



**CIVIL DOMESTIC ABUSE PROTECTION ORDERS
2020**

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1



- Chief legal officer and advisor for the State of Mississippi on both civil and criminal matters.
- General Fitch's responsibility is to represent public officials and governmental agencies and to issue legal opinions that interpret state law. Most importantly, she represents the people of the State of Mississippi.
- Bachelor of Business Administration and a Juris Doctorate at the University of Mississippi.
- She has over 30 years of both private and government law experience.



2



**Domestic Abuse Protection Order (DAPO)
≠ Restraining Order**


DAPO

- Filed and processed pursuant to § 93-21-1, et seq.
- Requires an allegation of abuse and qualifying relationship.
- Violation of DAPO is a misdemeanor.
- Federal law prohibits possession of firearm if subject to a temporary or final DAPO.

Restraining Order

- Governed by Rule 65 of Rules of Civil Procedure.
- Only Circuit & Chancery Court have authority to issue temporary restraining orders (TROs), preliminary injunctions, & injunctions.

3




Domestic Abuse Protection Order (DAPO) ≠ Restraining Order

<p style="text-align: center;">DAPO</p> <ul style="list-style-type: none"> • Does not require attorney. • Cannot charge petitioner filing fees or service costs. 	<p style="text-align: center;">Restraining Order</p> <ul style="list-style-type: none"> • Petitioner will have difficulty navigating the process without an attorney. • Petitioner is responsible for filing fees and service costs. **
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**M.C.A. § 11-13-41 exempts victims of stalking and sexual assault from paying fees or costs associated with "an action seeking injunctive relief preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to the victim, against the perpetrator of that offense"


4



Jurisdiction

- § 93-21-5(1): Municipal, Justice, County, Chancery ****or a state military court as defined by M.C.A. § 33-13-151** have jurisdiction over Civil Domestic Abuse Protection Order proceedings.
 - ****Military courts were added by SB 2821 and became effective on 7/1/2020.**

5



Venue

- § 93-21-5(2): Venue is proper in any county or municipality where the respondent resides or in any county or municipality where the alleged abusive act or acts occurred.
- Note the following venue language pertaining to military courts added by SB 2821:
 - Any action that originates in state military court as defined in § 33-13-151 alleged against a member of the MS National Guard & brought in a state military court proceeding as defined in § 33-13-151 shall be the sole province of the MS National Guard, & venue shall only be proper for such action before a state military court as defined in § 33-13-151, & shall be subject to all the applicable laws, procedures, rules and/or regulations as set forth in Title 33. The provisions of this subsection shall not prohibit any person from bringing the same or similar action in municipal, justice, county or chancery court.

6



Domestic Abuse Protection Order: Who Is Eligible?

RELATIONSHIP

- Current or former spouse;
- Persons living as or formerly lived as spouses;
- Persons having child(ren) together;
- Persons related by blood or marriage who reside or formerly resided together;
- Persons in a current or former dating relationship.

ABUSIVE CONDUCT

- Attempting to cause or causing bodily injury;
- Placing, by physical menace or threat, another in fear of imminent serious bodily injury;
- Criminal sexual conduct against a minor;
- Stalking
- Cyberstalking
- Sexual Battery
- Rape

7



3 Types of Domestic Abuse Protection Orders

- Ex parte Emergency Order (10 days max.):
 - Issued by Justice, Municipal or County Court.
 - Issued w/out a full hearing where both sides have the opportunity to be present.
 - If issued, the judge has determined that good cause has been shown of immediate and present danger.
 - Decision is based on one side of the story.
 - Order may contain provisions placing the respondent off limits to household members other than the petitioner, i.e., children.

8



ORDER OF PROTECTION

EX PARTE EMERGENCY DOMESTIC ABUSE PROTECTION ORDER

Number of persons being protected.

PETITIONER
 LAST NAME FIRST NAME MIDDLE NAME DOB (MM/DD/YYYY) SEX RACE

YES NO Is the petitioner to be protected?

OTHER PERSON(S) TO BE PROTECTED:


LAST NAME FIRST NAME MIDDLE NAME DOB (MM/DD/YYYY) SEX RACE



STATE OF MISSISSIPPI

COURT
 COUNTY/CITY
 ISSUING JUDGE
 CAUSE NO.
 DATE ISSUED


9



3 Types of Domestic Abuse Protection Orders

- Temporary Order (30 days max.)
 - May be issued by Justice or Municipal Court.
 - Justice & Municipal judges have the authority to issue a 1-year temporary DAPO if the parties have no children together.
 - Only issued after a full hearing in which both parties have the opportunity to be present & the victim proves the allegations during the hearing.
 - Order may contain provisions placing the respondent off limits to household members other than the petitioner, i.e., children.
 - A temporary order cannot be extended.

10



ORDER OF PROTECTION TEMPORARY DOMESTIC ABUSE PROTECTION ORDER

Number of persons being protected.

PETITIONER

LAST NAME	FIRST NAME	MIDDLE NAME	DOB (MM/DD/YYYY)	SEX	RACE

YES NO is the petitioner to be protected?

OTHER PERSON(S) TO BE PROTECTED:

LAST NAME	FIRST NAME	MIDDLE NAME	DOB (MM/DD/YYYY)	SEX	RACE

STATE OF MISSISSIPPI

COURT: _____


COUNTY/CITY: _____

ISSUING JUDGE: _____

CAUSE NO.: _____

DATE ISSUED: _____

11



Relief Available in Emergency & Temporary Orders (includes but not limited to)

- Direct defendant to refrain from abusing petitioner, minor children or incompetent adult
- Grant temporary possession to petitioner of residence or household to exclusion of defendant by evicting defendant and/or restoring possession to petitioner
- Prohibit contact (direct or indirect) with victim or household members.
- Proximity restrictions
- Prohibit the transfer, encumbrance or disposal of property jointly owned or leased (except in normal course of business)

12



3 Types of Domestic Abuse Protection Orders

- Final Order (duration is judge's discretion)
 - May only be issued by County or Chancery.
 - Issued following a full hearing.
 - May include an award of temporary custody of minor children and/or establish temporary visitation and/or temporary support of minor children.
- Note: Custody, visitation & child support provisions w/in a DAPO are for 180 days and then those provisions expire automatically.

THIS DOES NOT MEAN THE PROTECTION ORDER THAT INCLUDES CUSTODY, VISITATION & SUPPORT CAN ONLY BE 180 DAYS.
- County & Chancery Courts have no reason to issue a temporary order & have no statutory authority to do so. Once these courts have a hearing on the petition, the order that is issued should be the Final DAPO.

13



ORDER OF PROTECTION FINAL DOMESTIC ABUSE PROTECTION ORDER

STATE OF MISSISSIPPI	
COURT	
COUNTY	
ISSUING JUDGE	
CAUSE NO.	
DATE ISSUED	

Number of persons being protected.

PETITIONER
LAST NAME FIRST NAME MIDDLE NAME DOB (MM/DD/YYYY) SEX RACE

YES NO Is the petitioner to be protected?

OTHER PERSON(S) TO BE PROTECTED:
LAST NAME FIRST NAME MIDDLE NAME DOB (MM/DD/YYYY) SEX RACE

14



Relief Available in Final Orders (includes but not limited to)

- **Everything available in emergency and temporary orders, plus:**
- When duty to support, grant possession of residence or require suitable alternative housing
- Order defendant to pay monetary compensation for losses suffered as direct result of abuse (medical expenses, loss of earning, out of pocket expenses, reasonable attorney fees, counseling)
- Award temporary custody of and/or establish temporary visitation – 180 day limitation for minor children
- Order defendant to pay temporary support- 180 day limitation for minor children

15



Scope M.C.A. § 93-21-13(4) & -15(7)

- DAPOs issued by a MS court are effective in this state, all other states, and in U.S. Territories and tribal lands.
- A court shall not limit the scope of a protection order to the boundaries of the State of MS or to the boundaries of a municipality or county within the State of MS.

16



Civil DAPOs Getting Started

17



Filing A Petition M.C.A. § 93-21-7 & -9

- A person may seek relief under this chapter for himself /herself or may file on behalf of a minor or incompetent person **by filing a petition** alleging abuse by the respondent .

18



Filing A Petition M.C.A. § 93-21-7 & -9

- DAPO petitions shall be set as priority cases on the docket.
- Judge shall be immediately notified when a petition is filed in order to provide expedited proceedings.

19



Filing A Petition M.C.A. § 93-21-7 & -9

- Where does a person file?
- Where the abuse occurred or
- Where the respondent lives

Don't forget new 2020 legislation regarding venue & military courts

Upon objection to venue by respondent, justice, chancery and county courts should transfer to appropriate venue pursuant to applicable law.

Municipal Courts have no transfer option so must dismiss petition. If respondent does not object to venue, the issue is waived and the petition should be heard in the court where filed.

20



Filing A Petition M.C.A. § 93-21-7 & -9

- The petition that is filed with the court must be the standardized petition developed by the AG's Office. The court/clerk cannot substitute a different form for the AG petition.
- A petitioner does not have to file criminal charges or make a report to law enforcement before filing a petition. Courts should not be requiring this step.

21



**Costs
M.C.A. § 93-21-7**

- Cannot charge victim any fees associated with filing, service of process or issuance of a warrant or witness subpoena.
 - No need to make paupers oath.
- Court may assess costs to respondent after hearing.
- Court may assess costs to petitioner **only if** the court specifically finds that the petitioner is not a victim of abuse.

22



**Petition Contents
M.C.A. § 93-21-9**

- Name
- Address - Unless would place petitioner in danger or disclose location of dv shelter
- County of residence
- Facts and circumstances of abuse
- Relationship between parties
- Request for relief
- Signed by petitioner before a notary
- * **Petition forms available at AG website**

23



**Petition Contents
M.C.A. § 93-21-9**

- A petitioner may omit his/her address from the petition if including it would place the petitioner or household members at risk or would reveal the address of a DV shelter.
- **If address is omitted, a nonpublic record containing petitioner's address & contact information shall be maintained by the court for court purposes only.**

24



Scheduling the Hearing & Notice M.C.A. § 93-21-11

- Filing of DAPO petition triggers mandate that hearing be held within 10 days.
- Respondent must be **personally** served with notice of the date, time & place for the hearing.
 - Service pursuant to MS Rule of Civil Procedure 4(d)(1) will suffice as personal service for chancery and county court.
 - For justice or municipal court, normal service of process suffices with the exception that service cannot be done by posting.

25



What if Petition Contains Request for Emergency Relief?

- M.C.A. § 93-21-13 says: The court in which a petition seeking emergency relief pending a hearing is filed must consider all such requests in an expedited manner ****and shall not refer or direct the matter to be sent to another court.**
 - **This language added by SB 2561 in 2019.
- But note exception that Chancery does not have to entertain emergency requests for relief but may do so. M.C.A. § 93-21-7(2).
- To issue an emergency DAPO, the judge must find that **good cause is shown** that the victim is in **immediate and present danger of abuse.**
 - Respondent must be personally served with an emergency DAPO.

26



No Requirement to First Seek Relief in Lower Court M.C.A. § 93-21-7(2)

- A chancery court **shall not prohibit** the filing of a petition which **does not seek emergency relief** on the basis that the petitioner did not first seek or obtain temporary relief in another court. A petition requesting emergency relief pending a hearing shall not be filed in chancery court unless specifically permitted by the chancellor under the circumstances or as a separate pleading in an ongoing chancery action between the parties. Nothing in this section shall:
 - (a) Be construed to require consideration of emergency relief by a chancery court; or
 - (b) Preclude a chancery court from entering an order of emergency relief. M.C.A. § 93-21-7(2)

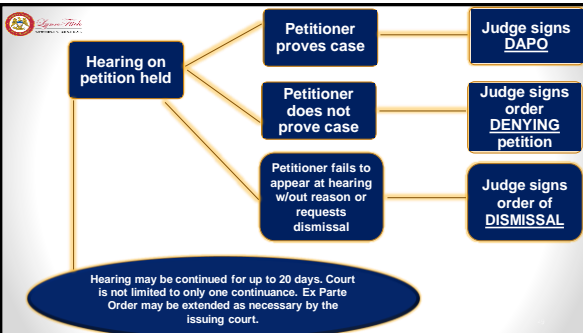
27



At the Hearing

- Petitioner must prove allegations of abuse.
- No requirement that petitioner have an attorney.
- The judge hears the evidence from both parties and makes a decision to grant or deny the request for DAPO. M.C.A. § 93-21-15(2)(a).
- **If respondent was properly served, the hearing may be held in his/her absence. M.C.A. § 93-21-11(2)**
- **The parties have the right to present evidence at the hearing.**
 - This includes testimony, calling witnesses, introducing photographs or other types of documentary evidence.

28



29



Mutual Orders

- **MUTUAL ORDERS** are prohibited unless:
 - Each party has filed an independent petition alleging abuse; **AND**
 - The court **specifically finds**
 - both parties were victims;
 - neither party acted in self defense; **AND**
 - both parties were principal aggressors

30



Orders

- Must be on the standardized forms that are available on the AG website.
- Website: <https://www.ago.state.ms.us/divisions/bureau-of-victim-assistance/>
 - Then click on "Interpersonal/Domestic Violence to access the forms.
- May be modified, amended or dissolved upon subsequent petition of either party and following a hearing of which both parties received notice to appear and given an opportunity to be heard. M.C.A. § 93-21-15(6)

31



APPEALS M.C.A. § 93-21-15.1

- Emergency DAPOs **cannot** be appealed
- Petitioner **cannot** appeal court's decision to deny issuance of a Temporary DAPO
- Respondent can appeal the issuance of a Temporary DAPO
- Appeal is to Chancery Court & is a de novo appeal
- Written Notice of Appeal must be filed w/Chancery within 10 days of the issuance of the Temporary DAPO

32



APPEALS M.C.A. § 93-21-15.1

- Copy of Notice of Appeal must be served on court that issued the DAPO & all parties or their attorneys
- Upon receipt of Notice of Appeal, Justice or Municipal must immediately provide entire file to Chancery Clerk
- Any costs of appeal are paid to Chancery Clerk
- Temporary DAPO is not suspended during the appeal
- If Chancery Court finds that petitioner has proven case at de novo trial, Chancery may grant a Final DAPO

33



APPEALS from County Court M.C.A. § 93-21-15.1

- Appeal is on the record & not de novo
- Written Notice of Appeal must be filed w/Chancery within 10 days of the issuance of the Final DAPO
- Copy of Notice of Appeal must be served on court from which DAPO is filed & all parties or their attorneys
- Any costs of appeal, where applicable, are paid to Chancery Clerk **(cannot charge person seeking protection any costs)**
- **County court must file record with Chancery within 30 days of filing of notice of appeal (court or court reporter may request extension of time for transcription)**
- **Final DAPO is not suspended during the appeal**

34



APPEALS from Chancery Court M.C.A. § 93-21-15.1

Appeals from Chancery shall be governed by the MS Rules of Appellate Procedure & any other applicable rules or statutes.

35



Violations of Civil DAPOs M.C.A. § 93-21-21

- Misdemeanor to **knowingly** violate the terms of a civil domestic abuse protection order issued by a court of this state or a tribunal of another state or jurisdiction.
 - Alternatively, the violation may be handled as a contempt matter by the issuing court but see *Corr v. State*, 97 So. 3d 1211 (MS S.Ct. 2012) to determine if issuing judge must recuse.
- **A person shall not be both held in contempt and prosecuted criminally for the same violation.**
- Mandatory arrest law applies for a violation.

36



Interplay Between a Criminal & Civil DAPO

- Persons convicted of a domestic violence assault may be subject to a criminal protection order as part of the sentence.
- This order is issued at the discretion of the criminal court judge.
- A criminal DAPO does not preclude a person from seeking a civil DAPO.
- Criminal DAPOs are typically no-contact orders without other types of relief that one might find in a civil DAPO.

37



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38



CIVIL DOMESTIC ABUSE PROTECTION ORDERS 2020

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39
