

PROTECTIVE ORDERS IN RHODE ISLAND

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What is a Protective Order?

A Protective Order is an order you can get from a Court to protect you from being abused by another person.

What are the different types of Protective Orders?

No Contact Order – This is an order issued at arraignment when the abuser is arrested by the police for a domestic violence criminal act (i.e. simple assault/domestic, disorderly conduct/domestic). No contact orders do not apply to children. If you have a child with the abuser, you may want to file a Restraining Order in Family Court.

Family Court Restraining Orders – If you are related to the abuser by blood or marriage, have a child with the abuser, or you or the abuser is a minor, you can go to

Family Court to file a restraining order. This order can also address issues of custody, visitation and child support if you have a child with the abuser. However, any of these orders will only be temporary orders. A child support order is issued for only 90 days. You should contact Child Support Enforcement to obtain a permanent order of child support. They can be contacted at (401) 222-2847. Ask Child Support Enforcement to send you an application.

District Court Restraining Orders – If you have been in a substantive dating relationship with your abuser or have lived with your abuser within the past three years you can go to District Court for a restraining order. The court will determine if you have been in a substantive dating relationship by looking at factors such as the length of the relationship, how often you and the abuser had contact, and the type of relationship, such as a sexual relationship. If you are currently pregnant by your abuser you can call Rhode Island Legal Services to see if we can assist you with your District Court restraining order.

Superior Court Restraining Orders – If you do not qualify for a Family Court or District Court Restraining Order, you need to go to Superior Court. Examples would be neighbors or parties not in a substantive dating relationship or without children. These orders are not enforceable by the police. They are civil orders. If the Defendant violates a Superior Court Restraining Order you would file a motion to adjudge in contempt. There is a filing fee for these Restraining Orders. You should contact the Superior Court Clerk to determine the filing fee.

Emergency Orders – An emergency order is an order issued by a duty judge when the Family Court is not open. These orders expire the first available hour that the court is open. For example, if you get an emergency order on Friday night at 11p.m. then your emergency order expires on 8:30 a.m. on Monday morning. If you obtain an emergency order on a holiday then it expires the next day court is open. Emergency orders are only available for Family Court Restraining Orders.

What if my child is being abused?

If you suspect that your child is being abused, it is mandatory in Rhode Island that you contact **The Department of Children, Youth and Families (DCYF)** at **1-800-RI-CHILD**. DCYF investigates allegations that a child is being abused or neglected and in serious cases has the power to remove a child from his/her home. If you are the parent or guardian of a minor child or have a court order granting you custody of a minor child, you can ask for a Family Court Restraining Order on behalf of that child. If you are both being abused, you can ask for an Order that will protect both of you.

Where do I go to ask for a Restraining Order?

You should go to the appropriate court clerk's office, depending on the relationship of the parties (see above for different types of orders) and what county you live in.

If it is after court hours, you should go to your local police department and ask for an emergency restraining order **(Family Court Restraining Orders only)**.

What happens when I go to court?

Go to the clerk's office and tell the clerk that you need to file a Restraining Order. You can fill out the form at the courthouse or take it with you to fill out somewhere else. If you have trouble understanding the form ask the clerk or an advocate for help.

What is a court advocate? What can she/he do for me?

Each domestic violence shelter provides an advocate to help domestic violence victims with the court process. In both District Court (criminal) and Family Court (civil) cases the advocate can help you file papers, explain what will happen in court and go to court with you for support. These advocates can also help you with finding other services you may need either through the shelters or other agencies. You never need to be alone in court. To speak to an advocate contact the domestic violence shelter nearest you. (www.courts.state.ri.us/domesticnew).

How do I fill out the Complaint form?

Fill out the form as completely as you can. You are the Plaintiff and the person who abused you is the Defendant. If you are filing the complaint for your child, list yourself as Plaintiff "on behalf of" your child. If both of you have been abused, state that you are filing on behalf of yourself and your child.

Describe the abuse with as much detail as you can remember. Example: "On June 20, Defendant slapped me on the face. Then he kicked me in the leg. The next day he told me he would kill me and my son if I called the police." Describe past incidents of abuse, whether the police were called, or whether you went to the hospital.

When you are asking the Court to give certain orders, **be sure to check all boxes that apply to you** such as the boxes requesting that the Defendant leave the home you are living in and awarding you temporary custody of the children and temporary child support. You can change your mind later and drop any requests. **But if you leave any boxes unchecked, the Judge may not let you ask for those orders later** (because the

Defendant was not put on notice that those orders could be granted). *Link to example of complaint.*

What if I do not speak English?

If you do not speak English, you should bring someone to court with you to help you write out the complaint. You should write a statement in your native language. Your statement should then be translated into English. The person translating your statement must write at the bottom “**as translated by . . .**” You will sign both statements. Both statements should then be attached to the complaint.

When you go to court for your hearing, you should also bring someone with you who speaks both your language and English. The court is not obligated to provide an interpreter for you.

What if I don't want the Defendant to find out where I am staying?

All of the information that you put on your complaint goes to the Defendant. Where the Complaint asks for your name and address, write your name only. If you have an attorney, you can put his or her address on the complaint instead of yours. You are allowed to withhold your address. Just inform the clerk that you want your address withheld. **If you are staying in a shelter, do not put either the shelter name or address on the complaint.**

What happens after I fill out the Complaint?

The complaint has to be notarized. This means that you must sign the complaint, **swearing that it is true**, in front of the clerk, a notary public, or a lawyer. You will also have to fill out a summons. On this form, write down where the defendant resides and his or her personal characteristics, such as height, weight, eye and hair color, facial hair, tattoos, etc. This will help the Sheriff find the defendant to serve him/her with the court papers. Generally, the clerk or an advocate will bring the paperwork to the Sheriff to serve the Defendant.

Will I have to talk to the Judge?

Maybe. The clerk will show your Complaint to the judge. After the judge reads it, the judge might have some questions. If so, the judge will talk to you. The judge might ask you to explain the abuse in more detail.

How soon will the Court give me an Order?

Once you have completed the paperwork, you will go in front of the duty judge. If the judge agrees that you are in immediate and present danger, he/she will grant your temporary restraining order. You will be given a hearing date within 21 days to ask the court to extend the temporary restraining order. **You must appear at this hearing or your restraining order will be dismissed.**

Will the Defendant see what I wrote in the Complaint?

Yes. If the judge grants the Temporary Order, the clerk will ask the Sheriff to serve the defendant with the Complaint, Temporary Order and Notice of Hearing. **This means that the Defendant will get a copy of everything you wrote in the complaint.** The clerk will also give you copies of these papers.

How much will it cost?

There are no court fees associated with Family/District Court Restraining Orders. Service is also free if the Defendant resides in Rhode Island. There may be a service fee if he/she resides outside the state of Rhode Island.

What is service?

Service is the process by which a Sheriff hand delivers the complaint, temporary order and notice of hearing to the Defendant/abuser. This must be done before the court can hear your request for an extension of the temporary order. A police officer handing the Defendant a copy is not enough. That simply puts the Defendant on notice, which could result in an arrest if he/she violates the order, but it is not considered good service for the restraining order hearing. This is why it is important that you provide the clerk's office with a good address for the Defendant.

What if the defendant does not live in Rhode Island?

The Court cannot order out-of-state service. You will have to contact the Sheriff's Department where the defendant lives to arrange service. Mail two copies of the court papers to that Sheriff's Department, along with information about where the Defendant can be found. Ask the Sheriff to send the Return of Service back to the Court before the hearing date. There may be a fee for the out-of-state Sheriff's service, which you are responsible to pay.

What if the Defendant is not served before the hearing date?

You should still go to Court on the scheduled date and time. Failure to do so will result in your temporary restraining order being dismissed. The judge will continue the hearing to a new date and send out a new summons to the Sheriff's Department to attempt to serve the Defendant. Your temporary restraining order remains in effect during the continuance. This might happen a few times until the Defendant is served. It is your obligation to provide the Sheriff's Department with an address to serve the Defendant.

If the Sheriff is not able to serve the Defendant, but you have a good address for him/her, you can ask the judge for permission to serve the Defendant by alternative service. One form of alternative service is certified and regular mail. You send the Defendant two (2) copies of the paperwork. Send one through the regular mail. Send the other by certified mail and request that the green card with the Defendant's signature on it be sent back to you once the mail is delivered to him/her. Bring that green card to court with you and give it to the judge. There is a small fee to pay for the certified mail. Another form of alternative service is to advertise the hearing date in the local paper where the Defendant last lived. You must do this for two (2) weeks in a row and bring copies of the ad from the newspaper to court to give to the judge. Because this can be very expensive, you should find out from the newspaper how much it will cost before you ask the court to allow you to do this.

If service on the Defendant cannot be completed after several attempts, the Court may dismiss the temporary restraining order without prejudice. Once you obtain a good address for the Defendant you may file a new complaint.

Do I have to go to the hearing?

Yes. If you do not go, the Court will dismiss your case and the temporary order will end. It is very important for you to be on time. Your paperwork will tell you what time you need to be at court, which is usually 9 a.m. Consider things such as traffic, parking, the metal detectors, and crowded elevators at the courthouse that might make you late. Be at the courthouse early. When you arrive at the courthouse, go to the Family Court Clerk's office and ask a clerk what courtroom your case will be heard in. You should dress appropriately. You should not wear jeans, sweatpants, shorts or tank tops, for example.

If you have a good reason why you cannot be at the hearing, you should request a continuance by writing to or telephoning the clerk's office. This does not mean your case will automatically be continued. Some good reasons for not going to court may be severe illness, a car accident, or car trouble. The judge will decide whether or not to grant the continuance on the date of the hearing.

How do I prepare for the hearing?

Step 1: Decide if you want to have a lawyer represent you.

This is a personal choice. You can represent yourself at the hearing. However, if the Defendant has a lawyer, or there are complicated issues in your case, it may be in your best interest to get a lawyer to represent you. If you choose not to have a lawyer, but do not want to go to court alone, bring a family member or friend. Also, there are court advocates who might stay with you in the courtroom.

If you do choose to have a lawyer represent you, you should begin looking for a lawyer the same day you file and are granted the temporary restraining order. If you cannot afford a lawyer, Rhode Island Legal Services may be able to represent you. If you are unable to get a lawyer before the hearing date, you have the right to ask the court for a continuance to give you more time to find one.

Step 2: Prepare your testimony.

At the hearing, you will be asking the judge to continue the temporary order for up to three (3) years. You must prove that the Defendant has done at least one of the following:

1. Attempted to cause or caused you physical harm;
2. Placed you in fear of imminent serious physical harm, such as threatening to harm you; or
3. Caused you to have sexual relations by force, threat of force, or duress.

Step 3: Decide if you want witnesses.

If other people have seen or heard the abuse, or saw you right after the abuse happened, and therefore saw marks or bruises on you or saw that you were very upset, etc., you may want to ask them to testify. You also have the right to subpoena witnesses. A subpoena is an order telling someone that they must be in court on a certain day and time to testify in a certain case. You can get subpoena forms from the clerk's office. It is not a good idea to subpoena someone who is not willing to come on his/her own unless you are pretty sure that they will testify honestly and be helpful to your case. Keep in mind that, as a general rule, witnesses can only testify about what they actually saw or heard.

If you have brought the complaint on behalf of a child, be aware that your case may be difficult to prove. If the child is too young to testify, then you will need other admissible evidence to prove your case. You may need testimony from a professional who has treated your child, such as a health care worker or counselor, especially if there are no other witnesses to the abuse who can testify. Sometimes the judge will talk to your child or order someone from the court to talk to your child. The judge may also contact DCYF and ask them to look into the allegations you are making.

Step 4: Decide if there are any documents you want to use as evidence.

Many documents contain out of court statements which cannot be used in court. Most police reports fall into this category. A medical report documenting injuries can be

helpful, but you must ask the hospital to certify it first. A threatening letter or note from the Defendant can be used as evidence. If you have documents that you think may help prove your case, bring them and the judge will decide if she/he can rely on them or not. If the judge decides she/he can rely on the documents, she/he will admit them into evidence and let you use them. Any documents you present as evidence may become part of the court file and you may not be able to get them back. You should make copies for yourself prior to the hearing.

Step 5: Decide what relief you will ask the court to give.

After the hearing, the judge will decide whether to extend the order. If extended, the order will usually:

- a. order that the Defendant cannot contact, assault, molest or otherwise interfere with you at home, on the street, or elsewhere;
- b. order that the Defendant vacate and/or remain out of the home;
- c. order that the Defendant may go to the home on a set date and time with a police officer to retrieve his/her personal belongings;
- d. state how long the order will be in effect (up to three (3) years).

If you and the Defendant have children together, the order may also:

- a. order temporary custody of the children to you or the Defendant;
- b. order temporary visitation rights (unsupervised or supervised) to you or the Defendant;
- c. order conditions on the Defendant's visitation rights such as Batterers' Intervention Program, drug and alcohol screens, drug, alcohol and mental health counseling, etc.;
- d. order temporary child support for a period of ninety (90) days.

Think about what you want to ask the Court to include in the order and be prepared to present proof, such as:

- a. if you are asking for child support, be prepared to testify about the Defendant's income or bring documents such as pay stubs and income tax returns;
- b. if you are asking for supervised visitation, have possible supervisors in mind;
- c. for either supervised or unsupervised visitation (be ready to suggest times for visits and how to drop off and pick up the children).

What happens at the hearing?

If the Defendant has been served with the Complaint and does not come to court, you might not have a hearing. Some judges will simply default the Defendant and grant the order. Default means that the court enters an order against someone for not showing up in court and contesting the complaint. Other judges may put you under oath and ask if what you wrote in your statement is true, if you are still afraid of the Defendant, and for how long you would like the order to be in effect. Some judges will want you to testify

- for an order. Prior to filing a new complaint, document any abuse by calling the police, going to the hospital for injuries, etc.
- c. Whether or not you have a protective order, some of the Defendant's acts may be criminal. If you think the Defendant has committed a criminal act against you, contact the police and file a criminal complaint.
 - d. Take other steps to protect yourself such as developing a safety plan. Get help and support from your local domestic violence agencies (*link to RICADV*) and from supportive family and friends.

What if the Defendant violates the order?

Call the police immediately and tell them that the Defendant has violated the order. They can arrest the Defendant for a violation without a warrant. The officer does not have to see the violation to make an arrest. The maximum penalty for a violation is a fine up to \$1,000 and/or up to one year to serve in jail and counseling.

You can also file a Motion to Adjudge the Defendant in Contempt for violating the order. If found in contempt of any order within the protective order, the judge may do any number of things, such as put the Defendant in jail, order counseling, suspend or modify visitation, etc.

Can I get the order extended past the three year time limit?

If the order is about to expire and you still have good reason to believe that you need protection, you can ask for an extension of the order. You should go to the clerk's office where the original complaint was filed and ask for a Motion to Extend form. A court date will be set and the Defendant must be served with the motion just like an original complaint. The Defendant has a right to appear in court and contest the extension.

If you do not file the Motion **prior** to the order expiring and you still feel that you need protection, you will have to start all over again by filing a new complaint.

If you and the Defendant have children together, you should try to obtain more permanent orders for custody, visitation and child support during the time that the protection order is in effect. If you are married to the Defendant, file a divorce action. If you and the Defendant are not married, file a Miscellaneous Petition for custody. A child support order can be obtained with the assistance of Child Support Enforcement.

What does the Domestic Violence Unit at Rhode Island Legal Services do?

Rhode Island Legal Services (RILS) has a Domestic Violence Unit, which is staffed with two attorneys, a two paralegals. RILS represents victims of domestic violence in **Family Court** to obtain extended restraining orders and temporary orders of custody, visitation and child support. Once you are given a temporary restraining order

and a court date, you can contact RILS if you wish to have an attorney represent you at the hearing. You would first contact one of the paralegals. Call Leslie Kolb for Providence County cases at 274-2652, extension 145, or Mary Curtin for Kent, Newport, and Washington County cases at extension 131. The paralegals will do an intake with you and determine if RILS is able to represent you. If you qualify for our services, one of the paralegals will then give you an appointment with an attorney. RILS' office hours are Monday, Tuesday, Wednesday and Friday from 8:30 a.m. until 4:30 p.m. and Thursday from 8:30 a.m. until 6 p.m.

Where can I get support services?

Victims of domestic violence can get help at the domestic violence shelters. The shelters are more than a place for victims without housing. They offer support groups and a variety of other services to individuals and families affected by domestic abuse. Shelter advocates are on call 24 hours a day at 1-800-494-8100.

Domestic Violence Links

RI Judiciary

www.courts.state.ri.us/domesticnew

RI Coalition Against Domestic Violence

www.ricadv.org

RI Sexual Assault & Trauma Resource Center

www.satrc.org Support for victims of sexual abuse

RI Department of Elderly Affairs

www.dea.state.ri.us Support services for elderly victims of abuse

RI Department of Children Youth & Families

www.dcyf.state.ri.us Services for child abuse victims

RI Department of Attorney General

www.riag.state.ri.us/criminal/domestic

Additional information on domestic violence

RI Department of Human Services

www.dhs.state.ri.us Information for individuals & families needing financial assistance

RI Violence Prevention Network

www.rivpn.org Lists community resources for prevention of violence, including domestic violence resources

RI Victim Information & Notification Everyday

www.doc.state.ri.us/ri_vines.htm Provides offender information including status and release date

Community Mental Health Centers

www.riccmhc.org Provides counseling services for low income individuals