

Requesting a District Court Temporary Restraining Order

1. What is a TRO?

A **temporary restraining order (TRO)** is a court order that tells a party that he or she cannot harass another party for as long as the judge orders it to last. A temporary restraining order is granted to protect individuals from harassment. A TRO can be issued against any person when the court sees that harassment has occurred or that threat(s) of harassment may be imminent. The person filing the TRO is called the “**petitioner**” and the defendant is called the “**respondent**”.

You may apply for a District Court temporary restraining order if the person harassing or abusing you:

- Is not someone to whom you are married or were married.
- Is not a relative.
- Has never lived with you.
- Is not someone with whom you had a child with.
- Is not and never was a dating partner.

If the person who is harassing or abusing you falls into one of these categories you must file for a **Family Court Temporary Restraining Order**.

2. Applying for a District Court Temporary Restraining Order

Where to Go:

Please apply at the following locations:

- Oahu- Honolulu District Court, Regular Claims Division, located at 1111 Alakea Street, Third Floor. (808)538-5151
- Maui- Service Center, located at 2145 Main Street, Room 141A, (808)244-2706
- Hawaii Island- Administration and Services Section, 777 Kilauea Avenue, Hilo (808) 961-7430
- Kauai- Civil Division, located at 3970 Kaana Street, Room A-105, Window 3, (808) 482-2303

What you need to know about filing for your TRO:

When you arrive at the court, a clerk will help you fill out the necessary forms. If you wish to fill them out ahead of time, please download them from the state judiciary website under the forms section. There is a \$15.00 filing fee for the TRO, and cash and personal checks are accepted.

If the TRO is granted, the respondent must be served with a copy. If you do not want the respondent to know your address or telephone number you should inform the clerk.

More Details give Greater Protection:

Please be prepared to provide as much detail as possible. Your petition may be denied if not enough evidence and details are provided. Keep in mind, you are signing the petition stating that the evidence you are providing is true under the penalty of perjury.

Examples of important details include:

- Dates of abuse or threats
- Description of physical or psychological abuse
- Information about property damage
- Documentation about abuse, including medical and police reports.
- Information about whether the respondent owns a gun or has threatened you with one.
- Name of parent or guardian, if the respondent is 17 or younger.

Filing Information for Juveniles:

If you are 17 or younger, one of your parents or a legal guardian must accompany you to file the TRO on your behalf. If you are filing against a minor, please provide the names of the minor's parents or guardians. If you cannot have a parent or legal guardian come with you, explain why in your petition. If you are 17 or younger and you are married, you can file a petition in your name alone.

After the TRO is granted:

If the TRO is granted, the clerk will give you certified copies of the TRO. Ask the clerk to "conform" all copies by stamping the judge's signature and the date of signing on all orders. Let the clerk know how many copies of the TRO you will need.

If the TRO is granted, a TRO/Injunction hearing will be scheduled within 15 days. The purpose of the hearing is to determine if you can extend protection beyond 90 days. A district court clerk will give you a hearing date and time, which will appear on the TRO. You do not have to have an attorney at the TRO/Injunction hearing, but you may want one if you think the respondent will obtain legal counsel.

Serving Your TRO:

A TRO is "effective" when the judge signs it, but it's only enforced against the respondent when they have a copy of it. This copy is also the respondent's notification to appear for TRO/Injunction hearing. Do not try to serve the respondent yourself! It is dangerous and the court will not accept that as "legal service".

First Circuit (Oahu):

- Take the TRO papers to the police station in the same area where the respondent resides.
- Give the police the exact addresses where the respondent can be located and the times you expect the respondent to be at those addresses.
- They will then "serve" the respondent, which means they will give the respondent a copy of the TRO. There is no charge for this service.
- Call the police every 24 hours until they tell you they served the respondent, or give them a self-addressed, stamped envelope and they will mail you the date and time served.

Second and Third Circuits (Maui and Hawai'i)

- Contact a process server from the list of Process Servers provided to you.
- Provide the Process Server with one copy of the TRO.
- Give the Process Server the exact addresses where the respondent can be located and the times you expect the respondent to be there.
- The Process Server will then “serve” the respondent.
- Check with the Process Server to find out when the respondent was served.

There is a \$25 charge per complaint served plus a \$.40 per mile mileage charge that is paid to the Process Server. You also have the option of having the TRO served by any person who is not party to the case and who is not less than 18 years of age.

Fifth Circuit (Kauai):

- Take the TRO papers to the Lihue Police Station.
- Give the police the exact addresses where the respondent can be located and the times you expect the respondent to be there.
- They will then “serve” the respondent a copy of the TRO. There is a \$15.00 for each respondent served.
- Check with the police to find out when the respondent was served.

For all circuits:

Your TRO is not officially in effect until the respondent receives a copy. If the respondent has not been served by your hearing date, you need to go to Court on the hearing date and ask for a later hearing date, so that the police can serve the respondent.

Your TRO orders the respondent not to contact you but keep in mind that the TRO does not guarantee your safety. Please take proper precautions. The most dangerous time for a victim is right after the respondent gets a copy of the TRO.

While the TRO is in effect, there should be no contact either by the respondent or by anyone acting on the respondent's behalf. Report any violations to the police immediately. If you initiate or invite contact with the respondent, your TRO is still valid, but the court and police may question your actions.

Keep a copy of your TRO with you at all times and report violations to the police immediately.

3. TRO/Injunction Hearing

A temporary restraining order is valid for 90 days from the time the respondent is served with the TRO papers. If you want to extend the order, a TRO/Injunction hearing is required. The date and time of your TRO/injunction hearing appears on your TRO. During this hearing, you need to present the court with information about continued abuse and threats. Based on your testimony and documentation, the judge will decide whether to extend your protection beyond the 90 days or not. The judge can also dissolve the TRO.

The respondent will be ordered by the court to appear for the hearing. If you do not appear, your petition will be dismissed, even if the respondent has not been served with a copy of the TRO. If you have not been able to serve the respondent, you need to appear at your hearing and ask the Judge for more time to serve the TRO and reschedule your hearing. If you fail to appear at your hearing, the TRO ends the day you miss your hearing. You will have to start the process over if you do not attend your hearing.

Presenting Your Evidence:

At the hearing, the respondent has the option to agree to the TRO. Otherwise, the respondent will have a chance to defend against the claims you have made. Be prepared to present clear and convincing evidence about the abuse. In your case, you may:

- Bring witnesses.
- Provide personal records, medical and police reports.
- Report any TRO violations that occurred after the respondent was served.

If the respondent has an attorney, but you don't have one, you may ask the judge for a continuance, or another court date. This will give you time to get an attorney. The judge may or may not grant your request. If the judge denies your request, proceed with presenting your evidence.

If Respondent Fails to Appear in Court:

If the respondent is not at the hearing because he or she was not served, ask the Judge to temporarily extend the TRO and get a new hearing date, which will usually be two weeks from the original date, but may be extended for a longer time period. Give your original TRO to the law clerk so your TRO is officially extended to the new hearing date. Then, request an extra-certified copy and two copies of the "Return Service". Take these documents to the police or process server so they can serve the respondent with information about the new hearing date.

If the respondent was served but fails to appear, the Judge is likely to issue an injunction for up to three years. The court will give you two copies, one to keep and one to take to the police so the respondent can be served with the injunction.

After the Decision:

If an injunction is ordered to replace the TRO, stay in the courtroom until the Judge gives both you and the respondent certified copies of the new court order. You can ask the judge to allow you to exit the courtroom first. If the judge issues an injunction, read it carefully. It may be different than what you asked for. To change a TRO for any reason, you need to go back to court and ask the judge to “amend” the TRO.

Remember, a TRO or injunction does not necessarily make you safe. Please take proper precautions:

- Tell everyone you know that you have a TRO, order for protection or injunction (employer, church members, friends, family, etc.).
- Change the locks on your doors and windows as soon as possible. Replace wooden doors with steel doors if possible.
- Install a security system if possible. Purchase additional locks, window bars, poles to wedge against your doors.
- Install smoke detectors and keep fire extinguishers on every floor.
- Install extra lighting outside – including motion-activated lighting.
- Decide where you and your kids would go and what you would do if you were in an unsafe situation.
- Think about who to call: give your kids numbers to call/places to go in emergency situations.
- Teach your children their name, address, phone number, the phone number of a safe friend/relative and how to dial 911.
- Make sure everyone who watches your children is informed of who is authorized to pick up your children.
- Keep essential items accessible, (medication, important phone numbers, cash, extra clothes, important papers, keys, shelter number, I.D, etc.).

4. Enforcing the TRO:

Breaking a TRO is a misdemeanor criminal offence. Depending on the specific conditions of your TRO, the respondent could be breaking the law by:

- Contacting you by phone
- Coming to your workplace or home
- Destroying your property
- Threatening to hurt you or others
- Coming within a certain distance
- Or any other act prohibited in the restraining order

Check your TRO for specific court orders that the respondent must adhere to. For the duration of the TRO, do not contact the respondent. Should the respondent violate the TRO, police and judges may take your report less seriously if you have invited contact.

The respondent broke the TRO:

No matter what the violation (even calling or texting you), call 911 immediately to report it.

- Call 911 immediately to report any TRO violations. Police will send an officer to your location. If the violator is still in the area, the police should make an arrest if there is evidence of a violation.
- Get the police officer's name, badge number, and the report number. Whether or not the violator is arrested, the police must file a report. Tell the officer that you would like to write a statement for the report. In your statement, give a brief summary of what happened.
- If no arrest was made, call the Victim/Witness Assistance Division of the Prosecuting Attorney's Office (OAHU: (808) 768-7401, MAUI, MOLOKAI, LANAI: (808) 270-7695, KAUAI: (808) 241-1898, KONA: (808) 322-2552, HILO: (808) 934-3306) and report the violation after reporting it to the police. If the prosecuting attorney feels there is enough evidence they will issue a penal summons on the violator to appear at court. If a penal summons is issued the charges cannot be dropped.
- Write down exactly what happened, what the respondent did, what time, names of witnesses, police officers and report numbers. Keep this information for future use.
- If you have any questions about an arrest, call Victim/Witness Assistance and tell them you reported a TRO violation to the police.

The Respondent Was Arrested for Breaking the TRO:

- The violator will be taken to the police station and booked. Bail for TRO violators is set by the police, and depends on the number of violations, severity of the abuse, threats and prior arrests for contempt of court. TRO violators are released within a few hours after bail is paid. When violators are bailed out of jail, they are informed of their Arraignment and Plea hearing date.
- At the arraignment, the violator can plead guilty and be sentenced, or can plead not guilty and request a trial. If a trial date is set, you will be subpoenaed to appear as a witness at the trial.
- If violators cannot make bail, they must remain in jail and the arraignment hearing will take place when court next convenes. If the violator is not released at that arraignment hearing, a trial must be held within 48 hours.
- If convicted, the violator will be sentenced to anything from jail to probation or counseling.