



LEGAL AID
SOCIETY OF HAWAI'I



Temporary Restraining Orders (TROs)

O'ahu and Maui



This brochure was created
through the AmeriCorps
Project Lulima at the
Legal Aid Society of Hawaii



© Copyright 2017, Legal Aid Society of Hawai'i

All rights reserved. These materials may not be reproduced without the written permission of the Legal Aid Society of Hawai'i. Under no circumstances are persons receiving these brochures to be charged for copies without written permission of the Legal Aid Society of Hawai'i. This is meant to be an informational brochure, and is not intended to take the place of legal counsel. It is not intended to be a complete statement of law nor is it intended to fully describe or evaluate your options. The distribution of this brochure by the Legal Aid Society of Hawai'i does not imply that an attorney-client relationship has been formed.

F2. Temporary Restraining Orders, O'ahu and Maui Revised 7/2017

Safety Plan for You and Your Children

- Decide where you & your kids would go & 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.
 - Talk to your neighbors and children: let them know what is going on.
 - Have a code word you use with family or friends that let them know to call the police.
 - Keep essential items accessible, (medication, phone #s, cash, extra clothes, important papers, keys, shelter number, I.D., etc.).
 - Shelter #: Keep the numbers with you. They are open 24 hours, and your kids can go there too.
- O'AHU:
Honolulu & Leeward: 841-0822
Windward: 528-0606
Military: 533-7125
- MAUI: 579-9581
- Free cellular phone. If you file a TRO for abuse & you don't live with your Abuser, you can call the Puuhonua Domestic Violence shelter at 522-5535 to request a free cell phone. This cellular phone only dials 911. (This program is only available on Oahu).

If you are 17 or under:

A parent or a legal guardian must come with you and fill out the TRO on your behalf. If you cannot have a parent or guardian with you, explain why in your petition.

If your Abuser is 17 or under:

The Abuser's parent or guardian must be named as respondent on the Abuser's behalf.

If you are a married/emancipated minor:

You may file alone. Bring proof of your marriage/emancipation.

What is a TRO?

A **Temporary Restraining Order (TRO)** is a court order that tells an Abuser she\he cannot contact, threaten or abuse you (and any other member of your household) for as long as the judge orders it to last. TROs are granted to protect victims from abuse and life-threatening situations.

A TRO can be against any person who has abused or threatened to abuse you. Abuse can be physical abuse, extreme psychological abuse, damage to your property, or threats of abuse. Judges are more likely to grant a TRO if abuse has occurred within the last 6 months (on Maui, within the last month).

A TRO can include a "kick-out" order which tells the Abuser s/he must move out of the home. A TRO can also award temporary child custody. *TRO does not award child support or permanent child custody.*

How long does a TRO last?

An "Ex Parte" TRO is good for 180 days, or until the date of your TRO court hearing, also known as the "Order to Show Cause" (OSC) hearing. At the OSC hearing, the judge can decide to end the TRO, to continue it until the end of the 180 day period, or to issue a long-term Protective Order for any number of years the Judge thinks is appropriate. You can request any reasonable length of time for the Protective Order in your petition.

How do I get a TRO?

1. Apply for a 180 day "Ex Parte" TRO.

An "Ex Parte" TRO is granted without your Abuser being present and without your going before a judge. The TRO is meant to keep your Abuser away while you are in the process of getting a Protective Order that can last indefinitely. The process takes about 3-4 hours. There is no filing fee for TROs in Family Court. The District Court charges a \$15 filing fee.

A. Where to Go for a TRO:

FAMILY COURT

Apply for a TRO in Family Court if you:

- are related to the Abuser,
- have lived with the Abuser in the past,
- have a child with the Abuser (even if you have never lived with the Abuser), OR
- Have dated the Abuser.

O‘AHU FAMILY COURT: 538-5959

An appointment will be made for 8:15 A.M. in either Honolulu or Kapolei, OR **Call 545-1880** to request assistance with petition and an appointment will be made.

MAUI FAMILY COURT:

You may apply Mon-Fri, 8:00am – 2:30pm, with either:

Child & Family Services (877-6888)

333 Dairy Road, Ste. 201 in Kahului,
OR

Women Helping Women (242-0755)

1935 Main Street, Suite 202 in Wailuku

DISTRICT COURT

Apply for a TRO in District Court if you:

- Want to file against a neighbor, co-worker, or anyone else who does not fit into the Family Court categories.

O‘AHU DISTRICT COURT: 538-5151

1111 Alakea Street, 3rd Floor

Go to the Service Center on the 3rd Floor between 7:45 a.m. and 4:30 p.m. Mon. - Fri.
No appointment necessary.

MAUI DISTRICT COURT: 244-2706

2145 Main Street

Go to the Service Center on the 1st Floor between 7:45 a.m. and 4:30 p.m., Mon - Fri.
No appointment necessary.

Calling Family Court for a TRO

An Adult Services Branch (ASB) worker will assess your chances for a TRO on your first phone call to the family court, so you should prepare yourself before calling.

During your call, be polite but firm. Before calling, write out a list of all the incidents of abuse. The worker will look mainly for physical abuse within the last 6 months, so list those first, then list threats and emotional abuse. Remember, the court worker should not deny you an opportunity for applying for a TRO; only a Judge can deny your TRO request. But the court worker can advise you if your claim is weak, so it is important that you are not shy and that you do not minimize abuse.

After speaking with you about your situation, the court worker will schedule an in-person interview with you.

B. Before the Interview:

Make a list. Before your appointment, write down all past events of abuse and the dates, so you won't forget anything. *If you don't list an incident in your petition, you may not be able to bring that incident up during your hearing.* You must be very specific about the history of abuse, including dates, so you should consider bringing your medical records, police reports, photographs, or other documents that will help you fill out your TRO application.

C. At the Interview:

At your appointment you will meet with a court worker (or, on Maui, an agency worker). They will interview you and help you fill out the forms.

Be honest. Failure to provide enough detail in your statement can result in the petition being denied.

Decide what type(s) of protection you want for you and your family. For example, you can request that the:

- Abuser move out of your home.
- Temporary physical and/or legal custody of your children go to you.
- Abuser have supervised visitation of the children. The Judge will not grant the Abuser supervised visitation in “Ex-Parte” TRO orders but the Judge will address this request at the “Order to Show Cause” (OSC) hearing.
- **If you don’t want your Abuser to know where you live,** explain to the clerk that you are afraid of your Abuser learning where you live. It is possible to let the court know how to reach you, without your Abuser knowing where you are.

D. After the Interview:

The court worker takes the forms to the Judge, and the Judge decides whether to give you a 180 day TRO. You will not appear in front of the Judge, and the Abuser will not be there.

- **If you are granted a TRO,** read it carefully, it may be different than what you asked for.
- **If you are not granted the TRO,** apply again as soon as there is another incident of abuse.

2. Have the police serve the 180 Day TRO on Your Abuser.

A TRO is “effective” when the Judge signs it, but it is only “enforceable” against your Abuser once they have a copy of it. This copy is also your Abuser’s notification to appear for the hearing for the long-term Protective Order.

DO NOT TRY TO SERVE THE ABUSER YOURSELF! It is dangerous and the court will not accept that as “legal service”.

- **Get the forms from your court worker.** Tell the worker your Abuser’s address, and the best time to find them, and the worker will put that information onto forms for the police.
- **Take the forms to the police station** (your court worker will tell you which one). Family Court will order the police to serve the documents to the Abuser.
- **Call the police every 24 hours** until they tell you they served your Abuser, or give them a self-addressed, stamped envelope and they’ll mail you the date and time served. **The most dangerous time for a victim is right after the Abuser gets a copy of the TRO.** You need to know when the TRO is served on your Abuser so you can protect yourself (see safety plan).
- **If your Abuser has not been served by your hearing date,** you need to go to Court and ask for a later hearing date, so that the police can serve the Abuser.

3. The Order to Show Cause Hearing

At the **Order to Show Cause Hearing** (OSC) both you and your Abuser get a chance to argue your side to the Judge. The Judge decides whether to give you a Protective Order for a longer period of time. If the judge grants a Protective Order for you, it can last as long as s/he orders it to last.

You will wait for the hearing in a different waiting room from your Abuser. A court Worker will ask you what exactly you want in the final Protective Order. Be specific about what protections you want and whom the Protective Order covers (for example, you and your child).

You must present evidence of the abuse. That means you must convince the court that the abuse happened. Your testimony may be the most important evidence. You can bring witnesses and personal records. Records could include police reports, medical records, your diary, threatening notes from your Abuser, anything that documents abuse. Remember to report any TRO violations to the judge.

Do I need an attorney at the hearing? No. If your Abuser comes with an attorney you can ask the judge for a later court date (a “continuance”) to give you time to find an attorney, but don’t worry if the judge does not grant one. Just go ahead and present your evidence.

If the Judge issues you a Protective Order, read it carefully. The Court Order may be different than what you asked for.

The Court can hold your Abuser for 10 minutes while you leave the building.

If the Abuser does not come to the hearing:

The Abuser was served and doesn’t show: Most likely the Judge proceeds by default and issues the Protective Order you requested in your petition. You must get two copies of the Order and have the police serve your Abuser in the same manner as the TRO. The order does not take effect until it is served, so again you want to either call the police or give them a self-addressed, stamped envelope to find out when your Abuser has been served. A bench warrant may be issued if the Abuser doesn’t show to the court hearing. A bench warrant is written order issued by a judge authorizing the arrest of a person. Upon arrest, a return of bench warrant hearing is set. At the hearing, a court worker will personally serve the abuser with the family court restraining order.

MAUI: the Judge may schedule another hearing and issue a bench warrant.

The Abuser was not served: The judge should grant a continuance for more time to serve the Abuser.

E. Enforcing the TRO

Breaking a TRO is a misdemeanor **criminal offense**. Depending on the specific conditions of your TRO, your Abuser could be breaking the law by;

- Harassing you by phone,
- Coming to your work-place or home,
- Destroying your property,
- Threatening to hurt you or others.

If you're unsure whether your TRO has been broken, read it to see what the Court has ordered.

- **Keep a copy of your TRO with you at all times**, and be familiar with what it says. If you call the police about a violation they will need to see the Order.
- **Do not contact your Abuser**. The TRO is also binding on you. If you contact your Abuser, you are violating the TRO. Police and the courts will be less sympathetic to your complaint if you have invited contact.

1. The Abuser Broke the TRO.

No matter what the violation (even calling or texting you), call 911 immediately to report it. If you are not near a phone at the time of the violation, call as soon as you get to a phone.

- **Call 911 immediately to report any TRO violation**. HPD will send an officer to your house. 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 Division of the Prosecuting Attorney's Office (**OAHU**: 523-4158 **MAUI**: 270-7777) and report the violation after reporting it to police. If the P.A. feels there is enough evidence they will issue a penal summons on the violator to appear at court. If a penal summons is issued you may not drop the case.
- **Write down exactly what happened**, what the Abuser did, what time, names of witnesses, police officers and report numbers. Keep this information for future use.
- **If you have questions about an arrest**, call Victim/Witness Assistance (**OAHU**: 523-4158 **MAUI**: 270-7695) and tell them you reported a TRO violation to the police.

2. The Abuser Was Arrested for Breaking the TRO.

- The violator will be taken to the police station and booked. Bail is set from \$50-\$1,000, and they will be required to appear for an arraignment hearing within 7 days of arrest.
- 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 convicted, the violator will be sentenced to anything from probation to counseling to jail.

F. Changing your TRO (see page 9 for additional info.)

To change a TRO for any reason, you need to go back to Court and ask the Judge to ‘amend’ the TRO. **O‘AHU:** Call the Family Court (539-4629) or District Court (538-5629) for help. **MAUI:** contact Child & Family Services (877-6888) or Women Helping Women (242-0775); District Court (244-2706).

G. Other Things You Can Do To Protect Yourself

If you want to do more than just get a TRO, you can change your name and Social Security Number. If you decide to do both, do your name change first, if possible.

1. Changing Your Name.

- a. Contact the Lieutenant Governor’s Office to get the necessary forms:
P.O. Box 3226
Honolulu, HI 96801
586-0255 (O‘ahu) or 1-800-442-8683 (Neighbor Islands)
- b. Go to the Prosecutor’s Office and request an affidavit from their office to prevent the publication of your new name. With this affidavit, the Lt. Governor’s office will not be able to publicize your name change in the newspaper. Without an affidavit, the Lt. Governor’s office will follow their normal procedures and your name change will be made public.

For more information, you can contact the Prosecutor’s office at
522-6494 (O‘ahu) 270-7777 (Maui, Moloka‘i, Lāna‘i)

2. Changing Your Social Security Number

- a. Apply in person at any Social Security Office.
- b. Bring evidence of your age, identity, and U.S. citizenship or lawful alien status.
- c. If you have changed your name, as recommended by the Department of Justice, bring records identifying you by both your old and new identity.
- d. If you are requesting new SSN for your children, be sure to bring records showing that you have custody of them.
- e. Be sure to bring any documents or reports showing harassment from your Abuser. The best evidence comes from police reports, hospitals, doctors and other written documents that describe the nature and extent of domestic violence. Other evidence can include your TRO, letters from shelters, and letters from those who know about the domestic violence.

**Once you have your new SSN, be careful about sharing it unnecessarily with strangers or people who may not need it to provide you with a benefit or service.*

Calling the Police

Domestic Abuse is considered a priority call by the police. Here are some tips on how to make sure that when the police are involved they follow proper procedure. You can help by remaining calm when talking to them. You can ask them to take you to a shelter, hospital or other safe-place if you do not feel safe at your house.

- **Call 911.** If police do not respond within 10 minutes call again.
- **When police arrive,** tell them in detail what happened. Show them your injuries and describe any pain you're in. Tell them about previous incidences of abuse, reported or not. Show them any court documents like TROs. Let them know if there are any witnesses. This information can determine whether or not an arrest will be made.
- **Make sure to file a police report.** Officers must file a report whether or not they make an arrest. The police should interview you, your Abuser and any witnesses. You can ask to be interviewed away from your Abuser.
- **Sign a Victim's Voluntary Statement.** The officers should ask you to complete and sign a Victim's Voluntary Statement which describes the incident in your own words. Police may also take photographs which will be included in the report documents.
- **If police do not make an arrest they must still file a report.** The police should make an arrest if they have enough evidence of abuse. If they do not make an arrest their report is sent to the Family Abuse Detail for follow up investigation.
- **Request a "Stay Away Order"** to keep the Abuser off the premises for 24 hours. Police can arrest someone for breaking a stay away order. (A Stay Away can also be issued if the person is arrested.) Call the Victim/Witness Protection Division of the Prosecuting Attorney (O'AHU: 523-4158, MAUI: 270-7695) if the police do not make an arrest.

"He says I hit him, too." -In cases where both parties are alleging violence, officers must identify and arrest the *primary aggressor*. When they cannot determine who that is they must call a supervisor to the scene to make that decision.

"The police won't do anything." -If police are not doing what they are supposed to (fill out a report, offer you protection you need), call 911 while they are there and ask for a supervisor. If they have already left: O'AHU: call the Internal Affairs Division at 529-3286 to file a complaint. MAUI: call 244-6480 and ask for the Domestic Violence Unit to complain.

Referrals/O'AHU:

<i>Honolulu, Leeward Spouse Abuse Shelter</i>	<i>841-0822</i>
<i>Windward Spouse Abuse Shelter</i>	<i>528-0606</i>
<i>Kailua Shelter</i>	<i>528-0606</i>
<i>Kāne'ōhe Shelter</i>	<i>526-2200</i>
<i>Military Spouse Shelter</i>	<i>533-7125</i>
<i>Domestic Violence Action Center</i>	<i>531-3771</i>
<i>(legal and advocacy services)</i>	
<i>Victim/Witness Assistance Division</i>	<i>523-4158</i>
<i>of the Prosecuting Attorney's Office</i>	
<i>Child Protective Services</i>	<i>832-5300</i>
<i>Family Court TRO Hotline</i>	<i>538-5959</i>
<i>Family Peace Center (for counseling)</i>	<i>845-1445</i>

Legal Referrals

<i>Legal Aid Society of Hawai'i</i>	<i>536-4302</i>
<i>Volunteer Legal Services</i>	<i>528-7046</i>
<i>Domestic Violence Action Center</i>	<i>531-3771</i>

Referrals/MAUI:

<i>Women Helping Women Shelter/Hotline/Counseling</i>	<i>579-9581</i>
<i>Victim/Witness</i>	<i>270-7695</i>
<i>Prosecuting Attorney</i>	<i>270-7777</i>
<i>Maui Police Department</i>	<i>244-6400</i>
<i>Child Welfare (Protective) Services</i>	<i>243-5461</i>
<i>Women Helping Women for TRO</i>	<i>242-0775</i>
<i>Child & Family Services for TRO/Counseling</i>	<i>877-6888</i>
<i>Domestic Violence Clearinghouse and Legal Hotline</i>	<i>1-808-528-7046</i>
<i>Legal Aid Society, Maui</i>	<i>1-800-499-4302</i>

Legal Aid Society of Hawai'i

924 Bethel Street
Honolulu, HI 96813

www.legalaidhawaii.org

Legal Aid's Hotline:

O'ahu: 808.536.4302
Neighbor Islands: 1.800.499.4302

REMEMBER:

This brochure is meant to provide general information, and does not provide specific legal advice about your individual case. The law often changes. Each case is different.