

Instructions for Petition for a Cyberbullying Restraining Order

What is “cyberbullying”?

“Cyberbullying” is harassment of one student by another student (1) using, or threatening to use, a phone or the Internet, (2) the bullied student is a minor at the time of the harassment, and (3) the harassment is related to school or affects the bullied student’s education.

A “student” is someone enrolled in public or private school or being home-schooled, and a “minor” is someone under 18 years of age. The Internet includes, for example, text messages, instant messages, email, postings on social media, and photographs posted on a web page. For anyone not covered by the cyberbullying law, there might be another law that offers some protection. You will have to consult a lawyer about that.

What is a “restraining order”?

A “restraining order” is a document signed by a judge instructing a person to stop doing something that may violate someone else’s rights. The restraining order is “served,” which means delivered in-hand by an authorized person. A person who violates a restraining order may be subject to the judge’s power to enforce the order.

What is the Petition?

The Petition is a request for a court order to stop cyberbullying. It starts a civil lawsuit. Anytime a lawsuit is filed, the person sued might be able to use it to sue you back. Whether the judge grants or denies your request for a restraining order to stop cyberbullying, the lawsuit might continue because you ask for further orders or the person you sued wants to continue the suit.

The Petition is *not* a criminal complaint. It also cannot be used to sue an Internet service provider, such as Facebook, or a library or a school.

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Who can complete and sign the Petition?

You do not have to hire a lawyer, but you should if you can. Whether you hire a lawyer or not, anyone you sue might hire a lawyer.

If the bullied student is a minor, only a parent of the minor or a person acting as a parent to the minor can complete and sign the Petition. A person acting as a parent may be a legal guardian or, for example, a grandparent who is raising the minor.

If the bullied student has reached the age of 18, he or she must complete and sign the Petition and Declaration.

Does the age of the *cyberbully* matter?

The law applies to a cyberbully of any age as long as he or she was a student *at the time of the cyberbullying*.

The Petition, however, differs based on the age of the cyberbully *at the time you file the Petition*. If the cyberbully is a minor when you file the Petition, you must sue one or both of his parents or a person acting as a parent to the cyberbully. If the cyberbully is 18 or older at the time you file your Petition, you must sue the cyberbully himself or herself. The Petition itself guides you in completing it for a cyberbully who is a minor and for a cyberbully who is 18 or older.

Completing and signing the Petition and Declaration

Fill in the information requested in the Petition for a Cyberbullying Restraining Order and sign it. Along with the Petition you must write a Declaration in your own words describing what the cyberbully did and how it hurt your child, or how it hurt you if you were the one bullied and are now 18 or older. You must sign “under penalty of perjury,” which means you can be prosecuted for perjury if you purposely give false information.

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The Petition and Declaration will be public

Before you file a Petition and Declaration, be aware that all documents filed with the clerk are public records available to anyone who requests them from the clerk. The documents may also be available through the clerk's web site. When you see a judge, you can ask the judge to make the document unavailable to the public. Even a judge cannot make some documents confidential, like orders of the court. And the courtroom is open to the public.

Where to file the Petition

You or someone acting on your behalf must deliver the Petition and Declaration to the clerk of the county or state district court where you live for filing. The court clerk can explain the next step in the process, but the clerk cannot give you legal advice or tell you what a judge might do in your case.

Is there a charge to file the Petition?

When you file the Petition, you are required to pay the standard fee charged by the county in which you file. You should find out the amount of the fee and whether you can pay by cash, check or credit card by calling the clerk of the court. If you believe the filing fee should be waived because of your income, ask the clerk how you can get the paperwork you will need to file. A request for a waiver cannot be made over the phone. It must be made in writing and under oath.

What happens after you file the Petition and Declaration?

When you file your Petition and Declaration ask the clerk to explain the next steps. Different courthouses have different procedures for these Petitions. In some courthouses at the time you file the clerk may tell you wait to see a judge or to return at another time. In others you may have to talk to other courthouse staff or the judge's staff. Whatever the procedure, in every courthouse a judge has the final word on when you will go before the judge.

Why you might have to wait to see a judge

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Holding any type of court proceeding without the other person even knowing about it is rare because in our system of justice every person is entitled to explain his or her side of the story. The judge has to consider whether your Petition is so urgent that an exception should be made.

You may be required to testify under oath

You may be required to testify in court under oath, which means you can be prosecuted for perjury if you purposely give false information.

If the judge grants the order, when is it effective and how long does it last?

The order is effective as soon as the person restrained by the order receives a copy of it. If the judge grants you an order without notice to the other side of the case, it will be in effect for only two weeks. During those two weeks you or your attorney can talk with the other child's parents, and you may reach an agreement that ends the case without going to court again. If you don't reach an agreement, to continue your case you will have to set a hearing and notify the other parent. At this hearing, the court will require you and the other parent to testify under oath. If the court grants an order, the judge decides how long it will be effective.

What if the judge denies my Petition?

When you first go to court the judge will not issue a final order. If the judge denies your Petition at this first proceeding, you will have to decide whether to continue the case. These instructions cannot and do not provide any guidance on whether or how to do that.