

Answers to Your Questions About

County Court Restraining Orders



**Excellence in Customer Service
Colorado Judicial Branch**

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CIVIL LAW

In a civil case, the person seeking the restraining order is the petitioner. The person who is being restrained is the respondent/defendant.

A victim of domestic violence, or any victim of violence or one who is in fear of personal harm, may go to civil court to get a **restraining order**, which is enforceable statewide and nationwide.

There are two stages for getting a restraining order in Colorado:

- First, you must obtain a **temporary restraining order (TRO)**. The TRO lasts up to 14 days. It will state the date and time you must return to make the order permanent (the permanent hearing).
- Second, you must return to court on the date indicated on the TRO for the court to issue a **permanent restraining order (PRO)**. If you do not return at this time, the TRO will expire. It will no longer protect you or your child. Once you obtain a PRO, the length of the PRO is at the discretion of the judge (except the part about children, which lasts no more than 120 days). The PRO is enforceable wherever you go.

Advantages of civil court restraining orders:

- **Speedy relief.** A judge usually can decide a TRO on the same day you request it.
- **No attorney necessary.** You do not need an attorney to get a TRO.
- **Personal protection.** A restraining order can do a lot more than order the defendant not to harm you. It can remove the respondent from the home; give you temporary “care & control” of your children; order the defendant to stay away from your work and/or home and order defendant not to call; set parenting time arrangements; deny parenting time if the children are being harmed; and provide safety during the drop-off and pick-up of children.
- **Ease.** A restraining order is relatively easy to obtain. You need only show that violence or threats of violence most likely took place. Filing criminal charges or calling the police is not usually necessary.

Disadvantages of civil court restraining orders:

- The burden of dealing with the legal system is on you. You are the one who goes to court and tells your story to the judge. Be prepared to deal with paperwork. You may decide you need to hire a lawyer to assist you with your case.
- The respondent will not go to jail as a result of the restraining order. However, violation of a restraining order is a crime.
- You will need to arrange for the order to be served on the respondent. You may take the order to the sheriff’s department to be served. There is a fee for service only for those who are not a victim of domestic violence, domestic abuse, sexual assault, or stalking.

HOW DO YOU GET A CIVIL RESTRAINING ORDER?

Local law enforcement have procedures to obtain an emergency protective order on your behalf when the courts are not open for regularly scheduled business. Otherwise, during regular business hours, every county court has a time and place for restraining order hearings. Your local domestic violence program can provide this information and can help you fill out the forms. Also, you can call the office of the clerk of court and ask when and where to get a TRO.

There is no fee to file a TRO, nor may the court charge you for certified copies, if you are a victim of domestic violence, domestic abuse, sexual assault, or stalking. The court may charge a fee for filing if it determines you are not seeking the TRO as a victim of domestic violence, domestic assault, sexual assault, or stalking. If you are requested to pay and cannot, you will need to fill out a **motion to waive costs** form. The court must either waive the fee or allow you to pay later.

To get a restraining order:

You must be able to state that the defendant hurt or threatened to hurt you and that you are in imminent (likely) danger of further abuse or threats if the order is not issued.

THE TEMPORARY RESTRAINING ORDER (TRO)

When you go to court, you will fill out a **complaint** and other forms. After you complete the forms, you will have a hearing in person before the judge. This usually happens the same day. The defendant will not be present.

In the complaint, you must give specific information about the abuse—what happened; when it happened; who else, if anyone, was there; and whether any children were there at the time. Include abuse that happened in the past.

The judge can order the defendant to stay a specific distance

- from your residence (even if it is the family residence or if the title/lease is in the defendant's name);
- from your job;
- from your children's day care or school;
- from friends or family places;
- from public places where you go frequently.

Police officers and deputy sheriffs can serve the defendant with a TRO after a 911 call when the defendant is with you. They will give one copy of the TRO to the defendant and return one to you. Their signature is your Proof of Service, and you must bring the signed TRO with you when you return to court for the PRO.

WHAT CAN YOU DO ABOUT THREATS?

If the defendant does anything prohibited by the TRO after it is served, the defendant has broken the law—**call the police**. When you go to the PRO hearing, **tell the judge what the defendant has done**.

Inform the judge about threats made to stop you from going to court, to take or harm the children, to withhold money for your support, or threats against your family or friends.

The TRO is in effect while you are in the courthouse. The defendant cannot speak to you while waiting for the hearing. If the defendant attempts to do so, immediately tell the bailiff, court clerk, or judge.

THE HEARING

You must return to court on the date ordered by the court. You must be on time. If you cannot arrive at the court on time, call the clerk of court's office. Give your name and number of your case, and explain why you cannot get to court on time. The court may grant you an extension. However, if the judge calls your name and you are not there and have not made arrangements with the court clerk, the judge will vacate (cancel) your TRO. You will not be able to get another TRO unless the defendant does something new to threaten or harm you.

If the defendant does not make an appearance in court and if you are still afraid, the judge should grant your request for a Permanent Restraining Order (PRO). Bring your Proof of Service.

WHAT HAPPENS AFTER YOU GET THE TEMPORARY RESTRAINING ORDER?

You will need copies of the TRO. You may be required to pay for certified copies to be served on the respondent/defendant if the court determines the TRO is not to prevent domestic violence, domestic assault, sexual assault, or stalking.

You should keep one copy with you always. In addition, you should:

- Leave a copy at any place from which the respondent/defendant is restrained (for example: daycare, work or school).
- Take a copy to your local police or sheriff's department.
- Keep a second copy with you until the defendant is served.

The TRO will contain the date and time that you are scheduled to return to court, so that the order can be made **permanent**. If you do not have the order made permanent, it will be vacated or set aside. (This means the order is no longer in effect.) Therefore, **it will no longer protect you or your children**.

WHAT HAPPENS TO THE ORDER (SERVICE)?

Service

- Service must be done by the sheriff or someone over 18 years of age. **YOU CANNOT SERVE THE TRO.**
- Service is the official word for notifying the respondent that there is a court order in effect.
- The respondent/defendant cannot violate the restraining order until he/she has been served.
- The law requires that a copy of the TRO be given directly to the respondent/ defendant.
- If you cannot get the respondent/defendant served before the return date, go to court on the day and time indicated, and ask the judge for a continuance so that you may continue trying to serve the respondent/ defendant.

WHAT IS A CONTESTED HEARING?

The respondent may choose to appear at the hearing and contest the entire restraining order or part of it. However, the order may be continued (made permanent) without the defendant being present.

- The respondent/defendant can deny that what you said is true but still agree to be restrained. In this case, the judge will make the order permanent, and it will protect you just as if what you said was proven in court.
- If you have children with the respondent/defendant, make sure the TRO specifically identifies parenting time, and it is safe for you and the children.
- You need to prepare carefully for a contested PRO hearing. If you think the respondent will contest the order, contact your local resources (for example: domestic violence shelter, Project Safeguard, legal services) before the PRO hearing. They can give you more information about how to prepare and what to expect.

WHAT IS YOUR ROLE AT THE PRO HEARING?

If you have physical evidence—photos of injuries or damaged property, medical records, 911 or answering machine tapes, etc.—bring these to the court. If you have witnesses who saw what happened and/or saw injuries, heard an argument, or in whom you confided afterward, ask them to come with you to the PRO hearing. By far the most important evidence is what you tell the judge. Make a plan regarding what you want to say. Write your plan down, including a list of the facts you want to tell the judge, and bring it with you to court.

SHOULD YOU GET AN ATTORNEY FOR THE HEARING?

It is not necessary to have an attorney to get a restraining order. Your story of what the defendant did is powerful evidence. Consider consulting with an attorney if the respondent/defendant has an attorney or if you and the defendant have children together. An attorney can assist you in telling your story to the judge and in asking questions of the respondent/defendant and other witnesses. No-cost or low-cost legal help is scarce, but local domestic violence agencies may know of resources.

HOW IS THE RESTRAINING ORDER ENFORCED?

If a respondent/defendant violates any part of the restraining order, **call the police**. Violating a restraining order is a crime in Colorado. If the police have a “probable cause” to believe that the defendant has violated the restraining order, they are required to arrest the defendant and take the defendant to jail. This will start the criminal process. Probable cause means that a reasonable person reasonably believes that a crime has been committed.

If the police tell you that the respondent/defendant cannot be charged, ask for a copy of the incident report, and ask that the officer on duty initial the copy. This documents what happened and can be helpful later.

If the police and prosecutor decide not to file charges, you can file a **motion for contempt** with the court that issued your restraining order. In a contempt proceeding, you (or your lawyer) will need to convince the judge that the defendant did something that the restraining order forbids.

You and the defendant cannot agree to change the PRO without the court’s permission. If you want to change the PRO, you will need to have a hearing. During the hearing, the judge will hear from both you and the defendant to determine whether changes should be made. The defendant may request changes, but the judge will not change the PRO without you being present.

YOUR SAFETY

If the defendant is arrested, the defendant may be held in jail overnight, until a bond hearing, or until the defendant posts bond. If the defendant is arrested in the morning, the defendant could be out of jail by the end of the day.

Although the judge will probably issue a no-contact order forbidding the defendant to contact you, you may need to take additional steps to protect yourself after the arrest. **A no-contact order is not the same as a civil restraining order.** It does not last as long and may not give you and your children the same protection.

WHAT ARE VICTIM ADVOCATES AND HOW CAN THEY HELP YOU?

City or district attorneys in Colorado have victim/witness advocates on staff who can give you information about your case. In many cases, they will give you support and accompany you to court. Also, you may be able to get help from advocates at your local domestic violence programs or from law enforcement victim advocates.

WHAT ARE YOUR RIGHTS AS A VICTIM?

- You have a right to know the judgment of the court and whether the defendant is following the conditions of probation.
- If the defendant is sentenced to jail, you have the right to be notified when the defendant is released. You must contact the prosecutor to request notification of the defendant's release.
- If the prosecutor is not going to file charges, if charges are dropped, or if the case is dismissed, you have a right to know why.

HOW DOES THE LAW WORK FOR YOU?

There are two kinds of courts: criminal and civil. Both can act to protect you against a defendant. You may be able to obtain protection from both courts at the same time, but the criminal and civil courts work differently. These differences can be important to you.

CRIMINAL LAW

Because domestic violence is a crime against the community and the victim, a defendant who is arrested is prosecuted in the county where the crime occurred. As the victim of the crime, you will be referred to in legal papers as the **complainant**.

In a criminal case, the person restrained is referred to as the **defendant**. A government lawyer, known as the **prosecutor** or **city/district attorney**, will decide if the case should go to criminal court. If he or she must gather the evidence necessary to bring the case to trial, **only the prosecutor can decide to press or drop charges**. As the **complainant**, your main responsibility in a criminal case is to come to court to **testify—to tell how the defendant harmed you**.

You can also help the prosecution by providing proof of the abuse, such as photographs of injuries, medical records, and the names of any people who witnessed the abuse.

Remember, just because the defendant has an attorney and you do not have an attorney, it does not mean that you will not be able to get a restraining order.

This brochure is published as a customer service by the Colorado Judicial Branch. For more information, contact your local county court.