



PROTECTIVE ORDERS: HARASSMENT RESTRAINING ORDERS AND ORDERS FOR PROTECTION

The process and qualifications for obtaining Harassment Restraining Orders (HROs) and Orders for Protection (OFPs) are similar but not identical. This fact sheet will outline the procedures for both. See SVJI fact sheet for further information on enforcement across state lines.

<p>Definitions common to both HROs and OFPs:</p>	<ul style="list-style-type: none"> • Petitioner: the person who requests/applies for the HRO or OFP is called the Petitioner. • Respondent: the person who the Petitioner alleges abused or harassed her, and who she requests be ordered not to contact her via either an HRO or OFP is called the Respondent. • Affidavit: the application for an HRO or OFP is an affidavit, which is a legal document containing information that the Petitioner swears under oath is true. • Hearing: a court proceeding where the judge determines whether the HRO or OFP should be granted, and what the terms should be. Either party may, but does not have to be represented by an attorney; hearings are open to the public; and advocates may attend to support either party.
<p>COMPARISON: HRO V. OFP</p>	
<p>Harassment Restraining Orders – Who can Obtain One? Minn. Stat. §609.748</p>	<ul style="list-style-type: none"> • A person who is a victim of “harassment” may seek a restraining order from the district court. • The parent or guardian of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor. • The definition of “harassment” includes a single incident of physical or sexual assault, or repeated incidents of intrusive or unwanted acts, words or gestures that have or are intended to have a substantial adverse effect on the safety or security of another, regardless of the relationship between actor and target • “Harassment” also includes targeted residential picketing and a pattern of attending public events after being notified that the actor’s presence at the event is harassing to another.
<p>Orders for Protection – Who can Obtain One? Minn. Stat. §518B.01</p>	<ul style="list-style-type: none"> • Any family or household member (see below), or a guardian or household member, or reputable adult age 25 or older on behalf of minor family or household member. • A minor age 16 or older may petition on her own behalf against a spouse, former spouse, or person with whom the minor has a child in common if the court determines that the minor is of sufficient maturity and judgment and it is in the best interests of the minor. • These persons described above may petition for an OFP where there is domestic abuse. • Domestic abuse is defined as physical harm, bodily injury; or assault, infliction of fear of imminent physical harm, bodily injury, or assault; or terroristic threats, criminal sexual conduct or interference with an emergency call. • Family or household member means spouses, former spouses, parents, children, persons related by blood, persons presently residing together or who have resided together in the past, persons with a child in common, a man and woman where the woman is pregnant and the man is the alleged father, persons involved in a significant romantic/sexual relationship.
<p>HRO – Where to File It?</p>	<ul style="list-style-type: none"> • The statute does not specify in which county the petition must be filed and the courts have generally applied the rules of civil procedure which state that an action may be filed in the county in which one or more defendants reside or in which the cause of action took place.
<p>OFP – Where to File It?</p>	<ul style="list-style-type: none"> • The OFP may be filed in the county having jurisdiction over a dissolution action, in the county of residence of either party, the county where completed or pending family court proceedings were brought, or in the county where alleged “domestic abuse” occurred. The petitioner need not be a resident of Minnesota to file a petition.

HRO – Filing Fee Waived When Stalking or Criminal Sexual Conduct Alleged as Basis for Petition	<ul style="list-style-type: none"> • The filing fee is waived for petitioners alleging violations of the stalking statute, 609.749 subdivision 2 or 3, which includes directly or indirectly manifesting a purpose or intent to injure the petitioner, stalks or follows the petitioner, returns to the home of petitioner without consent, repeatedly makes telephone calls, repeatedly mails letters, or harasses another with the intent to influence a judicial proceeding, OR violations of the criminal sexual conduct statutes, 609.342 to 609.3451 (first through fifth degree, including sexual penetration and sexual contact). • Some court administrators are not aware of these fee waivers; provide the statutory cite to court administration and if problems persist please inform MNCASA. • For petitioners not alleging these actions, the filing fee is \$320.00 (effective 7/1/09).
OFP – Filing Fee	<ul style="list-style-type: none"> • The filing fee is waived for petitioners.
HRO – Process After Filing	<ul style="list-style-type: none"> • Normally, an “ex parte” HRO is granted if danger is immediate and present. • The HRO should be “personally served” on the respondent (i.e. by a peace officer) • The HRO becomes effective upon service upon the respondent • Upon request by either party, a hearing shall be set to review the ex parte order, and the request by either party must be made within 45 days of the filing of the petition. • If neither party requests a hearing, no hearing is necessary. • The HRO is effective for a period of time set by the court for up to two years or up to 50 years if the petitioner has had two or more orders in effect against the same respondent or the respondent has violated an order on two or more occasions. • If a hearing is requested, the court must review whether there are reasonable grounds to believe that the respondent has engaged in harassment. If such a finding is made, the court may order relief to include ordering respondent: <ol style="list-style-type: none"> 1. to cease or avoid harassment of petitioner or 2. to have no contact with the petitioner
OFP – Process After Filing	<ul style="list-style-type: none"> • An “ex parte” OFP is granted if danger of domestic abuse is immediate and present • The ex parte order is effective for a fixed period set by the court up to two years (or longer if deemed appropriate by the court). • Upon request by either party, a hearing shall be set to review the ex parte order, and must be requested by the respondent within five days of service of the order. A hearing may be required to obtain certain relief. • The ex parte order should be “personally served” (usually delivered by a peace officer). • The ex parte order becomes effective upon service upon the respondent. • If the respondent requests a hearing, it shall be held within 10 days of the request, and service of the notice of hearing must be made upon the petitioner no less than 5 days before the date of the hearing. • At the hearing, if the court finds by a preponderance of evidence that domestic abuse has occurred, the court may order various types of relief, including, but not limited to: <ol style="list-style-type: none"> 1. restrain the abuser from committing acts of domestic abuse 2. exclude the abuser from the dwelling of the petitioner 3. award temporary custody of minor children 4. establish temporary support for minor children or spouse 5. order the abuser into treatment or counseling 6. restrain the abuser from the place of employment of the petitioner 7. order continuance of current insurance coverage 8. direct the care, possession or control of a pet or companion animal owned, possessed or kept by petitioner or respondent or child of the petitioner or respondent and direct respondent to refrain from physically abusing or injuring any pet or companion animal, without legal justification, as an indirect means of intentionally threatening the safety of such person

	<ul style="list-style-type: none"> • The relief granted in the permanent order (after hearing) shall be for a period fixed by the court for up to two years of longer if deemed appropriate by the court or up to 50 years if the petitioner has had two or more orders in effect against the same respondent or the respondent has violated an order on two or more occasions. • Subsequent orders and extensions may be appropriate if the respondent violates the order issued by the court.
<p>HRO – Violation</p>	<ul style="list-style-type: none"> • Violation is a misdemeanor • Violation within 10 years following discharge from sentence for a conviction for a “qualified domestic-violence related offense” is a gross misdemeanor (Q D-V R O are defined as): <ol style="list-style-type: none"> 1. violation of OFP 2. violation of domestic abuse no contact order 3. murder 1, 2 4. assault 1, 2, 3, 4, and 5 5. domestic assault 6. domestic assault by strangulation 7. criminal sexual conduct 1, 2, 3, and 4 8. malicious punishment of child 9. terroristic threats 10. violation of HRO 11. harassment/stalking 12. interference with an emergency call 13. similar other federal, state, or territory laws • Violation within 10 years following discharge from sentence for the first of two convictions for a Q D-V R O as defined above is a felony with maximum 5 years and/or \$10,000 fine. • Without regard to prior convictions, violation because of a person’s race, color, religion, sex, sexual orientation, disability, or national origin; violation by false impersonation of another; violation while possessing a dangerous weapon; violation with intent to influence with a witness or judicial officer or proceeding; violation against a victim under age 18 while the offender is 36 months older are felonies with maximum of 5 years and/or \$10,000 fine.
<p>OFP - Violation</p>	<ul style="list-style-type: none"> • Violation is a misdemeanor; 3 day minimum sentence with counseling or other requirements as set forth by the court • Violation within 10 years following discharge from sentence for a conviction for a Q D-V R O (see definition above) is a gross misdemeanor; 10 day minimum sentence with counseling or other requirements as set forth by the court. • Violation within 10 years following discharge from sentence for the first of two convictions for a Q D-V R O or while possessing a dangerous weapon is a felony with maximum 5 years and/or \$10,000 fine; minimum 30 day sentence as well as counseling and other requirements as set forth by the court. The court must impose and execute the maximum sentence for felony convictions.
<p><u>Q& A</u></p> <p>What are mutual HROs or OFPs, and how should they be handled?</p>	<ul style="list-style-type: none"> • Some courts will grant an HRO or OFP to <i>both</i> parties to the proceeding, effectively barring either from contacting the other. This is a mutual HRO or OFP, and sometimes seems the most convenient resolution for a judge who would rather not sort out conflicting stories. • It is never a good idea for a survivor to have an OFP or HRO against her (as “Respondent” in an HRO or OFP). This subjects her to the possibility of being charged with a criminal offense if the other party is willing to falsely report a violation by the survivor, may affect her negatively in her employment or housing, and is inappropriate if she herself is not guilty of the conduct required for the other party to obtain an HRO or OFP against her. • A victim/survivor should never agree or “stipulate” to having an HRO or OFP ordered against her, as people often do to save the hassle of a hearing or disagreeing with a powerful offender. Survivors should demand that the offender prove his need for an HRO or OFP just as she has proven her need for one.

	<ul style="list-style-type: none"> • If, at the hearing where the survivor has applied for an HRO or OFP, the court indicates a desire to grant a mutual OFP or HRO, the survivor can object. She should demand that, at a minimum, the other party be required to actually fill out an application alleging facts under oath which he claims would entitle him to get an HRO or OFP against the survivor, just as she had to do. If the other party has not filled out an application (and paid the fee), the issue of the HRO or OFP against the survivor is not legally “before the court” for consideration. The survivor will not have had sufficient “notice” (warning) of the possibility of an HRO or OFP against her. • If the other party <i>has</i> already filled out his own application, the survivor should testify (truthfully) that it is she, not he, who is the victim of harassment or abuse, and should bring witnesses if possible to corroborate what she has said about the incident, photos of injuries or property damage, a copy of the criminal complaint if any against the offender, and any other information which backs her version of events.
<p>Can the Petitioner be charged with violating an HRO or OFP?</p>	<ul style="list-style-type: none"> • No, it is not a criminal offense for the Petitioner to contact the Respondent, or to otherwise behave in ways that the Respondent is prohibited from behaving. • However, it is never a good idea for Petitioners to contact the Respondent (unless very specific contact is permitted, for example, for child visitation). Contacting the Respondent when an OFP or HRO prohibits the Respondent from doing the same can create problems if the Petitioner later wants charges brought for violation of the HRO or OFP. It can affect her credibility if she willingly talks to him one day, and the next wants him prosecuted for calling her, and can generally cause confusion about whether the Respondent is knowingly violating the OFP or HRP. If the Petitioner decides she wants to contact the Respondent, she should request that the court dismiss or modify the HRO or OFP—perhaps to permit phone contact only.

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ORDER FOR PROTECTION §518B	HARASSMENT RESTRAINING ORDER §609.748
Offender is in household or significant romantic relationship with survivor	Offender may not necessarily know or have relationship with survivor
Acts of domestic abuse have occurred, could be sexual assault	Harassment or stalking has occurred, could be sexual assault
On behalf of minors, an adult household member or reputable adult over 25; OR a minor 16 years or older on behalf of herself (against a spouse or other parent of child) may apply	On behalf of minors, the parent of a child who is the victim may apply
Filing fee waived	Filing fee waived if petition alleges acts violating Minn. Stat. §609.749 subd. 2 or 3 (stalking) or Minn. Stat. §§609.342 to 609.3451 (criminal sexual conduct); otherwise \$320.00 (effective 7/1/09), unless waived by court or <i>in forma pauperis</i>
OFP is effective for up to 2 years (except when the court determines a longer period is appropriate), and is effective upon personal service upon the Respondent. Hearing may be requested by Petitioner in the Petition, and by Respondent within 5 days of receipt of the OFP.	HRO is effective for up to 2 years (or as long as 50 years if petitioner has had two or more orders against respondent or respondent has violated the order on two or more occasions), and is effective upon personal service upon the Respondent. Hearing may be requested by either party within 45 days of filing Petition.
First violation: misdemeanor with minimum 3 days imprisonment plus counseling or other programs as designated by the court Second violation: (within 10 years of discharge from sentence of any QDVRO) gross misdemeanor Third violation: (within 10 years of discharge from first sentence of any two QDVROs) felony (see other felony factors)	First violation: misdemeanor Second violation: (within 10 years of discharge from sentence of any QDVRO) gross misdemeanor Third violation: (within 10 years of discharge from first sentence of any two QDVROs) felony (see other felony factors)