

# Domestic Violence Court Proceedings

## What is a Restraining Order?

A restraining order is a Court Order which is intended to protect you from further harm from someone who has hurt you; to keep the person causing harm away from you, or to stop harassing you, or keep the person causing harm from the scene of the violence, which may include your home, place of work, or apartment. It is a civil order, and it does not give the defendant (the person causing harm) a criminal record.

## Who Can Get a Restraining Order?

A victim of domestic violence can obtain a restraining order. But what does a victim of domestic violence mean? It refers to a person protected by the law and includes any person who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present or former household member where the victim is 18 years of age (or older) or who is an emancipated minor.

A victim, of any age, also includes any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship, or if the victim is pregnant by a person who she says will be the parent of the child when the pregnancy is carried to term. A victim, of any age, also includes any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

Domestic violence means the occurrence of one or more of the following acts committed against a victim by an adult or an emancipated minor:

- ❖ Assault
- ❖ Burglary
- ❖ Criminal mischief
- ❖ Criminal restraint
- ❖ Terroristic threats
- ❖ Criminal sexual contact
- ❖ Criminal trespass
- ❖ Homicide
- ❖ False imprisonment
- ❖ Harassment
- ❖ Kidnapping
- ❖ Lewdness
- ❖ Sexual assault
- ❖ Stalking

*\*emancipated minor means a person who is under 18 years of age but who has been married, has entered military service, has a child or is pregnant or has been legally declared by a court or administrative agency to be emancipated .*

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## What Does a Restraining Order Do?

If you are a victim of domestic violence, a judge can sign an order of protection that requires the person causing harm to obey the law. It is usually very specific. For example:

1. The person causing harm can be ordered not to have any contact with you, in person or by phone, at home, work, or almost anywhere you ask the court to put in the order. The order against contact may also protect other people in your family.
2. The court can order the person causing harm to leave the house or apartment that you and the person causing harm share, even if it's in the person causing harm's name.
3. Except in the most unusual situations, the court will grant you custody of your minor children. The court can also order the person causing harm to pay child support and support for you. The person causing harm may also be granted visitation with the child(ren) under certain conditions. If the children are in danger of abuse, you should let the judge know why you think so.
4. The court may order the person causing harm to pay for costs that results from the abuse, for example: household bills that are due right away, medical/dental treatment, moving expenses, loss of earnings. The judge can also make the person causing harm pay your attorney's fees, and make the person causing harm pay damages to you or other people that helped you or got hurt by the person causing harm.
5. The judge may order the person causing harm to receive professional domestic violence counseling, abuse intervention programming, or tell the person causing harm to get evaluated, or go to a group such as alcoholics anonymous or narcotics anonymous.
6. The judge can order the police to escort the person causing harm to remove personal items from the residence or shared place of business, so that you are protected by the police during any necessary contact.

The judge has the power under the law to order anything else that will help to protect you, as long as you agree to it.

## How Do You File a Restraining Order?

Domestic Monday through Friday, between 8:30am and 3:30pm, except on a holiday, you can go to the Domestic Violence Unit of the Family Division of the Superior Court and apply for the order. Court employees will help you file the papers on forms they will provide.

If it is after the end of the court day, a holiday, or a weekend, you can go to your local police department to obtain an order. They have the forms and can call a judge to get an order that starts immediately. You will be asked to speak to the judge by telephone unless the judge chooses to come to the court to hear your testimony directly.

If English is not a language you usually speak, you may want to bring a friend with you to interpret. An interpreter should be provided for you any time you are scheduled to appear in court but might not be available in the police station.

## How Long Does the Order Remain in Effect?

When you first get protection under the law it is only temporary. The order is called a Temporary Restraining Order, or TRO. You must return to court on the date indicated in the TRO, which will be about 10 days later., Both and the person causing harm will be asked to appear in court on that date. During the 10-day period, the police or Sheriff's Office will serve the person causing harm with a copy of the order, so the person causing harm will know when the hearing is. Keep a copy of the order with you and give a copy to the police in any town where you think the person using abuse might bother you.

## What Happens in Court?

If you apply for the TRO in the Family Division, you will appear before a judge so you can tell them what happened. You will usually appear before a judge without the person causing harm present. When you return to court on the date indicated in your order, the person causing harm has a right to be present. Both you and the person causing harm will have the opportunity to tell the judge what happened between you. You are allowed to bring a lawyer to this hearing, but it is purely your choice. (If you have any questions, especially if you do not have an attorney, please call one of the numbers in this pamphlet and ask). At the end of this hearing, the judge will determine if you should receive a final order, for how long, and under what conditions.

If the person causing harm does not appear at the hearing, the judge will either continue the temporary order in effect until the person causing harm can be brought into court, or will enter a final restraining order if there is proof that the person causing harm was served with the TRO/ Notice to Appear. The sheriff or the police should have proof of service. You cannot be asked or told to serve papers on the person causing harm.

If you do not appear, and have not made arrangements with the court to reschedule the case, someone from the court will attempt to contact you by phone at home or work, or they may send you a certified letter if you have no phone. The courts take domestic violence very seriously, and will be worried about your safety if you do not call. If they cannot find you, your restraining order may be dismissed and you will no longer have the protection granted in the order.

## What Happens Next?

The court will give you a copy of the order. Be sure to ask someone before you leave the court if there is anything you don't understand. **CARRY IT WITH YOU AT ALL TIMES.** If the person causing harm does not obey the order, **CALL THE POLICE.** The police have to arrest a person causing harm who violates any part of the order that protects you from threats or violence.

You have the right to police protection. If you carry your order with you at all times, it will be easier for the police to understand your current situation. If you lose your order, or it gets destroyed, return to the court and obtain another copy.

## What Can You Do If The Order is Violated?

Call the Family Court Domestic Violence Unit if the person causing harm's only violation is a failure to return personal property, failure to pay support or rent, not complying with custody or visitation conditions, or failing to attend domestic violence counseling. In those cases the Family Division will process your request to enforce the order.

If the person causing harm violates any of the other parts of the order, CALL THE POLICE. For some violations (having contact with you or coming to the house, for example) or if the person causing harm violated the order by committing a crime (for example, stalking you, harassing you, or trespassing) the police must sign a criminal complaint for contempt.

## Can I file Criminal Charges?

You can file criminal charges against the person causing harm for acts of domestic violence, because they are all crimes. Criminal charges can only be filed at the local police department, and they will usually be heard at the local municipal court. For very serious crimes, the county prosecutor may take your case to state criminal court. You do not have to file criminal charges, but the law does allow you to file them if you choose, even if you also get a restraining order. You have at least a year after the incident to file criminal charges. The police can also file charges on their own and must do so when you show signs of injury or if a weapon was used. If the person causing harm is found guilty of the criminal charges, the court can impose fines, probation, or even jail as punishment.

### Note:

This information is provided by the New Jersey Statewide Domestic Violence Hotline and distributed by the Office of Prevention of Violence Against Women and adapted by JBWS. If you have any questions or need further assistance, please call the hotline at 1-800-572-7233, 24 hours a day, 7 days a week. Se habla Español. TTY accessible.

**CALL 1-800-572-7233**  
**NEW JERSEY DOMESTIC VIOLENCE HOTLINE**