

IN THIS ISSUE

- Petitioning for an Order of Protection on behalf of another person
- Defining age, health, disability and inaccessibility
- Practical issues when petitioning on behalf of another



Office of the Superintendent
Domestic Violence Program

SEEKING AN ORDER OF PROTECTION ON BEHALF OF ANOTHER

Anyone may petition for an Order of Protection on behalf of someone who cannot petition on their own because of age, health, disability or inaccessibility of the court. 750 ILCS 60/201 (b)(8) No particular relationship, such as being a family member, is needed to apply for another person. This newsletter discusses each of these factors as well as providing practical information on petitioning for another person.

The term "age" in the statute generally refers to minors -- persons under the age of 18 years old. Minors are unable to sign a petition on their own and, therefore, require the assistance of someone over the age of 18 to sign on their behalf. There is some disagreement about the ability of teenaged minors who are abused in a dating relationship to file on their own. A few courts will allow teenagers to file their own petition for an Order of Protection but, to be on the safe side, a teenager should bring an adult with them to court to sign the petition. This adult can be the victim's 18 year old high school classmate.

Age does not generally refer to elder adults unless that person has one or more health conditions that do not rise to the level of a disability but the elder is so frail that going to court would be a serious hardship.

A temporary health condition may keep a person from going to court at the time the emergency protection is needed. For

example, a battered woman may be in a hospital and unable to come to court. Whether the hospitalization is because of injuries due to abuse or for some other reason, so long as she is in need of emergency protection and unable to come to court, another person can file on her behalf.

Anyone can file on behalf of a person with a disability but only when the disability prevents the person from petitioning on their own. Most people with disabilities are able to come to court. Keep in mind, however, that there may be situations where a person with disabilities has the ability to come to court but is suffering from a health problem or a flare up of their condition which makes them temporarily unable to come to court. In that case, someone filing on their behalf is allowed because of the health issue, rather than the disability.

The term "inaccessibility" refers to the physical condition of the courthouse or the lack of certain resources at the courthouse. For example, if a person needs a wheelchair for mobility and the courthouse lacks a ramp or an elevator, the building may not be accessible at any relevant time. While arrangements are being made to hold a hearing elsewhere, someone else may petition for the victim in order to obtain an emergency Order of Protection.

In some situations, the inaccessibility may be temporary. For example, a hearing impaired

person is seeking an Order of Protection but there is no sign language interpreter available. On that date, the courthouse is inaccessible. The court should ensure that a sign language interpreter is available on the next court date, and allow someone else to sign the petition for the Order of Protection.

A competent adult has the right to decline the protection of an Order of Protection. An Order of Protection cannot be initiated or continued over the objections of the adult victim unless the proceeding is brought by that person's legal guardian. A legal guardian would have been appointed only if the adult was incompetent to make decisions on his or her own. 750 ILCS 60/103 (2)

THE PRACTICAL PROBLEMS WITH PETITIONING ON BEHALF OF ANOTHER

While the IDVA allows for a person to seek an Order of Protection (OP) on behalf of another person who cannot, it is not easy to do so. In order for an OP to be granted, the petitioner must prove abuse. On the return date, the respondent is entitled to a hearing to have the petitioner prove the allegations that have been made. As domestic violence usually occurs in private, there may be no other witness to the abuse. How can abuse be proven?

In the case of a teenager obtaining an Order of Protection against a dating ex/partner, the teen is available to testify. The barrier is limited to signing the petition.

In the case of a temporary health issue, the victim may be unable to come to court to seek an emergency Order of Protection but may be available to testify on the return date, usually 21 days later. In that case, the victim may complete a notarized affidavit. The person acting on their behalf can bring the affidavit to court and initiate an Order of Protection proceeding. The victim and the person petitioning on their behalf can work with the hospital social worker to prepare the affidavit and have it notarized. On the return date, the victim can testify in person about the allegations of abuse.

In some cases, the victim will never be able to testify. For example, a person with Alzheimer's disease is unlikely to be found competent to testify at any time. The hearing must proceed with whatever evidence is available, without the testimony of the victim. Anyone who has witnessed abusive behavior can testify and, in some cases, the hearsay statements of the victim may be entered into evidence.¹ The Order of Protection proceeding is civil in nature and while there are restrictions to the use of hearsay testimony, a defendant's Constitutional right to confront his accuser applies only in a criminal case.

It is possible to call a person who is involved in the investigation of allegations of abuse to testify to their findings. If the victim is an elder with disabilities, for example, there may be an agent from the Department of Senior Services who can testify to their investigation. If there is a police officer or detective involved in the case, he or she may be able to testify.

Keep in mind that a criminal case carries a burden of proof beyond a reasonable doubt, but an Order of Protection proceeding carries a burden of preponderance of the evidence – the evidence presented is more likely true than not true. So while criminal charges might not be possible due to a lack of evidence to meet the state's heavy burden, there may be enough evidence to obtain an order of protection.

Presenting a case without the testimony of the victim may be difficult but very often the reason the victim cannot testify is exactly the reason why this victim is more vulnerable to abuse and in need of court ordered protection.

Further information can be obtained by calling the **Domestic Violence Program at 312-745-6340** or the **City of Chicago Domestic Violence Help Line at 1-877-863-6338 or 1-877-863-6339 (TTY)**, or if you or someone you know needs immediate assistance, call **911**.

¹ See 750 ILCS 60/213.1 for hearsay exceptions for high-risk adults with disabilities.

domestic violence

CHICAGO POLICE DEPARTMENT