

Mississippi Coalition Against Domestic Violence

HOW TO GET A 10 DAY TEMPORARY RESTRAINING ORDER QUICK REFERENCE SHEET

Under section 93-21-7(2) of the Mississippi Code, there is no cost to file for a protection order.

If you live within the limits of a town, you should go to the Municipal Court. If you live in the county, outside of the town limits, you should go to Justice Court. You may also file for a temporary restraining order (TRO) in County Court. You do not need an attorney to file for a temporary restraining order.

Tell the court clerk that you would like to file for a temporary restraining order. In some courts, the clerk will ask you to fill out the paperwork and return it to him/her. In other courts, the clerk will fill out the information for you.

If the court clerk says that the court does not hear cases for temporary restraining orders, please refer him/her to sections 93-21-11 and 93-21-13 of the Mississippi Code, giving the Justice, Municipal and County Courts jurisdiction to hear temporary restraining order cases. The court may not deny their jurisdiction and must hear the case.

If the clerk says that they do not have the necessary document (a petition) for you to fill out so that you may file for a temporary restraining order, please call MCADV at 1-800-898-3234 and we can fax the court a petition that was written by an attorney at the Mississippi Attorney General's office.

Once you have filled out the necessary paperwork, the clerk will tell you when you will see the judge. You will appear before the judge and tell him/her why you are seeking a temporary restraining order. You should bring any evidence of abuse with you so that the judge can review it. It is important to note that, under section 93-21-3(a)(ii) of the Mississippi Code, any *threat* of violence that places another in "fear of imminent serious bodily injury" is enough to constitute abuse for the purpose of obtaining a temporary restraining order.

The judge will either grant or deny your petition for a temporary restraining order based upon whether he/she believes there is good cause. The abuser will not be present in court. Only you will appear before the judge. If the judge grants the temporary restraining order, the abuser will be served with the order. After the ten day temporary restraining order has expired, the judge may extend it under certain circumstances for up to twenty days.

You also have the option of going to Chancery Court to file for a more lengthy restraining order. The judge will decide the duration of the restraining order, but it cannot exceed three years. Both parties will be present at this hearing. No attorney is necessary and there are no court filing fees. The judge and/or clerk at any of the above-mentioned courts will be able to give you more information about restraining orders.

Please see MCADV's publication, *Where Do I Go From Here?* for more detailed information regarding how to obtain a restraining order.

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**MISSISSIPPI COALITION AGAINST DOMESTIC VIOLENCE
MOST COMMONLY USED DOMESTIC VIOLENCE LAWS QUICK REFERENCE**

There is a presumption that the non abusive parent will get custody of the children. If both parents are abusive, there is a presumption that the grandparents will get custody.

Miss. Code Ann. § 93-5-24 (1972).

The threat of violence is enough to obtain a TRO. 93-21-3

There are no filing fees or court costs for domestic violence cases. 93-21-7(2)

Temporary Restraining Order Laws. 93-21-11 - 13

The violation of a TRO is a misdemeanor. The third violation escalates to a felony. 93-21-21

Simple DV and Aggravated DV Laws. 97-3-7 (3),(4)

There is an enhanced penalty if a child witnesses DV. 97-3-7(4)

A judge may require, as a condition of any suspended sentence, that the abuser go to counseling. Batterers' Intervention is the preferred mode of counseling. 97-3-7(6)

A law enforcement officer SHALL arrest with or without a warrant when he/she has probable cause to believe a person has committed DV within the last 24 hours. 99-3-7(3)(a)

The principal aggressor law. (An officer shall attempt to determine who the most significant aggressor is, rather than the first aggressor.) 99-3-7(3)(b)

Bail will not be set for a person arrested for misdemeanor DV until they have appeared before a judge, which must happen within 24 hours of the arrest. 99-5-37