

# CALIFORNIA

## JUDGES GUIDE TO

## EMERGENCY PROTECTIVE ORDERS



JUDICIAL COUNCIL  
OF CALIFORNIA

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OPERATIONS AND PROGRAMS DIVISION

CENTER FOR FAMILIES, CHILDREN & THE COURTS

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## Emergency Protective Orders

An Emergency Protective Order (EPO) is an order requested by a law enforcement officer, typically when responding to a domestic violence or other emergency situation. An EPO is valid only if it is issued by a judicial officer. The law enforcement officer that makes the request is usually a sheriff or police officer but can be a peace officer from a school, parole officer, or probation officer.<sup>1</sup> An EPO is issued without prejudice.<sup>2</sup>

### Procedure

The officer contacts the on-call judicial officer by phone to request the EPO. Typically, the officer completes an EPO form at the scene so parties can receive a copy. The Judicial Council has two mandatory forms for use: [EPO-001](#) and [EPO-002](#). Issuing the EPO on the wrong Judicial Council form (out-of-date) or no form, in and of itself, does not make the EPO unenforceable.<sup>3</sup> An EPO may be requested 24 hours a day, 7 days a week.<sup>4</sup> The procedures for contacting the on-call judge, commissioner, or referee vary from court to court.

### Situations Warranting an EPO

A judge may issue an EPO, when an officer asserts reasonable grounds to believe that:

1. There is an immediate harm or present danger (see chart on pages 2-3 for situations in which an EPO may be issued); and
2. An EPO is necessary to prevent the occurrence or recurrence of abuse, abduction, or injury.<sup>5</sup>

The fact that the protected person left the home to avoid abuse has no bearing on the availability of an EPO.<sup>6</sup>

#### Tips

- Whether the protected person left the home to avoid abuse has no impact on the availability of an EPO;<sup>1</sup> and
- Whether the respondent is in custody has no bearing on this factor. You do not know when the respondent will be released.

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<sup>1</sup> Fam C §6240(b).

<sup>2</sup> Fam C §6255.




<sup>3</sup> Fam C §6221(c).

<sup>4</sup> Fam C §6241.

<sup>5</sup> Fam C §6251(b).

<sup>6</sup> Fam C §6254.

**An EPO may be issued when there are reasonable grounds to believe any of the following:**




<p><b>Domestic violence</b></p> <p> Form EPO-001</p>	<p>Court must find that there is:</p> <ol style="list-style-type: none"><li>1. An immediate and present danger of domestic violence<sup>7</sup> based on an allegation of recent abuse or threat of abuse; and</li><li>2. A qualifying relationship between the protected person and restrained person.</li></ol> <p><b>Abuse</b> is any of the following:</p> <ol style="list-style-type: none"><li>1. to intentionally or recklessly cause or attempt to cause bodily injury;</li><li>2. sexual assault;</li><li>3. to place a person in reasonable apprehension of imminent serious bodily injury to that person or to another; and</li><li>4. to molest, attack, strike, stalk, threaten, batter, harass, telephone, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroy personal property, contact, either directly or indirectly, by mail or otherwise; come within a specified distance of, disturb the peace, credibly impersonate<sup>8</sup>, or falsely personate<sup>9</sup>.</li></ol> <p><b>Qualifying relationship</b> means that the protected person and restrained person:</p> <ol style="list-style-type: none"><li>1. have/had an intimate relationship (e.g. married, dated, or had a child together);</li><li>2. cohabit/cohobitated together (lived together as a family or social unit not just as roommates); or</li><li>3. are related by blood or marriage within the second degree (i.e. restrained person must be the parent, child, grandparent, or sibling of protected person).</li></ol>
<p><b>Child abuse</b></p> <p> Form EPO-001</p>	<p>Child is in immediate and present danger of abuse by a family or household member based on an allegation of recent abuse or threat of abuse.<sup>10</sup> See above for definition of abuse.</p>
<p><b>Child abduction</b></p> <p> Form EPO-001</p>	<p>Child is in immediate and present danger of abduction by a parent or relative based on a reasonable belief that a person has an intent to abduct the child or flee with the child or based on an allegation of a recent threat to abduct or flee with the child.<sup>11</sup></p>

<sup>7</sup> Domestic violence is defined as “abuse” perpetrated by someone who has a qualifying relationship with the protected person. Fam. C §6211.

<sup>8</sup> Pen. C §528.5.

<sup>9</sup> Pen. C §529.

<sup>10</sup> Fam C §6250(b).

<p><b>Elder or dependent adult abuse</b></p>  Form EPO-001	<p>Immediate and present danger of abuse based on an allegation of recent abuse or threat of abuse as defined under Welfare and Inst. Code section 15610.7. May not be issued solely on allegations of financial abuse.<sup>12</sup></p>
<p><b>Stalking</b> (no specific relationship required)</p>  Form EPO-001	<p>Immediate and present danger of stalking based on the person’s allegation that they have been willfully, maliciously, and repeatedly followed or harassed by another person. It must be a credible threat made with the intent to place the person who is the target of the threat in reasonable fear for their safety or the safety of their immediate family.<sup>13</sup> Unlike domestic violence, stalking does not require that the parties have a qualifying relationship.</p>
<p><b>Gun violence</b></p>  Form EPO-002	<p>A person who poses an immediate and present danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm may be enjoined through an Emergency Gun Violence Restraining Order (<a href="#">form EPO-002</a>).</p> <p>Authority for this EPO is contained in Penal Code section <a href="#">18125 et seq.</a> and not within the Domestic Violence Prevention Act.</p>

**Tips**

- Respond promptly to the requesting peace officer to allow the officer to get back on patrol.
- Provide clear orders to the officer so that the EPO form is filled out properly.
- Ask the officer to note on the EPO form if firearms were observed, reported, searched for, or seized.
- Stay away orders should include locations such as school, work, and daycare, if necessary.

**DV Task Force Recommendation:** Before issuing an EPO, the on-call judge should ask the law enforcement officer who is requesting the order if the officer has asked the victim, proposed restrained person, or both, whether a firearm is present at the location. Pen C §13730. [Final Report](#), page 23, #7.

<sup>11</sup> Fam C §6250(c).

<sup>12</sup> Fam C §6250(d).

<sup>13</sup> Pen C §646.91.

## Orders That May be Issued in EPOs

Orders Includable	Domestic Violence	Child Abuse	Child Abduction	Elder or Dependent Abuse	Stalking	Gun Violence
Personal conduct restrictions	X	X	X	X	X	
No finding location/address* of protected persons	X	X	X	X	X	
Stay away orders	X	X	X	X	X	
Temporary move-out orders	X	X	X	X		
Protect family or household members	X	X	X	X	X	
Temporary care & control of minor	X	X	X	X (of any child between the parties)		
Protect animal	X	X	X	X	X	
No firearms/ ammo	X	X	X	X	X	X

\*For all EPOs, except for a gun violence EPO, the restrained person is prohibited from taking any action to obtain the address or location of a protected party or a protected party's family members, caretaker, or guardian unless there is good cause not to make that order.<sup>14</sup>

## Firearms Restrictions

Any EPO issued prohibits the restrained person from owning, possessing, purchasing, or receiving any firearms or ammunition during the term of the protective order. A violation of this prohibition is a misdemeanor punishable by a maximum of one year in jail, a \$1000 fine, or both.<sup>15</sup> Any firearm must be surrendered while the protective order is in effect. Additionally, in a gun violence EPO (form EPO-002), ammunition, including magazines, must also be surrendered.

<sup>14</sup> Fam C §6252.5(a); Pen C §646.91(a).

<sup>15</sup> Pen C §29825(a), (b).

Ammunition includes, but is not limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence.<sup>16</sup>

## Duration of EPOs

### Gun violence EPOs

A gun violence EPO lasts 21 calendar days from the date of issuance. The court must also set the matter for hearing within 21 days of issuing the EPO. The hearing can be set at the time the EPO is issued (see item 4 on EPO-002). If the hearing is not set at the time the EPO is issued, the court must provide notice of the court hearing to both parties.

### All other EPOs

All EPOs issued on form EPO-001 expire on whichever occurs first:

- Close of court business on the fifth court day starting the day after the EPO is issued.
- Seven calendar days starting the day after the EPO is issued.

Example:

Sun	Mon	Tues	Wed	Thurs	Fri	Sat
1 EPO issued	2 <i>Holiday</i>	3	4	5	6	7
8 <b>7 calendar days</b>	9 <b>5<sup>th</sup> court day</b>	10	11	12	13	14

## Officer's Responsibility

The law enforcement officer who requests the EPO has the following responsibilities:

1. Personally serve the EPO on the restrained person, if they can be reasonably located;<sup>17</sup>
2. For gun violence EPOs, ask the restrained person to surrender any guns, firearms and ammunition. For all other EPOs, if the restrained person is known to

<sup>16</sup> Pen C §16150(b).

<sup>17</sup> Fam C §6271(a); Pen C §646.91(h)(1).

have guns/ firearms, the officer should ask that the restrained person surrender their guns/firearms;

3. Give a copy of the EPO to the protected party or, in the case of a minor, to the parent or guardian;<sup>18</sup>
4. File a copy of the EPO with the court as soon as practicable;<sup>19</sup>
5. Have the order entered into the California Law Enforcement Telecommunications System (CLETS); and
6. Once the officer serves the EPO, get the proof of service information into CLETS within one business day.<sup>20</sup>

## **Court's Responsibility to Ensure Entry of Restraining Order into Database (California Law Enforcement Telecommunication System-CLETS)**

### **Protective Order Registries**

Protective order registries provide law enforcement and courts with information about a protective order including the terms of the order, date of issuance and expiration, and whether the order has been served on the restrained person.

Protective orders issued in California must be entered into a protective order database known as the California Restraining and Protective Order System (CARPOS), formerly known as the Domestic Violence Restraining Order System (DVROS).<sup>21</sup> CARPOS is a system within CLETS; both CLETS and CARPOS are maintained by the California Department of Justice. Orders issued in another state, by a tribe or by a civil Canadian court may be registered in California for entry into CARPOS.

The Judicial Council also maintains a protective order database called the California Court Protective Order Registry (CCPOR). CCPOR interfaces with CARPOS which means that counties can enter protective orders into CCPOR directly and CCPOR transmits the data to CARPOS. CCPOR also stores scanned images of protective orders- providing users with the entire order.<sup>22</sup>

### **Court's Responsibility**

Each court has a procedure for sending protective orders and proofs of service into CARPOS. In some counties, the court is responsible for entering protective order

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<sup>18</sup> Fam C §6271(b); Pen C §646.91(h)(2).

<sup>19</sup> Fam C §6271(d); Pen C §§646.91(h), 18140(c).

<sup>20</sup> Fam C §6380(d).

<sup>21</sup> Fam C §6380(e).

<sup>22</sup> Data fields in CARPOS have space limitations that may not allow for enough space for long/detailed orders.

information into CARPOS while in other counties, law enforcement agencies are responsible for entry.

If a court is directly responsible for entry, the court has one business day to enter the protective order/proof of service into CARPOS.

If the court does not provide direct entry, it must send a copy of the order or proof of service within one business day to the responsible law enforcement agency who then has one business day to enter the information into CLETS.<sup>23</sup>

It is important for the court to issue a protective order, including modification, termination, or extension of a protective order, on Judicial Council forms. Only protective order forms adopted by the Judicial Council may be sent to the Department of Justice for entry into CARPOS. However, a registered out-of-state or tribal protective order not issued on a Judicial Council form may be entered into CARPOS.<sup>24</sup>

## **Enforcement of EPO**

An Emergency Protective Order is enforceable anywhere in California.<sup>25</sup>

If more than one protective order is active, an EPO takes precedence in enforcement over any other restraining or protective order, provided that the EPO meets the following requirements:<sup>26</sup>

1. The EPO is issued to protect one or more individuals who are already protected persons under another restraining or protective order;
2. The EPO restrains the individual who is the restrained person in the other restraining or protective order; and
3. The provisions of the EPO are more restrictive than the provisions of the other restraining or protective order.

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<sup>23</sup> Fam C §6380(d)(2).

<sup>24</sup> Fam C §6380.

<sup>25</sup> Fam C §6381(a).

<sup>26</sup> Pen C §136.2(c); Fam C §6383(h).