



Wednesday Workshop: Supporting Survivors of Sexual and Domestic Violence

Podcast Transcript

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Restraining Orders and Safety

Presented by Marissa, Adult Domestic Violence Advocate, and Fiorella, Advocacy Program Coordinator

Marissa: Hello and welcome to The Women's Center's Wednesday Workshop podcast, intended for survivors of domestic and sexual violence as a time to learn and grow in order to move beyond their trauma. Each session will feature instruction on a healing topic. This week, our topic is Restraining Orders and Safety. We are your hosts; my name is Marissa and I'm the Adult Domestic Violence Advocate here with The Women's Center.

Fio: And my name is Fiorella, or everybody calls me Fio. I have been at The Women's Center for nine years. I am the Advocacy Program Coordinator. I work mainly with our Spanish-speaking community and our Legal Advocacy program, and I am excited to share what I know about restraining orders.

Marissa: Awesome! Fio and I, along with some other advocates at The Women's Center, can provide support in Legal Advocacy. We provide advocacy and support through the restraining order process (which we'll be talking about today), and also service representation at court (also known as court accompaniment), attorney referrals, and assistance navigating the courthouse here in Waukesha. We can also provide some support and referrals in family court for separation and divorce, sexual assault or other criminal trials, immigration and abuse, et cetera. We can provide support in a range of topics.

Legal Advocates at The Women's Center are not attorneys, and we do not provide legal advice. The information presented in this podcast is not legal advice either, does not function as a do-it-yourself tool for completing restraining orders, and is accurate per Wisconsin State Statutes and the Waukesha County Courthouse. If you have additional

questions or if you are outside of the Greater Milwaukee area, please contact your local domestic violence or sexual assault agency for some of that additional support.

Fio: We're going to start talking a little bit about safety planning. It's important to understand, you know, and before we discuss restraining orders, what safety planning all encompasses. Restraining orders aren't a part of everyone's safety plan, and that's okay. Each situation is different, and you know yours best. Safety planning is a personalized, practical plan that addresses ways to stay safe while you're in an abusive relationship, while you're planning to leave, as well as maintaining safety after you leave. And, it may look different for everybody like changing locks, packing a "go bag", teaching kids a code word for when abuse escalates, seeking remedies in the legal system, learning grounding strategies to be calm, and more. I would suggest listening to our previous podcasts on safety planning or contact an advocate if you're looking for more information on the topic or want to create your own.

Marissa: So, what is a restraining order? You may have heard this referred to as an RO, an injunction, a protection order, a no contact: it goes by a lot of different names. But essentially a restraining order is a court order that orders somebody not to hurt you, to stay away from you, to perhaps move out of the house, have no contact with you, or to stop harassing you. This takes place in civil court and is not the same as reporting an abuser to the police. That said, if your abuser does violate the restraining order, you will need to contact law enforcement and your abuser will be arrested for violating the order.

The most common restraining orders filed with our Legal Advocates here are Domestic Abuse and Harassment restraining orders, and those will be what we're talking about today. There are also Child Abuse restraining orders and Individual At-Risk restraining orders, typically used for elder adults. Those are the other two forms of restraining orders that you can file for in Wisconsin. But again, we will be looking at Domestic Abuse and Harassment orders specifically.

Fio: Like Marissa was saying, I'm gonna touch base on what the statutes specifically say about Domestic Abuse versus Harassment restraining orders. We cannot tell you which one you need to file for. That's something that is, you know, up to each individual to decide. But we can explain the statutes and support you in your decision of which is best for your situation.

So, when it comes to Domestic Abuse, the statute 813.12 says physical abuse, sexual abuse, placing the person in a life-threatening condition (called intentional impairment of physical condition), destroying the petitioner's personal property, stalking, or threats to do any of these things. So basically, when we talk about destroying a petitioner's personal property, this could be throwing your phone. The impairment of physical

condition could be blocking the doorway of a room; stuff like that could all qualify for a Domestic Abuse restraining order. Also, it's important to mention that these are filed adult versus adult. The respondent must be a family or household member, dating partner, spouse (present or former), person with a child in common, or adult caregiver to another adult.

Now talking about Harassment restraining orders and the statutes, this one is 813.125. This says threats of physical and/or sexual abuse, stalking, child abuse under 48.02, or engaging in a course of conduct designed to harass or intimidate that serves no legitimate purpose. I think it's very important to say that, the part of no legitimate purpose; that is what the court really focuses on, that there's no reason for them to be either following you or just harassing you in general. This can be filed by anyone alleging harassment, whether filed by a minor and adult and whether the harassment is being done by an adult or a child. It's also important to mention that here in Wisconsin, we cannot include children in the Domestic Abuse petitions.

Marissa: Right. So, your restraining order will be your restraining order as an adult, and the children won't necessarily be lumped onto that. I know in other states that can be different, but here that is what the petition looks like. [Fio affirms] As far as some more differences between the Domestic Abuse and the Harassment restraining order, there is a difference in fee. In the Domestic Abuse restraining order, there is no fee involved with filing. However, with the Harassment restraining order, there is a filing fee of \$164.50 involved unless you are alleging domestic abuse or stalking behaviors. If you feel that you apply to that, you may file a fee waiver form and a judge will decide whether to waive that for you.

Another key difference between the Domestic Abuse and the Harassment restraining order is the requirement for the respondent to surrender their firearms. For the Domestic Abuse restraining order, that is court-mandated—the respondent will need to surrender their firearms if the injunction is granted, and even hunting firearms will need to be relinquished. This is something really important to take into consideration of your overall safety plan. For the Harassment restraining order, there is no court-mandate to surrender those firearms, though you can request it. That can be requested by the petitioner, for sure. So, for example, somebody could qualify and meet all of the statutes for the Domestic Abuse restraining order. However, they may feel that they might put themselves more at risk with that court-mandated relinquishment of firearms, so that person may choose to file a Harassment restraining order, and not ask the court to have the respondent to surrender the firearms. Again, all of this needs to take into account your personal safety situation and what your overall safety plan will look like.

Fio: Definitely, now talking a little bit more about the process of the restraining orders. A restraining order is a two-step process, and you start the process by requesting papers for a temporary restraining order, also known as a TRO. These papers are called the petition, the person completing the petition is called the petitioner, and the person you filed against is called the respondent. Once you file a TRO petition, the court decides whether or not to issue a TRO based on the information you write in your petition. And part of that information that is key is your statement. If the court grants the TRO, the court will schedule a hearing for you to come back to court within 14 days from when you filed. This hearing is called the injunction hearing. At that hearing, you will ask the court to order a final order of protection which is called an injunction. An injunction can typically be granted for up to four years for Domestic Abuse and Harassment. And in some instances, where the court believes there's substantial risk for the respondent to commit homicide or sexual assault against the petitioner, they might grant the injunction for up to 10 years.

Marissa: So, we've sort of gone through the meat of what these restraining orders are, let's start looking at how we can actually file this. There is always the option to file in-person: you fill out the paperwork and hand it in, and you should be notified usually within, you know, about an hour or two whether or not that TRO has been granted and what that court date looks like. A popular option that has really sort of boomed during the COVID-19 pandemic is the option to eFile. So instead of handwriting everything, you can submit everything electronically. It takes just a little bit longer to get a response about that TRO and the court date, but that usually should come about within 24 hours.

If you're concerned about your address or contact or contact information being given to your abuser, there are also address confidentiality forms that you can fill out. This makes it so that information is not on any court documents, or on CCAP either. If you're concerned about any ongoing address confidentiality, we do have the Safe at Home program in Wisconsin. This can be an additional part of that safety plan. A lot of advocates here at the Women's Center can help you with that; both Fio and I can help with that if you are in the area. Contact your local program for more information on that. [Fio affirms] There are multiple address confidentiality programs throughout the United States, here we've got the Safe at Home.

And like Fio mentioned earlier, some key pieces of the restraining order are the statement as well as evidence or exhibits. Exhibits are anything that can substantiate the claim that you're making; in other words, that domestic abuse, harassment or stalking has taken place. This can look like screenshots from text messages or emails, photos can count, police reports can often count as well. They may take that or statements from others as part of supporting evidence, but it may be considered hearsay if the author of that statement or report is not present to testify on it.

And then statements are your account of the abuse from the most recent incident, to establishing a timeline and context of the relationship between you and your abuser.

Again, that is key for the judge to determine whether or not the temporary order is granted. It's a little bit of a snapshot into what's going on. We will be including some tips on how to write a restraining order statement on our website under this podcast.

Fio: Yes, definitely, a little snapshot of what's going on, and also the relationship between the petitioner and the respondent. Because remember, whoever is reading this—the commissioner or the judge—does not know you, and they need to get an idea of what the relationship looks like.

So now you know how to file; let's talk about a little bit more of what to expect while in court and talking about the process. The court asks who is present. The petitioner must attend the hearing, and it is optional for the respondent to attend or not. The petitioner must notify the court orally or in writing if a victim service representative is present, somebody like Marissa or myself, an advocate. The petitioner testifies. The petitioner or attorney present the evidence of alleged abuse. Testimony might be limited to only what is stated in the petition unless you bring more evidence. Here in Wisconsin, I suggest to bring, every time you bring evidence it should be three copies of everything: one for you, for the other party, and the court. The respondent (if present) or their attorney has the right to cross-examine the petitioner or ask them questions. Witnesses for the petitioner testify; respondent or their attorney can do the cross-exam questions. The respondent testifies; the petitioner or their attorney can do cross examination as well. Witnesses for respondent testify, and same then the petitioner or their attorney can cross-examine witnesses. Cross-examination is to be limited to only what was said by the party during the testimony. Common objections during the hearings, during the testimonies, or of cross examination is they're non-relevant (meaning outside the scope of what the person is saying) or hearsay (statements be made by a third party outside of court). Like Marissa was mentioning before, let's say you bring a police report and you want to refer back to that. If the police officer who wrote it is not present, they might not accept that police report. So, you have to take all of that into consideration when thinking who your witnesses are going to be. Allow the court to rule on an objection before responding or testifying.

Now preparing for court: I would suggest you practice your testimony leading up to the hearing. It's important to feel comfortable with what you're saying of how things happened, maybe a little timeline in your head of how things went down. Also, some commissioners don't like when people have papers in front of them or are reading straight out of a paper. They would like you to talk based on what you remember, so practicing can help with that. Determining arrangements for children and transportation if held in-person. So, if you're going to go into the courthouse, all of this you have to think beforehand because children are not allowed in the courtrooms. So, who's going to watch your children where they're going to stay. Usually these hearings are held pretty early in the morning, so planning ahead of time, leaving with enough time, and all of that. Determining technology needs, like Marissa mentioned, now that

eFiling has become so popular. Sometimes as much as a lot of us are using our phones all the time, we might not be familiar with the type of program or app we might use for this hearing. So, becoming familiar with that, making sure your webcam and your microphone work, that it's a quiet room, a reliable phone, reliable internet, and all of that.

And then, how can we support you as advocates? We can help by making referrals to attorneys, phone calls immediately before and after the hearing, do accompaniment on Zoom call hearings (we won't be on camera but we can be present with you), and then physical accompaniment to hearings for support and the physical barrier between you and your abuser.

Marissa: That in-person support can be so helpful in that time because it is really scary [Fio affirms], especially if your abuser does show up. As well as for the Zoom call; even though we're not going to be on camera, we can be in the same room as you and just sort of provide that reassuring look, or you know, a thumbs up, anything. We can't talk, we can't be on camera, but we can show you that we're here and that we care. [Fio affirms]

So what's next? Things are going to look different, of course, whether the injunction is granted or if it is not granted. Let's start with if that injunction does get granted, you've gotten that up to four years of protection from your abuser. You're going to want to keep that restraining order on you at all times. You can also give a copy to a trusted neighbor, a friend or family member. You may also want to provide a copy of the restraining order to your workplace, to your school, or your residence if you're living in a larger building. If your abuser violates that protective order, you're going to want to call the police at that point. The restraining order is valid across the United States due to something called "full faith and credit"; however, if you are moving states, it's important to alert the jurisdiction that you're moving to, that you have this restraining order. It's also important to think of alternative ways to keep safe if the police don't respond right away, make sure you can notify a friend or family member, or you're in a room where you're not going to be blocked in or that there's not access to weapons if that abuser does show up and you're waiting for the police. And once again, informing family, friends, neighbors, and even healthcare providers too that you have a restraining order in effect. The safety planning doesn't stop as soon as the injunction is granted. It's something ongoing, it's something, you know, it's a process and a practice to ensure your safety going forward.

On the flip side of that, if the injunction is not granted, that also does not mean the safety planning stops, it'll just start to look a little bit different. So, we're gonna want to rework that safety plan to meet some new needs without that restraining order in place. This may look like notifying friends or family members of the most up-to-date situation. That could also look like changing your locks, participating in the Safe at Home program if your abuser does not know where you're currently staying, and if it's appropriate or

accessible, some folks even consider moving or relocating to make sure that their abuser does not know where they are.

You may also ask for something called a de novo review. And so, this is where a circuit court judge conducts the same hearing which the commissioner conducted as if that first hearing never took place. So essentially, it's a little bit of a do-over of that injunction hearing. Now I will say right off the bat, Fio and I are not experts in the de novo review. It is one option that a survivor may choose and of course, specific details will vary based on your case; any questions should be answered by an attorney at that point. And as far as other court proceedings as well, the denial or the dismissal of a restraining order will not jeopardize your ability to separate or divorce, and it won't affect any custody or placement orders. This is an entirely separate case. You know, even if in this situation, your injunction was denied or you dismissed it, it's not going to have any ramifications on those other court proceedings.

Something very, very important to remember as well, I can't stress this enough: if your injunction was not granted, it does not mean that the abuse didn't happen. You still deserve that safety. You deserve that respect. And ultimately, you deserve that life free from abuse. It's going to hurt, take some time to process those emotions, mourn a little bit. While you may doubt your experience after this, know that we believe you, we support you and we will continue to be here for you as well. That is crucial to remember here.

Fio: Definitely. I think sometimes people are discouraged or feel that because they haven't shared their story before and it's been something that has been happening for so long, people are not going to believe them. But like Marissa was saying, you know, don't get discouraged or it doesn't mean it didn't happen. I also want to just remind you that the information presented in this podcast is not legal advice, does not function as a do-it-yourself tool for completing restraining orders, and it's accurate per Wisconsin State Statutes and the Waukesha County Courthouse. I suggest you contact your local domestic violence or sexual assault agency for additional support. I know every restraining order is specific to the survivor's situation and needs. Not every single survivor completes a restraining order and like we said at the beginning, that's okay. It's sometimes not a good thing or a safe thing to do for everyone. Only you know if a restraining order is necessary for your safety, as with any part of your safety plan, and remember, you are the expert. We just get to be your cheerleaders and paper-pushers through this process.

Marissa: Absolutely. Definitely. Thank you all so much for joining us to learn more about Restraining Orders and Safety today. Our next session will be about the History of Domestic Violence Awareness Month with our Executive Director, Angela.

If you would like to talk with an advocate about your own experience, please call her 24-hour hotline at 262.542.3828. Learn more about the Women's Center at www.twcwaukesha.org. Thank you and be well!