive of past events (not events actually happening at the time);**
- ii. it is a calm narration, "absent of any imminent danger" (as opposed to an account in the face of an "ongoing emergency");**
- iii. it was elicited to determine what had happened in the past (as opposed to being elicited to resolve a present emergency);**

aa. Was the interrogation "solely directed at establishing the facts of a past crime, in order to identify (or provide evidence to convict) the perpetrator"? [State v. Kemp, 212 S.W.3d 135, 148 (Mo. banc 2007).] (If the answer is in the affirmative, the statement is testimonial...)

- iv. the statement was given in a formal, pressure-free environment (as opposed to an environment that was not calm, but frantic).**

[*Davis* at 2276-77].

b. Examples of Testimonial Statements

Some examples of testimonial statements are:

i. Prior testimony:

Preliminary hearing testimony, grand jury testimony, previous trial testimony, deposition testimony, etc...

ii. Certain responses to police interrogation.

The general test: does the statement address non-emergency matters?

(Or was the "primary purpose of the interrogation...to enable police assistance to meet an ongoing emergency" -- and thus be deemed non-testimonial?) [*Davis* at 2273].

iii. Certain statements on 911 calls.

Were statements made in response to an interrogation "to establish or prove past events potentially relevant to later criminal prosecution" when there is "no...ongoing emergency"? Or were operators trying to get information to apprehend an assailant to identify potential threats to police and public safety?

The test seems to focus on whether or not a reasonable declarant would reasonably expect her/his statement to be used for evidentiary (i.e., prosecutorial) purposes. Note how *Crawford* analyzes such statements: "An accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not." (*Crawford* at 51.) (Emphasis added). The U.S. Supreme Court obviously recognizes a distinction.

iv. Affidavits and Lab Reports.

Reports created to serve as evidence in criminal trials, such as laboratory drug test reports or reports certifying blood alcohol concentration, are testimonial statements that fall under the Confrontation Clause. [*Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527 (2009), *Bullcoming v. New Mexico*, 131 S.Ct. 2705 (2011)]. Note: The Supreme Court ruled in *Williams v. Illinois*, 132 S.Ct. 2221 (2012) that a report containing a DNA profile of a suspect is not testimonial. This type of report is distinguishable from the reports addressed in *Melendez-Diaz* and *Bullcoming* because the report was created to apprehend a criminal at large rather than obtain evidence against a particular suspect.

2. Description of “Unavailable”

Before the *Crawford* decision, there had been significant litigation over meaning of the word “unavailable.” Some recognized examples include:

a. Death;

b. Beyond the Reach of Service of Process;

c. Insanity;

d. Physical Illness;

e. Absence Due to the Connivance, Collusion and/or Consent of the Other Party;

f. “Where Due Diligence to Secure the Witness’ Attendance by Compulsory Process has Failed”;

g. Significant Emotional or Psychological Trauma;

Whether or not a witness has “severe emotional distress” has been litigated extensively. (Perhaps because “**emotional distress**” is difficult to determine...)

i. The appellate courts strongly recommend that the trial courts conduct a **formal hearing** on the witness’ unavailability.

ii. It is not sufficient for the court to deem a child witness “unavailable” due to “emotional distress,” solely because of the child’s age and the nature of the charges.

iii. The state must establish more than that it would be “less traumatic (than) if the child were not required to testify in front of the defendant.” [*Kierst v. D.D.H.*, 965 S.W.2d 932, 941 (Mo. App. W.D.1998)]. More than “mere nervousness or excitement or some reluctance to testify.” [*State v.Naucke*, 829 S.W.2d 445, 448 (Mo. banc 1992)].

iv. The court must determine that the child’s trauma would not be due to “the courtroom generally” (or the discomfort of being questioned in general), but rather, **because of the presence of the defendant.** (*Naucke* at 448).

h. Privilege;

Some examples of relationships that provide for confidential communications:

i. Marital (spousal);

ii. Doctor/patient;

iii. Shelter service provider/D.V. victim.

i. Invocation of the Fifth Amendment (Right against Self-Incrimination).

3. Description of the Term “Opportunity to Cross-Examine”

The courts have made it clear that the defendant must have had a meaningful opportunity to cross examine the out-of-court witness before deeming the statement admissible. In particular, the courts have insisted on the following:

a. The opportunity to cross-examine must be adequate (not necessarily the cross-examination itself).

b. The Confrontation Clause at least allows the defendant an opportunity to probe and expose a confronting witness’ “forgetfulness, confusion, or evasion.”

C. The Impact of Crawford on Law Enforcement Investigations – the Bottom Line

Of course, law enforcement officers rarely expect complete cooperation from DV victims. The victims may never even cooperate at all, after they had made their initial calls to the police. Nonetheless, in these situations, police officers may still be able to attain the necessary information to prosecute the offender. Indeed, the victims’ “911” statements may prove to be especially valuable.

If the victim cooperates at the scene, the police officers may want to still consider thoroughly documenting the victims’ statements upon their arrival at the scene of the DV assault. Supporting documentation – such as photographs and medical reports – could further corroborate the victim’s accounts. The officers could also locate both the witnesses to the purported abuse and the individuals with whom the victim spoke immediately after the purported abuse. (*Crawford* and subsequent U.S. Supreme Court decisions seem to hold that the Confrontation Clause requirements are not applicable to those situations in which statements were made to non-law enforcement people.)

The victims’ statements to law enforcement officers may ultimately be admissible if the judge deems them to be both exceptions to the hearsay rule and in accordance with the Confrontation Clause (i.e., the statements are deemed to be non-testimonial; they are from available testifying witnesses; or there was a prior opportunity to cross-examine the witness).

XII. Firearms Statutes Relating to DV

The United States Supreme Court recently declared that “firearms and domestic strife are a potentially deadly combination nationwide.” [*United States v. Hayes*, 129 S.Ct. 1079, 1087 (2009)]. Numerous studies have shown that having guns in the household makes the homicide of a family member or intimate partner significantly more likely to occur, compared to those situations in which firearms were not present in the home.

[Wiebe, Annals of Emergency Medicine, Vol. 41 (2003); Kellerman, et al., 329 New England Journal of Medicine 1084 (1993); Bailey, Archives of Internal Medicine 157, no.7: 777-82 (1997)]. Moreover, studies have shown, not surprisingly, that assaults with firearms involving family and intimate partners are much more likely to be fatal than those assaults not associated with firearms. [Saltzman, et al., 267 Journal of the American Medical Association 3043 (1992); Campbell, et al., American Journal of Public Health 93(7) (2003)].

Studies have also shown that a high percentage of domestic violence victims who live in residences with firearms reported that their intimate partners had threatened or harmed them with the firearms. Susan B. Sorenson et al., “Weapons in the Lives of Battered Women,” 94 Am. J. Pub. Health 1412, 1414 (2004). The mere presence of the firearms obviously makes such victims feel less safe. Sorenson at 1413.

Recent federal and Missouri legislation has attempted to address the “deadly combination” of firearms and domestic violence, as described below.

A. Federal Statutes (That Prohibit the Possession, etc . . . of Firearms)

1. Felonies and Misdemeanor Crimes of Domestic Violence

a. Applicable Crimes

i. “Felon in Possession”: According to 18 U.S.C. Section 922 (g), felons cannot possess firearms -- regardless of the type of felony for which they were convicted. No distinction is made relating to the length of time that has passed since the imposition of the felony conviction. The prohibition lasts for the entire life of the offender.

ii. Domestic Violence Misdemeanors: The federal firearms statute also prohibits those convicted of misdemeanor domestic violence crimes from possessing firearms. [(The U.S. Supreme Court recently held that common assault misdemeanors that were not charged as domestic assaults also trigger the federal prohibition, as long as the victim and defendant are family/household members. See *United States v. Hayes*, 129 S. Ct. 1079 (2009).] (Note that the misdemeanor defendant must also have been represented by an attorney – or have knowingly and intelligently waived his/her right to an attorney – and if the defendant was convicted after a bench trial, he/she must have waived his/her right to a jury trial.)

b. No "Official Use" Exception: 18 USC 922(g)(9) states that “(i)t shall be unlawful for any person...who has been convicted **in any court** of a misdemeanor crime of domestic violence ... to transport, ... possess, ... or receive ... any firearm or ammunition.”

Municipal DV assaults are therefore sufficient to trigger the federal statute.

c. Sentencing Considerations: There is no “official use” exemption for law enforcement officers or members of the United States military. Thus, any such individual who has been convicted of a misdemeanor domestic violence offense cannot possess or receive firearms or ammunition for any purpose, including the performance of official duties. [18 U.S.C. 925 (a) (i)].

A violation of these prohibitions is punishable for **up to ten years** in the federal prison system.

(NOTE: 18 U.S.C. Section 922(d) (9) prohibits an individual from **transferring a firearm** to a person **convicted of a misdemeanor crime of domestic violence.**)

2. Pending Orders of Protection

a. The Relevant Law: 18 USC 922(g)(8)(A)&(C)(ii) indicates that an individual cannot transport, possess or receive a firearm or ammunition after a “hearing” when the court issues an order that both first, “**restrains (the individual) ... from harassing, stalking or threatening an intimate partner** (which is defined very broadly) **or child** and second, “**explicitly prohibits the use, attempted use, or threatened use of physical force against such partner or child.**”

[NOTE: There is no need for the second restriction to be included if the court instead determines in writing that the respondent is a “**credible threat to the physical safety**” of the intimate partner (which a judge would typically find if he/she issues an O/P subsequent to a full hearing)].

b. St. Louis County Order of Protection Form Language: The standard St. Louis County Adult Abuse O/P form has an option for the judge (that is routinely checked in nearly all situations, including “consents”) that states that “Respondent shall not use, attempt to use, or threaten to use physical force against Petitioner that would reasonably be expected to cause bodily injury and shall not stalk, abuse, threaten to abuse, molest or disturb the peace of Petitioner wherever the Petitioner may be.” The standard Child O/P has similar language. If a “hearing” is held, such **language in the AAOP and the COP would appear to trigger the federal statute.**

c. What Is the Meaning of "Hearing"? One issue that has been regularly challenged by defendants and consistently decided (against them) by the federal appellate courts is the meaning of the word “hearing” as it is used in 18 U.S.C. Section 922(g)(8). “A hearing requires **actual notice and an opportunity to be heard**, but the statute does not require that evidence actually have been offered or witnesses called.” [United States v. Lippman, 369 F.3d 1039, 1042 (8th Cir. 2004), cert. denied 543 U.S. 1080 (2005)]. (Emphasis added.) Thus, all off-the-record consent O/Ps satisfy the 922(g) (8) “hearing” requirements.

d. Challenges in Making the U.S. Attorney's Office Aware of the Violation: The practical concern surrounding the “firearms” language relates to how the federal authorities could determine that the terms of the O/P warrant federal firearms scrutiny of a particular respondent. Without the state court’s indication on the Full O/P that the terms of the O/P trigger 18 U.S.C. 922(g) (thereby causing the firearm restriction to appear on NCIC), the restriction – and violation – would hardly ever be discovered.

e. "Official Use" Exemption: Unlike the situation for offenders with felonies or DV misdemeanors, law enforcement officers and members of the United States military who have O/Ps against them (that trigger the federal firearm prohibition) are entitled to an “**official use**” exemption [(18 U.S.C. 925 (a) (i)]. The exemption appears to apply only to service weapons and not to personal weapons.

f. Sentencing Considerations: Similar to a “felon in possession” conviction, a conviction for this violation is also punishable for **up to ten years** in the federal prison system.

(NOTE: 18 U.S.C. Section 922(d) (8) prohibits an individual from **transferring a firearm** to a person who is **subject to an Order of Protection.**)

3. Federal Background Check

The Brady Handgun Violence Prevention Act (1991) instituted mandatory federal background checks on firearms purchasers. Most background checks through the **National Instant Criminal Background Check System (NICS)** are now completed immediately, while the FBI agent is on the telephone with the firearms dealer. (The original Act provided for a five day waiting period. Only in rare instances is there even a waiting period any more.)

Despite the federal statute that prohibits both defendants who were convicted of committing misdemeanor crimes of domestic violence and respondents in O/P cases from possessing firearms, there is no federal prohibition for a dealer from selling firearms to such individuals. [18 U.S.C. Sect. 922 (s) (3) (B)].

A conviction for selling firearms to any individual who had been either convicted of or under indictment for any felony offense carries a range of punishment of **up to one year** with the Federal Bureau of Prisons. [18 U.S.C. Sect. 924 (5)]. He/she may also face the **suspension or revocation of his/her license** to sell firearms. [18 U.S.C. Sect. 922 (t) (5)].

4. What Should an Individual Do If He/She Is Subject to a Federal Firearms Prohibition?

The Alcohol, Tobacco, Firearms and Explosives Bureau (ATF) recommends that such persons transfer their firearms and ammunition to a third party, who may lawfully receive and possess them, such as their attorney, a local police agency, or a federal firearms dealer. (“At the Frontline against Violent Crime,” ATF website on misdemeanor crimes of domestic violence.)

5. Reporting Federal Violations

As can be seen, law enforcement officers need to be looking at **both the criminal and the order of protection history** when running record checks.

Any of these federal violations should be reported to the United States Attorney's Office. The Office has assistant U.S. attorneys responsible for prosecuting such DV and firearms matters. The local phone number is (314) 539-2200.

B. State Statutes (re: Usage of Firearms)

1. Unlawful Use of a Weapon

Section 571.030, RSMo, does not specifically address domestic violence. Many of the listed offenses, however, could be acts recognized as DV. The statute indicates that a person commits the offense of Unlawful Use of a Weapon if he/she knowingly:

- a. **carries concealed upon or about his/her person a knife . . . or any other weapon readily capable of lethal use** [Sect. 571.030.1(1), RSMo].
- b. **discharges or shoots a firearm** into a dwelling house . . . or motor vehicle or any building or structure used for the assembling of people. [Sect. 571.030.1(3), RSMo].
- c. **exhibits** in the presence of one or more persons, any weapon readily capable of lethal use in an angry or threatening manner. [Sect. 571.030.1(4), RSMo].
- d. **discharges or shoots a firearm at or from a motor vehicle.** [Sect. 571.030.1(9), RSMo].
- e. **discharges or shoots a firearm at any person, or at . . . any building** or habitable structure [Sect. 571.030.1 (9), RSMo].

Unlawful Use of a Weapon (as described above) is a **Class D felony** (and therefore carries a range of punishment of up to four years in the Missouri Department of Corrections).

2. Unlawful Possession of a Firearm

Section 571.070, RS Mo, also does not specifically address domestic violence. The Missouri statutes do not prohibit firearms possession to the extent that the federal firearms statutes do. Missouri does not prohibit an individual with a misdemeanor domestic violence conviction or a pending O/P against him/her from possessing a firearm. The statute does, however, find that an individual commits the offense of Unlawful Possession of a Firearm if he/she:

- a. knowingly has a **firearm in his/her possession**, and
- b. has been **convicted of a felony** in Missouri (or of a crime under the laws of any state or of the United States, which, if committed within Missouri, would be a felony).

Unlawful Possession of a Firearm is a **Class C felony** (carrying a range of punishment up to seven years in the Missouri Department of Corrections).

C. State Statutes (re: “Concealed Carry Endorsements”)

Section 571.101 of the Revised Statutes of Missouri authorizes “**concealed carry endorsements**” (“CCE”s) to allow individuals to carry concealed firearms “on or about his or her person or within a vehicle.”

1. Prohibition of Concealed Carry Endorsements

Certain individuals, however, may not attain or keep “concealed carry endorsements”:

a. those who have pled guilty to or have received convictions for any state or federal felony [Section 571.101.2 (2), RSMo];

b. those who have pled guilty to or have received convictions for “misdemeanor offenses involving crimes of violence” within a five year period immediately preceding application for a certificate of qualification for a concealed carry endorsement. [Section 571.101.2(3), RSMo];

c. respondents of valid full order(s) of protection which (are) still in effect.
[Section 571.101.2 (10), RSMo].

2. Court Procedure upon Judge’s Determination that Individual is Ineligible to Have a Concealed Carry Endorsement

If a court order (such as a sentencing on a felony) makes an individual ineligible to continue owning a concealed carry endorsement, the holder must then surrender his/her driver’s (or non-driver’s) license that contains the endorsement to:

a. the court; or

b. “the officer or other official serving the order, warrant . . .”

When a court issues an order of protection, the CCE surrender process applies but only when the judge makes a finding that the respondent “**presents a risk of harm to (himself) or others.**” [Sect. 571.104.1(2), RSMo]

The statute seems to suggest that if the respondent is present for his/her O/P hearing, he/she must give the court his/her license. If he/she does not appear and the judge issues a default Full O/P, the respondent must give his/her CCE to the officer who serves him/her with the Full O/P. (In criminal court, it would seem that the defendant would always be expected to give his/her CCE to the judge because the judge cannot issue a default sentencing order. Sentencing can only occur when the defendant is present . . .)

The statute also indicates that the court must then forward a **notice of “action”** and the license to the Missouri Department of Revenue (which will then notify the sheriff of the county that issued the “certificate of qualification for a concealed carry endorsement to MULES.”) The DOR will remove the endorsement from the respondent’s driving record.

When the O/P expires/is terminated, the court/police department must make arrangements to return the license. (Section 571.104, RSMo).

XIII. Interstate Travel to Commit Domestic Violence

The Violence Against Women Act prohibits an individual from crossing state lines with the intent to:

A. Commit a crime of violence, harassment or intimidation against an intimate partner – and then actually commits or attempts to commit a crime of violence (18 U.S.C. Sect. 2261); or

B. Stalk, harass, or cause distress to someone in person or by mail or computer and then actually causes substantial emotional distress or reasonable fear of death or serious bodily injury (18 U.S.C. Sect. 2261A); or

C. Violate a qualifying Order of Protection – and then actually violate the order. (18 U.S.C Sect. 2262).

Each of these violations carries a federal prison term of **five years to life**.

(NOTE: in June, 2010, the Justice Dept. confirmed that this statute and other parts of the Violence against Women Act apply to defendants whose victims are male and/or involved in homosexual relationships.)

Once again, it is critical for law enforcement officers to be looking at both the criminal **and the order of protection history** when running record checks. Such federal violations should be reported to the U.S. Attorney's Office at (314) 539-2200.

XIV. Immigration Issues

A. Protection for Non-Citizen D.V. Victims

A victim of domestic violence faces additional challenges when she/he is not a U.S. citizen. Her/his plight appears even more complicated when her/his legal status is contingent upon her/his marriage to the abuser. Certain federal statutes address these obstacles, often providing rights for undocumented victims of domestic violence.

1. Spouse/child of a U.S. Citizen or a Lawful Permanent Resident (i.e., “Green Card Holder”) May be Eligible for Permanent Residency.

Abused spouses (and children) may be eligible to file a “**Self-Petition**” (I-360) with the U.S. Citizenship and Immigration Services (formerly known as the Immigration and Naturalization Services, the I.N.S.).

Approval of this petition allows the abused spouse, child or parent of a U.S. citizen or the abused spouse/child of a **U.S. citizen/Lawful Permanent Resident** (“LPR”) to become eligible to apply for permanent residency without the participation of the abuser. (Eligibility for an abused spouse/child/parent of a U.S. citizen may be immediate; eligibility for an abused spouse/child of an L.P.R., however, will only occur when her/his visa becomes available). Approval of this petition (upon a demonstration of good moral character and a demonstration of being “battered” or the “subject of extreme cruelty”) allows such an abused spouse/child to file for a work permit (exempting her/him from the standard requirement that the U.S. citizen or the LPR file for him/her). [8 U.S.C.Sect. 1154 (a) (1)]. (Battered spouses must also establish that they had entered into the marriage in good faith.)

(NOTE: “Extreme cruelty” is any “act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury.”)

2. Certain Individuals Who are Subject to Deportation May Qualify for Cancellation of the Deportation Proceedings.

Individuals who are facing deportation (known now as “removal”) may attain as a remedy the “**cancellation of removal**” – which would result in the awarding of an LPR status. Undocumented immigrants are eligible to apply. Certain individuals, who have been “battered or subjected to extreme cruelty” by their U.S. citizen/LPR spouses (or parents), have less demanding requirements to meet (e.g., the required period of time that the alien must have been physically present in the U.S. is much shorter). (8 U.S.C. Section 1229b).

3. Certain Undocumented Individuals (Including Spouses of Undocumented Immigrants) May Attain Legal Residency.

An undocumented victim of domestic violence may be eligible for a **U-Visa**. (“U Nonimmigrant Status Classification”) The U-Visa can be granted to an immigrant who, as a victim of certain serious crimes (that include domestic violence, sexual assault and “abusive sexual contact”), has both suffered “substantial physical or mental abuse” and has cooperated with authorities in the investigation and/or prosecution of the perpetrator. The criminal activity need not relate to federal offenses – state **and municipal** offenses can suffice. [8 U.S.C. Section 1101(a) (15) (U)]. The extent of required “cooperation” is subject to interpretation.

A U-Visa can ultimately give the individual legal status to reside in the United States for up to four years, allowing her/him to apply for legal permanent residency after three years [if she/he had cooperated fully with a law enforcement or court investigation](#). [Violence against Women Act, 2000; 8 U.S.C. Section 1184(b) (6)]. In some cases, the U-Visa can be renewed for additional periods of time. It is also possible for an individual with a U-Visa to attain permanent residency status. [8 U.S.C. Section 1255(m)].

[In the course of investigating incidents involving domestic violence, law enforcement officers may also uncover evidence of human trafficking \(forcing a person to engage in sex trade or labor by use of force, fraud, or coercion\). Foreign-born victims of human trafficking who cooperate with law enforcement, court, or a child protective services investigation can also obtain immigration relief via the U-Visa process, or a similar visa, referred to as a T-Visa.](#)

4. Law Enforcement Officers Have No Duty to Ascertain Status.

An undocumented immigrant victim of DV may file for an O/P, make a police report or seek charges through a prosecuting attorney's office. Her/his legal status is not relevant. Law enforcement officers need to be certain that such victims – similar to those victims who are U.S. citizens -- have reasonable access to their departments and the courts. All victims of DV are entitled to protection. [Indeed, all foreign-born persons, without regard to immigration status, have constitutional protections once they have come within the territory of the U.S. See *Plyer v. Doe*, 457 U.S. 202, 210 (1982).]

Officers should be concerned about establishing a comfortable and safe environment for all victims. Foreign-born DV victims, in particular, desperately need an authority figure that they can trust to protect them, to assist them in addressing the DV. Confronting the victim about her/his legal status could prevent any potential rapport from ever developing.

NOTE: Section 476.803 R.S.Mo. states the following: “The courts shall appoint qualified interpreters and translators in all legal proceedings in which the non-English speaking person is a party or a witness.”

B. Deportable Status for Non-Citizen D.V. Offenders

An alien is “deportable” (i.e., “removable”) after admission to the U.S. if:

1. He/she is convicted of a “crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect or child abandonment.” [8 U.S.C. Section 1227 (a) (2) (E) (i)];
or

2. He/she has been enjoined under a protection order and “whom the court determines has engaged in conduct that violates the protection order that involves protection against credible threats of violence, repeated harassment or bodily injury” to the O/P petitioner.

[8 U.S.C. Section 1227 (a) (2) (E) (ii)].

XV. Victims’ Rights

In Missouri, the victims’ rights statute places extensive obligations on the prosecutor to ensure that certain rights are afforded to the victim. For all criminal cases, Missouri victims have the right to:

- (A.) be present at all criminal justice proceedings.
- (B.) receive information about the crime.
- (C.) be informed of the filing of charges.
- (D.) receive information about the bond and the defendant’s release.
- (E.) be informed of court dates (e.g., preliminary hearings, trials, sentencings, etc.)
- (F.) confer with the prosecutor about bail and plea bargains.
- (G.) receive reasonable protection.
- (H.) receive information on the availability of victim compensation assistance.
- (I.) receive restitution.
- (J.) receive a speedy disposition of the case.
- (K.) give input to the court about case plea bargains and sentencings.
- (L.) receive information “about how the criminal justice system works.”

(Missouri Constitution, Art. I, Section 32; Sections 595.209 and 557.041, RSMo)

A victim’s right to the above information/services is not necessarily automatic. If she/he is the victim of certain “dangerous felonies” (as defined in Section 556.061, RSMo), the victim should be automatically afforded such rights. However, if she/he is the victim of other felonies or misdemeanors, she/he can only attain such rights if she/he seeks such rights through a written request. Section 595.209, RSMo.

XVI. Domestic and Sexual Violence and Victim Resources

A. Police Assistance (911 if emergency). Non-emergency numbers:

- **St. Louis County: (314) 615-8608 (weekday daytime hours); (314) 889-2341 (evenings, weekends, holidays).**
- **St. Louis City: (314) 444-0100 (Dists. 1 & 2); (314) 444-2500 (Dists. 3 & 4); (314) 444-0001 (Dists. 5 & 6).**

B. Order of Protection Offices/Information

1. Courthouse Offices (to obtain a Child/Adult O.P. or to get assistance when such orders are violated)

a. St. Louis County – St. Louis County Courthouse, 7900 Carondelet Ave., Clayton MO – Plaza Level

Business Hours (Staff member will answer) (314) 615-4725

(M: 8:00 a.m. -- 6:00 p.m., Tu -- F: 8:00 a.m. -- 5:00 p.m., Sat: 9:00 a.m. -- 12:00 p.m.)

After Hours: If you reside in a municipality in St. Louis Co., call your local police department.

If no one there is able to assist you, call:

-- The St. Louis County Police Department (314) 889-2341 or

-- The Hazelwood Police Department (314) 838-5000.

(NOTE: See Addendum D for information on getting an O.P. “after hours.”)

Also: -- St. Louis Co. Order of Protection Assistance Program (C.O.P.A.)..... (314) 615-3210

-- St. Louis County Domestic Violence Court (314) 615-4642

b. St. Louis City – St. Louis City Civil Cts. Building, 10 N. Tucker Blvd., St. Louis, MO – 9th Floor (Rm. 901)

Business Hours (Staff member will answer) (314) 622-4434

(M – F: 8:30 a.m. – 4:30 p.m.)

After Hours: Call any St. Louis Metropolitan Police Department Area Station for assistance.

Also: St. Louis City Order of Protection Assistance Program (C.O.P.A.) ... (314) 621-4402

c. St. Charles County

Business Hours (Staff member will answer).....(636) 949-7391(Ext. 6)

After Hours (Sheriff's Office).....(636) 949-0809

d. Jefferson County

Business Hours (Informational recording only).....(636) 797-5555

After Hours (Informational recording only).....(800) 748-3456

e. Franklin County

Business Hours (Staff member will answer).....(636) 583-6355

After Hours (Sheriff's Office).....(636) 583-2560

2. Missouri Victim Automatic Notification System (MOVANS) (866) 5MOVANS

www.vinelink.com

(866) 566-8267

3. Victim Address Confidentiality Program (Safe At Home)(866) 509-1409

www.mosafeathome.com

C. General Domestic and Sexual Violence and Victim Assistance Hotlines/Websites

1. Hotlines

- National Domestic Violence Hotline: (800) 799-7233/ (800) 787-3224 (TTY)
- Domestic Violence and Sexual Assault (Safe Connections) Hotline: (314) 531-2003
- Rape Crisis Line (St. Louis Regional Sexual Assault Center): (314) 531-7273
- ALIVE Hotline: (314) 993-2777
- Safe Connections 24-Hour Crisis Helpline: (314) 531-2003
- Life Source Consultants Hotline: (314) 524-0686
- National Sexual Assault Hotline: (800) 656-4673
- National Teen Dating Abuse Helpline: (866) 331-9474/ (866) 331-8453 (TTY)
- Missouri Elder Abuse Hotline: (800) 392-0210
- Missouri Child Abuse Hotline: (800) 392-3738
- Youth Violence Prevention Hotline: (800) 367-2543

2. Websites

- St. Louis County Domestic Violence Court:
www.STLOUISCO.COM/CIRCUITCOURT (Click on “Domestic Violence Court”)
- Missouri Coalition against Domestic and Sexual Violence: www.MOCADSV.ORG
- Missouri Bar Association:
www.mobar.org/3e6746cd-feff-4018-b3ec-a3ae7529ab97.aspx – “Handbook for Survivors of DV”
- Missouri Attorney General: www.ago.mo.gov/publications/domestic_violence
- National Coalition against Domestic Violence: www.NCADV.ORG
- American Bar Association: www.ABANET.ORG (Follow the “Commission on Domestic Violence” links)
- National Network to End Domestic Violence: www.NNEDV.ORG
- National Immigration Project of the National Lawyers Guild:
www.nationalimmigrationproject.org (Click the “Domestic Violence” link)
- Rainbow Domestic Violence (GLBT): www.rainbowdomesticviolence.itgo.com

(NOTE: All St. Louis area DV shelters also have hotlines – See Subsection D of this Section.)

D. Domestic Violence Shelters

- Alternatives to Living in Violent Environments (ALIVE)(314) 993-7080 *St. Louis County*
www.alivestl.org (800) 941-9144 *Franklin County*
- Bridgeway Women’s Center (877) 946-6854
www.bridgewaybh.com
- Kathy J. Weinman Shelter (314) 423-1117
www.co.st-louis.mo.us/dhs/kjweinmanshelter.html
- St. Martha’s Hall (314) 533-1313
www.saintmarthas.org
- The Women’s Safe House (314) 772-4535
www.twsh.org

E. Domestic and Sexual Violence Victim Advocacy/Counseling Services

- A.C.C.E.S.S. (MERS/Goodwill) (Employment Services) (314) 646-5845
www.mersgoodwill.org
- Alice’s House (314) 839-4357
- AWARE (Barnes-Jewish Hospital) (for BJC hospital patients only) (314) 362-9273
www.barnesjewish.org
- Crime Victim Advocacy Center(314) 652-3623 *Hotline*
www.supportvictims.org (314) 652-9771 *Office*

- The LEAD Institute (Leadership through Ed. & Advocacy for the Deaf) (800) 380-3323
www.deaflead.org *Deafline Missouri (636) 219-9880; (573) 445-5005 Office*
- Life Source Consultants (314) 524-0686 *Hotline*
www.lifesourceconsultants.org (314) 524-4130 *Office*
- Lydia’s House (314) 771-4411
www.lydia’s house.org
- Redevelopment Opportunities for Women (ROW) (314) 588-8300
www.row-stl.org
- Safe Connections (314) 531-2003 *Hotline*
www.safeconnections.org (314) 646-7500 *Office*
- South Asian Women Empowerment Region Association (SAWERA) (877) 729-3722 *Hotline*
www.saweraa.org (314) 435-3722 *Office*
- Woman’s Place (314) 645-4848
www.womansplacestl.org
- Women of Grace (314) 652-2572 *Hotline*
www.womenofgrace.com (314) 652-9196 *Office*
- YWCA St. Louis Regional Sexual Assault Center..... (314) 531-RAPE *Hotline*
www.ywcastlouis.org (314) 726-6665 *Office*

F. Domestic and Sexual Violence Legal Resources

- Catholic Legal Assistance Ministry (314) 977-3993
www.ccstl.org
- Lasting Solutions/Legal Services of Eastern Missouri (314) 534-4200 *Office*
www.lsem.org (800) 444-0514
- Legal Advocates for Abused Women (LAAW) of the Crime Victim
Advocacy Center (CVAC)..... (314) 664-6699
www.laawstl.org
- St. Louis Circuit Attorney’s Victim Services (314) 622-4373
www.circuitattorney.org
- St. Louis County Prosecuting Attorney’s Office, Victim Services Division... (314) 615-4872
www.stlouiscopa.com
- St. Louis University School of Law, Legal Clinic (314) 977-2778
www.law.slu.edu/acedemics/clinics/civil_advocacy_clinics.html
- Washington University School of Law, Civil Justice Clinic (314) 935-7238
www.law.wustl.edu/civiljustice

G. Medical/Dental/Reconstructive Surgery for DV Victims

- Face-to-Face (Facial Plastic Surgery)..... (800) 842-4546
www.facetofacesurgery.org
- Give Back a Smile Program (Cosmetic Dentistry)..... (800) 773-4227
www.givebackasmile.com
- Skin Care Outreach Empowers Survivors (SCORES) (Derm. Surgery)..... (888) 892-6702
www.asds.net

H. Assistance for Elderly DV Victims

- Older Women's League (OWL).....(314) 725-5862
www.owlstlouis.com
- Missouri Elder Abuse Hotline.....(800) 392-0210
www.seniorcareservices.org/2010

I. Other Services

- **St. Louis Crisis Nursery**..... (314) 953-8030
www.crisisnurserykids.org
- **Housing Resource Center**..... (314) 802-5444
www.ccstl.org
- **Missouri Child Support Enforcement**(800) 859-7999
www.dss.mo.gov/cssr
- **Missouri Crime Victims Compensation Program**(800) 347-6881
www.dss.mo.gov/cse
- **Fathers' Support Center**.....(314) 333-4170
www.fatherssupportcenter.org

XVII. Batterer Intervention Programs

- **Alternatives to Violence and Abuse (AVA)**.....(314) 486-2027
www.bridgewaycounseling.com
- **Developing Options to Violence (DOV)**.....(314) 623-5859
- **Men Ending Domestic Violence (MEDV), Provident Counseling**(314) 371-6500
www.providentstl.org
- **Rape and Violence Ends Now (RAVEN)**..... (314) 289-8000
www.ravenstl.org
- **Strength Through Emotions Management (STEM)**..... (314) 997-6463
www.mindcarellc.com

ATTACHMENT 1

A. Threshold Issues – Prerequisite Information

A petitioner cannot obtain any relief whatsoever, unless she/he meets the threshold requirements described in Subsection II.A.1. The failure to meet all of the first three (four, if a COP) requirements warrants an outright dismissal. The failure to meet the last three requirements may warrant dismissal or merely mean that the selected county for filing is not the appropriate place to do so. If the petitioner satisfies all of the necessary requirements, she/he can proceed to address the further considerations in the flow chart and outline.

1. Necessary relationship between parties

a. “Domestic Violence” (“Abuse”?) Allegation: Present or Former “Family or Household Member.”

b. Stalking Allegation: No relationship necessary.

2. Age of alleged victim

a. AOP (Petitioner) -- 17 years of age or older (unless otherwise emancipated).

b. COP (Child) -- Younger than 17 years of age.

3. Age of Respondent

a. AOP -- Any age. Section 455.020.1, RSMo 2011.

b. COP – Any age. Section 455.505.1 RSMo Supp. 2013.

4. Special COP requirement as to the relationship between Petitioner and the child --

Petitioner must be a parent, guardian, guardian ad litem, court-appointed special advocate, or a juvenile officer of the child.

5. Location of Petitioner (JURISDICTION #1)

a. AOP – Must be present within the state of Missouri.

b. COP -- No such requirement.

6. Location of Respondent’s Actions (JURISDICTION #2)

a. AOP-- Must “have occurred, have been attempted, or have been or are threatened within the state of Missouri.”

b. COP-- No such requirement.

7. Venue

a. AOP – In the county where Petitioner resides, where the alleged act of abuse (not stalking) occurred, or where Respondent can be served (as opposed to where Respondent resides...).

b. COP -- Same as for an AOP.

If the criteria are met for these requirements (as described in detail in Sub Section II.A.1), proceed to the Flow Chart, on the next page...

B. The Flow Chart

(See next three pages.)

For #8:
 A. Abuse – the following acts or attempts/threats to commit the following acts:

- i. Assault (knowingly placing petitioner in fear of physical harm).
- ii. Battery (knowingly causing petitioner physical harm).
- iii. Coercion (compelling petitioner to engage in certain conduct).
- iv. Harassment (engaging in knowing conduct that causes petitioner’s alarm/distress).
- v. Sexual Assault (knowingly causing petitioner to involuntarily engage in a sexual act).
- vi. Unlawful Imprisonment (confining petitioner against her/his will).

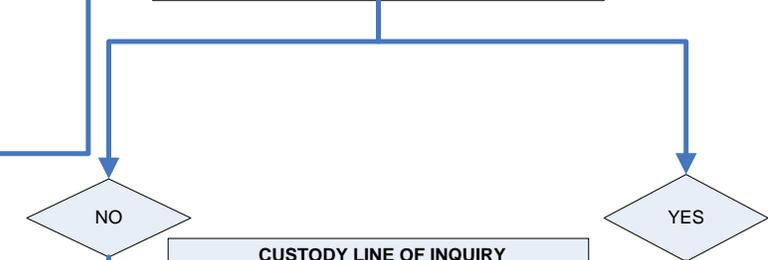
For #8:
 B. Stalking – 5-pronged test

- i. Purposely
- ii. Engaging in “Course of Conduct”
 - a. At least two acts over a period of time, however short?
 - b. Was there no legitimate purpose to the conduct/activity or did the behavior/comments go beyond the legitimate purpose?
- iii. That Causes “Alarm”
 - a. Subjective Alarm – Did petitioner actually have fear of physical harm?
 - b. Objective Alarm – Was it reasonable for petitioner to have such fear?

REQUIREMENT FOR FULL ORDER OF PROTECTION
#8. Does Petitioner allege that Respondent ABUSED or STALKED her/him or the child in a COP [as defined by Sections 455.010(1) and 455.010(13) RSMo 2011]?^a



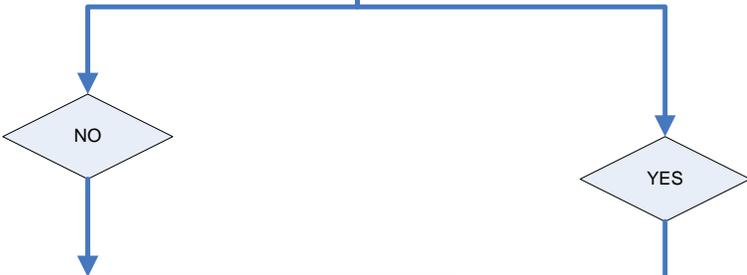
REQUIREMENT FOR EX PARTE RELIEF
#9. Do the facts alleged within the petition establish an “immediate and present danger of abuse” to Petitioner?^b
 (Or is there other “good cause” alleged?^c)



ISSUE A SUMMONS

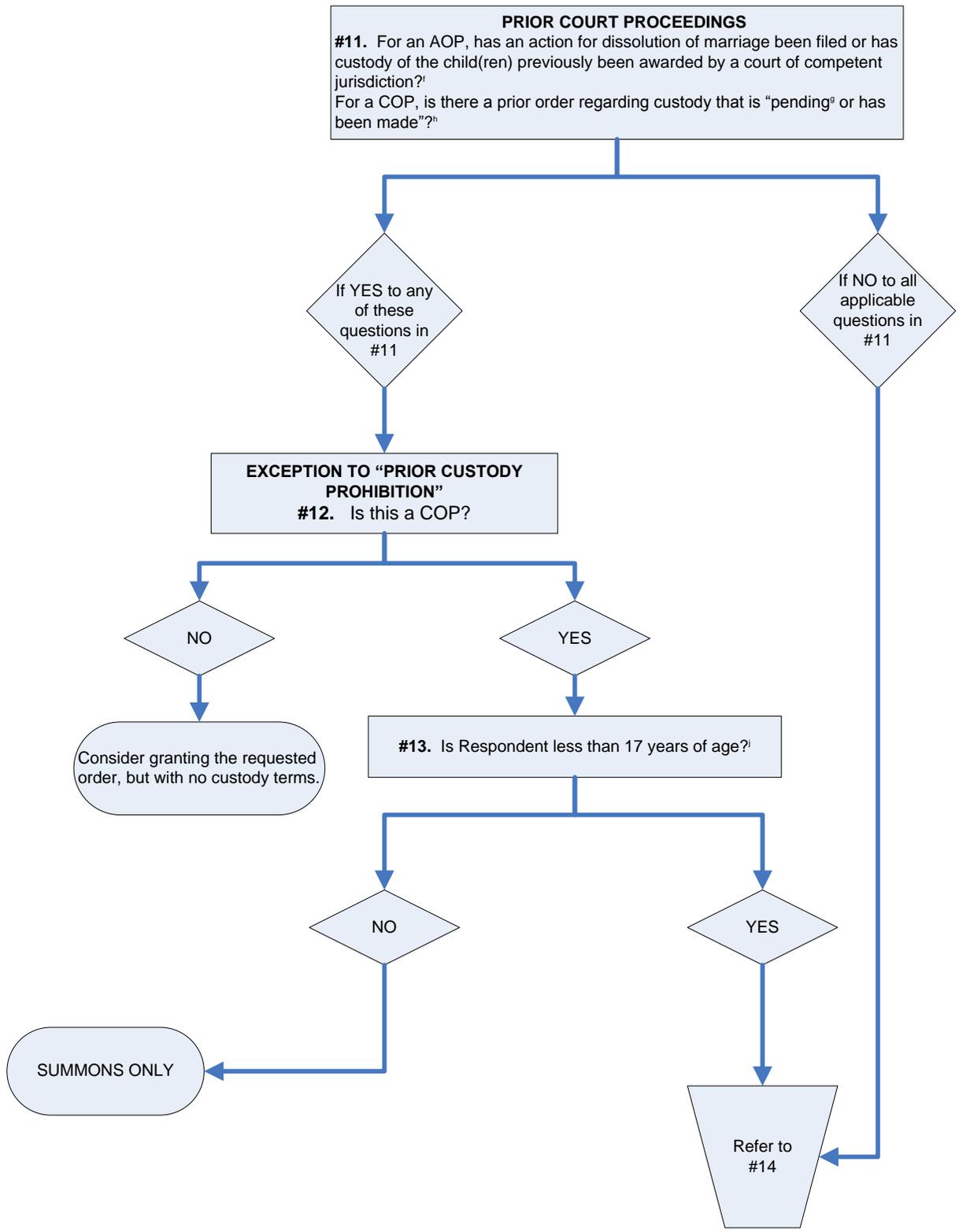
ISSUE A SUMMONS

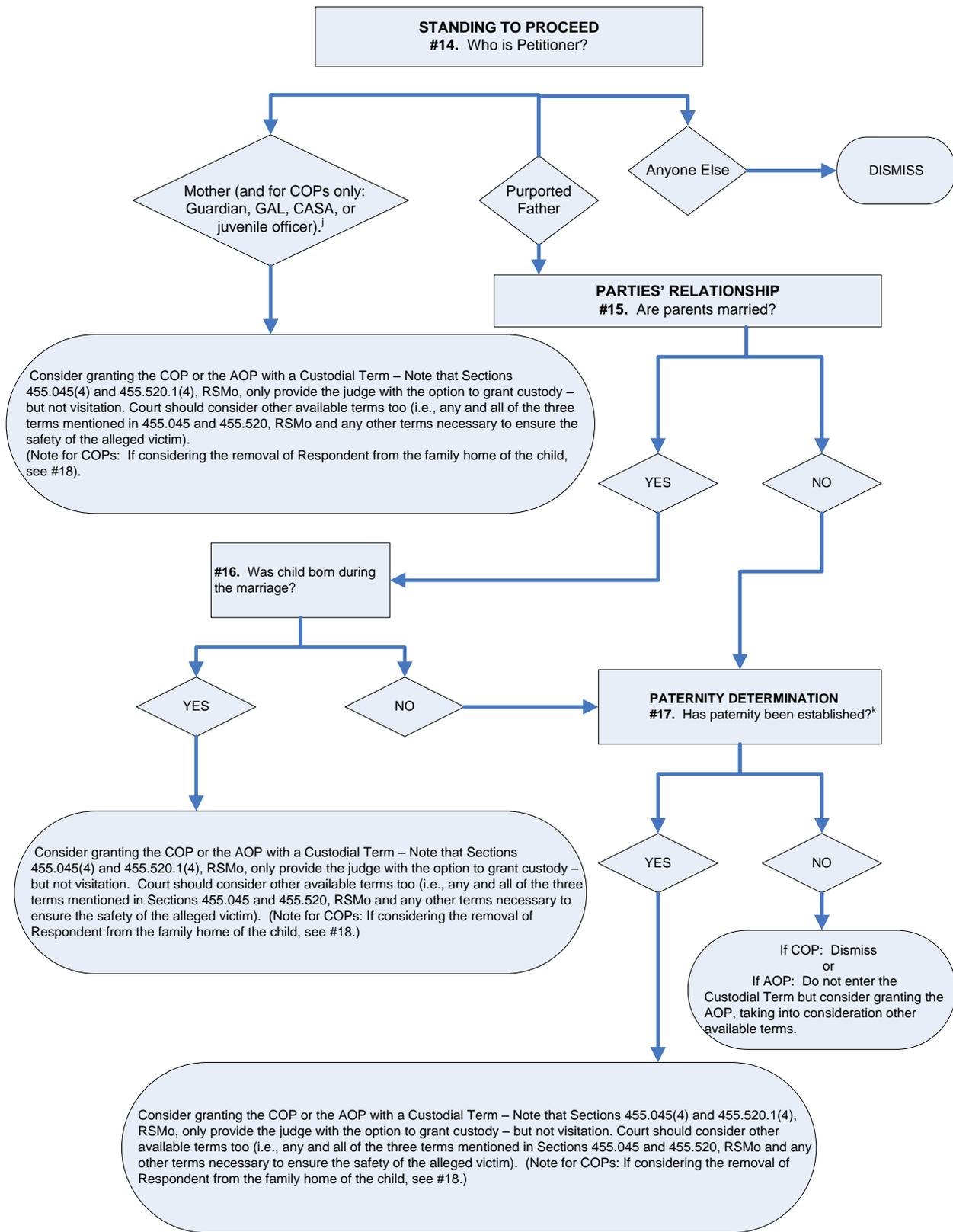
CUSTODY LINE OF INQUIRY
#10. Is this an Adult Order of Protection (AOP) in which Petitioner is seeking “custody” or a Child Order of Protection (COP)?^d



Consider granting the requested order^e. Consider other terms requested by Petitioner – but only the terms requested and available in Section 455.045, RSMo. These are: 1) restraining Respondent from abusing, etc.. the alleged victim; 2) restraining Respondent from entering the residence of the alleged victim; 3) restraining Respondent from communicating with alleged victim; and 4) any additional terms the court reasonably deems necessary to protect Petitioner’s or the child’s safety.

Refer to #11





#18. FOR COPs ONLY

Pursuant to Section 455.520.2, RSMo 2011, Respondent can only be excluded from the family home if the court finds that:

- a. The order is in the best interest of the child or children remaining in the home;
- b. The verified allegations of domestic violence present a substantial risk to the child or children unless the respondent is excluded; and
- c. A remaining adult family or household member is able to care adequately for the child or children in the absence of the excluded party.

[NOTE: According to the 2011 legislation, a commitment by Children’s Division to provide appropriate social services is no longer necessary to exclude the respondent from the family home.]

ENDNOTES (from the Flow Chart)

^a “Domestic violence” is defined as “abuse” or “stalking”. “Abuse” is broadly defined in Section 455.010(1), RSMo 2011 (relating to both adult and child orders of protection). *See* Subsection II.A.3.a of this manual.

^b *See* Subsection II.A.3.

^c Sections 455.035.1 and 455.513.1, RSMo, Supp. 2013, give little explanation as to what other “good cause” – besides an “immediate and present danger of domestic violence” -- would suffice to get *ex parte* relief. “Domestic violence” is defined as “abuse or stalking committed by a family or household member.” The definition of “abuse” is extremely broad, covering many acts, including “harassment” and “assault.” Thus, the petitioner’s demonstrating that the respondent’s acts caused “immediate and present danger” of stalking, harassment, or assault would seem to pass muster. “Harassment” is defined as “engaging in a purposeful or knowing course of conduct involving more than one incident that alarms or causes distress to an adult or child and serves no legitimate purpose.” Section 455.010(1) (d), RSMo. Supp. 2013. “Assault” is defined as “purposely or knowingly placing or attempting to place another in fear of physical harm.” Section 455.010(1) (a), RSMo, Supp. 2013.

“Stalking” is when a person “purposely and repeatedly engages in an unwanted course of conduct that causes alarm to another person when it is reasonable in that person’s situation to have been alarmed by the conduct.” Section 455.010(13), RSMo. Supp. 2013. “Alarm” means “to cause fear of danger of physical harm.” Section 455.010(13)(a), RSMo Supp. 2013.

^d Note that the court can award custody (but arguably not establish a visitation schedule) in an *Ex Parte* Adult Order of Protection and Child Order of Protection. As to Adult Orders of Protection, the court always has the discretion to not include a custody term. *See* Subsection II.A.5.d.

^e Note that for all *ex parte* requests, the court always has the discretion to **consider** whether or not to issue an *Ex Parte* Order – even when the petitioner has met all of the necessary requirements. Sections 455.035.1 and 455.513.1, RSMo. *See* Subsection II.A.4.b.

^f Section 455.060.6, RSMo precludes a judge from issuing a custody term in an AOP when there was a prior custody award. It is arguable that this limitation only applies when one of the parties seeks to modify the Full Order of Protection’s custody terms, as this language is in the modification section of the statute... Indeed, unlike the situations involving AOP full hearing relief (Section 455.050.3, RSMo), COP *ex parte* relief (Section 455.513.1, RSMo) and COP full hearing relief (Section 455.523.2(1), RSMo), the pertinent section for AOP *ex parte* relief (Section 455.045, RSMo) is silent on this issue ... Logic would dictate, however, that the legislators would not have meant to allow a judge to affect custody (that has, in many cases, been significantly litigated on a previous occasion) on the basis of an *ex parte* petition when the judge is not given the authority to do so after a full hearing in the same case. It would also not make sense to believe that a judge would have his/her hands tied (as to the issue of custody) when presented with a COP, but not with an AOP. *See also* Subsection II.A.5.d.

^g “Pending” means “exists, or for which a hearing date has been set.” Section 455.010(10), RSMo 2011.

^h Section 455.513.1, RSMo provides this limitation when considering a custody award in a COP. *See also* Subsection II.A.5.d.

ⁱ Section 455.513.1, RSMo 2011 carves out an exception when the respondent is a juvenile. *See also* Subsection II.A.5.d.

^j (What about former GALs, CASAs, or juvenile officers?) (Unclear -- can they seek the judge’s re-appointment of them? Or must they already have the position at the time of the issuance of the O/P?)

^k *See* Subsection II.A.5.d. The father must establish paternity before he has any custody rights or can proceed on a COP. This may be accomplished in a variety of ways:

A. Persuasive evidence of paternity:

1. A judgment of paternity.
2. A previous order relating to custody of the particular child.
3. Respondent has a birth certificate which indicates that he is the father.
4. Respondent has an order from the Dept. of Child Support Enforcement (“D.C.S.E.”) that indicates that he is the father. (The Adult Abuse Office does not have access to many of these orders.)
5. Respondent has already been found to be the father in a previous (but lapsed) order of protection. (The Adult Abuse Office should be able to provide this Order).
6. Proof of marriage to Respondent – *re* child born during the marriage.

B. Questionable evidence of paternity:

1. Respondent has DNA test results but no DCSE nor prior custody order.
2. Proof of marriage to Respondent – *re* child born prior to marriage.

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