

# Domestic Violence and Stalking: Court Orders of Protection

*There is legislation to protect victims of domestic violence and stalking. An order of protection, sometimes called a restraining order, is a legal document. It can refer to any type of court order or release conditions that are imposed by police. These orders set rules to protect one person from another. Usually, the conditions restrict contact or communication with another person. They can also restrict the ability of one person to go anywhere the other person lives, works, worships or attends school.*

## Criminal Court Orders:

Reporting domestic violence or stalking to police may result in criminal charges being laid against the accused. When charges are laid, conditions may be imposed that restrict the accused from making contact with the victim. If criminal charges are laid, Manitoba Justice Victim Services will be able to help you get copies of court orders or release conditions. For more information call toll-free 1-866-484-2846. Conditions may be imposed in the following ways:

### Undertaking or Recognizance

The accused may be released by the police on an **Undertaking**. This order comes with specific conditions that generally include no contact or communication with you. It also includes the condition that the person does not appear at or near your home or other specified places such as your work, school and place of worship. When police have concerns about an accused's release, the accused must appear before a judge or justice of the peace. If granted bail, the accused may be released on a **Recognizance Order** with similar conditions. **Undertakings** or **Recognizances** are in effect until the criminal charges are dealt with, or if the court varies (changes) or cancels the conditions. Manitoba Justice Victim Services can explain how court orders are varied. You can call the police if the accused disobeys the conditions of the order.

### In-Custody Non-Communication Order

If the accused is denied bail, the judge may order an **In-Custody Non-Communication Order**. It states that the accused cannot contact you directly or indirectly (ex: by phone or letter). In-custody orders are in effect until the accused is released from custody or when the criminal charges are finished.

## Probation Orders

Probation Orders are orders set by a judge when the accused is found guilty of a criminal charge and if the judge agrees it is appropriate. Conditions apply for as long as the court-ordered probation period. The maximum period of probation that can be imposed by a judge in Canada is three years. In addition to no-contact and non-attendance conditions, judges may impose other restrictions such as ordering the accused not to use alcohol and drugs and to attend counselling.

## Peace Bonds

A Peace Bond is a court order that can be issued by a judge when you fear personal injury to yourself, your partner or your children or damage to your property. There are two ways that a **Peace Bond** may be obtained:

1. You can apply at your local Provincial Court Office for a Peace Bond. Once you have made an application in writing, you will be given a date to appear in court. The person you are seeking the order against, known as the respondent, must also appear in court on that date. If the respondent does not agree to sign the Peace Bond, a hearing will be set for another date. It can take several weeks to get an initial court date and it can take several months if a hearing must be held. Peace Bonds are issued up to a maximum of one year. There is no fee to apply for a Peace Bond.
2. A judge can order a Peace Bond when a criminal charge against an accused is stayed (dropped) in court but the victim is still afraid and would like protective conditions to be put in place.

# Civil and Family Court Orders:

**In Manitoba, there are two kinds of Protection Orders.** Protection Orders granted under:

1. *The Domestic Violence and Stalking Act (DVSA)* set protective conditions for victims of domestic violence and/or stalking.
2. *The Sexual Exploitation and Human Trafficking Act* set protective conditions for people being victimized by sexual exploitation and human trafficking.

If you want more information about the second type of Protection Order, go to:

[www.gov.mb.ca/justice/csehtact.html](http://www.gov.mb.ca/justice/csehtact.html).

## Protection Orders under the DVSA

DVSA Protection Orders are granted on an urgent basis without notice to the respondent.

You can apply two ways:

1. in person at a courthouse to the Judicial Justice of the Peace (JJP)
2. on the phone with the help of the police, a lawyer or a Protection Order Designate (a person specially trained to help people apply for Protection Orders)

You must fill in a written application and then answer questions under oath from the JJP. You must explain, in detail, the history of abuse/stalking and why you believe you are at risk of being harmed again in the immediate or near future. If you have dependent children who are also at risk of abuse, you can give evidence to ask that the children be included in the protective conditions.

After hearing your evidence, the JJP can grant up to seven possible conditions that may be necessary for your continued safety. A Protection Order is generally in effect for three years. However, in exceptional situations a JJP can issue the order for a longer period of time.

There is no fee to apply for this order. But there will be costs if you make an application to the Court of Queen's Bench to have it removed at a later date.

Once served with the Protection Order, the respondent has 20 days to apply to have the order set aside. If this occurs, you will be given notice of the hearing and will have a chance to go to court to

explain why you don't agree with the respondent's application and why the order should stay in place. Some people choose to hire a lawyer to help them with this process.

For more information on Protection Orders and Protection Order Designates, go to: [www.gov.mb.ca/justice/domestic/pdf/protection\\_orders.pdf](http://www.gov.mb.ca/justice/domestic/pdf/protection_orders.pdf).

## DVSA Prevention Orders

A Prevention Order application takes longer because the judge may hear evidence from both the applicant and the respondent before deciding which conditions should be ordered. A variety of conditions can be set, including restricting contact and communication with you; temporary possession of items such as furniture; and compensation for monetary losses. The order will be in effect unless it is changed or revoked by another court order. It is best to hire a lawyer to apply for a Prevention Order. A lawyer will help file the legal documents and represent your interests at the Court of Queen's Bench hearing. There are legal costs with this type of order.

## Family Court Orders

Under *The Family Maintenance Act*, a spouse or common-law partner can ask for an order that prohibits or restricts communication or contact with the other partner. It is best to hire a lawyer for the family court process. There may be legal costs with this type of order.

## REMEMBER:

**A court order is not a guarantee of safety – a safety plan is your best form of protection.** Talk to a counsellor or call the Domestic Violence Crisis Line at the 24 hour toll-free number 1-877-977-0007. If criminal charges are laid, Manitoba Justice Victim Services will:

- provide you with copies of the release conditions
- provide you with court update information
- help you prepare if you have to attend a court hearing
- help create a protection plan for yourself and your children

If you need help during regular working hours, call the toll-free number at 1-866-484-2846.