



Lynn Fitch
ATTORNEY GENERAL

**MS JUDICIAL COLLEGE
DV Q & A ZOOM MEETING**

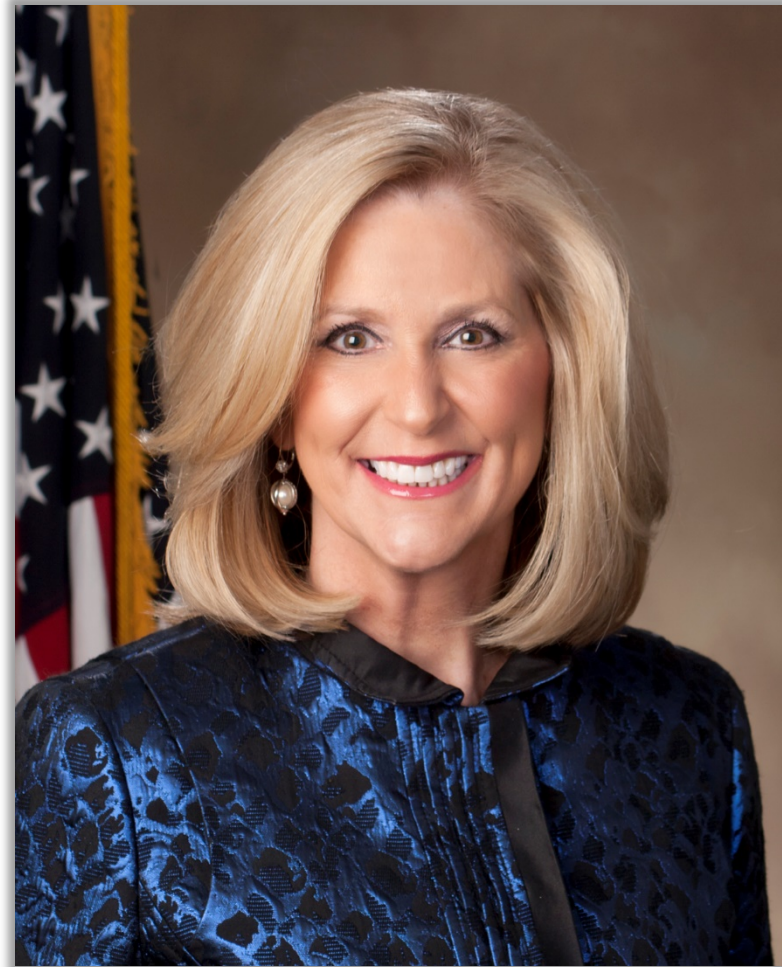
PAULA BROOME

JUNE 16, 2020



Lynn Fitch
ATTORNEY GENERAL

- 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.





Susan and Joe Smith are divorced. Divorce was in Rankin County. They have one child together and custody order was issued as part of the divorce.

Paragraph 7

Yes No A suit for divorce is pending. If yes, where _____

Yes No A divorce has been granted. If yes, where **Rankin County Chancery Court**

(If yes, a copy of the divorce decree must be provided to the court before the hearing on this petition.)

Paragraph 8

Yes No The Respondent and **Joe Smith**, who is listed in Paragraph 1(a), have child(ren) in common

Name (last, first, middle): **Nathan Lee Smith**

Date of Birth (mm/dd/yyyy): **03/12/2002**

Sex:

Male
 Female

Race:

Asian or Pacific Islander
 American Indian or Alaskan Native
 Black **White** Unknown

A court order for custody or visitation has been granted.

Yes **(If yes, provide a copy to the court before the hearing on this petition.)**
 No

Susan must provide the court with a copy of the divorce decree including any custody order and/or property settlement agreement.



Susan Wright and Joe Smith were never married but have a child together, Nathan Smith. A custody order was issued by Simpson County Chancery Court on 7/3/2019 giving Susan custody and awarding visitation to Joe every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m.

Paragraph 7

Yes No

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A court order for custody or visitation has been granted.

Male
 Female

Asian or Pacific Islander
 American Indian or Alaskan Native
 Black White Unknown

Yes *(If yes, provide a copy to the court before the hearing on this petition.)*
 No



Susan Wright and Joe Smith were never married but have a child together, Nathan Smith. A custody order was issued by Simpson County Chancery Court on 7/3/2019 giving Susan custody and awarding visitation to Joe every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m.

- Susan must provide the court with a copy of the custody order before the hearing on the DAPO.
- If you find that Nathan is in danger, your DAPO may include a provision that Joe cannot have any contact with Nathan even though there is a custody order.
- If you do not want to disturb the existing custody order by placing Joe off-limits to Nathan but you do not want Joe going to Susan's house to pick-up Nathan, you may write that condition into the order under other.



Can a Judge issue a Temporary DAPO when the Respondent was never served with the Ex Parte Order/Summons?

- No. The judge cannot have the hearing on the DAPO petition unless the Respondent is served with a summons to appear and defend the allegations set forth in the petition.
- When the respondent is served with the summons, he should also be served with the emergency order and the petition. If no service of the summons and petition by the date of the hearing, the judge can continue the case for up to 20 days and extend the ex parte order.
- Once the respondent is served, the judge can hold the hearing for the temporary order without the respondent if the respondent chooses not to appear.



What steps need to be taken if Respondent has not been located to be served the notice of DAPO Hearing?

- A judge always has the authority to continue a hearing.
- If there is an emergency DAPO in place, the hearing can be continued for up to 20 days. There is no limit on how many times the judge can continue the hearing. § 93-21-13(1)(c).
 - An order extending the emergency DAPO would also need to be issued.



Does the Judge issue another hearing date & if so how do I update that on the Online Registry?

- Yes, the judge would issue a new hearing date by signing an order continuing the hearing. If there is an emergency DAPO in place, the judge would also need to issue an order extending the emergency DAPO.
 - The order extending the emergency DAPO would need to be entered into the registry.
 - Be sure to serve the respondent with the new hearing date and the order that extends the original emergency DAPO. Also, give the petitioner a copy of the continuance order and order to extend the emergency DAPO.



If DV offender is arrested by the city, why would the city tell the victim to come to Justice Court to file for a DAPO?

- As long as the abuse occurred in the city or the respondent lives in the city, the municipal court should handle the DAPO.
 - An exception would be if there was no judge available. Municipal should not be bouncing victims to Justice Court just to avoid having to do the DAPO.



Can a judge order the respondent to pay petitioner's attorney fees when he is appearing on her behalf for a DAPO?

- Yes, if the judge **issues** the order of protection. 97-3-7(3) provides as follows:
 - (3) The petitioner in any action brought pursuant to this chapter shall not bear the costs associated with its filing or the costs associated with the issuance or service of any notice of a hearing to the respondent, issuance or service of an order of protection on the respondent, or issuance or service of a warrant or witness subpoena. **If the court finds that the petitioner is entitled to an order protecting the petitioner from abuse, the court shall be authorized to assess all costs including attorney's fees of the proceedings to the respondent.** The court may assess costs including attorney's fees to the petitioner only if the allegations of abuse are determined to be without merit and the court finds that the petitioner is not a victim of abuse as defined by [Section 93-21-3](#).



Can an order of protection be filed by a minor age 15 against a boyfriend age 17?

- No, an adult has to file the petition on behalf of the minor. The petition can be filed in your court against a minor, however. 93-21-7(1) provides as follows:
 - (1) Any person may seek a domestic abuse protection order for himself by filing a petition alleging abuse by the respondent. Any parent, adult household member, or next friend of the abused person may seek a domestic abuse protection order on behalf of any minor children or any person alleged to be incompetent by filing a petition with the court alleging abuse by the respondent. Cases seeking relief under this chapter shall be priority cases on the court's docket and the judge shall be immediately notified when a case is filed in order to provide for expedited proceedings.



What is the process for filing a violation of a DAPO?

- (1) The easiest thing for the victim to do is to go to justice or municipal court in the jurisdiction where the violation occurred and sign an affidavit charging the violation under 93-21-21.
 - This affidavit would be handled just like any other affidavit charging a misdemeanor. The judge would determine whether to issue a warrant or serve the accused with a notice to appear for trial.
 - This assumes the judge finds the affidavit states sufficient probable cause to move forward with the charge. The charge would be placed on the docket just like any other misdemeanor and the prosecutor would handle the prosecution.
- (2) The victim could also handle the violation by filing a petition for contempt in the court that issued the protection order.
 - There are no forms for filing contempt which is why the easiest thing for the victim to do is file the criminal affidavit.
- **The victim cannot file a criminal affidavit and also file a petition for contempt on the same violation. It must be one or the other.**



Does the Sheriff's Dept. have to witness the DAPO violation or can they take the plaintiff's word??

- For violation of a DAPO, the Sheriff's Dept. does not have to witness the violation to have the authority to arrest but they do need **probable cause** to arrest and/or sign an affidavit for the violation.
- If law enforcement has probable cause that the violation occurred and they are within 24 hours of the violation, the law requires that they arrest with or without a warrant.
- If law enforcement has probable cause of the violation but more than 24 hours has passed since it occurred, law enforcement cannot arrest unless they first get a warrant.
- Only law enforcement can determine whether they have probable cause based on the totality of the circumstances. Law enforcement could certainly decide that they do not have probable cause if the only evidence they have is the word of the victim. In this situation, the victim would need to sign the affidavit or file for contempt as indicated above.



What is the process for filing a “violation of a bond condition issued pursuant § 99-5-37?”

- If referring to violation of a no contact bond condition, charges can be filed pursuant to 93-21-21.
 - The victim can file a criminal affidavit charging the violation of a bond condition under 93-21-21 in the justice or municipal court of the jurisdiction where the violation occurred.
 - Also, law enforcement has the authority to arrest without a warrant if they have probable cause that the bond condition was violated within 24 hours of the arrest.
 - This is permitted whether or not the officer witnesses the violation. Probable cause, however, must exist.
 - Unlike the mandatory arrest requirement for violations of protection orders, law enforcement officers are not mandated to arrest for the violation of a bond condition. The language in 99-5-37 provides:
 - “(4) Any law enforcement officer having probable cause to believe that defendant has violated a bond condition imposed pursuant to § 99-5-37 may make a warrantless arrest for the violation if violation occurred within 24-hours of the arrest.”
- The use of the word “may” in this paragraph means arrest is discretionary.



Are DAPO's public records? Open or Closed?

- The court's DAPO file is subject to the public records laws unless the case has been sealed by the court. You handle a public records request for DAPO matters just like any other.
 - Note: Where a petitioner has requested that his/her address be omitted from the petition and the petitioner provides you with that information on a separate form, that form does not go in the court file.
 - You need to keep this form separate because the victim's address is not public when it is omitted from the petition.
- The MS Protection Order Registry is not public. A person is not entitled to have you search the database for anything or provide them with anything within the database. Obviously, some information in your court file will also be in the registry, i.e., orders. Just make sure what you provide to the public is coming from your court file.



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