

THRESHOLD QUESTIONS (GENERALLY DETERMINED BY THE APPROPRIATE COURT CLERK BEFORE
PRESENTED TO A JUDGE FOR POSSIBLE EX PARTE RELIEF)

- #1. RELATIONSHIP BETWEEN PARTIES
- a. "DOMESTIC VIOLENCE" ("ABUSE"?) ALLEGATION
 - i. Adult Order of Protection ("AOP") – Respondent's relationship to Petitioner: present or former "family or household member" ("FHM") (i.e., spouse, relative by blood or marriage, cohabitant, individual in a continuing social relationship of a romantic or intimate nature with Petitioner, or person who has a child in common with Petitioner, regardless of whether the parties have been married or have resided together). Sections 455.020.1 and 455.010(7), RSMo 2011.
 - ii. Child Order of Protection ("COP") – Respondent's relationship to child: present or former "household member" (see definition above). Sections 455.505.1 and 455.010(7), RSMo 2011. (Note – no mention of "family member" here – but the definition of "household member" is the same as the above definition of FHM. . .)
 - b. STALKING ALLEGATION

(See Section 455.010(13), RSMo 2011, for the definition of "stalking")

 - i. AOP -- No relationship necessary. Section 455.020.1, RSMo 2011.
 - ii. COP -- No relationship necessary. Section 455.505.1, RSMo 2011. [NOTE: While the definition of "domestic violence" is "abuse or stalking," the statute causes some confusion by referring to "domestic violence and stalking" as the two possible allegations, which if proven, warrant the issuance of an order of protection by the court. A "domestic violence" allegation requires a "household member" relationship; a stalking allegation does not require any relationship whatsoever. (Clearly the 2011 legislation was not meant to require any sort of relationship for a stalking matter ...).]
- #2. AGE OF ALLEGED VICTIM
- a. AOP (Petitioner) -- 17 years of age or older (unless otherwise emancipated). Section 455.020.1, RSMo 2011. (Presumably as of the date of the filing . . .)
 - b. COP (Child) -- Younger than 17 years of age. Section 455.505.1, RSMo 2011.
- #3. AGE OF RESPONDENT
- a. AOP -- Any age. Section 455.020.1, RSMo 2011.
 - b. COP:
 - i. Abuse allegation: 17 years of age or older (unless otherwise emancipated). Sect. 455.505.1, RSMo 2011;
 - ii. Stalking allegation: Any age. (However, the 2011 statutes are ambiguous here. The statute indicates that all child orders of protection alleging acts of "domestic violence" – which are either acts of abuse or stalking -- can only be brought against adult respondents. Stalking allegations, however, can be brought against individuals of any age.) Section 455.505.1, RSMo 2011.
- #4. SPECIAL REQUIREMENT AS TO THE RELATIONSHIP BETWEEN PETITIONER AND THE CHILD FOR COPs
Petitioner must be a parent, guardian, guardian *ad litem*, court-appointed special advocate, or a juvenile officer. Section 455.503.2, RSMo.
- #5. LOCATION OF PETITIONER (JURISDICTION #1)
- a. AOP – Must be present within the state of Missouri ("permanently or on a temporary basis"). Section 455.032, RSMo.
 - b. COP -- No such requirement.
- #6. LOCATION OF RESPONDENT'S ACTIONS (JURISDICTION #2)
- a. AOP-- Must "have occurred, have been attempted, or have been or are threatened within the state of Missouri." Section 455.032, RSMo.
 - b. COP-- No such requirement.
- #7. VENUE
- a. AOP – In the county where Petitioner resides, where the alleged act of abuse (not stalking) occurred, or where Respondent can be served (as opposed to where Respondent resides...) Section 455.015, RSMo.
 - b. COP -- Same as for an AOP. Section 455.503, RSMo.

If the criteria are met for all seven of these requirements, proceed to #8...

ALL REVISIONS OF CHAPTER 455 WERE ENACTED ON AUGUST 28, 2011.
(THE 2011 LEGISLATIVE CHANGES ARE DENOTED WITH "RSMo 2011.")

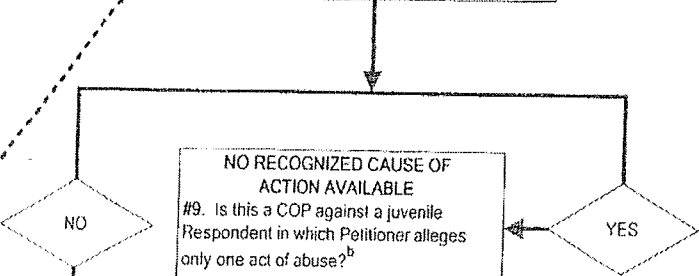
For #8:
A. Abuse - the following acts or attempts/threats to commit the following acts:

- i. Assault (knowingly placing petitioner in fear of physical harm).
- ii. Battery (knowingly causing petitioner physical harm).
- iii. Coercion (compelling petitioner to engage in certain conduct).
- iv. Harassment (engaging in knowing conduct that causes petitioner's alarm/distress).
- v. Sexual Assault (knowingly causing petitioner to involuntarily engage in a sexual act).
- vi. Unlawful Imprisonment (confining petitioner against her/his will).

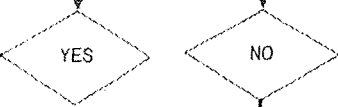
For #8:
B. Stalking - 5-pronged test

- i. Purposely
- ii. Engaging in "Course of Conduct"
 - a. Were there repeated (at least two) acts over a period of time, however short?
 - b. Was there no legitimate purpose to the conduct/activity or did the behavior/comments go beyond the legitimate purpose?
- iii. That Causes "Alarm"
 - a. Subjective Alarm - Did Petitioner actually have fear of physical harm?
 - b. Objective Alarm - Was it reasonable for Petitioner to have such fear?

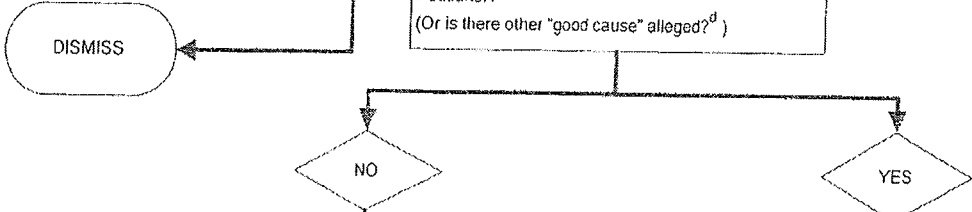
REQUIREMENT FOR FULL ORDER OF PROTECTION
 #8. Does Petitioner allege that Respondent committed an act of ABUSE or STALKING against her/him [as defined by Sections 455.010(1) and 455.010(13) RSMo 2011]?^a



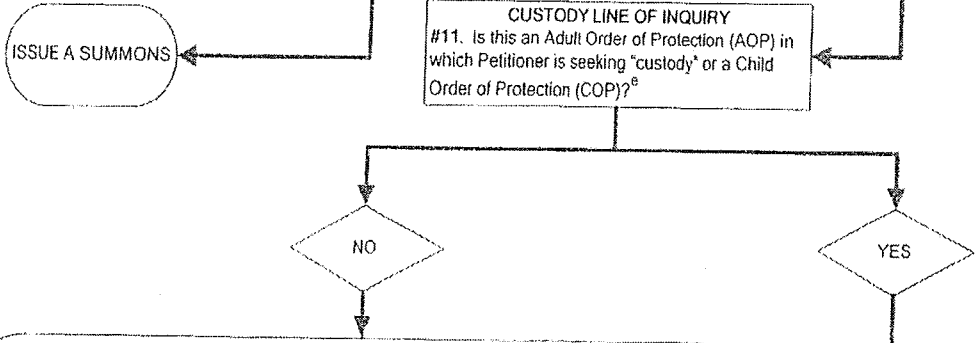
NO RECOGNIZED CAUSE OF ACTION AVAILABLE
 #9. Is this a COP against a juvenile Respondent in which Petitioner alleges only one act of abuse?^b



REQUIREMENT FOR EX PARTE RELIEF
 #10. Do the facts alleged within the petition establish an "immediate and present danger of abuse to Petitioner?"^c
 (Or is there other "good cause" alleged?^d)



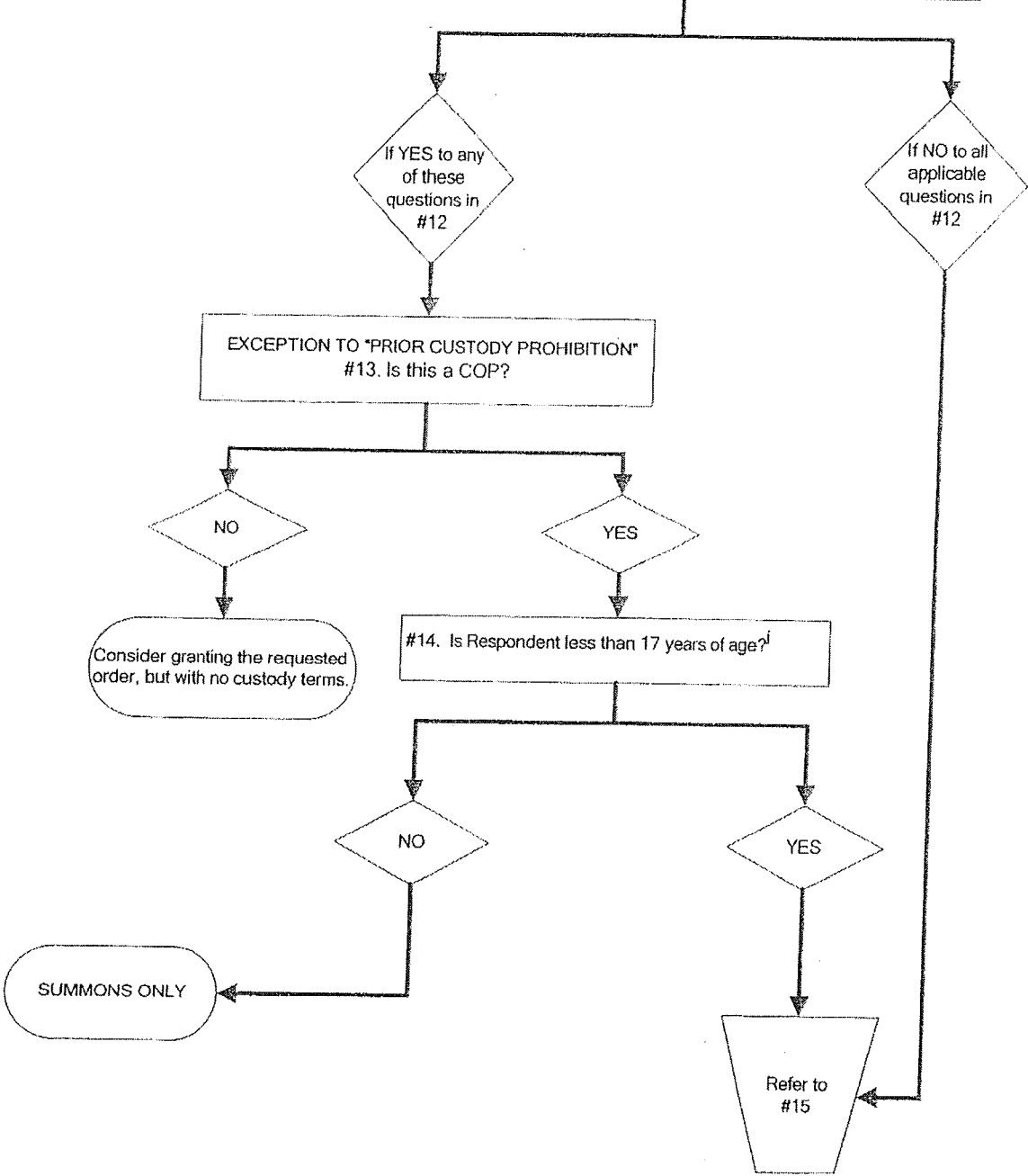
CUSTODY LINE OF INQUIRY
 #11. Is this an Adult Order of Protection (AOP) in which Petitioner is seeking "custody" or a Child Order of Protection (COP)?^e

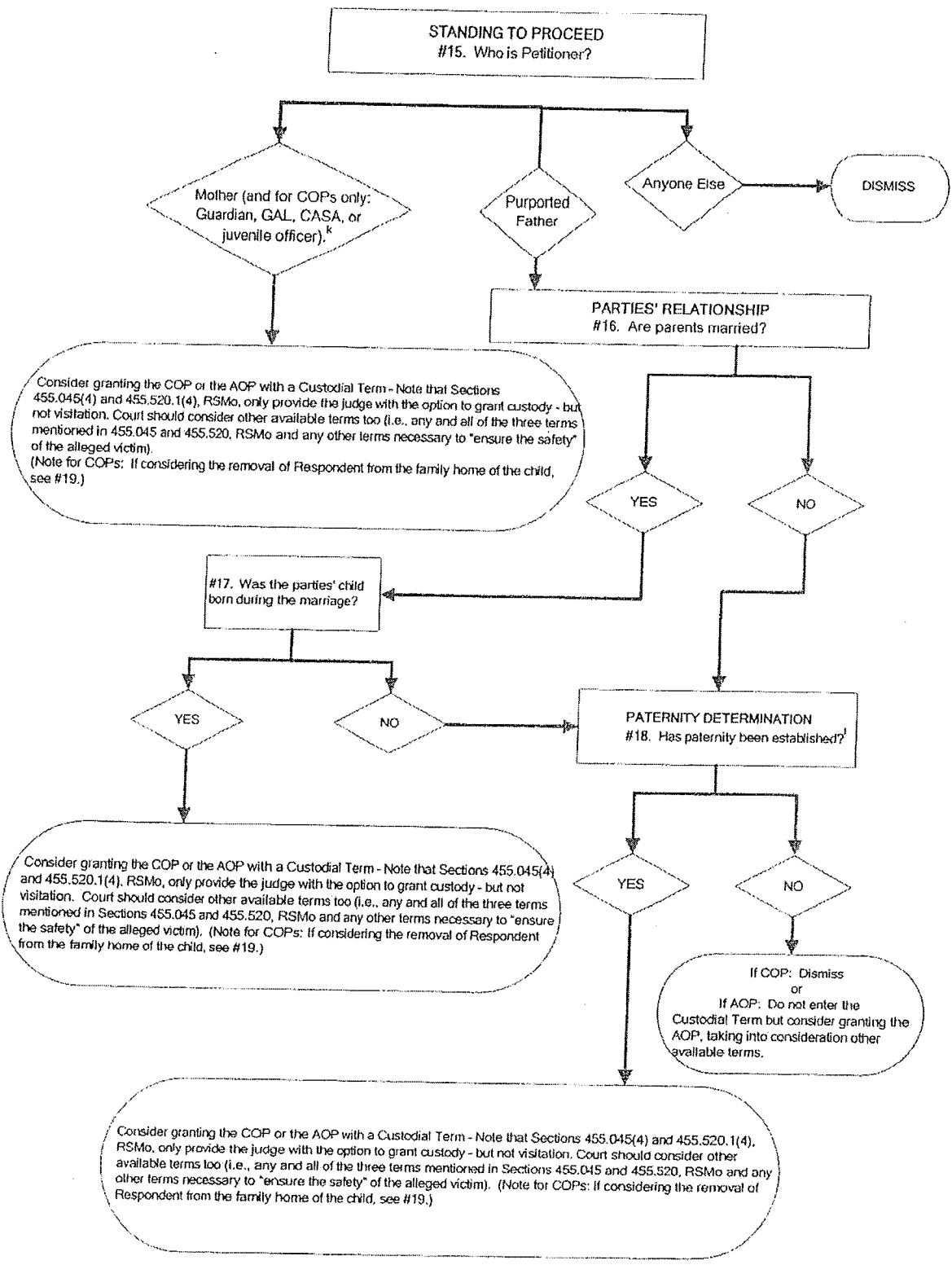


Consider granting the requested order^f. Consider other terms requested by Petitioner - but only the terms requested and available in Section 455.045, RSMo. These are: 1) restraining Respondent from abusing, etc., the alleged victim; 2) restraining Respondent from entering the residence of the alleged victim; 3) restraining Respondent from communicating with alleged victim; and 4) any additional terms the court reasonably deems necessary to protect Petitioner's or the child's safety.

Refer to #12

PRIOR COURT CUSTODY PROCEEDINGS
#12. For an AOP, has an action for dissolution of marriage been filed or has custody of the child(ren) previously been awarded by a court of competent jurisdiction?⁹ For a COP, is there a prior order regarding custody that is "pending"^h or has been made?ⁱ





#19. FOR COP's ONLY

Pursuant to Section 455.520.2, RSMO 2011, Respondent can only be excluded from the family home if the court finds that:

- a. The order is in the best interest of the child or children remaining in the home;
- b. The verified allegations of domestic violence present a substantial risk to the child or children unless the respondent is excluded; and
- c. A remaining adult family or household member is able to care adequately for the child or children in the absence of the excluded party.

[NOTE: According to the 2011 legislation, a commitment by Children's Division to provide appropriate social services is no longer necessary to exclude the respondent from the home.