



LEGAL AID
SOCIETY OF HAWAI'I



Temporary Restraining Orders (TROs)

Big Island only

A. What is a TRO?

- A TRO is a court order that tells an abuser s/he can not contact, threaten or abuse you and/or any other household member named in the TRO. You can file a TRO on behalf of your child/step-child if they are being abused, but also consider contacting CPS. The judge might ask for CPS intervention in the TRO proceedings anyway.
- A TRO can include a “kick-out” order which tells the abuser s/he must move out of the home.
- A TRO can award temporary child custody. *A TRO does not award child support or permanent child custody.*

B. How long does a TRO last?

- The family court judges grant a TRO for no longer than 180 days. A hearing must be held within 15 days of the TRO being granted. At that hearing, the judge may grant a permanent protective order (to replace the TRO), for a reasonable period of time determined by the judge (typically 18 months or 3 years, but also up to 10 years).

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C. How do I get a TRO?

1. Apply for a 180 day “Ex Parte” TRO. (2 weeks “Ex Parte” TRO in Dist Ct)

This 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 permanent Protective Order that can last for up to three years (and occasionally, up to ten years). Family Court charges a filing fee of \$65 and District Court charges a filing fee of \$15.

Hilo:

Family Court

(934-5700, 345 Kekuaaoa, by the Waiakea Villas).

Go to Family Court in the morning for your TRO if:

- you are related to, OR
- you have lived with your abuser in the past, OR
- you have a child with your abuser, even if you never lived with him/her.

There will be a representative from Alternatives to Violence (ATV) to assist you. Or go to the ATV office in the Plaza Building, 180 Kinoole St., Ste 210 (969-7798).

District Court TRO: (961-7470, State Building, 75 Aupuni St., Second Floor)

Go to District Court for your TRO if you want a TRO against:

- a neighbor, OR
- co-worker, OR
- someone you haven't lived with and do not have children with.

There is no ATV assistance with this type of TRO.

If you need a District Court TRO, you must go to District Court and fill out the TRO request form. If you cannot afford the \$15 filing fee, fill out an “Ex Parte Application for Relief from Costs” or the equivalent form in their circuit and turn in before turning in their TRO forms.

Kona:

Family Court: (329-7377)

Go to Family Court in the morning for your TRO if:

- you are related to, OR
- you have lived with your abuser in the past, OR
- you have a child with your abuser, even if you never lived with him/her.

To receive assistance in applying for a Family Court TRO, call ATV at 326-1607. ATV is located at 77-6425 Kuakini Highway, Ste B-102.

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.

****It is illegal for anyone with a TRO against them to carry a gun or ammunition.****

District Court TRO: (322-8700, In the Keakealani Building, Kealahou)

Go to District Court for your TRO if you want a TRO against:

- a neighbor, OR
- co-worker, OR
- someone you haven't lived with and do not have children with.

There is no ATV assistance with this type of TRO.

If you need a District Court TRO, you must go to District Court and fill out the TRO request form. If you cannot afford the \$15 filing fee, fill out an "Ex Parte Application for Relief from Costs" or the equivalent form in their circuit and turn in before turning in their TRO forms.

D. The Interview:

- At your interview** you will meet with an ATV advocate. They will interview you and help you fill out the forms. You must be very specific about the history of abuse, including dates, so you should consider bringing your medical records, police reports, or other documents that will help you fill out your TRO application. Decide what type of protection you want for you and your family. For example, you can request that the:

-Abuser move out of your home.

-Temporary physical custody of your children go to you.

-Abuser have supervised visitation of the children. The Judge will not grant the Abuser supervised visitation in TRO orders but the Judge will address this request at the OSC hearing.

-Abuser must turn in firearms (describe the type of firearm)

- Make a list.** Before your appointment, write down all past events of abuse and their dates, so you won't forget anything. Include an address and detailed description of where the abuser can be found and served with papers.
- Be honest.** Failure to provide a detailed statement can result in the petition being denied

After the interview:

The ATV Advocate 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 from what you asked for.
- If you are not granted the TRO**, apply again as soon as there is another incident of abuse.

If you don't want your abuser to know where you live, explain to the ATV advocate 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. Or can put down a PO Box No and a message phone number.

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2. Serve the 180 Day TRO on your Abuser. (2 week TRO for Dist Ct TROs)

A TRO is “effective” as soon as the Judge signs it, but it’s only “enforceable” against your Abuser once they are given a copy of it. This is also your abuser’s notification to appear for the hearing for the permanent TRO.

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

Get the forms from your ATV advocate. Tell the advocate your abuser’s address, and the best times to find him/her. The Advocate will put that information onto forms for you to take to the police. If your abuser is on probation, give the name of the Probation Officer and the date of their meetings. The petition can be served on your abuser at that meeting.

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 (call Records at Police Dept: 935-3311, island-wide, tell them the FC-DA number) 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 (Kona only). **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 was served on your Abuser, so you can make sure to 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 you can serve the Abuser. The court will usually continue the matter for another week or two.

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 up to three years (10 year protective orders are granted infrequently).

A Deputy Sheriff will be present in the waiting room to protect you from your Abuser. The ATV Advocate 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 clear and convincing evidence of the abuse. That means you must show the court that the abuse happened. You can bring witnesses and personal records. Records 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.

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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 you are a petitioner claiming domestic violence in Family Court, an ATV worker will accompany you, but cannot speak on your behalf.

- Once the Judge issues you a Protective Order**, read it carefully. The Court Order may be different from what you asked for.
- The Court can hold your abuser for 10 minutes while you leave the building.

“S/he didn't come to the hearing.”

The Abuser was served and didn't come: (call Records at Police Dept: 935-3311, island-wide, tell them the FC-DA number) Most likely the Judge proceeds by default and issues an extensive restraining order. You must get two copies of the Order and 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 (Kona only) to find out when your abuser has been served. A bench warrant is usually issued upon arrest of the Abuser and a return of bench warrant hearing is set at which the ASB worker will personally serve the Abuser with the Family Court restraining order.

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

E. Enforcing your 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 if you have a “no contact” TRO.** 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.

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1. The Abuser broke the TRO.

No matter what the violation (even calling 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.
See the text box on page 8 called, "Calling the Police."

- Call 911 immediately to report any TRO violation.** The police department 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 police report. Be very detailed and specific regarding threats that were made and acts of aggression and injury to you.
- If no arrest was made,** call the Division of the Prosecuting Attorney's Office (Hilo: 961-0466, Kona: 322-2552) and report the violation after reporting it to 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 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. Documentation is a powerful tool. Keep your notes in a safe place.
- If you have questions about an arrest,** call Victim/Witness Assistance (Hilo: 961-0466, Kona: 322-2552) 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

To change a TRO for any reason, you need to go back to Court and ask the Judge to "amend" the TRO. Call ATV (Hilo: 969-7798, Kona: 326-1607) or District Court (Hilo: 961-7470, Kona 322-8700) for help.

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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 Neighbor Islands), www.hawaii.gov/ltgov/office/name

b. Go down 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

(O'ahu) 547-7400 or

(Kona) 322-2552

547-7401

(Maui, Moloka'i, Lāna'i) 270-7777

(Hilo) 961-0466

(Kaua'i) 241-1888

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.

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CALLING THE POLICE

Domestic Abuse is considered a priority call by HCPD, however, it is a call officers dislike the most. 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 police file a 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 they may do a 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 (Hilo: 961-0466, Kona: 322-2552) 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 call the Hawaii County Police Commission at 961-8412 to file a complaint.

http://www.hawaii-county.com/police_commission/complaint_form.pdf

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Safety Plan for You & Your Children

Advocate: get safe address & mail Plan for Your Life, Plan for Their Lives, and HPD Domestic Violence Referral List!

- 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 #s: Hilo: 959-8864 and Kona: 322-7233.** Keep the number with you. They are open 24 hours, and your kids can go there too.

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Referrals

| | | |
|---|---|----------------|
| Alternatives to Violence: | Hilo | 969-7798 |
| | Kona | 326-1607 |
| Shelters: | Hilo | 959-8864 |
| | Kona: Family Crisis Shelter | 322-7233 |
| Domestic Violence Legal Hotline | | 1-800-690-6200 |
| National Domestic Violence Hotline: | | 1-800-799-SAFE |
| Victim/Witness Assistance (Office of the Prosecutor): | Hilo: | 961-0466 |
| | Kona: | 322-2552 |
| Child Protective Services | Hilo: | 933-0350 |
| | Kona: | 327-4787 |
| Central Intake for Reports of Abuse/Neglect | | 1-800-494-3911 |
| Counseling Services: | | |
| | Island Crisis Help | 935-3393 |
| | Family Support Services of West Hawai'i | 326-7778 |

Legal Referrals:

| | | |
|---|-------|----------------|
| Legal Aid Society of Hawai'i: www.legalaidhawaii.org | Hilo: | 934-0678 |
| | Kona: | 329-8331 |
| Volunteer Legal Services (f.k.a Hawai'i Lawyers Care) | | 1-800-839-5200 |
| Domestic Violence Legal Hotline | | 1-800-690-6200 |

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