

TEMPORARY RESTRAINING ORDER (TRO) AND PROTECTIVE ORDER (PO) BENCH CARD

■ La. Ch. C. arts. 617-618



PURPOSE

TRO and PO protect families from abuse and/or neglect by restraining individuals from harmful conduct and by giving other additional relief; can be used to prevent or eliminate the need for removal of the child by protecting him/her from further abuse and/or neglect.

PRELIMINARY CONSIDERATIONS

■ ARTICLES 102, 309, 615(B)(2), 617-20, 627, 681

- (1) **PREVENT/ELIMINATE NEED FOR REMOVAL:** After investigation finding justification for report of child abuse or neglect, DCFS may seek TRO/PO and/or Instant Safety Plan Order (ISPO), pursuant to its obligation to provide reasonable efforts to prevent or eliminate need for removal.
- (2) **MANAGE SAFETY IN GENERAL:** Children's Code also allows issuance of PO in the following circumstances:
 - At Continued Custody Hearing (CCH), if court finds child can be safely returned home under PO.
 - At Disposition Hearing, if court places child in custody of a parent or any other relative or suitable person.
 - In any CINC proceeding under court's general authority.
 - Pursuant to Title XV, Chapter 8, Articles 1564 et seq.

PRACTICE TIP | Other Examples: TRO/PO can be effective in but are not limited to the following situations:

- Jurisdiction is needed over perpetrator, including non-parent, to temporarily order to refrain from certain actions.
- Eviction of perpetrator from residence would preserve child's safety.
- Awarding person protected use of community property, such as a car, would help person keep child safe.
- Existing custody/visitation order regarding child needs to be modified.
- Ordering perpetrator to pay temporary support would help person keep child safe.
- To prevent parent's/caretaker's contact with a child.
- Parent/caretaker is hesitant or unable to file TRO/PO on his/her own.

PRACTICE TIP | Petitioner: Children's Code uses "petitioner" for person seeking TRO/PO since language taken from Domestic Abuse Assistance Act. However, DCFS will often be petitioner in these instances.

PRACTICE TIP | Defendant/Restrained Person: Children's Code uses term "defendant," but there is no "defendant" in CINC cases. May be helpful to think of the relevant individuals as the "Restrained Person" (defendant) and the "Person Protected." Restrained Person would be the perpetrator; Person Protected would be the child and could include adults such as one or more of the parents/caretakers. Restrained Person could be parents, significant others, relatives, or someone else living in the home. The [Temporary Restraining Order \(TRO\) Template](#) and [Protective Order \(PO\) Template](#) use "Restrained Person" instead of "defendant."

PRACTICE TIP | Appointment: Article 607 directs court to appoint children's counsel "at the time the order setting the first court hearing is signed." Article 608 provides the parents' right to counsel at CCH and "at all stages of the proceedings thereafter." Court has authority to appoint CASA in any CINC proceeding (Article 424.1).

HELPFUL GUIDANCE | Domestic Violence: Those with domestic violence experience are well aware that lethality may increase when TRO/PO is requested by an individual.

TEMPORARY RESTRAINING ORDERS

■ ARTICLE 617

- (1) **FINDINGS:** To grant, court shall find that:
 - TRO is necessary to protect "petitioner," child, and/or any other persons alleged to be an incompetent from abuse or neglect and that good cause has been shown for ex parte order.
- (2) **GRANT:** TRO may include but is not limited to the following relief:
 - Refrain from abusing, neglecting, harassing, or interfering with person or employment or going near residence or place of employment of "petitioner," child, or any person alleged to be incompetent.
 - Use and possession of specified community property, such as automobile.
 - Grant possession of residence or household via eviction or restoration of possession.
 - Allow return to family residence once to recover items accompanied by law enforcement officer.
 - Prohibit transferring, encumbering, or otherwise disposing of property, except when in ordinary course of business or for necessary support of a party or minor child.
 - Other forms of relief not specifically set forth in Article 617.
- (3) **RULE TO SHOW CAUSE WHY PO SHOULD NOT BE ISSUED:**
 - a. **IF TRO GRANTED WITHOUT NOTICE:**
 - Matter shall be set within 10 days (See Article 114); AND
 - Defendant shall be given notice of TRO and hearing on rule to show cause by service as required by law.
 - b. **IF NO TRO GRANTED:**
 - Matter shall be set for hearing on earliest day business of court will permit but, in any case, within 10 days from date of service of petition; AND
 - Defendant shall be given notice by service as required by law.
 - c. **AT PO HEARING:** Petitioner shall prove allegations of abuse or neglect by preponderance of the evidence.
 - d. **IF HEARING CONTINUED:**
 - Make or extend TRO as deem necessary; AND
 - Continuance shall not exceed 10 days.

PRACTICE TIP | Good Cause: Immediate and present danger of abuse constitutes "good cause" for TRO.

PRACTICE TIP | Further Orders: In [Temporary Restraining Order \(TRO\) Template](#), there is section where court may make further orders as it deems necessary ("Individualized relief to protect child's well-being").

HELPFUL GUIDANCE | Purpose: TRO is meant to be temporary and heard immediately.

PROTECTIVE ORDERS

ARTICLE 618

- (1) **FINDINGS:** To grant, court shall find that:
 - It has jurisdiction over parties and subject matter; AND
 - Parties have entered into consent agreement, or party against whom PO is sought has been given reasonable notice and opportunity to be heard sufficient to protect person's right to due process.
- (2) **GRANT:** PO may include but is not limited to the following relief:
 - Granting relief available under TRO. See [TRO Section 2](#) above.
 - When there is a duty to support a party, a child, or any person alleged to be incompetent living in residence or household, ordering payment of temporary support or provision of suitable housing for them.
 - Awarding temporary custody of or establishing temporary visitation rights and conditions with regard to any minor child or person alleged to be incompetent.
 - Ordering counseling/professional medical treatment for either defendant or abused or neglected person(s), or both.
 - Court is authorized to order other forms of relief not specifically set forth in Article 618.
- (3) **DURATION AND APPEAL:**
 - PO or approved consent agreement shall be for fixed period of time, not to exceed 6 months.
 - It may be extended by court in its discretion after contradictory hearing.
 - PO or extension thereof is only subject to a devolutive appeal.
- (4) **SERVICE OF THE PROTECTIVE ORDER:**
 - PO shall be served on the person the PO applies to in open court at close of hearing or same manner as writ of injunction.
 - Clerk of court shall send copy of PO or any modification of PO to chief law enforcement official of parish where Person(s) Protected resides.
 - Copy of PO is to be retained in file in office of chief law enforcement officer until otherwise directed by court.

HELPFUL GUIDANCE | Stipulation: A consent agreement occurs when there is a stipulation to the issuance of the PO. A defendant/Restrained Person(s) may stipulate without any admission; may want to do so, for example, if there is a pending criminal charge.

PRACTICE TIP | Further Orders: In [Protective Order \(PO\) Template](#), there is a section where court may make further orders as deems necessary ("Individualized relief to protect child's well-being"). See La. R.S. § 46:2136, Louisiana Uniform Abuse Prevention Order's Order of Protection and [Temporary Restraining Order \(TRO\) and Protective Order \(PO\) Benchbook Section 2](#) for other examples that may be helpful.

PRACTICE TIP | Custody or Divorce: If PO is granted, custody and/or divorce case involving parties may be impacted.

PRACTICE TIP | Modify: On motion of any party, after notice to the other parties and a hearing, the court may modify prior Order regarding relief granted as authorized by Article 618(D).

ENFORCEMENT

- There is currently no clear mechanism for criminal enforcement of TRO/PO.
- There is no provision for entry of Orders into Louisiana Protective Order Registry (LPOR) in Articles 617 and 618.

PRACTICE TIP | Contempt Authority: Court may always exercise its general contempt authority. See Article 1509(D). Also, PO issued pursuant to Article 1570 can be criminally enforced.

PRACTICE TIP | Other Articles: Article 627(D), however, states that if PO is issued or modified at CCH, court shall have Uniform Abuse Prevention Order, pursuant to La. R.S. § 46:2136.2(C), prepared and shall sign Order and clerk shall transmit it to LPOR. Also, in Authors' Notes in Article 618, in discussing TRO and PO, author states "court must file and transmit the Order no later than the following day for entry in the Louisiana Protective Order Registry."

FULL FAITH AND CREDIT

PO issued in Louisiana or outside of Louisiana that is consistent with Article 618(B) shall be accorded full faith and credit:

- In all 50 states and the District of Columbia; AND
- Tribal lands, U.S. territories, and commonwealths.

See the [Temporary Restraining Order \(TRO\) Template](#) and [Protective Order \(PO\) Template](#).