



# HARASSMENT RESTRAINING ORDERS AND ORDERS FOR PROTECTION

The process and qualifications for obtaining HRO's and OFP's are similar but not identical. This factsheet will outline the procedures for both.

<p><b>Definitions common to both HROs and OFPs:</b></p>	<ul style="list-style-type: none"> <li>• <b>Petitioner:</b> the person who requests/applies for the HRO or OFP is called the Petitioner.</li> <li>• <b>Respondent:</b> 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.</li> <li>• <b>Affidavit:</b> 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.</li> <li>• <b>Hearing:</b> 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.</li> </ul>
<p><b>COMPARISON: HRO V. OFP</b></p>	
<p><b>Harassment Restraining Orders – Who can Obtain One? 609.748</b></p>	<ul style="list-style-type: none"> <li>• A person who is a <b>victim of “harassment”</b> may seek a restraining order from the district court.</li> <li>• The <b>parent, guardian, or step-parent of a minor who is a victim of harassment</b> may seek a restraining order from the district court on behalf of the minor.</li> <li>• The definition of “harassment” includes a <b>single incident of physical or sexual assault</b>, 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</li> <li>• “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.</li> </ul>
<p><b>Orders for Protection – Who can Obtain One? 518B.01</b></p>	<ul style="list-style-type: none"> <li>• Any <b>family or household member</b> (see definition below), or a guardian or household member, or reputable adult age 25 or older on behalf of minor family or household member.</li> <li>• A <b>minor age 16 or older</b> 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.</li> <li>• These persons described above may petition for an OFP where there is domestic abuse.</li> <li>• <b>Domestic abuse</b> 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.</li> <li>• <b>Family or household member</b> 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 alleged to be the father, persons involved in a significant romantic or sexual relationship.</li> </ul>
<p><b>HRO – Where to File It?</b></p>	<ul style="list-style-type: none"> <li>• The statute does not specify in which county the petition must be filed, but it is safe to assume that filing in the county where the “harassment” occurred, or</li> </ul>

where the petitioner or respondent resides will suffice for purposes of proper venue.

**OFP – Where to File It?**

- 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**

- The filing fee is waived for petitioners alleging criminal sexual conduct first through fifth degrees by the respondent. The filing fee is also waived for petitioners alleging violations of the stalking statute by the respondent, which includes directly or indirectly manifesting a purpose or intent to injure the petitioner, stalking or following the petitioner, returning to the home of petitioner without consent, repeatedly making telephone calls, repeatedly mailing letters, or harassing another with the intent to influence a judicial proceeding.

**OFP – Filing Fee**

- For petitioners not alleging those actions, the filing fee is **\$245**.
- The filing fee is waived for petitioners.

**HRO – Process After Filing**

- Normally, an “**ex parte**” HRO is granted if danger is immediate and present.
- The HRO should be “personally served” on the respondent (usually delivered 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**.
- 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:
  1. to cease or avoid harassment of petitioner or
  2. to have no contact with the petitioner

**OFP – Process After Filing**

- Normally an “**ex parte**” OFP is granted, as the danger of domestic abuse is immediate and present
- The ex parte order is effective for a fixed period set by the court up to **one year**.
- 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.
- 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:**
  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

## HRO – Violation

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
- The relief granted in the permanent order (after hearing) shall be for a period fixed by the court for up to one year.
  - Violation is a misdemeanor
  - Violation within 5 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):
    1. violation of OFP
    2. assault 1, 2, 3, 4, and 5
    3. domestic assault
    4. criminal sexual conduct 1, 2, 3, and 4
    5. malicious punishment of child
    6. terroristic threats
    7. violation of HRO
    8. harassment/stalking
    9. similar other federal, state, or territory laws
  - Violation within 5 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 all felonies with a maximum of 5 years and/or \$10,000 fine.

## OFP - Violation

- Violation is a misdemeanor; 3 day minimum sentence.
- Violation within 5 years following discharge from sentence for a conviction for a Q D-V R O is a gross misdemeanor; 10 day minimum sentence.
- Violation within 5 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.

## Q & A

Can a survivor of sexual assault who has not been otherwise stalked by the offender obtain a *free* HRO?

- This *used* to be a problem, as victims of stalking could get a free HRO, but not victims of sexual assault! No longer : SVJI worked with the 2005 legislature to get the fee *waived* for any petitioner alleging the need for an HRO due to criminal sexual conduct first through fifth degrees.
- If neither stalking nor criminal sexual conduct applies, the petitioner may apply to proceed *in forma pauperis*, which is for indigent applicants. The court administrator can help you with this.

What are mutual HROs or OFPs, and how should they be handled?

- Some courts will grant an HRO or OFP to *both* parties to the proceeding, effectively barring either from contacting the other. This is called 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 (to be the “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.
- 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 *has* 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.

**Can the Petitioner be charged with violating an HRO or OFP?**

- 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.

ORDER FOR PROTECTION	HARASSMENT RESTRAINING ORDER
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, guardian, or step-parent of a child who is the victim may apply
Filing fee waived	Filing fee is waived for victims of stalking, sexual assault or <i>in forma pauperis</i> , otherwise: \$245
OFP is effective for up to one year, 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 two years, 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 Second violation: (within 5 years of discharge from sentence of any QDVRO) gross misdemeanor Third violation: (within 5 years of discharge from first sentence of any two QDVROs) felony (see other felony factors)	First violation: misdemeanor Second violation: (within 5 years of discharge from sentence of any QDVRO) gross misdemeanor Third violation: (within 5 years of discharge from first sentence of any two QDVROs) felony (see other felony factors)

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