

# FAMILY LAW BASICS

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## Divorce, Custody, and Orders of Protection

# DISCUSSION

**Provider Perspective**

**vs.**

**Attorney Perspective**

# TERMINOLOGY

**EOP= Emergency Order of Protection**

**POP= Plenary Order of Protection**

**SNCO= Stalking No Contact Order**

**CNCO= Civil No Contact Order**

**Divorce = Dissolution of Marriage**

**Custody= Allocation of Parental Responsibilities**

# DOMESTIC VIOLENCE

- Orders of Protection
- Stalking No Contact Orders
- Civil No Contact Orders

# WHAT IS DOMESTIC VIOLENCE?

- Physical abuse
- Harassment
- Intimidation of a dependent
- Interference with personal liberty
- Willful deprivation



# ORDERS OF PROTECTION


Orders of protection provide protection for people being abused by family or household members. This includes:

- Spouses, including ex-spouses
- Parents
- Children
- Step-children
- People who have a child in common
- People who are in or were in a dating relationship
- Personal assistants and caretakers of a disabled individual
- People who share or formerly shared a common dwelling
- Blood relationship

# TYPES OF ORDERS OF PROTECTION


- **Emergency Order of Protection** – typically lasts 14 to 21 days
- **Interim Order of Protection** – can last up to 30 days
- **Plenary Order of Protection**- lasts up to 2 years

# MY PATIENT WANTS TO ASK FOR AN ORDER OF PROTECTION, NOW WHAT?

- Give your patient the contact information for the victim's advocate in the county that they are living in or the county they are staying in to avoid further abuse.
  - Tell your patient to file a Verified Petition for Plenary Order of Protection with the Circuit Clerk and to ask for an Emergency Order of Protection.
  - Generally, Land of Lincoln will not help file the Petition or seek the Emergency Order.
  - Fill out the referral form to refer the patient to Land of Lincoln
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# MY PATIENT WAS SERVED WITH AN EMERGENCY ORDER OF PROTECTION AND/OR A PETITION FOR ORDER OF PROTECTION, NOW WHAT?

- Fill out the referral form to refer the patient to Land of Lincoln and note that patient has been served on the referral form.
  - Your Patient has 7 days from the date of service to file a Response to the Petition with the Circuit Clerk. **If a response is not filed within 7 days, the court may grant the relief asked for in the victim's petition.**
  - Your Patient's Response must either admit or deny the allegations contained in the Petition. If allegations are not expressly denied, they are admitted.
  - A copy must be sent to the victim.
  - Your Patient must show up for the Court date.
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# **VICTIM'S ADVOCATES CONTACT INFORMATION**

**Cairo Women's Center: 618-734-4357**

**Counties Served:** Alexander, Massac, Pulaski, and Union

**SWAN: 1-888-715-6260 & (618) 392-8406**

**Counties Served:** Clay, Edwards, Lawrence, Richland, Wabash, and Wayne

**The Women's Center (Harrisburg office): (618) 294-8641**

**Counties served:** Gallatin, Hamilton, Hardin, Johnson, Pope, Saline, and White

**The Women's Center (Carbondale office): 1-800-334-2094 & (618) 529-2324**

**Counties Served:** Franklin, Jackson, Perry, and Williamson

**Advocate in Franklin County: Jama (618) 438-4118**

**Advocate at Williamson County Courthouse: contact Women's Center**



# STALKING NO CONTACT ORDERS

**Definition of Stalking:** course of conduct, more than a single act, including:

- Following a victim
  - Keeping the victim under surveillance
  - Showing up at the victim's home, work, or school
  - Unwanted phone calls, texts, emails
  - Vandalizing victim's property
  - Injuring the victim's pet
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- The Procedure for a SNCO is the same as for Orders of Protection.
  - The victim does not have to have any present or past relationship to ask the court for a SNCO against the alleged abuser.

# CIVIL NO CONTACT ORDERS


A victim of sexual assault may file a petition for a Civil No Contact Order

- intentional or knowing touching or fondling of the victim by the alleged abuser either directly or through clothing, of the sex organs, breast of the victim
- any part of the body of a child under 13 years of age,
- any transfer or transmission of semen by the abuser upon any part of the clothed or unclothed body of the victim for the purpose of sexual gratification or arousal
- The Procedure for a CNCO is the same as for Orders of Protection.
- **The victim does not have to have any present or past relationship to ask the court for a CNCO against the alleged abuser.**

# DISSOLUTION OF MARRIAGE

- Dissolution of Marriage Defined: A divorce is a legal process that ends a marriage and deals with children, property, debts, and other issues.
- In Illinois, the only grounds for divorce is Irreconcilable Differences.

# MY PATIENT WANTS A DIVORCE, NOW WHAT?

- Fill out the referral form to refer the patient to Land of Lincoln. If you know that there is a history of domestic violence in the marriage, please note this on the referral form.
  - In most cases without history of domestic violence, we require that the spouses are separated from one another for at least 3 months before we will file the divorce petition.
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# PROCEDURE

**Step 1:** Decide if Illinois has jurisdiction at the time the petition is filed.

**Jurisdiction:** the power of the court to act and enter orders affecting people and property.

**The court needs jurisdiction over:**

- You
- Your spouse
- The marriage
- Children
- Property
- Debts

- One spouse must be an Illinois Resident or stationed in Illinois for the military for 90 days prior to the filing of the petition or the court making a finding.
- The children must have lived in Illinois for 6 months before the filing of the petition.

# PROCEDURE

**Step 2: Decide what county to file the petition for dissolution of marriage.**

- The Petition may be filed with the Circuit Clerk in one the following counties:
  - where either spouse lives
  - Where the property is located
  - BUT if there are children it must be filed where the children live



# Filing the Petition and Service of Summons

- Petition for Dissolution of Marriage must be filed with the Circuit Clerk
- Application to Sue or Defend as a Poor Person: asks the Court to waive filing fees
- Certification for Exemption From E-filing: asks the Court to waive the requirement of filing case documents online.
- Have a summons issued by Circuit Clerk and give the summons and copy of the Petition to the Sheriff where spouse lives
- Give Sheriff money or fee waiver
- Make sure Return of Service is filed with Circuit Clerk and was served by deadline on the summons

## Responding to Petition for Dissolution of Marriage

- After being served with a Summons and Petition for Dissolution of Marriage, spouse has 30 days to file an answer with the Circuit Clerk.
- If an answer is not filed within 30 days after service, a default judgment may be entered.
- The spouse must be sent a copy of the answer.

## ISSUES TO CONSIDER

Non-Marital Property: Purchased prior to the marriage.

Cannot be divided by the Court

Non-Marital Debt: Cannot be divided by the Court

Obtained prior to the Marriage.

Marital Property: Property purchased during the course of the marriage: Subject to being divided by the Court

Marital Debt: Property purchased during the course of the marriage: Subject to being divided by the Court

Maintenance: Formerly Alimony

# ALLOCATION OF PARENTAL RESPONSIBILITIES

- Determines issues related to children when the child(ren) were born outside the marriage.
- Formerly known as custody.
- Procedure is the same as divorce

# ISSUES TO CONSIDER

The Best Interest Standard: What is in the best interest of the child when determining who the child will primarily reside with.

Primary Caregiver: the parent who traditionally provides care for the child/ren.


Primary Residence: Where the child will/has live/d

Parent's Conduct: in the presence of the child

Child's Issue: health, behavior, grades, parents' willingness to encourage relationship between child and other parent

Child Support: traditionally paid by the parent with less parenting time.

# MY PATIENT WHO IS THE PRIMARY CARE-TAKER WAS SERVED WITH A SUMMONS, NOW WHAT?

- Fill out the referral form to refer the patient to Land of Lincoln and specify that patient has been served. The parties do not have to be married for Land of Lincoln to assist.
  - Your patient has 30 days from the date of service to file a Response
  - If a response is not filed within 30 days, the court may grant the relief asked for in the other party's petition.
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**QUESTIONS?**