

Information about Restraining Orders

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What Is Domestic Violence

Domestic violence occurs in all sections of our community and across all cultures. Domestic violence is an abuse of power between people in intimate relationships, or after separation, through a wide range of abusive behaviours. This may include physical and sexual violence, verbal abuse, threats and intimidation, emotional and social abuse, stalking and economic deprivation. All of these behaviours are unacceptable in our community, and some of them are clearly against the law.

South Australia Police aim to protect and increase the safety of victims of domestic violence. A restraining order may help protect you and your family. This pamphlet tells you what will happen if you contact the police about getting a restraining order. We hope it will answer your questions, and help you decide what to do.

What is a Restraining Order?

A restraining order is a court order which forbids a person (the defendant) from behaving towards you (the complainant) in ways which may harass, threaten or abuse you or which may be violent. The other person may be ordered not to do various things, such as not to come to your home, not to go to your children's school, not to follow or watch you, or not to send messages to you. An order is made specifically for you and your situation.

It is an offence for the person to do any of the things the order says they must not do. This is called 'breaching' the order. You should tell the police if the person does any of those things.

How do I apply for a Restraining Order?

Going to the police is usually the easiest way to apply for a restraining order.

It helps to go prepared. Take with you any evidence or information you think will help to support what you are saying. This may include:

- any notes you may have made about what the other person has been doing including information as to when and where things have happened
- any photos or other evidence of damage the person has done to your property
- copies of any Family Court Orders that apply to your children.

You should tell the police if you think the other person has a gun. This is because, if a restraining order is made, the court will also order that the gun be taken away from the other person (the defendant) for the duration of the order. A sworn statement, called an affidavit, will be taken from you. This tells the story of your circumstances and forms the basis of your application for a restraining order. By swearing the affidavit you are telling the court that everything you say in the affidavit is true. It is an offence to make an untrue statement in a sworn affidavit. Your affidavit will then be sent to the Police Criminal Justice Section where police prosecutors will check that there are sufficient grounds to ask the court to make an order for you. If so, the police will appear in court for you. You will usually have to come along to court, however the police will do the talking for you.

In the metropolitan area:

- You will be told when you have to go to the Magistrates Court.

In a country area

- The Police Criminal Justice Section will contact you if you need to attend court.

Attending court

Make sure that you get to court at the time told to you by the police officer. If you are running late or can't get there, telephone the police or the court beforehand and give reasons.

When you arrive at the court, ask the staff at the information desk which courtroom to go to.

What happens when you arrive in court?

If you are attending a metropolitan court, a police officer will meet and speak with you. If you are attending a country court, the police prosecutor will approach you. If you haven't already read and sworn your affidavit, they will arrange for you to do this in front of an authorised police officer or a Justice of the Peace. Remember it is an offence to swear an affidavit which includes false information.

As your affidavit will be used in court as evidence, you may not have to give oral (verbal) evidence in the courtroom. However, although you may not have to give oral evidence, you must stay at court.

You will be asked to wait outside the courtroom until the magistrate is ready to hear your application. A court officer will call you in at the right time.

What happens in the court?

The person you have applied to have a restraining order against will not be in the court for your application. If they are there for some other reason and you do not feel safe, tell a police officer or the court staff.

When the magistrate is ready to hear your application you will be asked to come into the courtroom and sit in the seats at the back of the courtroom.

When you hear the name of the person you are applying for an order against, the matter is being 'called on'. This is a court formality and means that the magistrate is ready to consider your application.

You should remain seated. You do not have to do anything at this stage unless asked to by the magistrate, court staff or a police officer.

If the magistrate needs to clarify something, he or she may ask you to step into the witness box so that you can be asked a question. Often though, they will just ask you while you are seated at the back of the court, and you can answer from there. The police officer may also ask you a question if they need more information about something. Listen to the questions carefully and answer them truthfully.

When the magistrate has made his or her decision, he or she will tell you whether the restraining order has been granted.

Listen to what the magistrate says to you after he or she has read your application. If you miss something, you can ask the police officer after the hearing and the police officer will explain what happened and answer any questions you may have.

What happens when a restraining order is granted?

The court will issue the order the same day, however, it is important to realise that the order **does not start working until the police hand a copy of it personally** (serving the order) **to the other person** (the defendant). If possible, don't tell the other person that the police are going to give them a restraining order as this can make it more difficult for the police to serve the order.

The police will tell you when the restraining order has been served, however, if you are worried you can ask at your nearest police station at any time.

You will receive **three copies** of your restraining order in the mail or from the police a few days after you attended court. It is a good idea to keep one copy in a safe place, another copy with you (for example, in your bag or car), and give the third copy to anyone else who might need it (for example, the school your children attend).

Read your copies carefully so that you are aware of what the other person (the defendant) can and cannot do (the conditions). That way, you know if the other person does something that breaks any of the conditions, in which case you should contact the police.

Often, an order is made for a set period of time, for example, one or two years. If an order does not specify a time period, this means the order will continue indefinitely.

What happens next?

The restraining order also contains a court date for the other person to go to court **if they disagree with the conditions** in the restraining order. The police will try to sort out any disagreement and will let you know if anything in the order changes. **You don't have to go to court on this date.** If the person still disagrees with the order after this court hearing, then there will be a court case later.

The police will tell you if you have to go to court and, if so, when and where you should turn up. **If you have to go to court at this stage you will have to give evidence in the witness box.** The other person (the defendant) will also be in court for the hearing, so if you do not feel safe then tell the police and arrangements can be made to try to make you feel safe.

It is important to remember that the restraining order keeps working until the end of any such hearing. The court can then choose to confirm the order. If so, the order will continue to give you protection until it expires or it is changed by the court.

What happens if the other person breaks the order?

If the defendant breaks any of the conditions in the order, this is called a breach of the order. This is a criminal offence and the defendant can be charged.

You should be careful that you do not do anything to breach the order, or cause the other person to breach the order. For example, if the other person is not allowed to contact you, then you should not go and visit them, or ring them. Otherwise, you may be breaking the law as well and could be charged with an offence.

If a breach of the restraining order is taking place by the defendant in your presence or you feel you are in danger, you should immediately dial 131 444 (or 000 in the case of an emergency) and a patrol can be sent out to assist you.

If you think that a breach of the restraining order has occurred but you are in no immediate danger (e.g, where the defendant has visited a child at school contrary to a condition in the order), **you should report this to your local police station** so that the police can investigate the matter.

Remember - your restraining order is only as effective as you allow it to be. Report all breaches promptly.

What about Family Court Orders?

If children are involved, **it may be necessary to obtain legal advice** to help you decide whether you should apply to the Family Court for a Family Court Order. It is important to remember that the conditions in a Family Court Order **may override any conditions that have been made in a restraining order.** The police can explain this to you.

What happens if I need to change the Restraining Order?

If your circumstances change, and you wish to change any of the conditions in the restraining order or to cancel the order, then contact the Child and Family Investigation Unit or your local police station and tell them the reasons why you want the restraining order changed or cancelled.

Another court hearing will need to be scheduled for any order to be changed or cancelled. It is important for you to understand that only the court can change or cancel an order. Your order cannot be changed just by you and the other person agreeing to a change.

Both you and the other person will be advised of the time and date of the hearing. You **will** need to attend court for this. Often, the other person will also have to attend.

The police and courts recognise that sometimes situations change for the better and orders may need to change too. However, the police also need to feel satisfied that you will still be safe, and that you are not being pressured into making changes that might put you or your family at increased risk.

Sometimes, the police will not agree to appear in court for you in an application to vary or revoke a restraining order if they believe this action will increase the risk that you or your family will suffer further domestic violence.

Where to call for assistance

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| For an emergency situation | 000 | | |
| For police assistance/attendance | 131 444 | | |
| Police Child and Family Investigations Units | | | |
| Adelaide | 8463 7090 | A/H | 8346 7007 |
| Elizabeth | 8207 9353 | A/H | 8207 9442 |
| Holden Hill | 8207 6034 | A/H | 8207 6000 |
| Port Adelaide | 8207 6413 | A/H | 8207 6444 |
| South Coast | 8392 9172 | A/H | 8392 9000 |
| Sturt | 8207 4801 | A/H | 8207 4700 |
| In country areas contact your local police station. | | | |

If you are a victim of domestic violence from a non-English speaking background, and need support and assistance in understanding the restraining order process, please contact the **Migrant Women's Support and Accommodation Service** on **8346 9417**.

A list of agencies which may be of further assistance and support to you as a victim of domestic violence, is available from your local police station.

DISCLAIMER: This publication has been prepared as a public service initiative by South Australia Police. It provides general information in the form of a practical guide to assist in promoting safety and reducing the risk of crime.

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Readers are encouraged to seek independent legal and other relevant professional advice in relation to individual circumstances.

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