



LEGAL AID
SOCIETY OF HAWAI'I



Temporary Restraining Orders (TROs)

Kaua'i



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WHAT IS A TEMPORARY RESTRAINING ORDER (TRO)?

A **Temporary Restraining Order (TRO)** is a court order that sets guidelines to protect you from someone who is harassing or abusing you.

Hawai'i has both Family Court and District Court TROs available. Your relation to the other person determines which one you file. The paperwork for both is available at the courthouse at 3970 Ka'ana Street in Līhu'e, or online at www.courts.state.hi.us. This brochure addresses primarily Family Court TROs.

Family Court TROs are provided for in Hawai'i Revised Statutes (HRS) § 586 – *Domestic Abuse Protective Orders*. After a hearing, a long-term **Order for Protection** may be issued for any “fixed reasonable period as the court deems appropriate.”

District Court TROs are provided for in HRS § 604-10.5 - *Power to enjoin and temporarily restrain harassment*. After a hearing, a long-term **Injunction Against Harassment** may be issued for up to three (3) years.

JURISDICTION

You can file a petition for a Family Court TRO if any of the following apply:

- You have had a dating relationship with the other person.
“Dating relationship” means a romantic, courtship, or engagement relationship, often but not necessarily characterized by actions of an intimate or sexual nature, but does not include a casual acquaintanceship or ordinary fraternization between persons in a business or social context.” (HRS § 586-1)
- You have been married to the other person.
Alternately, if marriage was prohibited by HRS § 572, you have been in a registered reciprocal beneficiary relationship with them.
- You have had a child with the other person.
- You are related by consanguinity (“blood”) to the other person.

You can file a petition for a District Court TRO if you do not qualify for Family Court. For example:

- You have **not** had a dating relationship or marriage with the other person.
- You are **not** related by blood to the other person.
- You have **not** had a child with the other person.
- The other person is someone such as a neighbor, roommate, or acquaintance.

If you have an incapacitated adult family or household member who is not capable of filing their own TRO, you can file on their behalf. You also can request assistance from Adult Protective Services (APS) at 808.832.5115.

If your child or step-child is being abused, you can file a TRO on their behalf. You also can report child abuse to Child Welfare Services (CWS) – formerly known as Child Protective Services (CPS) – at

808.832.5300. If abuse to a minor is alleged during the Family Court TRO process, the judge commonly will request an investigation by CWS on his/her own.

If you are 17 or under, and are unable to have a parent or guardian fill out the petition on your behalf, you can explain why in your own petition. If you are a married or emancipated minor, you may file on your own. Bring proof of your marriage/emancipation.

If the person abusing you is a minor 17 or under, the minor's parent or guardian must be named as a respondent on that minor's behalf.

<p style="text-align: center;">KAUA'I FAMILY COURT 3970 Kā'ana Street Līhu'e, Hawai'i 96766 Kaua'i court Info: 808.482.2300 Kaua'i court TTY: 808.482.2533</p> <p>To request an appointment for help with the initial Family Court TRO paperwork, you can call the YWCA of Kaua'i's 24 Hour Domestic Violence Hotline at 808.245.6362. You also can obtain some informational assistance at the court's Self Help Center, open most weekdays 9am through 12pm.</p>	<p style="text-align: center;">KAUA'I DISTRICT COURT 3970 Kā'ana Street Līhu'e, Hawai'i 96766 Kaua'i court Info: 808.482.2300 Kaua'i court TTY: 808.482.2533</p> <p>You can obtain informational assistance with the District Court TRO paperwork at the court's Self Help Center, open most weekdays 9am through 12pm. The YWCA also sometimes assists with the initial District Court TRO paperwork if allegations of sexual assault or child abuse are involved. District Court TROs have a \$15 filing fee.</p>
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After you file a TRO petition, a judge reviews your written allegations, and decides whether or not to grant an initial, temporary *ex parte* order, without yet hearing from the other person. **In Family Court**, this initial temporary order is good for six (6) months, to allow time for the other person to be served, and for court to proceed. **In District Court**, the initial TRO against harassment is good for three (3) months. You must attend your scheduled hearing date(s), where the other person has the opportunity to respond, or else your temporary order will be dissolved automatically before the end of the temporary timeframe. Temporary orders also end as soon as a judge issues a new long-term order, or decides to end the temporary order.

If the other person at court requests a hearing on a Family Court TRO, it can occur at your initial court date, that very same day. If the other person at court requests a hearing on a District Court TRO, the judge sends both parties to mediation at the initial court date. The mediator usually goes back and forth, with those involved kept in separate rooms. If there is no agreement after mediation, a contested hearing is scheduled for another day.

Once a hearing occurs, a judge will decide to end the Temporary Restraining Order, or to issue a long-term **Order for Protection** (Family Court), or **Injunction Against Harassment** (District Court). If a long-term order is granted, you can file in court later to ask it be extended, modified, or dismissed.

FAMILY COURT TROs

COMPLETING THE INITIAL TRO PAPERWORK

The TRO forms can be obtained at the courthouse, located at 3970 Ka'ana Street in Līhu'e. You'll also need to go to the courthouse to file the forms, and to pick them up when ready a day or two after filing.

If you cannot get to the courthouse right away, you can go on the Judiciary's website at www.courts.state.hi.us, and use the PDF forms from the O'ahu – Family Court section. The initial forms you'd file from there are 1F-P-752 Petition for an Order of Protection, 1F-P-750 Temporary Restraining Order, and 1F-P-751 Notice of Hearing. You can cross out the parts that say O'ahu, Kapolei, and First Circuit and write in Kaua'i, Līhu'e, and Fifth Circuit instead. However, you'll still need to get to the courthouse to file the paperwork, and to pick it up when it's ready.

The YWCA of Kaua'i has advocates who are able to provide basic informational guidance with the initial Family Court TRO paperwork. They also assist with some District Court TRO paperwork if allegations of sexual assault or child abuse are involved. However, they may not provide legal advice or otherwise engage in the unauthorized practice of law, including expressing legal opinions, discussing legal strategy, or recommending what they think you "should" do on your individual paperwork or in court.

To request their related services, you can contact the Kaua'i YWCA's 24 hour Domestic Violence hotline at 808.245.6362. If you are using the services of the Kaua'i YWCA, prepare for the interview:

- **When you file a Family Court Petition for an Order of Protection, you are alleging that "a past act or acts of abuse may have occurred; threats of abuse make it probable that acts of abuse may be imminent; or extreme psychological abuse or malicious property damage is imminent."** In the petition, you are to state "the specific facts and circumstances from which relief is sought." (HRS § 586-3)
- **Make a list.** Before your interview, write down all past events of abuse and their dates, so you will not forget anything. Failure to provide a sufficiently detailed, factual statement can result in denial of your petition right at the start. Be ready with the other person's contact information, including where they can be served with court papers. Also be ready with their physical description (such as height, weight, eye and hair color, any tattoos or scars, etc.).
- **At your interview** you will meet with a YWCA advocate. S/he will interview you and help you fill out the initial court forms. The forms require you be adequately, factually specific about the history of alleged abuse, including dates of individual incidents. If your case goes to a contested hearing later, you usually will NOT be permitted to talk about additional incidents that are not on your petition. You can bring medical records, police reports, photos, recordings, and text and email records to help you confirm the allegations you're making in the initial forms. At the interview, you also will decide if you are requesting things like:
 - i. If the other person needs to immediately leave a shared residence.

- ii. If the other person can have contact with any children, or others in your household.
- iii. If the other person can have any contact with household animals.
- iv. Temporary custody and visitation arrangements, including if you think visitation needs to be supervised.

Additionally, you'll be asked to describe and provide the location of any firearms you know the other person may have, as s/he'll be required to turn them in to the police.

IF YOU DO NOT WANT THE OTHER PERSON TO KNOW YOUR CURRENT ADDRESS, you can explain this to the YWCA advocate. The court requires you provide your current contact information when you file, via a separate non-public form that accompanies your paperwork. However, it is possible not to disclose this information on the TRO petition itself, with which the other person will be served. Some people also simply provide a PO Box or message number on their petition.

FILING THE PAPERWORK AT COURT

- Once you complete the paperwork, you will file your petition at the courthouse at Window 2, used for Family Court. If your initial filing is approved by the judge, s/he signs the temporary order (TRO). Within 1-2 business days, you will receive a call from the clerk to let you know if your filing was approved or denied, and that your paperwork is ready for pickup. The clerk will provide you with certified copies when you return to the courthouse.

The court always keeps the original document, then the certified copies are for (1) the Police (to serve on the other person), (2) yourself, and (3) the YWCA (if they assisted in filing the TRO). Make sure you read through the returned documents carefully, so you fully understand what protections the court granted you. They may be different from what you asked for. Note that the three pages entitled "Temporary Restraining Order" at the back are what's initially ordered by the court. The "Petition" section at the front simply is what you're asking for long-term. ONLY WHAT THE JUDGE APPROVED IN THE "ORDER" SECTION IN THE BACK IS IN EFFECT.

- **Take one certified copy and the serving instructions to the Police, who will serve the other person.** The Kaua'i Police Department is at 3990 Kā'ana Street, across the street from the courthouse. They have a walk up window on the first floor so you don't need to enter the building. They'll also take a copy of the serving instructions that include the other person's contact information and description, along with information about where you think the other person can be served with papers.
- **Give one copy to YWCA.** If you used the services of the YWCA, take one copy of the order to them.
- **Keep the remaining copy for yourself. Carry it with you at all times.** If the order is violated by the other person, call the police immediately and be ready to show them the TRO signed by the judge when they arrive. You also can phone the police if the other person has not been served,

and you discover where they're located or they encounter you. The police may need to serve the person with the copy of the TRO you are carrying with you, if the person has not already been served.

SERVICE OF THE TRO

- A TRO is “effective” and enforceable against the other person once s/he is served with it. Service also is how the other person receives notice of the Order to Show Cause (OSC) hearing, which must initially be scheduled within two weeks of when the TRO is granted. Even if the other person has not been served, if you yourself contact them after filing, it can be used to argue that you don't really require a Protective Order.
 - Do NOT try to serve the other person yourself. The court will not accept this as legal service, and it also can be very dangerous.
 - After taking the signed TRO to KPD as described above, you can start calling KPD dispatch every day at 808.241.1711 to ask if it's yet been served. The most dangerous time for a survivor of domestic violence usually is for a day or two after the other person is served a copy of the TRO.
 - You can hire a professional process server to serve your TRO instead of KPD if you wish. However, many process servers do not like serving TROs due to potential related issues, such as with weapons the other person may possess.
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THE ORDER TO SHOW CAUSE (OSC) HEARING

- On Kaua'i, the initial Family Court TRO hearing date usually is the second Wednesday after your filing, at 1:30pm, in courtroom 3. It sometimes changes, such as due to a holiday. Review the paperwork you get back from the court to confirm your own date and location. If you do not show up for your court date(s), your TRO case can be dismissed, and you may not be able to file again based on the same allegations.
- **If the other person has not been served** by your hearing date, you still need to go to court. The clerk will reschedule another hearing date, usually for exactly two weeks later. It cannot be any longer than that. You'll be given a slip of paper to take to Window 2, where an Amended Notice of Hearing will be provided. You'll then fill it in, and take it again to KPD across the street, so the other person can be served with the new court date when they're served with the TRO.
- **If the other person has been served and does not come to the hearing**, the court will swear you in and ask you to give brief testimony about the specific allegations of abuse you made in your petition. The court then will grant a Protective Order by default, assuming your testimony is adequate to result in findings of abuse.
- **If the other person is served and comes to the hearing**, s/he'll be given the option to agree to a Protective Order while not admitting to any of your allegations. Alternately, s/he can request to

have a contested hearing, wherein the court will hear from witnesses and review evidence. However, anything presented in a contested hearing will be on court record, and can be used against the person in any related criminal proceeding.

THIS CONTESTED HEARING CAN OCCUR LATER THE SAME DAY. If the court calendar already is full, or if the other person is granted a continuance to consult an attorney and/or to prepare, it can be continued to another date. However, as you filed the initial petition, and the other person may have been removed from the residence or denied the ability to see any children, you usually are expected to be ready to proceed later that day if the other person is ready to proceed themselves. The same-day contested hearings usually start at 2:30pm.

REPRESENTING YOURSELF IN A CONTESTED HEARING

- If you go into a contested Order to Show Cause (OSC) hearing, both you and the other person get a chance to present your stories to the judge. A Deputy Sheriff will remain in the courtroom during the hearing. At this hearing, you will explain the facts of the specific incidents you included on your petition. You usually will NOT be permitted to talk about additional incidents that were not on your petition.
- The other person has a chance to cross-examine you and to respond, in order to “show cause why the order should not be continued and that a Protective Order is necessary to prevent domestic abuse or a recurrence of abuse.” (HRS § 586-5.5). At the end of the hearing, the judge will decide to dissolve the TRO, or to extend it as a long-term Protective Order.
- The burden is on you to prove your case by a ***preponderance of the evidence***. This means that your fact-based abuse allegations need to be perceived by the judge as more likely true than not, despite what the other person may say. (In a District Court TRO case, the burden is a more rigorous one of ***clear and convincing evidence***.)
- **Exhibits:** In addition to your testimony, you can use exhibits such as photos, texts, emails, or recordings to support your case. You must have three copies of all exhibits at your hearing – one for you, one for the other person, and one for the court.

If you have recordings such as voicemails, the court will let you use your own device, like a cell phone or laptop, to play them in court. However, you need to prepare distributable copies, such as on burned DVDs, or else the court may need to take your device directly into evidence. Similarly, exhibits like text messages need to be screenshotted and printed out for distribution.

You should complete an exhibit list and individually label all your exhibits prior to your court date. The official forms and instructions are available at the courthouse.

During the hearing, you will need to explain the story behind each exhibit – referred to as ***laying foundation*** – before the court will admit it into evidence for the court’s formal consideration. Laying foundation shows that the evidence is authentic, reliable, and relevant.

- **Witnesses:** You also can bring in witnesses to talk of their own *personal knowledge* of your abuse allegations, based on their firsthand observations. Any witnesses must remain outside the courtroom except when they're testifying. When questioning your own witnesses, you generally are limited to asking them open-ended questions (who, what, when, why, where, how), and letting them tell their own stories.
- **Minors as witnesses:** Hawai'i Family Court Rule 45.1 requires the prior approval of the court before minors are permitted to testify in court. This usually occurs via a Motion for Minor Testimony, though the reports and testimony of Child Welfare Services (CWS) or Child and Family Service (CFS) can already be sufficient, if such agencies are involved. If you think you need to file a Motion for Minor Testimony, you can visit the Self Help Center at the courthouse, open 9:00am to 12:00pm most weekdays, to request related assistance.
- **Hearsay:** Hearsay is "an out of court statement, made in court, to prove the truth of the matter asserted." Hearsay generally is not admissible as evidence in court. The person who made the out of court statement needs to be there to testify about it. For example, the court generally does not accept police or medical reports as evidence, as they are out of court statements made by people who usually are not there, thus subject to the hearsay rule.
- **At the end of the hearing, the judge can order:**
 - i. The other person to stay away from you and your child(ren).
 - ii. The other person to leave a shared residence.
 - iii. The other person to stay away from your workplace.
 - iv. Temporary custody/visitation of your child(dren), including if supervised visits are required, either by professionals, or by friends or relatives.
 - v. That limited communication with the other person is acceptable, such as texting limited to the best interests of the children.
 - vi. That the police can escort you or the other person to retrieve undisputed belongings from the other person's residence, usually at a specific day and time agreed upon in court.
 - vii. That the other person needs to attend counseling. (This is very rare.)
 - viii. That the other person needs to give weapons to the police, etc.
- Another case, such as a divorce, needs to be used for other issues. For example, a restraining order case will NOT be used to address matters such as:
 - i. Long-term child custody/visitation.
 - ii. Child support.
 - iii. Alimony.
 - iv. Who has the right to any disputed property.
- If the judge issues you a long-term Protective Order, read it carefully. The Protective Order may be different from what you originally asked for.
- The court can hold the other person for several minutes while you leave the building.

ENFORCEMENT OF YOUR TRO AND/OR ORDER FOR PROTECTION

- Violating a TRO or Protective Order is a misdemeanor criminal offense. Depending on the specific conditions of your Order, the other person can break the law by texting you, contacting you on social media, phoning you, coming to your job or home, engaging in third party contact (such as asking others to relay messages to you), destroying your property, and/or threatening to hurt you or others. Read the TRO or Protective Order carefully to see what the court has ordered.
- **Keep a copy of your TRO/Protective Order with you at all times.** Be familiar with what it says. If you need to call the police, they will need to see it.
- **Do not contact the other person if you have a “no contact” TRO / Protective Order.** The TRO / Protective Order is binding on you, too. If you contact the other person, you are violating the TRO / Protective Order yourself. The police and the court will be less sympathetic to your complaint if you have invited any contact with the other person, and your Order may be dissolved. Even if the other person has not yet been served, initiating or maintaining contact yourself can be used to argue you do not require a Protective Order.
- **If the other person violates the TRO / Protective Order, you are supposed to promptly report it to the Police Department (i.e., phone 911).** Call the police if the other person contacts you, including by social media, phone, text, or email. If you are not near a phone at the time of the violation, call the police as soon as you get to one. They are less likely to take action if you delay making a report. An officer will come to your location. If the violator still is in the area, the police should make an arrest if there is evidence of the violation.
- **Request the police officer’s name, badge number, and the report number.** Whether or not the other person is arrested, the police are supposed to file a report. You can tell the officer that you would like to write a statement for the police report. Be very detailed and specific regarding any threats that were made or acts of violence and/or injury.
- **If the other person is not arrested, you can call the Department of the Prosecuting Attorney’s Office at 808.241.1888.** You can report the violation to them after reporting it to the police. If the Prosecuting Attorney believes there is enough evidence, they can issue a penal summons on the violator to appear in court. If a penal summons is issued, you cannot drop the case.
- **Documentation:** Keep a written log of what the other person did, including at what time, what you did (e.g., called police), the names of witnesses, etc. Keep your notes in a safe place.
- If you have questions about the arrest, you can call the Prosecuting Attorney’s Office at 808.241.1888.
- **If the other person is arrested, s/he will be taken to the police station and booked.** Bail usually is set between \$50 - \$1,000. The violator will be required to appear for an arraignment hearing

with seven (7) days of the arrest. At the arraignment, the other person can plead guilty (or no contest) and be sentenced, or they can plead not guilty and request a trial. If a trial date is set, you likely will be subpoenaed to appear as a witness at the trial. If convicted, the other person will be sentenced to anything from probation to counseling to jail.

MODIFYING A PROTECTIVE ORDER

- You cannot modify a Protective Order on your own, such as by making an agreement with the other person to be filed for the judge's approval, unless there are attorneys involved. You must file a Motion to Modify and go back to court.
 - If you need to modify any temporary child custody arrangements, this is done via a separate custody or divorce case, NOT via the TRO / Protective Order case. The temporary custody arrangements in a Protective Order last only until the court makes another order in another case.
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OTHER ACTIONS YOU CAN TAKE TO PROTECT YOURSELF

- **Change Your Name.** The Lieutenant Governor's office is the state office in charge of name changes. Changing a name takes about 6-8 weeks, but can take longer if there are mistakes on your form. There is a non-refundable filing fee, and you usually also need to pay for publication in a local newspaper, which can cost a few hundred dollars.

If you are a domestic violence victim or if publishing the name change would endanger you in any way, publication can be waived by getting an affidavit issued by a state prosecuting attorney. You can contact the Department of the Prosecuting Attorney on Kaua'i for more information.

- **Change your Social Security Number.** You will need to apply in person at your local Social Security Administration Office.
 - Bring evidence of your age, identity, and U.S citizenship or lawful alien status.
 - If you have changed your name, bring records identifying you by both your old and new name.
 - If you are requesting a new Social Security number for your children, bring records showing that you have custody of them.
 - You will need to bring documents or reports showing abuse. Such evidence can come from police reports, hospitals, doctors, a TRO, a Protective Order, letters from shelters, and letters from those who know about the domestic violence.
 - Once you have a new Social Security number, be careful about sharing it unnecessarily with strangers or people who may not need it to provide you with a benefit or service.
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USEFUL NAMES AND NUMBERS

Kaua'i 24 Hour Domestic Violence Hotline

(operated by the YWCA)

808.245.6362

Kaua'i Courthouse Self-Help Center

3970 Ka'ana Street

Weekdays 9:00am – 12:00pm; first-come, first-served

Kaua'i Police Department: Dispatch

808.241.1711

Child Welfare Services (CWS), Kaua'i

808.274.3320

Adult Protective Services (APS), Kaua'i

808.241.3432

Parents and Children Together (PACT), Kaua'i

808.847.3285

Child and Family Service (CFS), Kaua'i

808.245.5914

YWCA of Kaua'i

4410 Hardy Street (Women's Center); 3094 Elua St. (Admin)

808.245.5959

Domestic Violence Action Center (DVAC), Hawai'i

DV Helpline: 1.800.690.6200

National Domestic Violence Hotline

1.800.799.SAFE (1.800.799.7233)

LEGAL AID SOCIETY OF HAWAII

www.legalaidhawaii.org

Statewide intake: 1.800.499.4302

Weekdays 9:00-11:30am, 1:00-3:30pm

Senior Legal Hotline (age 60+): 808.531.0011 **OR** 1.888.536.0011

Kaua'i office: 3016 Umi St. Ste 208; Lihu'e, HI 96766

(no walk-in services)

SAFETY PLANNING

- **Plan in advance where you and your kids can go** and what you can do in an unsafe situation.
- **Think about who to call**, and give your child(ren) numbers to call and places to go in an emergency situation. Don't forget about 911.
- **Talk to your neighbors and child(ren)**. Let them know what is going on. Also, talk to your family and child's school about any abuse.
- **Have a code word** you use with family and friends that lets them know to call the police.
- **Keep essential items accessible**, like medications, phone numbers, cash, extra clothes, important papers, keys, I.D., etc.
- **The Domestic Violence Hotline Number for Kaua'i, operated by the YWCA, is 808.245.6362**. Keep this with you. The Kaua'i DV Shelter is open 24 hours, and children can go there, too. The shelter's direct number, if needed, is 808.245.8404.
- **Stay away from the other person**. If communication is needed, do not be alone with the other person.
- **An old cell phone can still be used as an emergency device**. As long as it has battery power and can reach a signal, it can call 911. It cannot receive incoming calls back, however.
- If you're low income, you may be able to obtain a free or low-cost cell phone and services via the government's Lifeline program.

Victim/Witness Program at the Office of the Prosecuting Attorney

The program provides the following services: information about your case, explaining the judiciary process, referral to community agencies, crisis and short term counseling, help with obtaining witness fees, assistance with Crime Victim Compensation, employer medication, restitution request assistance, help with the Victim Impact Statement, property return assistance, court accompaniment and assistance in requesting notification of the abuser's release.

3990 Kā'ana Street, Suite 210, Līhu'e, HI 96766
808.241.1888

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.