

# DV Legal Proceedings

CIVIL AND CRIMINAL

# Temporary Restraining Order (TRO)

- ▶ An order entered pursuant to a complaint under the PDVA;
- ▶ Is temporary by its terms and requires that a full hearing be scheduled within 10 days.
- ▶ A TRO shall continue in effect until further order of the court.
- ▶ In order to qualify for a **TRO**, you will need an Act and a Relationship.
- ▶ Survivor will be able to talk with a judge to apply for TRO.
- ▶ The Judge decides if the TRO shall be granted or denied.
- ▶ If denied, Survivor has the option to request an appeal and immediately speak with a superior court judge.

# Temporary Restraining Order (TRO)

- ▶ If TRO is granted, the Survivor can ask the Judge to add the children to order. This will temporarily prohibit abuser from having any contact.
- ▶ The Survivor can also request the abuser not be allowed to come their home, children's school, their school or work, or parents home.
- ▶ Survivor should always mention any **history of DV** with the abuser when applying for TRO or it will not be able to be discussed at FRO court and they will have to amend their TRO.

# Qualifications for a TRO in NJ

## Relationships

- **A person 18 years of Age or older**
- Has been subjected to domestic violence by either:
- A spouse, Former spouse, or any other person who is a present or former household member.

## -Continued

- A person with whom the victim has a child in common, or With whom the victim anticipates having a child in common, if one of the parties is pregnant.
- A person with whom the victim has had a dating relationship.

## **A person who is an emancipated minor, under 18 years.**

- Has been married
- Has a child or is pregnant
- Has been previously declared by a court or an administrative agency to be emancipated.
- Has entered the military service.

## 19 Predicate Acts of Domestic Violence Under PDVA

1. Homicide N.J.S.A. 2C:11-1 et seq.
2. Assault N.J.S.A. 2C:12-1
3. Terroristic Threats N.J.S.A. 2C:12-3
4. Kidnapping N.J.S.A. 2C:13-1
5. Criminal Restraint N.J.S.A. 2C:13-2
6. False Imprisonment N.J.S.A. 2C:13-3
7. Sexual Assault N.J.S.A. 2C:14-2
8. Criminal Sexual Contact N.J.S.A. 2C:14-3
9. Lewdness N.J.S.A. 2C:14-4 10
10. Criminal Mischief N.J.S.A. 2C:17-3
11. Burglary N.J.S.A. 2C:18-2
12. Criminal Trespass N.J.S.A. 2C:18-3
13. Harassment N.J.S.A. 2C:33-4
14. Stalking N.J.S.A. 2C:12-10
15. Criminal Coercion N.J.S.A. 2C:13-5
16. Robbery N.J.S.A. 2C:15-1
17. Cyber Harassment N.J.S.A. 2C:33-4.1
18. Contempt of a Domestic Violence Order pursuant to subsection b. of N.J.S.A. 2C:29-9 that constitutes a crime or disorderly persons offense.
19. Any other crime involving risk of death or serious bodily injury to a person protected under the “Prevention of Domestic Violence Act of 1991 p.l.1991, c.261(C.2C:25:17 et al.).

## Where can a Survivor apply for a TRO: Jurisdiction

- ▶ Where the Survivor lives.
- ▶ Where the abuser lives.
- ▶ Where the Survivor is being temporarily housed.
- ▶ Where the incident happened.

- ▶ Superior Family Court during regular business hours and days.

**OR**

- ▶ The Local police department when the superior family court is not open.

# Final Restraining Order (FRO)

- ▶ In order to qualify for an FRO, you must have a Relationship, an Act, and a Need.
- ▶ N.J.S.A. 2C:25-29) A civil order entered under the PDVA after a hearing at which time the court considered plaintiff's complaint, having established jurisdiction over the subject matter and the parties pursuant to the PDVA and having found that the defendant has committed an act of domestic violence, and all other statutory and case law requirements having been satisfied.
- ▶ Restraining orders in New Jersey are **permanent and never expire**.

# Final Restraining Order Court Day

- ▶ Survivor does not need an attorney but there are attorneys who may come to court with you if you qualify. Your local DV agency can help you with referrals.
- ▶ Survivor should bring any evidence they may have to court with them. This includes print outs of text messages, social media messages, pictures, voice mails, and anything that the survivor thinks would help their case.
- ▶ All pictures the police took at the station will stay with the criminal file and will not be there in court with survivor on FRO day. This is why the survivor should take their own pictures the day of the incident of any injuries and each day following. Bruising will change and marks can appear even a day or two after. Bring all evidence.
- ▶ Survivor can bring witnesses to court.
- ▶ The Survivor must be asked if they wish to request child support at the Final Restraining Order (FRO) hearing.



# Violations of a Restraining Order: TRO or FRO

- ▶ An Abuser can violate a Restraining Order if they do any of the following:
- ▶ Contact the Survivor by:
  - ▶ Calling
  - ▶ Texting
  - ▶ Messaging
  - ▶ Getting another person to relay a message. It doesn't matter what the content of the message is.
  - ▶ Attempting to contact them in person.
- ▶ Survivor needs to report any violations immediately to the police. They are mandated to arrest.

## Continuance/Indefinite Orders and Amended TROs:

- ▶ Continuance orders, Indefinite orders and amended TROs serve different purposes and should only be used for their intended uses.
- ▶ Continuance orders are not to be used to address custody and parenting time matters.  
Continuance Orders: are entered when one or both parties request an adjournment of the FRO hearing.
- ▶ Continuance/Indefinite orders: the defendant cannot be served and service is not likely in the foreseeable future.
- ▶ Amended TROs are used when there is a request for changes to the TRO, including additional relief not requested on the original complaint as well as a request for an adjournment.

# Fingerprint Requirement for Granted FRO:

- ▶ Defendants shall be fingerprinted via Live Scan when served with a FRO pursuant to N.J.S.A. 53:1-15.
- ▶ Each county shall have a process in place to direct the defendant to the Sheriff's office to complete the fingerprint process.
- ▶ Staff must utilize the Fingerprinting Requirements Notice to inform the defendant of this statutory mandate.

## Full Faith and Credit of Violence Against Women Act:

- ▶ **Full faith and credit** is a legal term that means a court in any jurisdiction will honor and enforce orders issued by courts in other jurisdictions.
- ▶ Under the Violence Against Women Act (VAWA), all jurisdictions must give full faith and credit to valid protection orders issued by all other jurisdictions, including states, Indian tribes, or territories, on behalf of survivors of domestic violence, sexual assault, stalking, and dating violence.
- ▶ Therefore, a valid protection order should be enforced as if it were the order of the enforcing state, tribe, or territory.

# No Contact Order, Criminal

- ▶ In New Jersey, a “no contact” order is issued by a judge in a criminal proceeding often as a condition of bail on a criminal charge or during contentious divorce proceedings, and is designed to ensure the safety of an alleged victim after the release of a defendant pending the resolution of their case.

# Civil Restraints

- ▶ **“Civil Restraints” are a way to resolve pending domestic violence cases without a trial or the entry of a formal restraining order.**
- ▶ A Final Restraining Order against you can cause you to lose your license to work at certain jobs. For this reason, some Survivors decide to go the route of signing “Civil Restraints” with their Lawyers.

# ERPO

- ▶ **Extreme Risk Protective Order (ERPO):** A family or household member, or a law enforcement officer, may apply for an order against a person who presents immediate and present danger of bodily injury to self or others by possessing or purchasing a firearm.

# Custody and Parenting Time

- ▶ The court shall inquire if the parties have children in common and address custody and parenting time as appropriate.
- ▶ This may include prohibiting the defendant from contact with the child(ren) as a protected party, granting custody to the plaintiff, modifying or temporarily suspending an active parenting time order.



# Dismissal of a FRO

- ▶ A request for dismissal of a final order should be handled in the same manner as a request for withdrawal of a TRO.
- ▶ The dismissal must be requested either telephonically or in person.
- ▶ The court shall determine whether an order for child support, spousal support, custody and/or visitation was entered or sought as part of the FRO and if so, determine whether the plaintiff wants the relief to continue.
- ▶ If so, these provisions will be made part of an FD order and staff shall establish an FD docket simultaneously with the dismissal order without the imposition of fees or the refiling by the plaintiff.