

JUDGES GUIDE TO

**Restraining Orders**

**DOMESTIC VIOLENCE  
RESTRAINING ORDERS**

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Judicial Council of California

With special acknowledgment

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This guide is also available on the California Courts website:

<https://www.courts.ca.gov/programs-dv.htm>

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## Part 1 Family Court—Domestic Violence Restraining Order

### Overview

Domestic violence restraining orders, also known as Domestic Violence Prevention Act (DVPA) orders, are one of the most common restraining orders issued throughout the state. A person seeking a domestic violence restraining order (DVRO) must submit an application—*Request for Domestic Violence Restraining Order* ([form DV-100](#)) and applicable attachments—to request a DVRO. This one application acts as a request for a temporary and long-term restraining order. The court may issue a DVRO based solely on the affidavit (e.g., form DV-100) or testimony of the person requesting the restraining order.<sup>1</sup>

### Required Relationship Between Parties

To qualify for a DVRO, the petitioner must have a relationship with the respondent that falls into at least one of the following five categories:<sup>2</sup>

1. Spouse and domestic partners registered with the State of California (current or former).<sup>3</sup>
2. Dating or engagement relationship (past or present).

A dating relationship means frequent, intimate associations characterized by the expectation of affection or sexual involvement independent of financial considerations.<sup>4</sup>

Even if the parties do not characterize the relationship as a “dating” relationship, the court may still find that one exists under the law.<sup>5</sup>

Whether the parties had sexual intercourse is probative, but not determinative in assessing whether or not a dating relationship exists.<sup>6</sup>

3. Parties have a child together, and the male parent is the presumed father.<sup>7</sup>
4. Any other person related by consanguinity or affinity, meaning related by blood, marriage, or adoption, within the second degree.

A second-degree relative is any of the following:

- grandparent
- grandchild

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<sup>1</sup> Fam. Code, § 6300.

<sup>2</sup> Fam. Code, § 6211.

<sup>3</sup> Code Civ. Proc., § 297.5. Same-sex marriages in California made after June 28, 2013, or between June 16 and November 5, 2008, are valid. *Hollingsworth v. Perry* (2013) 570 U.S. 693, 133 S.Ct. 2652. Same-sex marriages that are recognized under state law are recognized under federal law. *United States v. Windsor* (2013) 570 U.S. 744, 133 S.Ct. 2675.

<sup>4</sup> Fam. Code, § 6210.

<sup>5</sup> *Phillips v. Campbell* (2016) 2 Cal.App.5th 844.

<sup>6</sup> *Id.* at p. 850 (parties found to be in a dating relationship where no sexual intercourse had occurred).

<sup>7</sup> Fam. Code, § 6211(d).

- sibling
- parent
- child

A noncustodial father and custodial stepfather of the same child are not “related [to each other] by consanguinity or affinity” under the DVPA. The court does not have jurisdiction to issue an order in such a case, even if a person who does meet the relationship test is included as an additional protected person.<sup>8</sup>

5. Cohabitant or former cohabitant.<sup>9</sup>

A cohabitant is a person who regularly resides in the household. A former cohabitant is a person who used to regularly reside in the household. See *O’Kane v. Irvine* (1996) 47 Cal.App.4th 207, 212, which limited the “cohabitant” definition in the context of DVPA restraining orders. The court ruled that sublessees of different units of a house who shared some common areas of the house but who had no romantic or friendly relationship and who were not even previously acquainted were not “cohabitants” within the meaning of the Family Code. Although they lived together in the same house, they did not live together “as a group with a common goal” or as a “social unit living together” with “some permanency in their living arrangements.”

### Definition of Abuse

An act of abuse includes:

- An intentional or reckless cause/attempt to cause bodily injury;
- Sexual assault;
- Placing a person in reasonable apprehension of imminent serious bodily injury to them or another;
- Threatening;
- Battering/attacking/striking;
- Harassment;
- Stalking;
- Telephoning/annoying calls;
- Destroying personal property;
- Molesting;
- Impersonation;
- Disturbing the peace, which includes coercive control;<sup>10</sup>
- Reproductive coercion (a form of coercive control);<sup>11</sup>

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<sup>8</sup> *Riehl v. Hauck* (2014) 224 Cal.App.4th 695.

<sup>9</sup> Fam. Code, § 6209.

<sup>10</sup> See Fam. Code, § 6320(a) & (c); see also *Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140.

<sup>11</sup> Fam. Code, § 6320(c).



- Violating a restraining order (including the custody and visitation provisions therein);<sup>12</sup> and
- Abusing the other party's child, if that abuse disturbs the other party's mental or emotional calm.<sup>13</sup>

Coercive control is a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty.

Examples of coercive control include but are not limited to unreasonably engaging in:

- Isolating someone;
- Depriving someone of basic necessities;
- Controlling, regulating, or monitoring someone's movements, communications, daily behavior, finances, economic resources, or access to services;
- Making threats related to someone's actual or perceived immigration status; and
- Engaging in reproductive coercion, which includes using force, threat, or intimidation to pressure someone to be or not be pregnant; or to control or interfere with someone's use of birth control, contraception, pregnancy, or access to health information.<sup>14</sup>

A court may grant a request where no physical violence or threat of physical violence exists, based solely on harassment, coercive control, and/or one of the other forms of abuse listed above.<sup>15</sup>

The court must consider the totality of the circumstances in determining whether to grant or deny the restraining order.<sup>16</sup> This includes events that occurred after the filing of the initial petition, such as violations of a temporary restraining order or other additional acts of abuse.<sup>17</sup> The length of time since the most recent act of abuse is not determinative by itself.<sup>18</sup> No statute indicates that the past act of abuse must have occurred within a specified period of time.

### **Factors That Court Cannot Consider**

- The court may not deny relief because the petitioner has vacated the household to avoid abuse.<sup>19</sup>

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<sup>12</sup> *N.T. v. H.T.* (2019) 34 Cal.App.5th 595 (even violations of a temporary restraining order are in and of themselves an acts of abuse).

<sup>13</sup> *Gou v. Xiao* (2014) 228 Cal.App.4th 812; *Perez v. Torres-Hernandez* (2016) 1 Cal.App.5th 389.

<sup>14</sup> Fam. Code, § 6320(c).

<sup>15</sup> *N.T. v. H.T.*, *supra*, 34 Cal.App.5th 595. See *Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140; *In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416; *Altafulla v. Ervin* (2015) 238 Cal.App.4th 571; *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483.

<sup>16</sup> Fam. Code, § 6301(c).

<sup>17</sup> *In re Marriage of F.M. & M.M.* (2021) 65 Cal.App.5th 106.

<sup>18</sup> Fam. Code, § 6301(c).

<sup>19</sup> Fam. Code, § 6301(b).

- In the case of a marital relationship, the court may not consider whether or not a dissolution (divorce), legal separation, or nullity of marriage has been filed in determining whether or not to grant the petition.<sup>20</sup>
- The court may not deny a domestic violence protection order based on the existence of a criminal protective order or the existence of other criminal or civil remedies.<sup>21</sup>

## **Jurisdiction and Venue**

### ***Personal Jurisdiction Over Out-of-State Party***

A non-California resident who abuses a California resident may be subject to the state's jurisdiction. That means that a California court can make orders prohibiting a non-California resident from further abusing a California resident.<sup>22</sup>

Abuse committed by out-of-state parties subjects them to this state's personal jurisdiction.<sup>23</sup> An act of abuse by a party in another state against a person in California is subject to "special regulation" in this state and is sufficient to vest personal jurisdiction in the California courts over the out-of-state party to enjoin any further such conduct.

### ***Venue***

The proper venue for a restraining order case is the county where the abuse took place or where the restrained party lives.<sup>24</sup> However, venue is a defensive motion and should be considered by the court only if the restrained party objects by filing a noticed motion for change of venue at or before the time of responding to the request.<sup>25</sup> Improper venue is not a proper basis for the court to deny relief on its own motion (*sua sponte*).<sup>26</sup>

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<sup>20</sup> *Ibid.*

<sup>21</sup> Fam. Code, § 6227; *Lugo v. Corona* (2019) 35 Cal.App.5th 865.

<sup>22</sup> *Hogue v. Hogue* (2017) 16 Cal.App.5th 833.

<sup>23</sup> *Ibid.*

<sup>24</sup> Code Civ. Proc., § 395.

<sup>25</sup> Code Civ. Proc., § 396b(a).

<sup>26</sup> *Ibid.*

## **Part 2 Temporary Restraining Order Made Without Notice (Ex Parte)**

### **No Notice Requirement**

Requests for temporary restraining orders (TROs) may be made without notice. If a request for a TRO is made without notice, the court must not deny the request solely because the other party was not provided notice.<sup>27</sup>

- ❖ **Tip** Notifying a proposed restrained person about an applicant's request for a restraining order can trigger a significant risk of harm to the applicant. In all cases, applicants should be referred to community services and should be advised of the National Domestic Violence Hotline (1-800-799-SAFE).<sup>28</sup> Under the Family Code, the court is required to develop and provide a domestic violence resource list.<sup>29</sup> This list could be provided to applicants at the time of filing an application.

### **Standard of Proof for Ex Parte Temporary Restraining Orders**

A person seeking a DVRO must submit a completed form DV-100 for the court's review and the court may grant an order based solely on the affidavit (e.g., form DV-100) or testimony of the person requesting the restraining order.<sup>30</sup>

At the time of review, the court must determine whether there is reasonable proof of a past act or acts of abuse to warrant the issuance of a TRO. If the court issues a TRO, the court must complete forms DV-110, *Temporary Restraining Order*, and DV-109, *Notice of Court Hearing*.

### **Special Procedures for Court's Review of Request Made Without Notice**

#### ***Time Requirements for Issuance or Denial***

If a request is made without notice to the other party (ex parte), the request for a temporary restraining order must be granted or denied by the court on the same day it is submitted.<sup>31</sup> If submitted too late in the day for effective review, then it must be issued or denied the next day of judicial business, allowing sufficient time for the order to be filed that day.<sup>32</sup>

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<sup>27</sup> Fam. Code, § 6326.

<sup>28</sup> Judicial Council of Cal., *Recommended Guidelines and Practices for Improving the Administration of Justice in Domestic Violence Cases: Final Report of the Domestic Violence Practice and Procedure Task Force* (Jan. 2008) (Final Report), p. 15 (item 10), [www.courts.ca.gov/documents/dvpp\\_rec\\_guidelines.pdf](http://www.courts.ca.gov/documents/dvpp_rec_guidelines.pdf).

<sup>29</sup> Fam. Code, § 6343(c).

<sup>30</sup> Fam. Code, § 6300.

<sup>31</sup> Fam. Code, §§ 246, 6326.

<sup>32</sup> *Ibid.*

### ***Denial of Request Made Without Notice***

An order denying a request made without notice must include the reasons why the request was denied.<sup>33</sup> The reasons must be stated on [form DV-109](#), *Notice of Court Hearing*.

### **Requirement to Set Hearing**

Whether or not the court grants a temporary restraining order, it must set a hearing to consider the request within 21 days or—if there is good cause—within 25 days.<sup>34</sup>

The court may not summarily deny a factually sufficient petition without holding a hearing on the merits.<sup>35</sup> If a request made without notice is denied by the court, the petitioner is still entitled to a hearing if the court has personal and subject matter jurisdiction to hear the petitioner's request (the official power to make legal decisions and judgments). At the hearing, the court would consider whether to issue a restraining order that could last up to five years.

### ***Denial of TRO***

As noted above, if the court denies a request made without notice, it must give its reasons on [form DV-109](#), *Notice of Court Hearing*.

If the temporary restraining order was partially or fully denied, the petitioner has the option of canceling the hearing. For example, in some situations it may be dangerous for the petitioner to proceed with the restraining order request without a restraining order in place. To cancel the hearing, the petitioner may complete and file [form DV-112](#), *Waiver of Hearing on Denied Request for Temporary Restraining Order*. The petitioner may choose to refile a new request for restraining order at a later time, without prejudice.<sup>36</sup>

If the petitioner wants to keep the court date, the petitioner must have the respondent served with all court paperwork at least five days before the hearing unless the court shortens time for notice, allowing the petitioner more time to serve respondent.<sup>37</sup>

- ❖ **Tip** Courts should develop a procedure to inform the petitioner about the option of canceling the hearing.<sup>38</sup>

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<sup>33</sup> Fam. Code, § 6320.5(a).

<sup>34</sup> Fam. Code, § 242(a).

<sup>35</sup> *Gou v. Xiao* (2014) 228 Cal.App.4th 812, 818; see *Nakamura v. Parker* (2007) 156 Cal.App.4th 327.

<sup>36</sup> Fam. Code, § 6320.5(c); see *Nakamura v. Parker* (2007) 156 Cal.App.4th 327.

<sup>37</sup> Fam. Code, § 243(b).

<sup>38</sup> Final Report, *supra* note 28, at p. 15 (item 11).

## **Duration of TRO Granted Without Notice**

A temporary restraining order granted without notice to the other party is valid until the date of the hearing, which is no later than 21 days from the date of the order or 25 days if good cause is shown to the court.<sup>39</sup>

## **Service of Orders and Request**

### ***Deadline***

Generally, the temporary restraining order (form DV-110), notice of hearing (form DV-109), request (form DV-100), and any other accompanying document must be served on the respondent at least five calendar days before the hearing. On the petitioner's request or courts own motion, the court may allow more time for service (e.g., require service on respondent at least two days before the hearing).

- ❖ **Tip** Each court should collaborate with law enforcement and processing services to ensure timely and effective personal service of process of restraining orders and entry of proof of services into the California Law Enforcement Telecommunications System.<sup>40</sup>

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<sup>39</sup> Fam. Code, § 242(a).

<sup>40</sup> Final Report, *supra* note 28, at p. 16 (item 13).

## Part 3 Summary of Orders That May Be Issued

Below is a brief summary of every order that may be made in a domestic violence restraining order. Some orders may only be made at a noticed hearing. For a list of orders that may be made at each stage of a proceeding, see the chart in Appendix A.

A temporary restraining order (TRO) can be granted without notice to the other side. A restraining order after hearing (ROAH) can only be made at a noticed hearing.

### Orders That Restrict Conduct

#### ***Other Protected People (TRO, ROAH)***

On a showing of good cause the court can protect other household or family members. If the nature of the abuse includes actions (even nonviolent) that may affect the household or family members, this can be enough to meet the good cause requirement.<sup>41</sup>

In determining whether there is good cause to include children between the parties as protected persons, the court considers the totality of the circumstances. While a showing of potential jeopardy to the safety of the children is sufficient for including them as protected persons, it is not a necessary predicate for doing so.<sup>42</sup> Further, witnessing abuse between the parents is enough to jeopardize the safety of the children and also constitutes direct abuse against a child by the perpetrator.<sup>43</sup>

- ❖ **Tip** Adding a child on a restraining order is more protective than only issuing a custody and visitation order regarding that child. Including a child as an additional protected person prevents an abuser from showing up unannounced at a child's school, childcare, or activities and from inappropriately contacting a child.

#### ***Order to Not Abuse (TRO, ROAH)***

The court may grant orders that the restrained person not harass, attack, strike, threaten, assault, hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, impersonate, or block movements.<sup>44</sup>

#### ***No-Contact Order (TRO, ROAH)***

The restrained person may be ordered not to contact any protected person. If the parties have a child together and child custody and visitation orders are in place, the court may need to order an exception to the no-contact order if parties need to communicate with each other to effectuate child exchanges or other child-related issues.

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<sup>41</sup> *Tanguilig v. Valdez* (2019) 36 Cal.App.5th 514, 521–522.

<sup>42</sup> *M.S. v. A.S.* (2022) 76 Cal.App.5th 1139, 1144; *J.H. v. G.H.* (2021) 63 Cal.App.5th 633.

<sup>43</sup> *In re Bruno M.* (2018) 28 Cal.App.5th 990.

<sup>44</sup> Fam. Code, § 6320(a).

- ❖ **Tip** Communication between parties may provide opportunities for further abuse. Parenting time orders should be as specific as possible to eliminate the need for communication between the parties.

### ***Stay-Away Order (TRO, ROAH)***

The restrained person may be ordered to stay a specified distance away (listed in yards) from protected persons or places. If the protected and restrained person live, work, or go to school together, the court may want to fashion detailed orders to accommodate these situations. If the parties have a child together and the restrained person has parenting time, the court may need to make an exception for child exchanges or for the parenting time, if the child is a protected person or if the parties are both involved in the exchanges.

*Note:* A protective order directing one parent to stay away from children when the children are in the other parent’s lawful custody and limiting or prohibiting contact with the children except during authorized visits is a “custody order” subject to Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) jurisdictional requirements;<sup>45</sup> see page 12 for more information about UCCJEA requirements.

- ❖ **Tip** Listing the address of any protected person on the forms may jeopardize that person’s safety. Addresses do not need to be listed for enforcement purposes.<sup>46</sup>

## **Property-Related Orders**

### ***Move-Out Order (TRO, ROAH)***

The restrained person may be excluded from the family dwelling, the dwelling of the other party, the common dwelling of both parties, or the dwelling of the person who has care, custody, and control of a child to be protected from domestic violence for a period of time and on the conditions the court determines, regardless of who holds legal or equitable title or is the lessee. The court, however, can only order this on a showing of all the following:<sup>47</sup>

1. Facts sufficiently show that the party staying in the dwelling has the right to possession of the premises under color of law;
2. The excluded party has assaulted or threatened to assault the petitioner, anyone under the care and control of the petitioner, or a minor child of the parties or petitioner; and
3. Physical or emotional harm would result to the petitioner, anyone under the care and control of the petitioner, or to a minor child of the parties or petitioner.

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<sup>45</sup> *Marriage of Fernandez-Abin & Sanchez* (2011) 191 Cal.App.4th 1015, 1037–1039.

<sup>46</sup> Fam. Code, § 6225.

<sup>47</sup> Fam. Code, § 6321(a) & (b).

A helpful tool to determine “color of law” would be if the person has been in the dwelling long enough that they would be entitled to a 30-day eviction notice. A common situation is when two people live together and the dwelling is only in one of their names.

The court may order a move-out order even if there is another civil suit regarding the property, and must not deny a move-out order because the petitioner has vacated the property to flee abuse.<sup>48</sup>

- ❖ **Tip** When a court issues a move-out order, the court should consider implementing a protocol that allows the restrained party to collect their belongings without violating the order.<sup>49</sup>

### ***Protecting Animals (TRO, ROAH)***

On a showing of good cause, the court may grant the petitioner exclusive care, possession, or control of any animal owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or respondent. The restrained person may also be ordered to stay away from the animal and forbidden from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.<sup>50</sup>

### ***Property Control (TRO, ROAH)***

The court may issue an order determining the temporary use, possession, and control of real and/or personal property and payment of any liens or encumbrances due while the order is in effect.<sup>51</sup>

### ***Property Restraint Orders When Parties Are Married (TRO, ROAH)***

The court may restrain married persons from transferring, hypothecating, encumbering, concealing, or in any way disposing of any real or personal property, whether community, quasi-community, or separate property. One exception is if either party does so in the usual course of business or for necessities of life. If the order is against one party, that party must notify the other party of any proposed extraordinary expenses and must account to the court for those expenses.<sup>52</sup>

In 2005, the California Domestic Partner Rights and Responsibilities Act became effective and provides that registered and former registered domestic partners have the same rights, protections, and benefits that are granted to spouses and former spouses. They are subject to the same responsibilities, obligations, and duties under law, whether derived from statutes,

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<sup>48</sup> *Nicole G. v. Braithwaite* (2020) 49 Cal.App.5th 990.

<sup>49</sup> Final Report, *supra* note 28, at p. 17 (item 21).

<sup>50</sup> Fam. Code, § 6320(b).

<sup>51</sup> Fam. Code, § 6324.

<sup>52</sup> Fam. Code, §§ 2045, 6325.



administrative regulations, court rules, government policies, common law, or any other provisions or sources of law that are imposed on spouses and former spouses.<sup>53</sup>

***Health or Other Insurance (TRO, ROAH)***

The court may restrain any party from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage held for the benefit of the parties, or their child or children, if any, for whom support may be ordered, or both.<sup>54</sup>

**Custody and Visitation of a Minor Child (TRO, ROAH)**

The court may issue temporary custody and visitation (parenting time) only to a parent who has:

1. Established a parent and child relationship;<sup>55</sup> and
2. Meets the federal requirements for jurisdiction.

***Establishing Parent and Child Relationship***

The court must determine that petitioner is a parent of the child in order to grant custody to petitioner.<sup>56</sup> If the respondent has not been established to be a parent of the child, the court may make an order of no visitation to respondent, pending establishment of parentage.<sup>57</sup>

When a parent-child relationship has not been established, but a parentage action has been filed, the court may issue custody and visitation orders under the Uniform Parentage Act.<sup>58</sup>

The *party requesting custody* may establish a parent-child relationship by offering proof of any of the following:<sup>59</sup>

1. The parent gave birth to the child.
2. The child is conclusively presumed to be a child of the marriage.

The child of a cohabiting married couple (including a same-sex couple) is presumed a child of the marriage.<sup>60</sup> *Note:* The rights and obligations of registered domestic partners with respect to a child of either of them must be the same as those of spouses. The rights and obligations of former or surviving registered domestic partners with respect to a child of either of them must be the same as those of former or surviving spouses.<sup>61</sup>

3. The party has been determined by the court to be a parent of the child under Family Code section 7541.

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<sup>53</sup> Fam. Code, § 297.5(a) & (b).

<sup>54</sup> Fam. Code, § 6325.5.

<sup>55</sup> Fam. Code, § 6323.

<sup>56</sup> *Ibid.*

<sup>57</sup> Fam. Code, § 6323(a)(2)(A); *Barkaloff v. Woodward* (1996) 47 Cal.App.4th 393.

<sup>58</sup> Fam. Code, §§ 6346, 7600 et seq.

<sup>59</sup> Fam. Code, § 6323(a)(2)(B).

<sup>60</sup> Fam. Code, § 7540.

<sup>61</sup> Fam. Code, § 297.5(d).

4. A legal adoption occurred or is pending.
5. A valid voluntary declaration of paternity has been signed at least 60 days before the restraining order application and has not been set aside or rescinded.
6. Parentage was previously established in juvenile court or in a governmental child support or parentage action. Both parties stipulate in writing or on the record that they are parents of the child.

The court must not make a finding of paternity at this point in the proceedings, unless this is a Uniform Parentage Act case or the parties submit an uncontested stipulation (agreement) regarding paternity. The court may make a finding of paternity in a DVPA action only if there is a stipulation by the parties and they agree to the entry of a judgment of parentage.<sup>62</sup> [Form DV-180, Agreement and Judgment of Parentage](#), may be used for this purpose.<sup>63</sup>

If the restrained person has not established a parent-child relationship, the court may award temporary sole legal and sole physical custody to the petitioner and no visitation to the restrained party pending establishment of the parent-child relationship. The court may make this decision when determining what is in the best interests of the child and to limit the child's exposure to potential domestic violence while ensuring the safety of the whole family.<sup>64</sup>

#### ***Meeting Federal Requirements for Jurisdiction Over Child Custody***

For the court to be able to make custody orders regarding a child, a petitioner must establish one of the following under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA):

1. California is the child's "home state"; or
2. The child has no home state, and both of the following conditions are met:
  - a. The child and at least one parent have a significant connection to California beyond mere physical presence; and
  - b. Substantial evidence is available in California concerning the child's care, protection, training, and personal relationships;<sup>65</sup> or
3. There is an "emergency" that warrants immediate action by the court to keep the child safe.<sup>66</sup>

#### ***Home State***

California is the child's home state if the child has lived in California for the six months before the filing of the request (or, in the case of a child less than six months old, the child was born in California and lived there) and one of the following two conditions is met:

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<sup>62</sup> Fam. Code, § 6323(b)(2).

<sup>63</sup> Cal. Rules of Court, rule 5.380.

<sup>64</sup> Fam. Code, § 6323(a)(2)(A).

<sup>65</sup> Fam. Code, §§ 3421(a)(2) & (c).

<sup>66</sup> Fam. Code, §§ 3421(a), 3423, 3424(a), 6323.

1. No other state court has made orders regarding the child; or
2. Another state court has made orders regarding the child but has determined that it no longer has exclusive, continuing jurisdiction.<sup>67</sup>

### ***Emergency***

There is an emergency if the child is physically present in California and one of the following applies:

1. The child has been abandoned; or
2. Orders are necessary to protect the child because the child, their siblings, or their parent has been subjected to or threatened with mistreatment or abuse.<sup>68</sup>

In a situation in which the court finds that there is an emergency, but California is not the child's home state and there is also a case open with another state, the court may make custody orders only for an amount of time sufficient to allow the petitioner to seek orders from the other state.<sup>69</sup>

### ***Parent Seeking Gender-Affirming Health Care for Child***

Effective January 1, 2023, under California law a California court has the authority to assert temporary emergency jurisdiction if the child has been “unable to obtain gender-affirming health care or gender-affirming mental health care, as defined by Section 16010.2 of the Welfare and Institutions Code.”<sup>70</sup>

### ***Modifying an Existing Custody or Visitation Order***

If a custody order already exists, the court must not modify the custody order on an ex parte basis unless there has been a showing of immediate harm to the child or immediate risk that the child will be removed from California. Immediate harm to a child includes domestic violence committed by one parent that is recent or part of a continuing and demonstrated pattern of domestic violence.<sup>71</sup> On a showing of immediate harm or risk to a child, the court may award temporary custody to the petitioner if the petitioner has established a parent-child relationship.

### ***Best Interests of Child***

Once the court has determined that it has jurisdiction over the child for purposes of making custody orders, the court may issue custody and visitation orders provided that they are in the child's best interests.<sup>72</sup>

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<sup>67</sup> Fam. Code, § 3421(a).

<sup>68</sup> Fam. Code, § 3424(a).

<sup>69</sup> Fam. Code, § 3424(c).

<sup>70</sup> Fam. Code, § 3424(a).

<sup>71</sup> Fam. Code, §§ 3064, 6323.

<sup>72</sup> Fam. Code, § 3020.

## **Custody**

There are two types of custody: legal and physical. “Legal” custody gives the right and responsibility of a person to make health, educational, and welfare decisions for a child. “Physical” custody means the person that a child regularly resides with. Both types of custody can be held “solely” by one person, or “jointly” by two or more persons. If there has been a finding that a parent committed domestic violence, that person cannot have sole or joint physical or legal custody unless the court rebuts the presumption in Family Code section 3044.

### ***Special Custody Law Applies to Domestic Violence Cases (Fam. Code, § 3044)***

***Rebuttable presumption against custody to the perpetrator.*** If the court finds that a person seeking custody has perpetrated domestic violence, then there is a rebuttable presumption that the parent who perpetrated domestic violence must not have sole or joint custody of a child.<sup>73</sup>

This presumption applies if a court has found that a person has committed domestic violence in the last five years against one of the following people:

- The other parent;
- Their child or child’s sibling;
- Their current spouse or someone they are currently dating, engaged to, or cohabitating with; or
- Their parent.<sup>74</sup>

A finding of domestic violence includes a conviction for domestic violence or a finding that there has been abuse in a domestic violence restraining order matter.<sup>75</sup>

***Rebutting the presumption.*** To rebut the presumption, the court must consider the following factors, make findings on each factor in writing or on the record,<sup>76</sup> and find that, on balance, they support the best interests of the child:

1. Whether the parent has successfully completed an approved batterer’s treatment program;<sup>77</sup>
2. Whether the parent has successfully completed alcohol or drug abuse counseling, if ordered by the court;
3. Whether the parent has completed a parenting class, if ordered by the court;
4. If the parent is on probation or parole, whether they have complied with its terms and conditions;

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<sup>73</sup> Fam. Code, § 3044.

<sup>74</sup> *Ibid.*

<sup>75</sup> In *S.M. v. E.P.* (2010) 184 Cal.App.4th 1249, 1267, the court stated, “Because a DVPA restraining order must be based on a finding that the party being restrained committed one or more acts of domestic abuse, a finding of domestic abuse sufficient to support a DVPA restraining order necessarily triggers the presumption in [Family Code] section 3044.”

<sup>76</sup> Fam. Code, § 3044(f)(2).

<sup>77</sup> The program must be approved by the probation department; see Penal Code section 1203.097(c).

5. Whether the parent is complying with any restraining orders in effect;
6. Whether the parent has committed any further acts of domestic violence;
7. Whether the restrained parent is or has been in possession and control of a firearm or ammunition in violation of the terms of a protective order; and
8. Whether giving the parent who perpetrated domestic violence sole or joint custody is in the child's best interests.

***Presumption is mandatory.*** Applying this presumption is mandatory, not permissive; a court may not “call into play” this presumption only when it believes it appropriate. Rather, it must apply the presumption in every case in which there is a finding of abuse (e.g., a domestic violence restraining order has been granted by the court).<sup>78</sup>

This presumption applies in any hearing in which custody and visitation is sought, not just DVPA hearings.<sup>79</sup> At any child custody or visitation hearing at which the court is aware that one party has made allegations of domestic violence, the court must determine whether or not the presumption applies.<sup>80</sup>

***Rescheduling the hearing if more time is needed.*** If the court does not have time to make this determination at the first hearing, it may reschedule the hearing for a reasonable amount of time.<sup>81</sup> However, in the interim, the court must follow the terms of Family Code sections 3011 and 3020. This means that if one party has raised allegations of substance abuse or domestic violence, the default orders are for sole legal and sole physical custody to the nonoffending parent and supervised visitation to the offending parent pending a determination on these allegations.<sup>82</sup> To order anything else, the court must state its reasons in writing or on the record.<sup>83</sup> The court may, but does not have to, require written corroboration from the party making the allegations before applying this provision of Family Code section 3011.<sup>84</sup>

The preference for frequent and continuing contact with both parents must not be used as a reason to rebut the presumption under Family Code section 3044.<sup>85</sup>

“As a prerequisite to considering allegations of abuse [for purposes of making custody orders], the court may require independent corroboration, including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts,

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<sup>78</sup> *In re Marriage of Fajota* (2014) 230 Cal.App.4th 1487; *City and County of San Francisco v. H.H.* (2022) 76 Cal.App.5th 531.

<sup>79</sup> Fam. Code, § 3044(g); *Noble v. Superior Court* (2021) 71 Cal.App.5th 567.

<sup>80</sup> *Ibid.*

<sup>81</sup> Fam. Code, § 3044(g).

<sup>82</sup> Fam. Code, § 3011(e)(1).

<sup>83</sup> *Ibid.*

<sup>84</sup> Fam. Code, § 3044(b).

<sup>85</sup> Fam. Code, § 3044(b)(1).

medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence.”<sup>86</sup>

### ***Impermissible Factors***

In rebutting the presumption, there are factors that the court must not consider for either parent, such as English proficiency, immigration status, sex, gender identity, gender expression, or sexual orientation.<sup>87</sup>

Also, the court must not order a self-executing mechanism for future joint custody (such as the passage of time or the completion of certain classes) where the presumption has not yet been rebutted.<sup>88</sup>

### ***De Facto Joint Custody Orders Not Permitted***

The court may not issue a de facto joint custody order by labeling the custody “sole” to the nonabusive parent but ordering substantial timeshare (e.g., 50-50) to the abusive parent.<sup>89</sup>

### ***Special Finding Required for Certain Criminal Convictions***

If the court seeks to award a person described below with custody (sole or joint) or unsupervised visits, the court must first make a finding that there is no significant risk to the child and state its reasons in writing or on the record.<sup>90</sup> This finding must be made if a person:

- Has to register as a sex offender as a result of a felony conviction regarding abuse of a child;
- Lives in a household with a person who has to register as a sex offender as a result of a felony conviction regarding abuse of a child;
- Was convicted of child endangerment (Pen. Code, § 273a);
- Was convicted of child abuse (Pen. Code, § 273d); or
- Was convicted of annoying or molesting a child (Pen. Code, § 647.6).<sup>91</sup>

### ***No Custody or Unsupervised Visitation to Convicted Rapist if Child Conceived From Rape***

A person convicted under Penal Code section 261 (rape), whose child was conceived as a result of that violation, must not have sole or joint custody, or unsupervised visits.<sup>92</sup> There are no exceptions to this provision, and there is no way to rebut or overcome it.<sup>93</sup>

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<sup>86</sup> Fam. Code, § 3011(a)(2)(B).

<sup>87</sup> S.Y. v. Superior Court (2018) 29 Cal.App.5th 324; Fam. Code, § 3040(b) & (c).

<sup>88</sup> Jason P. v. Danielle S. (2017) 9 Cal.App.5th 1000, 1029.

<sup>89</sup> Celia S. v. Hugo H. (2016) 3 Cal.App.5th 655.

<sup>90</sup> Fam. Code, § 3030(a).

<sup>91</sup> *Ibid.*

<sup>92</sup> Fam. Code, § 3030(b).

<sup>93</sup> *Ibid.*

### **Visitation (Parenting Time)**

When making a decision in the best interests of the child, the court must consider, based on the circumstances of the case, whether visitation (parenting time) should be supervised, or if custody or visitation should be suspended or denied.<sup>94</sup> If there are allegations of domestic violence or substance abuse against a parent and the court awards sole or joint custody or unsupervised visits to that parent, the court must state its reasons in writing or on the record (though the court may require reports for independent corroboration of these allegations before applying this provision).<sup>95</sup> This does not apply if the parties stipulate to unsupervised visitation.<sup>96</sup> Supervision may be through a professional (paid) provider or a nonprofessional provider.<sup>97</sup> If the provider is a professional, it is important to make clear who must pay for the supervision. Any orders for custody or visitation must be made on [form DV-140](#), *Supervised Visitation and Exchange Order*.

### **Visitation Orders Must Be Specific**

The court's orders must be specific as to day, time, place, and manner of transfer of the child for custody or visitation. The court's order must be designed to limit the child's potential exposure to domestic violence and ensure the safety of all family members.<sup>98</sup>

If the protected person is staying in a domestic violence shelter or other confidential location, then the specific orders must be designed to prevent disclosure of the shelter or other confidential location, including finding a safe, nonconfidential location for child exchanges.<sup>99</sup>

- ❖ **Tip** Do not make an order for “reasonable visitation” or “alternate weekends.” These orders are vague as to day and time and are difficult for law enforcement to interpret in emergency situations. They are also contrary to the law in domestic violence cases. For example, instead of alternate weekends, make an order for the first and third Saturday of each month, from 10 a.m. to 1 p.m.

Any visitation (parenting time) or custody order granted by a family or juvenile court after a criminal protective order must refer to and acknowledge the precedence of enforcement of any other protective order.<sup>100</sup>

### **Supervised Visitation**

Visits may be supervised (monitored) by a professional provider or a nonprofessional provider (such as a friend or family member).<sup>101</sup>

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<sup>94</sup> Fam. Code, §§ 3011(a)(5)(A), 6323(d).

<sup>95</sup> Fam. Code, § 3011(a)(5)(A).

<sup>96</sup> Fam. Code, § 3011(a)(5)(B).

<sup>97</sup> Fam. Code, § 3200.5.

<sup>98</sup> Fam. Code, §§ 3031(b), 6323(c).

<sup>99</sup> *Ibid.*

<sup>100</sup> Pen. Code, § 136.2(e)(3).

<sup>101</sup> Fam. Code, § 3200.5

A provider must be a neutral third party who will watch and listen to every visit with the child. The provider is there to make every effort to keep the child safe. The provider must do the following:

- Be present at all times during the visit.
- Listen to what is being said.
- Pay close attention to the child's behavior.
- Report any suspected child abuse.
- Feel comfortable interrupting or ending the visit if they have concerns.

It is a conflict of interest for the supervised visitation provider to be an employee of the person being supervised, financially dependent on the person being supervised, or to be in an intimate relationship with the person being supervised; such a provider may not be used.<sup>102</sup>

❖ **Tip** All providers should speak the same language as the children and the parents.

**Professional providers** must receive special training, pass a background check, and are mandated reporters for suspected child abuse.<sup>103</sup> Professional providers should have special protocols in place to ensure that parents and children are safe at all times, including during drop-off and pick-up.

❖ **Tip** When making an order for professional supervision, make sure to indicate on the order who is responsible for paying provider fees.

**Nonprofessional providers** cannot be paid for their services.<sup>104</sup> They are usually family members or friends. A nonprofessional provider must agree under penalty of perjury to follow the requirements under Family Code section 3200.5 and standard 5.20 of the California Standards of Judicial Administration.<sup>105</sup> [Form FL-324\(NP\)](#), *Declaration of Supervised Visitation Provider (Nonprofessional)*, may be used for this purpose.

❖ **Tip** When choosing a nonprofessional provider, make sure the provider will be able to end the visit if there are safety or other concerns.

For more information about supervised visits and the role of providers, see the online Self-Help Guide to the California Courts, “Guide to Supervised Visitation,” <https://selfhelp.courts.ca.gov/guide-supervised-visitation>.

### **Limit Parent's Access to Records**

The court may grant an order restricting a restrained person from having access to their own child's records and information pertaining to that child's health care, education, daycare,

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<sup>102</sup>Cal. Stds. Jud. Admin., std. 5.20(i).

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> Fam. Code, § 3200.5(c).



recreational activities, or employment.<sup>106</sup> These orders are made on [form DV-140](#), *Child Custody and Visitation Order*.

### ***Preventing Child Abduction***

If the court determines that there is a risk of child abduction, on its own motion or the request of a party, the court may take measures to prevent abduction. The court must consider the following factors when determining if there is a risk:<sup>107</sup>

1. Whether a party has a prior history of taking, concealing, enticing away, or withholding a child in violation of a right to custody or visitation of another person.
2. Whether a party has previously threatened the actions described above in item 1.
3. Whether a party lacks strong ties to the state.
4. Whether a party has strong familial, emotional, or cultural ties to another country or state, including foreign citizenship. This factor must be considered only if evidence exists in support of another factor in this section.
5. Whether a party has no financial reason to stay in this state, including whether the party is unemployed, is able to work anywhere, or is financially independent.
6. Whether a party has engaged in planning activities that would facilitate removal of the child from the state, such as quitting a job, selling a primary residence, terminating a lease, closing a bank account, liquidating other assets, hiding or destroying documents, applying for a passport, or requesting birth certificates or medical or school records, or purchasing airplane or other travel tickets, with consideration given to whether a party is carrying out a safety plan to flee from domestic violence.
7. Whether a party has a history of domestic violence, lack of parental cooperation, or child abuse.
8. Whether a party has a criminal record.

To determine whether measures are needed to prevent abduction of the child by a parent, the court must consider:

1. The risk of the child being abducted;
2. Obstacles to location, recovery, and return if the child is abducted; and
3. Potential harm to the child if the child is abducted.

Use [form DV-145](#), *Order to Prevent Child Abduction*, to issue orders to prevent child abduction.

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<sup>106</sup> Fam. Code, § 6323.5.

<sup>107</sup> Fam. Code, § 3048(b)(1)(A)–(H).

***Confidential Mediation (Nonrecommending) or Child Custody Recommending Counseling***

Under Family Code section 3170, parents of minor children must first attempt to reach an agreement about custody and visitation between themselves as part of the court process. Therefore, asking the court to make custody and visitation orders will mean that both parents are generally required to attend a session with a court mediator to see if they can come to any agreement on custody and visitation. A stepparent or grandparent who has petitioned the court for child visitation must also participate in mediation.<sup>108</sup> Mediation involves only child custody and visitation, and not mediation of support or property issues or whether a restraining order should be granted.

Before ordering parties into family court mediation or recommending counseling, the court must inform the parties of the existence of the rebuttable presumption against awarding sole or joint custody to an abusive parent and provide a copy of the statute (Family Code section 3044) to the parties.<sup>109</sup> Courts and providers may use the [plain language version](#) produced by the Judicial Council, which is also available in eight additional languages ([Spanish](#), [Chinese](#), [Korean](#), [Vietnamese](#), [Punjabi](#), [Russian](#), [Arabic](#), and [Tagalog](#)).

If the parents reach a full agreement on custody and visitation, the court should adopt the agreement only if the agreement is in the child’s best interests and is consistent with Family Code section 3044.

If the parents cannot come to an agreement, in more than half of the state’s counties, by local rule a mediator acting as a child custody recommending counselor (CCRC) may submit recommendations to the court as to child custody or visitation. See Appendix D for the model (confidential or recommending counseling) used by each county.

If the CCRC provides recommendations:

- The CCRC must first provide the parties and their attorneys, including the lawyer for any minor children, with the recommendations in writing before the hearing; and
- The court must make an inquiry at the hearing as to whether the parties and their attorneys have received the recommendations in writing.<sup>110</sup>

***Domestic Violence Protocol for Mediation and Counseling Programs***

The division of the court that houses the mediation or child custody recommending counseling program is called Family Court Services (FCS). FCS must have a separate written protocol for mediation in domestic violence cases. The protocol should:

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<sup>108</sup> Fam. Code, § 3171(a).

<sup>109</sup> *Noble v. Superior Court* (2021) 71 Cal.App.5th 567.

<sup>110</sup> Fam. Code, § 3183(a).

- Have a process for the parent alleging domestic violence to request and receive a separate mediation session from the other parent.<sup>111</sup> Any intake form must provide information about this right.<sup>112</sup>
- Allow a protected party to bring a support person, if a restraining order is in effect.

The function of a support person is to provide moral and emotional support for the person alleging domestic violence. No certification or training is needed to be a support person. However, if a support person is disruptive or acts as an advocate during mediation or is “prompting, swaying, or influencing” the party, the person may be removed. The support person is bound by the confidentiality of the mediation and their presence does not waive confidentiality.<sup>113</sup> Note that the parent alleging domestic violence may also bring a support person to the court hearing.<sup>114</sup>

### ***Role of Mediator and Child Custody Recommending Counselor***

A mediator or CCRC may:

- When appropriate, recommend that a restraining order be granted, pending determination of the case, to protect the well-being of a child.<sup>115</sup>
- Recommend to the court that a lawyer be appointed to represent a minor child. In doing so, the mediator or CCRC must inform the court of the reasons why it would be in the best interests of the child to have a lawyer appointed.<sup>116</sup>
- If the parties have not reached an agreement in mediation, recommend to the court that an investigation or that other services be offered to assist the parties to effect a resolution of the controversy before a hearing on the issues.<sup>117</sup>

❖ **Tip** Each court should take reasonable steps to expedite the determination of custody and visitation in domestic violence cases.<sup>118</sup>

### ***Parent and Child Counseling***

The court may require parents, or any other party involved in the custody or visitation dispute, and the minor child to participate in counseling for not more than one year if the court finds both of the following:

1. The dispute poses a substantial danger to the best interests of the child; and

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<sup>111</sup> Fam. Code, § 3181(a).

<sup>112</sup> Fam. Code, § 3181(b).

<sup>113</sup> Fam. Code, § 6303.

<sup>114</sup> *Ibid.*

<sup>115</sup> Fam. Code, § 3183(c).

<sup>116</sup> Fam. Code, § 3184.

<sup>117</sup> Fam. Code, §§ 3110–3118.

<sup>118</sup> [Final Report](#), *supra* note 28, at p. 16 (item 17).

2. Counseling is in the best interests of the child.<sup>119</sup>

One factor to be considered in determining if a dispute poses a substantial danger is any history of domestic violence within the past five years between the parents, parent and child, parent or parents and other party seeking custody/visitation rights, or other party and child.<sup>120</sup>

If counseling is ordered in a case that has a history of abuse by either parent against the child or by one parent against the other parent, and a protective order is in effect, the court may order the counseling separately and at separate times. Each party bears their own counseling cost unless good cause is shown for a different apportionment. The cost for a minor child is apportioned according to Family Code section 4062.<sup>121</sup>

The court cannot order the parties to return to court upon the completion of counseling. Any party may file a request for order after counseling has been completed, and the court may again order counseling.<sup>122</sup>

- ❖ **Tip** Individuals seeking protection in domestic violence cases should not be ordered to attend counseling without careful consideration. Under existing law, a court may not order a protected party to obtain counseling without the consent of the party unless there is a custody or visitation dispute.<sup>123</sup> In the event that the court orders counseling under Family Code section 3190, the court must make the requisite findings and should order separate counseling sessions under Family Code section 3192. Nonmandatory referrals to counseling or related services may be made, and resource lists for referrals to community domestic violence programs and services should be provided.<sup>124</sup>

***Apportioning Costs for Counseling***

If the court finds that the financial burden created by the order for counseling does not otherwise jeopardize a party's other financial obligations, the court must fix the cost and must order that the entire cost of the services be borne by the parties in the proportions the court deems reasonable.<sup>125</sup>

The court, in its finding, must state reasons why it has found both of the following:

1. The dispute poses a substantial danger to the best interests of the child, and the counseling is in the best interests of the child; and
2. The financial burden created by the court order for counseling does not otherwise jeopardize a party's other financial obligations.<sup>126</sup>

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<sup>119</sup> Fam. Code, § 3190(a); [Final Report](#), *supra* note 28, at p 14 (item 6).

<sup>120</sup> Fam. Code, § 3190(b).

<sup>121</sup> Fam. Code, § 3192.

<sup>122</sup> Fam. Code, § 3190(e).

<sup>123</sup> Fam. Code, § 3190.

<sup>124</sup> Final Report, *supra* note 28, at p. 14 (item 6).

<sup>125</sup> Fam. Code, § 3190(c).

<sup>126</sup> Fam. Code, § 3190(d).

### ***Drug Testing When Custody or Visitation at Issue***

The court may order any person seeking child custody or visitation to undergo testing for the illegal use of controlled substances and the use of alcohol if there is a judicial determination based on a preponderance of the evidence that there is habitual, frequent, or continual illegal use of controlled substances<sup>127</sup> or a habitual or continual abuse of alcohol by the parent, legal custodian, person seeking guardianship, or person seeking visitation in a guardianship.<sup>128</sup> The evidence may include, but may not be limited to, a conviction within the last five years for the illegal use or possession of a controlled substance.

The court must order the least intrusive method of testing. Substance abuse testing must be performed in conformance with procedures and standards established by the U.S. Department of Health and Human Services for drug testing of federal employees.<sup>129</sup>

A parent, legal custodian, person seeking guardianship, or person seeking visitation in a guardianship who has undergone testing has the right to a hearing, if requested, to challenge a positive test result. A positive test result, even if challenged and upheld, must not, by itself, constitute grounds for an adverse custody or guardianship decision. Determining the best interests of the child requires weighing all relevant factors.

The court may order either party or both parties to pay the costs of the drug or alcohol testing.

### ***Drug Test Results Are Confidential***

Test results are confidential, must be maintained as a sealed record in the court file, and may not be released to any person except the court, the parties, their attorneys, the Judicial Council, and any person to whom the court grants access by written order made with prior notice to all parties. Any person with access to the test results cannot disseminate copies or disclose information to unauthorized persons. A breach of the confidentiality of the test results is punishable by civil sanctions not to exceed \$2,500.<sup>130</sup>

Test results cannot be used for any purpose, including any criminal, civil, or administrative proceeding, except to assist the court in determining the best interests of the child under Family Code section 3011, and the content of the order or judgment determining custody or visitation.

### ***Making Information About a Minor Confidential (TRO, ROAH)***

A minor or the minor's legal guardian may ask the court to have certain information regarding the minor kept confidential, including but not limited to the minor's name, address, and the circumstances surrounding the protective order with respect to that minor.<sup>131</sup> To make this

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<sup>127</sup> "Controlled substances" has the same meaning as defined in the California Uniform Controlled Substances Act, division 10 (commencing with section 11000) of the Health and Safety Code.

<sup>128</sup> Fam. Code, § 3041.5.

<sup>129</sup> *Ibid.*

<sup>130</sup> Fam. Code, § 3041.5.

<sup>131</sup> Fam. Code, § 6301.5(a).

request, the minor or legal guardian must complete [form DV-160](#), *Request to Make Minor's Information Confidential*.

The court may order the information kept confidential if the court expressly finds all of the following:

1. The minor's right to privacy overcomes the right of public access to the information;
2. There is a substantial probability that the minor's interest will be prejudiced if the information is not kept confidential;
3. The order to keep the information confidential is narrowly tailored; and
4. No less restrictive means exist to protect the minor's privacy.<sup>132</sup>

The confidential information must be made available to law enforcement to the extent necessary and only for purposes of enforcing the order. Additionally, the restrained person must have notice of any information needed to comply with and respond to the order.<sup>133</sup>

Once the court has made a decision, the court must complete [form DV-165](#), *Order on Request to Keep Minor's Information Confidential*. Information made confidential must be maintained in a confidential file and must not become part of the public file in the proceeding or any other civil proceeding.<sup>134</sup> Disclosure or misuse of that information is punishable by a sanction of up to \$1,000, except in limited situations. For example, the minor or legal guardian who made the request cannot be sanctioned for disclosure of the confidential information unless the disclosure was made maliciously. In addition, the minor or legal guardian may disclose confidential information without a court order.

A third party can ask for the release of confidential information. A request must be made using [form DV-176](#), *Request for Release of Minor's Confidential Information*. The court must serve form DV-176 on the minor or legal guardian who made the request for information to be made confidential. This must be done within 10 days of the filing of form DV-176.

### **Child Support (ROAH)**

At a noticed hearing, the court may make an order for child support if:

1. Child support has been requested by the petitioner; and
2. The parties are married (or registered domestic partners) and no other child support order exists, or the respondent is the presumed natural parent of a minor child who is in the custody of the petitioner under Family Code section 7611.<sup>135</sup>

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<sup>132</sup> Fam. Code, § 6301.5(b).

<sup>133</sup> Fam. Code, § 6301.5.

<sup>134</sup> Cal. Rules of Court, rule 5.382(f)(2).

<sup>135</sup> Fam. Code, § 6341(a).

### **Considerations**

When determining whether to make any child support orders, the court must consider whether failure to make any of these orders may jeopardize the safety of the petitioner and the children for whom child support is requested, including safety concerns related to the financial needs of the petitioner and the children.<sup>136</sup>

A child support order issued in the case is made without prejudice in a future parentage action.<sup>137</sup>

A child support order made after a hearing survives the termination of the restraining order.<sup>138</sup>

A court-approved stipulation for child support survives the termination of the restraining order.<sup>139</sup> Even if the underlying restraining order is dissolved, the court has jurisdiction over child support.<sup>140</sup>

- ❖ **Tip** When child or spousal support is requested and financial documentation is submitted, the court should consider the request and should order appropriate support at the same time as the restraining order request is considered or as soon thereafter as possible to ensure safety (Fam. Code, § 6341(a) & (c)). Each court should establish a cooperative relationship with the Department of Child Support Services and take reasonable steps to expedite the award of child and spousal support in domestic violence cases.<sup>141</sup>

### **Spousal or Domestic Partner Support (ROAH)**

If the parties are spouses or registered domestic partners, and no support order exists, the court may order the respondent to pay support. The court must consider whether failure to make these orders may jeopardize the petitioner's safety, including safety concerns related to the financial needs of the petitioner.<sup>142</sup>

Financial constraints are often a reason that victims stay in abusive relationships. Child and spousal support orders should be issued if requested.

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<sup>136</sup> *Ibid.*

<sup>137</sup> Fam. Code, § 6341(b).

<sup>138</sup> Fam. Code, § 6340(a)(1).

<sup>139</sup> Fam. Code, § 6340(a).

<sup>140</sup> *Moore v. Bedard* (2013) 213 Cal.App.4th 1206. In *Moore*, court granted a temporary restraining order, which was never served on the respondent. At the hearing in 2006, the court dissolved the temporary order on the petitioner's request and approved the parties' stipulation for child support. Later, the respondent filed to modify the support order. The trial court dismissed the entire action, noting that there was no restraining order in effect so the court had lost jurisdiction over the matter. The appellate court reversed, holding that Family Code section 6340(a) provided the court with continuing jurisdiction even though the restraining order had not been granted.

<sup>141</sup> Final Report, *supra* note 28, at p. 16 (item 16).

<sup>142</sup> Fam. Code, § 6341(c).

At a noticed hearing, the court may issue a support order before deciding whether to grant a restraining order.<sup>143</sup> A spousal support order made after a hearing survives the termination of the restraining order.<sup>144</sup>

Same-sex marriages in California made after June 28, 2013, or between June 16 and November 5, 2008, are valid.<sup>145</sup> Same-sex marriages that are recognized under state law are recognized under federal law.<sup>146</sup>

### ***Support Obligations for Registered Domestic Partners***

Registered and former registered domestic partners have the same rights, protections, and benefits and are subject to the same responsibilities, obligations, and duties imposed on spouses and former spouses.<sup>147</sup> The rights and obligations of registered domestic partners with respect to a child of either of them must be the same as those of spouses. The rights and obligations of former or surviving registered domestic partners with respect to a child of either of them must be the same as those of former or surviving spouses.<sup>148</sup>

A support order issued in the case is made without prejudice in a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties.<sup>149</sup>

## **Restitution**

### ***For Petitioner or Agency Providing Services to Petitioner (ROAH)***

The court may order restitution to the petitioner for:

1. Lost earnings.
2. Out-of-pocket expenses including but not limited to medical care and temporary housing incurred as a direct result of the abuse or physical injuries sustained from the abuse.<sup>150</sup>

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<sup>143</sup> In *In re Marriage of J.Q. & T.B.* (2014) 223 Cal.App.4th 687, the court granted a TRO and, at the noticed hearing, deferred adjudication of the issues of abuse and spousal support because the respondent was the defendant in a pending criminal domestic violence case. The trial court noted that it had no jurisdiction to issue spousal support unless it first determined that abuse was sufficient to issue a restraining order. (Fam. Code, § 6340.) The appellate court reversed, holding that the trial court had jurisdiction to issue the requested spousal support orders without first determining whether there was abuse because the statutory authority for issuing spousal support hinged on whether there was a noticed hearing, not on a finding of abuse at that noticed hearing. The appellate court reviewed the purpose of the DVPA, noting that it is to prevent a recurrence of abuse, and stated: “[I]f the applicant does not have the financial resources [to leave the relationship], the applicant is oftentimes forced to remain living with the respondent and the recurrence of acts of violence and sexual abuse is increased while the request for a domestic violence restraining order is litigated.” (*Id.* at p. 702.)

<sup>144</sup> Fam. Code, § 6340(a)(1).

<sup>145</sup> *Hollingsworth v. Perry* (2013) 570 U.S. 693, 133 S.Ct. 2652.

<sup>146</sup> *United States v. Windsor* (2013) 570 U.S. 744, 133 S.Ct. 2675.

<sup>147</sup> Fam. Code, § 297.5(a) & (b).

<sup>148</sup> Fam. Code, § 297.5(d).

<sup>149</sup> Fam. Code, § 6341(d).

<sup>150</sup> Fam. Code, § 6342.



“Out of pocket expenses” may include costs for temporary housing and rental car expenses for a petitioner wrongfully excluded from their residence.<sup>151</sup> The respondent may also be ordered to pay a public or private agency for the reasonable cost of providing services to the petitioner required as a direct result of the respondent’s abuse or actual injuries sustained from the respondent’s abuse.<sup>152</sup> Restitution cannot include damages for pain and suffering.<sup>153</sup>

***For Prevailing Respondent (ROAH)***

The court may order the petitioner to pay restitution to the respondent for out-of-pocket expenses related to responding to the ex parte order when the facts supporting the order are found to be insufficient.<sup>154</sup>

**Batterer Intervention Program (ROAH)**

The court may order the respondent to complete a 52-week batterer’s program. The program must be approved by a probation department under Penal Code section 1203.097.<sup>155</sup>

If ordered to participate, the respondent must:

1. Register for the program by a deadline ordered by the court or within 30 days, if no deadline was ordered;
2. Sign all necessary program consent forms for the program to release proof of enrollment, attendance records, and completion or termination reports to the court and to the protected party or the protected party’s attorney; and
3. Provide the court and the protected party with the name, address, and telephone number of the program.

The court and the protected party may provide to the program a fax number or mailing address for purposes of receiving proof of enrollment, attendance records, and completion or termination reports.<sup>156</sup>

To comply with the requirements listed above, the respondent may use [form DV-805](#), *Proof of Enrollment for Batterer Intervention Program*, and [form DV-815](#), *Batterer Intervention Program Progress Report*.

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<sup>151</sup> *Rivera v Hillard* (2023) 89 Cal.App.5th 964.

<sup>152</sup> Fam. Code, § 6342(a)(3).

<sup>153</sup> Fam. Code, § 6342(b).

<sup>154</sup> Fam. Code, § 6342(a)(2).

<sup>155</sup> Fam. Code, § 6343(a).

<sup>156</sup> Fam. Code, § 6343(b).

### **Attorney’s Fees and Costs to the Prevailing Party (ROAH)**

If the petitioner (protected party) prevails, the court must, upon request, order respondent to pay the petitioner’s attorney’s fees and costs if there is a finding that the respondent has the ability to pay these fees.<sup>157</sup>

If the respondent prevails, the court, upon request, may issue an order for the payment of attorney’s fees and costs only if the restrained party establishes by a preponderance of the evidence that the petition or request is frivolous or solely intended to abuse, intimidate, or cause unnecessary delay and there is a finding that the other party has the ability to pay these fees.<sup>158</sup>

The prevailing party for the purposes of the DVPA is the party who obtains the grant of a protective order after hearing or who successfully defends against the award of such a protective order. A party who prevails in seeking a modification at a subsequent law and motion hearing concerning other family law issues is not entitled to attorney’s fees under the DVPA, though the party may be entitled to such under other applicable statutes.<sup>159</sup>

- ❖ **Tip** When a party is represented by counsel and attorney’s fees are requested by either party, the section on the Income and Expense Declaration pertaining to the amount in savings, credit union, certificates of deposit, and money market accounts must be fully completed, as well as the section on the amount of attorney’s fees incurred, currently owed, and the source of money used to pay attorney’s fees.

#### ***Timing of Request***

Neither party is barred from requesting attorney’s fees where the request was not made in the initial restraining order application, and a request for attorney’s fees does not need to be raised and adjudicated at the same time as the merits of the domestic violence restraining order request.<sup>160</sup> However, as in all unlimited civil cases, the request must be made before the time for appeal has passed (though this timeline may be extended by agreement of the parties).<sup>161</sup>

Legal services organizations funded by the Legal Services Corporation may request attorney’s fees.<sup>162</sup>

### **Wireless Phone Accounts (ROAH)**

The parties may have cellphone service on a single account. The court may issue an order to the wireless telephone service provider ordering the service provider to transfer the billing

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<sup>157</sup> Fam. Code, §§ 270, 6344(a) & (c).

<sup>158</sup> Fam. Code, §§ 270, 6344(b) & (c).

<sup>159</sup> *C.T. v. K.W.* (2021) 71 Cal.App.5th 679.

<sup>160</sup> *Faton v. Ahmedo* (2015) 236 Cal.App.4th 1160.

<sup>161</sup> Cal. Rules of Court, rule 3.1702(b).

<sup>162</sup> On December 16, 2009, former President Barack Obama signed into law the Consolidated Appropriations Act of 2010 that covers the Legal Services Corporation. The legislation lifts the statutory restriction on claiming, collecting, and retaining attorney’s fees. Part 1642 of the Legal Services Corporation regulations, which had implemented the previous prohibition on requesting attorney’s fees, was suspended on December 16, 2009.

responsibility for and rights to the wireless telephone number or numbers of the requesting party and/or children in the requesting party's care.<sup>163</sup>

To do so, the court should inquire regarding the provider of the wireless telephone number, and must issue an order directly to that provider.<sup>164</sup> To issue an order transferring one or more wireless accounts, [form DV-900](#), *Order Transferring Wireless Phone Account*, may be used. The person requesting transfer must complete [form DV-901](#), *Attachment to Order Transferring Wireless Phone Account*, and provide both forms to the service provider. Note that form DV-901 *must not* be filed with the court or provided to the other party.<sup>165</sup>

Forms DV-900 and DV-901 must be served on the wireless service provider's agent for service of process listed with the California Secretary of State.<sup>166</sup>

Upon transfer, the new accountholder must assume all financial responsibility for the transferred wireless telephone number or numbers, monthly service costs, and costs for any mobile device associated with the wireless telephone number or numbers. The wireless service provider may apply routine and customary requirements (e.g., identification, financial information) to establish an account for the protected person.<sup>167</sup>

As part of an order to transfer service accounts, the court may award temporary use, possession, and control of the cellphone/wireless device to a party and apportion the assets and debts associated with personal property.<sup>168</sup>

### **Firearm and Ammunition Restrictions (Automatic With TRO, ROAH)**

If a temporary or long-term restraining order is granted, the restrained person cannot own, possess, purchase, or receive any prohibited items for the duration of the protective order.<sup>169</sup>

Prohibited items include all:

- Firearms (including unserialized firearms, also known as ghost guns);
- Firearm parts (receiver, frame, or any item that may be used as or easily turned into a receiver or frame as defined in Penal Code section 16531(a)); and
- Ammunition.

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>170</sup>

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<sup>163</sup> Fam. Code, § 6347.

<sup>164</sup> Fam. Code, § 6347(b)

<sup>165</sup> *Ibid.*

<sup>166</sup> Fam. Code, § 6347(b)(2).

<sup>167</sup> Fam. Code, § 6347(c).

<sup>168</sup> Fam. Code, §§ 6324, 6340.

<sup>169</sup> Fam. Code, § 6389(a).

<sup>170</sup> Pen. Code, § 16150(b).

The prohibition described above automatically issues when the court grants a temporary or longer restraining order. The court cannot disable or modify the prohibition, except to grant a limited exemption for current employment if all the requirements under Family Code section 6389 are met.<sup>171</sup>

### ***Relinquishing Prohibited Items***

After issuing a TRO or order after hearing, the court must order the respondent to relinquish all prohibited items in the restrained person's immediate possession or control within 24 hours of being served with the order.

To comply with the relinquishment order, the respondent must:

1. Sell to a licensed gun dealer;
2. Store with a licensed gun dealer; or
3. Store or turn in to local law enforcement.<sup>172</sup>

*Note:* Local law enforcement may charge a storage fee that does not exceed the actual cost of storage. "Actual cost" means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed dealer or to the person relinquishing the firearm.

During the period of the relinquishment order, the respondent is entitled to make one sale of all firearms that are in the possession of local law enforcement. A licensed gun dealer who presents a bill of sale must be given possession of those firearms, at the storage location, within five days of presentation of the bill of sale.

### ***File Receipt With Court***

Within 48 hours after receiving the order, the restrained person must file a receipt with the court and with the law enforcement agency that served the order, showing that prohibited items were properly surrendered. A violation of this prohibition is a misdemeanor punishable by a maximum of one year in jail or a \$1,000 fine, or both.

The restrained person may use [form DV-800](#), *Receipt for Firearms, Firearm Parts, and Ammunition*, to prove to the court that all prohibited items have been properly turned in, sold, or stored.

### ***Limited Exemption May Be Granted by Court***

The court may grant an exemption from the relinquishment requirement for a particular firearm if the restrained person can show that the firearm is necessary as a condition of continued employment and that the respondent is unable to be reassigned to a position where the firearm is

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<sup>171</sup> See *Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275.

<sup>172</sup> Fam. Code, § 6389(c).

unnecessary.<sup>173</sup> In most cases, a request for exemption should be considered at a noticed hearing because the court needs to make detailed findings to grant this exemption.

***Additional Requirement for Peace Officers Requesting Exemption***

In cases involving a peace officer whose employment and personal safety depend on the ability to carry a firearm, a court may allow the peace officer to continue to carry a firearm, either on duty or off duty, if the court finds that the officer does not pose a threat of harm after the officer undergoes a psychological evaluation. Additionally, the court may require the officer to enter into counseling.<sup>174</sup>

If the exemption is granted, the order must provide that:

1. The firearm be in the respondent’s possession only during scheduled work hours and during travel to and from the place of employment; and
2. Identify the firearm for which the exemption applies (e.g., make, model, and serial number).

Note that while California law allows the court to grant a limited exemption for possession of firearms and ammunition for work purposes, the restrained person may still be subject to a prohibition under federal firearm laws. Under federal law, it is unlawful for any person subject to a qualifying court order to transport, receive, or possess any firearm or ammunition in or affecting commerce.<sup>175</sup>

A qualifying court order is an order (1) issued after notice and hearing giving the restrained party an opportunity to be heard; (2) prohibiting harassing, stalking, threatening, or engaging in conduct that would place an intimate partner or child of the partner or restrained party in reasonable fear of bodily injury; or (3) finding that the restrained party presents a credible threat to the physical safety of the intimate partner or child or by its terms prohibits the use, attempted use, or threatened use of physical harm that would reasonably be expected to cause bodily injury.<sup>176</sup> An intimate partner under the federal statute is a spouse or former spouse, a parent of a child of the respondent, or a cohabitant or former cohabitant.<sup>177</sup> Violation of this prohibition while the order remains in effect is a federal offense punishable by a fine and/or up to 10 years’ imprisonment.<sup>178</sup>

***Relinquishing Prohibited Items***

A law enforcement officer serving a protective order that indicates that the restrained person has prohibited items must request that the items be immediately surrendered. Upon request of a law enforcement officer, the restrained person must immediately relinquish to the officer any

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<sup>173</sup> Fam. Code, § 6389(h).

<sup>174</sup> *Ibid.*

<sup>175</sup> 18 U.S.C. § 922(g)(8).

<sup>176</sup> 18 U.S.C. § 922(g)(8)(A)–(C).

<sup>177</sup> 18 U.S.C. § 921(a)(32).

<sup>178</sup> 18 U.S.C. § 924(a)(2).

prohibited items in their possession or control. If no request is made by law enforcement, within 24 hours of being served with the order the restrained person must surrender all items to local law enforcement, or store them with or sell them to a licensed gun dealer.

### ***Expiration of Relinquishment Order***

If the firearms were stored with local law enforcement, then the firearms must be returned to the respondent within five days after expiration of the order, unless the law enforcement agency determines that (1) the firearm has been stolen; (2) the respondent is in a prohibited class for possession of firearms as defined in (Penal Code sections 8100, 8103, and 29800 et seq.) and Welfare and Institutions Code sections 8100 and 8103; or (3) there is another restraining order against respondent. If the respondent is prohibited from getting the firearm back and is the legal owner, the respondent is entitled to sell it to or store it with a licensed gun dealer.

### ***Court's Duty to Inquire and Provide Notice of Noncompliance***

At the first hearing on the restraining order, the court must review the file to ensure that the restrained person has complied with the order to relinquish prohibited items and ask the restrained person whether they have complied with the orders.<sup>179</sup>

If information is presented to the court that the restrained person has or may have prohibited items, the court must determine, by a preponderance of evidence, whether the restrained person has any prohibited items. If the court determines that the restrained person has an item and is in violation of the order, the court may set a hearing to review compliance.

Additionally, if the restrained person has not complied, the court must notify appropriate law enforcement and a prosecuting agency. Notice to law enforcement must be immediate. Notice to the prosecuting agency must be within two days of the court's finding of noncompliance, unless the restrained person complies and files the receipt.<sup>180</sup>

If the restrained person declines to relinquish a firearm by arguing a Fifth Amendment right against self-incrimination, the court may grant use immunity for the act of relinquishing the firearm.<sup>181</sup>

For a flowchart detailing firearms compliance steps, see Appendix C.

The court (through the sheriff, court, or pretrial services) should conduct a firearms search on the proposed restrained person through Automated Firearms System (AFS) or another appropriate database before issuing a restraining order. However, failure or inability to conduct the firearms search should not delay issuance of an order. If firearms, whether registered or not, are reported to the court through an AFS database search or by the protected party, the court should note this

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<sup>179</sup> Fam. Code, § 6389(c)(4).

<sup>180</sup> Fam. Code, §§ 6306, 6389(c)(4).

<sup>181</sup> Fam. Code, § 6389(d).

on the temporary restraining order and order after hearing. For more on the court's responsibility to conduct a search, see Family Code section 6306.

***Warrant May Be Issued***

A search warrant may be issued when the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms under Family Code section 6389. The person must have been lawfully served with the protective order and failed to relinquish the firearm as required by law.<sup>182</sup>

***Criminal Penalties***

Failure to relinquish prohibited items is punishable under Penal Code section 29825.<sup>183</sup>

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<sup>182</sup> Pen. Code, § 1524(a)(11).

<sup>183</sup> Fam. Code, § 6389(m).

## **Part 4 Hearing on Request for Domestic Violence Restraining Order**

### **Court Background Check on Proposed Restrained Person**

Before the a hearing on the request, if resources are available, the court must conduct a special background check and consider the results of the background check in its decision on whether to grant a restraining order and in determining any custody and visitation orders, if applicable.<sup>184</sup>

The check should include whether the restrained person:

1. Has any prior conviction for a violent felony (Pen. Code, § 67.5) or a serious felony (Pen. Code, § 1192.7). This does not include nonviolent crimes.
2. Has any prior misdemeanor conviction involving domestic violence, weapons, or other violence.

*Note:* A person convicted of misdemeanor corporal injury against a spouse/cohabitant (Pen. Code, § 273.5) on or after January 1, 2019, will be subject to a lifetime firearm prohibition.

3. Has a registered firearm.

*Note:* If the court's search finds a registered firearm and the respondent has not complied with the terms of Family Code section 6389, the clerk of the court must immediately notify appropriate law enforcement and a prosecuting agency. Law enforcement must take all actions necessary to remove the firearm.<sup>185</sup>

4. Has any outstanding warrants.

*Note:* If the court's search finds an outstanding warrant, the court must immediately notify the appropriate law enforcement agency of the terms of any protective order or other information found during the search that the court considers appropriate. Law enforcement must take all actions necessary to execute any outstanding warrants against the restrained party.<sup>186</sup>

5. Is currently on probation or parole.

*Note:* If the court's search finds the restrained person is on probation or parole, the court must immediately notify the appropriate probation or parole officer of the terms of any protective order and other information found during the search that the court considers appropriate. As appropriate, the officer must take all necessary action to revoke the restrained party's probation or parole.<sup>187</sup>

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<sup>184</sup> Fam. Code, § 6306.

<sup>185</sup> Fam. Code, § 6306(f).

<sup>186</sup> Fam. Code, § 6306(e).

<sup>187</sup> Fam. Code, § 6306(f).



6. Has any prior restraining order or violation of a prior restraining order.

The court must search all records and databases readily available and reasonably accessible to the court, including but not limited to the following:

- The California Sex and Arson Registry;
- The Supervised Release File;
- State summary criminal history information maintained by the Department of Justice;
- The FBI’s nationwide database; and
- Locally maintained criminal history records or databases.

If information can be obtained in more than one location, the search does not have to be duplicated.

### ***Priority of Hearing***

The restraining order hearing takes precedence over all other matters on the calendar, except old restraining order matters or matters given special precedence by law.<sup>188</sup>

Each judge hearing domestic violence restraining order proceedings should conduct appropriate dialogue with self-represented litigants to clarify facts and explain the court’s procedures as necessary in the specific case.<sup>189</sup> If the court’s self-help center staff is available, the court may wish to refer self-represented litigants for help with next steps or preparing a court order. Judicial officers should use plain language to explain legal concepts and processes to self-represented litigants.

### ***Remote Appearance Available to Litigants, Witnesses, and Support Persons***

A party, witness, or support person may appear remotely at the hearing on a petition for a domestic violence restraining order. Each trial court must develop local rules and instructions for remote appearances, which must be posted on its website.<sup>190</sup>

A party, witness, or support person need not articulate a specific reason for appearing remotely. This law was enacted because “domestic violence victims have voiced the courthouse is the most anxiety-inducing place they must go to while pursuing safety for themselves, their children, and their family. Petitioners that deal with trauma and anxiety can become confused or frustrated by the unfamiliar process or even worse, they endure continuous harassment or intimidation by their abuser. These issues deprive domestic violence victims and families access to justice in a time of crisis, and of the safety, they seek and deserve.”<sup>191</sup>

If a party’s deportation or detention by the Department of Homeland Security will have a material effect on the person’s ability, or anticipated ability, to appear in person at a child

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<sup>188</sup> Fam. Code, § 244(a).

<sup>189</sup> Final Report, *supra* note 28, at p. 18 (items 27 & 28).

<sup>190</sup> Fam. Code, § 6308.

<sup>191</sup> Sen. Com. on Judiciary, Analysis of Sen. Bill No. 538 (2021–2022 Reg. Sess.) as amended Apr. 6, 2021, p. 3.

custody proceeding the court must, on the party's request, allow the party to present testimony or evidence and participate in mandatory custody mediation by electronic means.<sup>192</sup>

## Support Persons

A support person must be permitted to accompany either party to a protective order proceeding and, if the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide comfort and a sense of safety during the proceedings to a person who alleges abuse. This individual is not a legal adviser and may not give legal advice. The court has discretion to remove the support person from the courtroom if it would be in the interest of justice to do so or the court believes the support person is prompting, swaying, or influencing the party they are supporting. As noted above, support persons, like parties and witnesses, have the right to appear remotely.<sup>193</sup>

## Case Readiness

### *Service Is Required*

For the court to hear the request for restraining order, there must be proper service on the respondent.

Generally, forms DV-100, DV-109, DV-110 (if granted), and any accompanying paperwork must be personally served on the respondent. Someone over the age of 18, who is not a party to the action, must serve by the deadline indicated by the court on [form DV-109](#), *Notice of Court Hearing*.<sup>194</sup> A person listed as an additional protected person on the restraining order may not serve the respondent with the court papers.<sup>195</sup> Often the papers are served by a sheriff or marshal, who will do it for free.

### *Alternative Service*

The court may allow for alternative service if the protected person is unable to accomplish personal service after diligent effort and if there is reason to believe that the restrained person is evading (avoiding) service.<sup>196</sup> If the court grants an alternative method of service, the court must reschedule (continue) the hearing to allow the petitioner time to serve by alternative means. The court may use [form DV-116](#), *Order on Request to Continue Court Hearing*, to reschedule the hearing and extend any temporary restraining orders previously granted, and attach [form DV-117](#), *Order Granting Alternative Service*, to grant an alternative means of service.

Alternative methods of service include but are not limited to the following:

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<sup>192</sup> Fam. Code, § 3012(a).

<sup>193</sup> Fam. Code, § 6308.

<sup>194</sup> Fam. Code, § 243.

<sup>195</sup> *Caldwell v. Coppola* (1990) 219 Cal.App.3d 859.

<sup>196</sup> Fam. Code, § 6340(a)(2)(A).

- Service by publication<sup>197</sup> or posting; and
- Substitute service.<sup>198</sup>

### **Reschedule Court Hearing (Continuance)**

If the petitioner has not served the respondent, the court may give the petitioner more time to serve the respondent and schedule another court hearing. [Form DV-116](#) may be used to continue the hearing and extend any temporary restraining orders previously granted.<sup>199</sup>

If both sides are present and either party is not ready to proceed, the court:

- Must grant respondent one continuance, as a matter of right, for a reasonable period to respond; and
- May grant either party's request for continuance, if there is good cause.<sup>200</sup>

A request to reschedule a hearing may be done in writing before the hearing ([form DV-115](#)) or orally at the hearing. The court may also reschedule the court hearing on its own motion.<sup>201</sup>

Before making custody and visitation orders at an evidentiary hearing, the court must first determine whether or not the abuse occurred, as this will influence the legal standard for awarding custody.<sup>202</sup> If the court needs to reschedule the evidentiary hearing in order to determine whether abuse has occurred, the court may issue temporary custody and visitation orders for a reasonable period of time, so long as the orders comply with Family Code sections 3011 and 3020.<sup>203</sup>

The court may not order an automatic (pro forma) continuance based on the existence of a related or pending criminal case; a party has no absolute right not to be forced to choose between testifying in a civil matter and asserting their Fifth Amendment privilege.<sup>204</sup> Should the court issue a continuance on this basis, it must first make a particularized inquiry into the following:

1. The interest of the plaintiffs in proceeding expeditiously with the litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay;
2. The burden that any particular aspect of the proceedings may impose on defendant;
3. The convenience of the court in the management of its cases, and the efficient use of judicial resources;
4. The interest of persons not parties to the civil litigation; and

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<sup>197</sup> Code Civ. Proc., § 415.50.

<sup>198</sup> Code Civ. Proc., § 415.20.

<sup>199</sup> Any temporary restraining order previously issued must remain in effect until the next hearing, unless otherwise ordered by the court. Fam. Code, § 245.

<sup>200</sup> Fam. Code, § 245(a) & (b).

<sup>201</sup> Fam. Code, § 245(b).

<sup>202</sup> Fam. Code, § 3044(g).

<sup>203</sup> *Ibid.*

<sup>204</sup> *Keating v. Office of Thrift Supervision* (9th Cir. 1995) 45 F.3d 322, 326.

5. The interest of the public in the pending civil and criminal litigation.<sup>205</sup>

If the court reschedules the hearing, any temporary restraining order must be extended and remain in effect until the end of the continued hearing, unless modified or terminated by the court.<sup>206</sup> If the court reschedules the court hearing, the court must complete [form DV-116, Order on Request to Continue Court Hearing](#). This form gives parties notice of the next court date and extends any TRO that the court previously granted.

### ***Proceeding on Request for Restraining Order***

If the respondent has been properly served, or the respondent is present and is ready to proceed with the hearing, then the court should conduct a hearing. A domestic violence restraining order can be granted for up to five years. Note that any custody and support orders made will survive the termination of the restraining order.<sup>207</sup> If the court grants a restraining order, [form DV-130, Restraining Order After Hearing](#), must be completed, along with any applicable attachments.

### ***Special Procedure for Disclosing Immigration Status***

Evidence of a person's immigration status must not be disclosed in open court in a civil action by a party or the party's attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure of the person's immigration status.<sup>208</sup> A person or the person's attorney may voluntarily reveal their immigration status to the court. This section does not apply when a person's immigration status is necessary to prove an element of a claim or an affirmative defense.<sup>209</sup> This section does not impact otherwise applicable laws governing the relevance of immigration status to liability or the standards applicable to inquiries regarding immigration status in discovery or proceedings in a civil action.<sup>210</sup>

## **Definition of Abuse and Standard of Proof**

The court may issue a restraining order after a noticed hearing if the affidavit or testimony and any additional information provided to the court through a records and database search under Family Code section 6306 shows, to the satisfaction of the court, that it is more likely than not that past acts of abuse occurred.<sup>211</sup> The standard is preponderance of the evidence.<sup>212</sup>

- The court may issue an order under this part based solely on the affidavit or testimony of the person requesting the restraining order.<sup>213</sup>

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<sup>205</sup> *Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 885.

<sup>206</sup> Fam. Code, § 245(c).

<sup>207</sup> Fam. Code, § 6340(a); Cal. Rules of Court, rule 5.381.

<sup>208</sup> Evid. Code, § 351.3(a).

<sup>209</sup> Evid. Code, § 351.3(b)(1).

<sup>210</sup> Evid. Code, § 351.3(b)(2).

<sup>211</sup> Fam. Code, §§ 6300, 6306; Evid. Code, § 115.

<sup>212</sup> Evid. Code, § 115.

<sup>213</sup> Fam. Code, § 6300.

- As long as there are allegations of a general nature contained in the request, a party may present evidence at hearing regarding incidents not specifically alleged in the pleadings.<sup>214</sup>
- The testimony of one witness, even that of a party, can be sufficient evidence to support a domestic violence restraining order.<sup>215</sup>
- In evaluating the evidence, the court must consider the “totality of the circumstances.”<sup>216</sup>

**Definition of Abuse**

Abuse does not have to be actual infliction of physical injury or assault.<sup>217</sup> The court must find a past incident of abuse, threat of abuse, or behavior that can be enjoined under Family Code section 6320(a). Family Code section 6320 lists several types of nonviolent conduct that constitute abuse under the law:

- Harassment
- Telephoning/annoying calls
- Destroying personal property
- Disturbing the peace
- Coercive control, including reproductive coercion
- Following/stalking
- Molesting
- Sexual assault
- Attacking/striking
- Threatening
- Violating a protective order<sup>218</sup>

“Disturbing the peace” is conduct that “destroys the mental or emotional calm of the other party.”<sup>219</sup> Abuse against a party’s child is also considered direct abuse against that party if it destroys the party’s mental or emotional calm.<sup>220</sup>

“Disturbing the peace” also includes “coercive control.” Coercive control is “a pattern of behavior that in purpose or effect unreasonably interferes with a person’s free will and personal liberty.”<sup>221</sup> Even an action that seems benign standing alone may be a part of a greater pattern of abuse, especially in cases involving coercive control.<sup>222</sup>

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<sup>214</sup> *In re Marriage of Davila & Mejia* (2018) 29 Cal.App.5th 220.

<sup>215</sup> *In re Marriage of Fregoso & Hernandez* (2016) 5 Cal.App.5th 698.

<sup>216</sup> Fam. Code, § 6301(c).

<sup>217</sup> Fam. Code, § 6203.

<sup>218</sup> Fam. Code, §§ 6203, 6320; *N.T. v. H.T.* (2019) 34 Cal.App.5th 595.

<sup>219</sup> Fam. Code, § 6320(a) & (c); *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497; *Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140; *Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816; *In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416; *Sabato v. Brooks* (2015) 242 Cal.App.4th 715.

<sup>220</sup> *Gou v. Xiao* (2014) 228 Cal.App.4th 812; *Perez v. Torres-Hernandez* (2016) 1 Cal.App.5th 389.

<sup>221</sup> Fam. Code, § 6320(c).

<sup>222</sup> *McCord v. Smith* (2020) 51 Cal.App.5th 358, 366.

When evaluating the evidence, the court must consider all violations of the TRO. Such violations, even seemingly “technical” violations, are sufficient to support the issuance of a restraining order, even without a further showing of abuse.<sup>223</sup>

Disclosing intimate details of someone’s life, even if the information is legally obtained, can constitute abuse.<sup>224</sup> The ability to continue to engage in activity that has been determined after a hearing to constitute “abuse” is not the type of speech afforded protection by the First Amendment to the U.S. Constitution.

The factual accuracy of information used to otherwise harass a party does not take abusive conduct outside the scope of the DVPA.<sup>225</sup>

“[U]nilateral, unwanted, and harassing contacts” supported granting the domestic violence restraining order even in the absence of threats and/or violence.<sup>226</sup>

### **Cumulative Relief**

The relief provided in the DVPA exists in addition to other civil and criminal remedies provided by law.<sup>227</sup> The court may not decline to issue a restraining order under this part because of the existence of a criminal protective order or any other civil or criminal relief (e.g., another type of civil restraining order).<sup>228</sup>

Similarly, the court should not decline to issue other orders under this part (such as support and child custody) because of the existence of alternative means of applying for such relief. It was the intention of the Legislature that parties who enter into the family law system via the DVPA process have access to a simplified process, as the vast majority of litigants in family law are self-represented.<sup>229</sup>

### **Self-Defense**

A victim of physical aggression may use reasonable force to defend themselves, and a person who responds reasonably to an aggressor in this way does not commit abuse within the meaning of Family Code section 6203.<sup>230</sup>

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<sup>223</sup> *N.T. v. H.T.* (2019) 34 Cal.App.5th 595; *In re Marriage of F.M. & M.M.* (2021) 65 Cal.App.5th 106.

<sup>224</sup> *In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416.

<sup>225</sup> *Altafulla v. Ervin* (2015) 238 Cal.App.4th 571.

<sup>226</sup> *Sabato v. Brooks* (2015) 242 Cal.App.4th 715, 725.

<sup>227</sup> Fam. Code, § 6227.

<sup>228</sup> *Lugo v. Corona* (2019) 35 Cal.App.5th 865.

<sup>229</sup> Sen. Com. on Judiciary, Analysis of Assembly Bill No. 939 (2009–2010 Reg. Sess.) as amended June 17, 2010, p. 12.

<sup>230</sup> See *In re Marriage of G.* (2017) 11 Cal.App.5th 773.

### ***Timing of Abuse and Likelihood of Further Abuse***

The length of time since the most recent act of abuse is not determinative by itself. The court must consider the totality of the circumstances in determining whether to grant or deny the restraining order.<sup>231</sup>

The court is not required to find likelihood of future abuse to support issuance of a restraining order.<sup>232</sup> All that is required is a showing of past abuse, not a threat of future harm.<sup>233</sup>

A period of reconciliation of the parties between issuance of the temporary restraining order and the hearing on request for issuance of a restraining order after hearing does not preclude issuance of a restraining order after hearing.<sup>234</sup>

### ***Victim May Record Communication Between the Parties***

A victim of domestic violence who is seeking a domestic violence restraining order from a court and who reasonably believes that a confidential communication made to them by the perpetrator may contain evidence relevant to that restraining order, may record that communication for the exclusive purpose and use of providing that evidence to the court, in accordance with federal law.<sup>235</sup> The court should receive such recordings if offered into evidence.

### ***Safety of Petitioner and Minor Children***

When determining whether to make any of the orders requested, the court must consider whether “failure to make any of these orders may jeopardize the safety of the petitioner and the children for whom the custody or visitation orders are sought. If the court makes any order for custody, visitation, or support, that order shall survive the termination of any protective order.”<sup>236</sup>

- ❖ **Tip** The court should ensure that an order is prepared and provided as soon as possible to all parties who are present at the proceeding.<sup>237</sup>

### ***Duration of Order***

A restraining order granted after a hearing or trial may last up to five years.<sup>238</sup> If no expiration is listed on the order, it will be deemed a three-year order.<sup>239</sup> However, any child custody, child visitation, child support, and spousal support orders survive the termination of the restraining order.<sup>240</sup>

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<sup>231</sup> Fam. Code, § 6301(c).

<sup>232</sup> *Nevarez v. Tonna* (2014) 227 Cal.App.4th 774; see *Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816.

<sup>233</sup> *Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, 137.

<sup>234</sup> *In re Marriage of Fregoso & Hernandez* (2016) 5 Cal.App.5th 698.

<sup>235</sup> Pen. Code, § 633.6(b).

<sup>236</sup> Fam. Code, § 6340(a).

<sup>237</sup> Final Report, *supra* note 28, at p. 16 (item 14).

<sup>238</sup> Fam. Code, § 6345(a).

<sup>239</sup> Fam. Code, § 6345(c).

<sup>240</sup> Fam. Code, § 6340(a).

- ❖ **Tip** Remember that custody/visitation/support orders are issued without prejudice to subsequent orders issued in a dissolution, legal separation, or paternity parentage action.

When both parties are present at a protective order proceeding, the court must inform both parties of the terms of the order, including the firearms and ammunition prohibitions and penalty for violation.

### ***Service of Order After Hearing***

If the respondent attended the hearing and heard the terms of the order from the court, then that individual is considered served and a proof of service is not required for enforcement.<sup>241</sup>

If the respondent was personally served with the temporary restraining order but did not appear at the hearing or through counsel, then:

1. If the ROAH is identical to the TRO except for the expiration date, the ROAH may be served on the restrained person by first-class mail to the most current address known by the court.<sup>242</sup>
2. If the terms of the ROAH are different than the TRO then the ROAH must be personally served on the restrained person (by someone over the age of 18 who is not a party to the action<sup>243</sup>).

- ❖ **Tip** While service by mail is sufficient in some cases, personal service may be preferred, as prosecutors may decline to charge a violation of a mail-served restraining order after hearing due to inability to prove actual knowledge of the order under Penal Code section 166(a)(4) or intentional and knowing disobedience under Penal Code section 273.6.<sup>244</sup>

### ***Verbal Notice Is Sufficient for Enforcement Purposes***

If at the scene of a domestic violence incident an officer determines that a protective order has been granted but not served, the officer must immediately notify the restrained person of the terms of the order and advise the restrained person to go to court to get a copy of the protective order.<sup>245</sup>

### **Mandatory Statement of Reasons; Statement of Decision on Request**

If the court denies the restraining order request at the time of hearing or trial, the court must provide a brief statement of the reasons for the decision in writing or on the record. A decision stating “denied” is insufficient.<sup>246</sup>

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<sup>241</sup> Fam. Code, § 6384(a).

<sup>242</sup> *Ibid.*

<sup>243</sup> Code Civ. Proc., § 414.10.

<sup>244</sup> See *People v. Poe* (1965) 236 Cal.App.2d Supp. 928.

<sup>245</sup> Fam. Code, § 6383(d), (e) & (g).

<sup>246</sup> Fam. Code, § 6340(b).



If the court rebuts the custody presumption outlined in Family Code section 3044, it must state its reasons in writing or on the record.<sup>247</sup> In so doing, the court must address each of the statutory factors, as the statute creates a mandatory checklist.<sup>248</sup> Failure to provide this statement of reasons is reversible error.<sup>249</sup> A party need not ask for this statement of reasons; the court must provide it in any event.<sup>250</sup>

If either party asks for a statement of decision, the court must issue a statement of decision, including regarding child custody and visitation. A court must do this regardless of whether it rebuts the presumption under Family Code section 3044.<sup>251</sup>

### ***Affirmative Relief Available to Respondent***

The respondent may seek affirmative relief alternative to the petitioner's request, on the same issues raised by the petitioner, by filing a responsive declaration, except a request for a restraining order to protect the respondent.<sup>252</sup>

If the affirmative relief requested by the respondent is a restraining order against the petitioner, the respondent must request by filing a request for restraining order, not in a responsive declaration.<sup>253</sup> See mandatory [form DV-100](#), *Request for Domestic Violence Restraining Order*. A mutual protective order may not be issued unless certain conditions are met (see next section on mutual restraining orders).

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<sup>247</sup> Fam. Code, § 3044(f); see *Jaime G. v. H.L.* (2018) 25 Cal.App.5th 794.

<sup>248</sup> *Jaime G. v. H.L.* (2018) 25 Cal.App.5th 794.

<sup>249</sup> *Abdelqader v. Abraham* (2022) 76 Cal.App.5th 186, 198.

<sup>250</sup> *Ibid.*

<sup>251</sup> *City and County of San Francisco v. H.H.* (2022) 76 Cal.App.5th 531.

<sup>252</sup> Fam. Code, § 213.

<sup>253</sup> Fam. Code, § 6305(a)(1).

## Part 5 Issuance of Mutual Restraining Orders

### Legal Requirements

The court *must not* issue mutual protective orders unless:

1. Both parties personally appear at the hearing;
2. Both parties present written evidence of abuse or domestic violence in an application for a restraining order using a mandatory Judicial Council restraining order application form (DV-100); and
3. The court makes detailed findings of fact that both parties acted as a primary aggressor and that neither party acted primarily in self-defense.<sup>254</sup>

The dominant aggressor is the person determined to be the most significant, rather than the first aggressor. The factors to consider in identifying the dominant aggressor are:

1. The intent of the law to protect victims of domestic violence from continuing abuse;
2. The threats creating fear of physical injury;
3. The history of domestic violence between the persons involved; and
4. Whether either person involved acted in self-defense.<sup>255</sup>

The court may not issue mutual restraining orders, including by agreement (stipulation), unless the evidence shows that both parties acted primarily as aggressors and neither party acted primarily in self-defense.<sup>256</sup>

Mutual restraining orders are the exception and not the rule, and should not be issued as an expedient way to address joint claims of abuse. Rather, the court must conduct a particularized inquiry and make specific findings before issuing mutual restraining orders.<sup>257</sup> See *K.L. v. R.H.* (2021) 70 Cal.App.5th 965, 979, holding “[i]t is essential in a case such as this [mutual DVRO request] that the court rigorously evaluate the evidence to ensure that the moving party has, in fact, been victimized. This is so, particularly, where ... the trial court is aware that the acts *committed* by the moving party ... are significantly more violent than the acts *alleged* by the moving party.”

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<sup>254</sup> Fam. Code, § 6305(a).

<sup>255</sup> Pen. Code, § 836(c)(3).

<sup>256</sup> See *J.J. v. M.F.* (2014) 223 Cal.App.4th 968, in which the appellate court reversed the lower court’s issuance of a mutual restraining order because the evidence supported a finding that only one party acted primarily as the aggressor.

<sup>257</sup> *K.L. v. R.H.* (2021) 70 Cal.App.5th 965, 979; *Conness v. Satram* (2004) 122 Cal.App.4th 197, 204.

Family Code section 6305 “should apply to all cases in which parties present competing petitions for DVPA restraining orders, regardless of when the petitions are filed or calendared for hearing.”<sup>258</sup>

### **Heightened Risk of Judicial Bias in Mutual DVRO Cases**

The appellate court has emphasized that there is a particular risk of judicial bias when it comes to mutual restraining order cases as the social science shows that “[w]e expect ... victims to be ‘sweet, kind, demure, blameless, frightened, and helpless’ and ‘not a multi-faceted ... [person] who may or may not experience fear or anger.’ ‘These are the preconceptions that judges and jurors bring with them into the courtroom when they assess the veracity of a victim-witness’s story.’”<sup>259</sup>

Though a court may not condone all of a litigant’s words or actions, that does not mean that these words or actions rise to the level required by law to issue a mutual order.<sup>260</sup>

### **Full Faith and Credit**

Mutual protective orders are not entitled to full faith and credit unless both parties present written pleadings seeking a protection order and the court makes a specific finding that both parties are entitled to such an order.<sup>261</sup>

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<sup>258</sup> *Salmon v. Salmon* (2022) 85 Cal.App.5th 1047, 1058.

<sup>259</sup> *In re Ma. V.* (2021) 64 Cal.App.5th 11 (quoted with approval in *K.L. v. R.H.* (2021) 70 Cal.App.5th 965, 984, n. 11), quoting Kohn, “Barriers to Reliable Credibility Assessments: Domestic Violence Victim-Witnesses” (2003) 11 *Am. U. J. Gender Soc. Pol’y & L.* 733, 734, 743–744.

<sup>260</sup> *K.L. v. R.H.* (2021) 70 Cal.App.5th 965, 981 (reversing mutual restraining order restraining a mother in a case in which the mother threatened to kill the father at a custodial exchange).

<sup>261</sup> 18 U.S.C. § 2265(c).

## Part 6 Renewing a Restraining Order After Hearing

A party may request renewal of a restraining order after hearing (form DV-130). Upon request by the protected party, or by stipulation of the parties, the court may grant request for renewal and subsequent requests for renewals.<sup>262</sup>

A restraining order granted by a juvenile court, based on domestic violence, may be renewed in family court after the juvenile court case closes (jurisdiction terminates).<sup>263</sup>

### Timing of Request

The request for renewal must be brought before the restraining order after hearing expires, and may be requested up to three months before the expiration date.<sup>264</sup> The court may renew a restraining order after hearing even if the original order is subject to a pending appeal.<sup>265</sup>

### Standard of Proof

The court must find by a preponderance of the evidence that the protected party has a “reasonable apprehension of future abuse.”<sup>266</sup>

A restraining order may be renewed without a showing of any further abuse since the issuance of the original order.<sup>267</sup> Violation of the current restraining order is not required for renewal of the restraining order, and the protected party does not need to show fear of future physical abuse to support renewal of the restraining order.<sup>268</sup> Note that the protected party may be seeking renewal because a restraining order is achieving its protective purpose.<sup>269</sup>

Relevant appellate decisions:

- The protected party may show “reasonable apprehension of future abuse” without any further incident of violence when the party had applied for the original restraining order after a “violent incident,” there was “evidence of a long and troubling history of physical abuse,” and there was no showing of any change in circumstances, particularly because the restrained party failed to attend court-ordered anger management classes.<sup>270</sup>
- A restrained party’s use of the shared child’s extracurricular activities as a pretext to continue harassing and controlling the protected party constitutes “abuse” under the

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<sup>262</sup> Fam. Code, § 6345(a).

<sup>263</sup> *Garcia v. Escobar* (2017) 17 Cal.App.5th 267; *Priscila N. v. Leonardo G.* (2017) 17 Cal.App.5th 1208, 1214.

<sup>264</sup> Fam. Code, § 6345(a).

<sup>265</sup> *In re Marriage of Carlisle* (2021) 60 Cal.App.5th 244.

<sup>266</sup> *Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275.

<sup>267</sup> Fam. Code, § 6345(a).

<sup>268</sup> *Eneaji v. Ubboe* (2014) 229 Cal.App.4th 1457.

<sup>269</sup> *Ashby v. Ashby* (2021) 68 Cal.App.5th 491, 510.

<sup>270</sup> *Cueto v. Dozier* (2015) 241 Cal.App.4th 550, 562.

Domestic Violence Prevention Act and may be considered as grounds for renewal of the restraining order.<sup>271</sup>

- Evidence of abuse against the protected party's children is relevant to the issue of renewal, as abuse against the child disturbs the protected party's peace and can cause fear of future abuse to both the child and the protected party.<sup>272</sup>
- Spiteful litigation tactics by the restrained party during the restraining order period supported a finding of reasonable apprehension of future abuse, even when the protected party relocated out of state.<sup>273</sup>
- A nonviolent violation of a restraining order is very serious and supports renewal of restraining order.<sup>274</sup>

### **Duration of Order**

If the court approves a request to renew the restraining order, the renewed restraining order must be extended for at least five years, or made a permanent order of the court, unless a shorter duration is agreed upon by the parties.<sup>275</sup>

Restraining orders may be renewed multiple times.<sup>276</sup>

If the court grants the request to renew, the court must sign [form DV-730](#), *Order to Renew Domestic Violence Restraining Order*.

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<sup>271</sup> *Rybolt v. Riley* (2018) 20 Cal.App.5th 864.

<sup>272</sup> *Perez v. Torres-Hernandez* (2016) 1 Cal.App.5th 389.

<sup>273</sup> *Ashby v. Ashby* (2021) 68 Cal.App.5th 491.

<sup>274</sup> *Lister v. Bowen* (2013) 215 Cal.App.4th 319.

<sup>275</sup> Fam. Code, § 6345(a); *Avalos v. Perez* (2011) 196 Cal.App.4th 773.

<sup>276</sup> Fam. Code, § 6345(a).

## Part 7 Modifying or Terminating a Restraining Order After Hearing

A restraining order after hearing may be terminated or modified by written stipulation (agreement) filed with the court or motion of a party.<sup>277</sup>

### Notice Requirements

If a request to terminate or modify an order is made by someone other than the protected party, the request must be personally served on the protected party or, if the protected party is participating in the Safe at Home program, by mail on the California Secretary of State. The Safe at Home program is a confidential mail service.<sup>278</sup>

If the protected party cannot be notified prior to the hearing, the court must deny the motion to modify or terminate without prejudice or continue the hearing until the protected party is properly served. On a showing of good cause, the court may specify another method for service of process. If the protected party attends the hearing notice may be waived if the protected party does not challenge the sufficiency of the notice.<sup>279</sup>

### Requests to Terminate

A motion to terminate a restraining order after hearing is governed by the standards applicable to motions to dissolve injunctions.<sup>280</sup>

- ❖ **Tip** If a protected party requests termination or modification of a restraining order, the court should conduct a hearing to determine if the request is entirely voluntary and not a result of coercion or duress and to make sure that the person making the request is in fact the protected party. The court should consider deferring ruling on the request to allow the protected party time to discuss the request for termination or modification with a support person.<sup>281</sup>

To terminate a restraining order after hearing, use [form DV-400](#), *Findings and Order to Terminate Restraining Order After Hearing*. Form DV-400 must be entered into the California Law Enforcement Telecommunications System (CLETS) in order for the restraining order to be canceled in CLETS. An order modifying a restraining order must also be entered into CLETS. Follow the procedure for your court for having restraining orders entered into CLETS.

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<sup>277</sup> *Ibid.*

<sup>278</sup> Gov. Code, §§ 6205–6210.

<sup>279</sup> Fam. Code, § 6345(d).

<sup>280</sup> Code Civ. Proc., § 533; *Loeffler v. Medina* (2009) 174 Cal.App.4th 1495.

<sup>281</sup> Final Report, *supra* note 28, at p. 17 (item 22).

## Part 8 Enforcement

### Overview

The protective order is enforceable anywhere in California.<sup>282</sup> A protective order is valid and enforceable even if the petitioner invites or consents to contact with the respondent. The orders can be changed only by another court order.<sup>283</sup>

***Federal full faith and credit.*** A protective order issued by a state, an Indian tribe, or a territory that has jurisdiction over the parties and subject matter and that gives the respondent reasonable notice and opportunity to be heard must be given full faith and credit by another state, Indian tribe, or territory and enforced as if it were the order of the enforcing state, Indian tribal government, or territory.<sup>284</sup>

### Criminal and Civil Penalties

An intentional and knowing violation of a protective order is a misdemeanor punishable under the law.

A district attorney or city attorney may charge a person for failing to comply with a court order entered under the DVPA.

A petitioner may also bring a civil contempt motion to enforce the order. The court may appoint counsel to represent the petitioner in a proceeding to enforce the protective order. If counsel is appointed, the court may order the respondent to pay reasonable attorney's fees and costs incurred by the petitioner.

#### ***Enforceability of Foreign Protective Orders***

Foreign protective orders include any orders issued by another state of the United States, the District of Columbia, Puerto Rico, any U.S. territory, any branch of the U.S. military with authority to issue these orders, and any tribe or band.<sup>285</sup>

A foreign protective order is valid and enforceable in California if it meets all of the following criteria:<sup>286</sup>

1. Identifies the protected party and the respondent;
2. Is currently in effect;
3. Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

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<sup>282</sup> Fam. Code, § 6381(a).

<sup>283</sup> Pen. Code, § 13710(b).

<sup>284</sup> 18 U.S.C. § 2265(a) & (b).

<sup>285</sup> Fam. Code, § 6401.

<sup>286</sup> Fam. Code, § 6402(d).

4. Was issued after respondent was given reasonable notice and the respondent had an opportunity to be heard before the order was issued. If the order was made without notice (ex parte), the respondent must have had notice and opportunity to be heard within a reasonable time after issuance of the order.

*Note:* The absence of any of the above criteria is an affirmative defense in an enforcement action.<sup>287</sup>

The foreign protective order will be enforced under California laws. California will also enforce terms of a valid foreign protective order that a California tribunal would normally lack power to provide.<sup>288</sup> Also, custody and visitation orders contained in the protective order will be enforced if the orders were issued in accordance with the jurisdictional requirements governing custody and visitation orders in the issuing state.<sup>289</sup>

Provisions of a foreign mutual protective order favoring a respondent will be enforced in California only if:<sup>290</sup>

1. The respondent filed a written pleading seeking a protective order in the issuing state.
2. The tribunal in the issuing state made specific findings in favor of the respondent.

Foreign protective orders do not have to be registered in California.<sup>291</sup> However, a person can request the court to register the order. This is often recommended so that the order can be entered into CLETS. There is no fee to file the registration form ([DV-600, Order to Register Out-of-State or Tribal Court Protective/Restraining Order](#)). After the foreign protective order is registered, it must be sealed, and access is allowed only to law enforcement, the person who registered the order on written request with proof of identification, the defense after arraignment on criminal charges involving an alleged violation of the order, or on further order of the court.<sup>292</sup>

A tribunal of California may not enforce a foreign protective order if the tribunal of the issuing state does not recognize the standing of a protected individual to seek enforcement.<sup>293</sup>

### ***Enforceability of Canadian Domestic Violence Protection Orders***

A Canadian domestic violence protection order is enforceable in California if it meets all of the following criteria:<sup>294</sup>

1. Identifies the protected party and the respondent;

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<sup>287</sup> Fam. Code, § 6402(f).

<sup>288</sup> Fam. Code, § 6402(a).

<sup>289</sup> Fam. Code, § 6402(c).

<sup>290</sup> Fam. Code, § 6402(g).

<sup>291</sup> Fam. Code, § 6403(d).

<sup>292</sup> Fam. Code, § 6404.

<sup>293</sup> Fam. Code, § 6402(b).

<sup>294</sup> Fam. Code, § 6453(c).



2. Is valid and currently in effect;
3. Was issued by a court that had jurisdiction over the parties and subject matter under the law of the issuing court; and
4. Was issued after respondent was given reasonable notice and the respondent had an opportunity to be heard before the order was issued. If the order was ex parte, the respondent was given reasonable notice and had or will have an opportunity to be heard within a reasonable time after issuance of the order, in a manner consistent with the respondent's due process rights.

*Note:* Absence of any of the above criteria is an affirmative defense in an enforcement action.<sup>295</sup>

The Canadian domestic violence protection order will be enforced under California laws for enforcement of a domestic protection order. Enforcement is limited to terms of the Canadian domestic violence protection order issued in English in a civil proceeding by a court of Canada under the law of the issuing jurisdiction that relates to domestic violence and prohibits a respondent from doing any of the following:<sup>296</sup>

1. Being in physical proximity to a protected individual or following a protected individual;
2. Directly or indirectly contacting or communicating with a protected individual or other individual described in the order;
3. Being within a certain distance of a specified place or location associated with a protected individual; or
4. Molesting, annoying, harassing, or engaging in threatening conduct directed at a protected individual.

Provisions of a foreign mutual protective order will be enforced in California only if both of the following apply:<sup>297</sup>

1. The party seeking enforcement filed a written pleading requesting the order from the issuing court; and
2. The court made detailed findings of fact indicating that both parties acted as primary aggressor and neither acted primarily in self-defense.

Canadian domestic violence protection orders do not have to be registered in California to be enforced.<sup>298</sup> However, a person may register the order by presenting a certified copy of the order to a court.<sup>299</sup> This is often recommended so that the order can be entered into the California Restraining and Protective Order System (CARPOS). There is no court filing fee to register the

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<sup>295</sup> Fam. Code, § 6453(e).

<sup>296</sup> Fam. Code, §§ 6451(a), 6453(b).

<sup>297</sup> Fam. Code, § 6453(f).

<sup>298</sup> Fam. Code, § 6454(c).

<sup>299</sup> Fam. Code, § 6454(a).

order ([form DV-630](#), *Order to Register Canadian Domestic Violence Protective/Restraining Order*).<sup>300</sup>

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<sup>300</sup> Fam. Code, § 6454(b).

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## Part 9 Court Fees and Responsibilities

### Providing Court Forms Free of Charge

Protective order forms are to be provided free of charge.<sup>301</sup> Courts must provide informational packets with the protective order forms.<sup>302</sup> The packets must describe local court procedures and include maps to the filing windows and courts and information on how to return a proof of service (including mailing addresses and fax numbers).<sup>303</sup>

The packets must state that the orders are enforceable anywhere in any state and include general information about agencies in other jurisdictions that can be contacted for purposes of enforcement.

The court must provide up to three free, certified, stamped, and endorsed copies of the protective order and any extensions, modifications, or terminations of the order.<sup>304</sup>

### No Court Filing Fees

There is no filing fee for an application, responsive pleading, or order to show cause (request for order) that seeks to obtain, modify, or enforce a protective order, or for other filings necessary to obtain or give effect to the protective order. There is no fee for a subpoena filed in connection with the application, responsive pleading, or order to show cause.<sup>305</sup>

There is no fee for the extension of a temporary restraining order.<sup>306</sup>

There is no fee for service of process by the sheriff's department for an order issued under the DVPA.<sup>307</sup>

### Resource List for Petitioner

The court must provide each petitioner with a resource list of referrals to appropriate community domestic violence programs and services. The list must be prepared in consultation with local domestic violence shelters and programs.<sup>308</sup>

❖ **Tip** The resources should be available in English and other languages to the extent feasible and could include:

- Legal services agencies and pro bono legal resources;
- Child support services;

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<sup>301</sup> Fam. Code, § 6380(g).

<sup>302</sup> *Ibid.*

<sup>303</sup> *Ibid.*

<sup>304</sup> Fam. Code, § 6387.

<sup>305</sup> Fam. Code, § 6222.

<sup>306</sup> Fam. Code, § 245(e).

<sup>307</sup> Gov. Code, § 6103.2(b)(4).

<sup>308</sup> Fam. Code, § 6343(c).

- Informational pamphlets and videos;
- Available victim-witness services or funding;
- Appropriate referrals to community domestic violence programs and services, including batterer intervention programs;
- Self-help services; and
- Other community services, including those providing immigration information.<sup>309</sup>

### **Importance of Using Mandatory Judicial Council Forms**

All restraining orders should be issued on Judicial Council forms, entered into the Confidential Law Enforcement Telecommunications System (CLETS), and reported to the California Department of Justice. The obligation to enter these orders into CLETS is mandatory, not discretionary, and may not be circumvented by stipulation or judicial order. The issuance of a “non-CLETS” restraining order, or a restraining order that is not entered into the CLETS system, is reversible error.

Failure to use the appropriate forms does not in and of itself make the order unenforceable.

A petition is valid and an order enforceable without explicitly stating the address for the petitioner’s residence, workplace, school, childcare location, or child’s school.<sup>310</sup>

- ❖ **Tip** A protected party specifically may not want to list a residence, workplace, school, or childcare address on the restraining order because the restrained party might not know the address, and disclosing it on the order may be a significant safety issue.

#### ***Form CLETS-001***

The protected person must turn in a completed *Confidential CLETS Information* ([form CLETS-001](#)) with their request for a restraining order. The purpose of this form is to provide additional information to law enforcement for enforcement purposes. This form must not be filed in the court file and does not need to be reviewed by the judicial officer. It is important that the CLETS form be updated by the petitioner if there have been changes to any of the information listed on the form.

#### ***Proper Handling of Form***

Access to the information on form CLETS-001 is limited to authorized court personnel, law enforcement, and other personnel authorized by the California Department of Justice.<sup>311</sup> If the court grants a temporary restraining order or order after hearing, the court must either transmit form CLETS-001 to a law enforcement agency for entry into CLETS and not retain any copy, or enter the information on the form into CLETS itself and promptly destroy form CLETS-001 or delete the form from its records. The form must also be destroyed or deleted if the court does not enter an order. Until the court has transmitted, destroyed, or deleted the form, it must be retained

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<sup>309</sup> Final Report, *supra* note 28, at p. 14 (item 3).

<sup>310</sup> Fam. Code, § 6225.

<sup>311</sup> Cal. Rules of Court, rule 1.51.

in a secure manner that prevents access to the information on the form except for authorized personnel.<sup>312</sup>

### **Entering Information Into Confidential Law Enforcement Telecommunications System (CLETS)**

All forms with “CLETS” in the footer of the form must be entered into the California Restraining and Protective Order System (CARPOS), which is accessible through CLETS. In most counties, law enforcement does the entry. Some courts in California have taken on the responsibility of entering the information.

Forms that must be entered into CLETS (CARPOS) include all orders (e.g., DV-110, DV-116, DV-130, DV-400, DV-710, and DV-730) and proof of service forms (DV-200).<sup>313</sup> All available information must be included; however, the inability to provide all categories of information must not delay the entry of the information available. Numeric identifiers such as date of birth and social security number are not required to enter an order into CARPOS or CLETS; even if this information is missing, the court or law enforcement agency must still enter the order into CLETS.<sup>314</sup>

The Judicial Council maintains a separate database called the California Courts Protective Order Registry (CCPOR), available to California superior courts, tribal courts in California, and law enforcement agencies within California (e.g., police, sheriff, marshal). Unlike CLETS (CARPOS), the California Courts Protective Order Registry contains scanned images or electronic copies of the orders. Restraining order data required to be entered into CLETS (CARPOS) is submitted through CCPOR; therefore, no additional data entry is needed for participating courts or law enforcement.

#### ***Time Frame for Entry***

The court has one business day to enter an order or proof of service into CLETS. If the court is unable to provide the notification through CLETS directly, then the court has one business day to transmit the order or proof of service to a law enforcement agency that then has one business day to enter the information into CLETS.<sup>315</sup>

### **Overview of CLETS**

CLETS is a system that law enforcement uses to view data regarding restraining orders, warrants, and other vital information in the field. When law enforcement views information in CLETS, they do not see an image of the restraining order, but rather data, as shown in figure 1 below.

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<sup>312</sup> Cal. Rules of Court, rule 1.51(e).

<sup>313</sup> Fam. Code, § 6380.

<sup>314</sup> Fam. Code, § 6380(b).

<sup>315</sup> Fam. Code, § 6380.

**Figure 1. Sample Entry of Restraining Order in CLETS**

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MATCH MADE ON NAM/SIMPSON,BART L
NAME FIELD SEARCH REVEALS:
HIT MADE ON AKA/SIMPSON, BART
FCN/000000000000
ORI/CA0379100 RE: NAM/SIMPSON,BART DOB/060689
**NOT A WARRANT RESTRAINING ORDER NOT A WARRANT**
**CAUTION/SEE MIS FIELD **
**DO NOT ARREST BASED SOLELY ON THIS RESPONSE **
THIS RESPONSE MAY BE THE SAME AS:
RESTRAINING ORDER NAM/SIMPSON,BART DOB/060689
EYE/BRO HGT/302 HAIR/BLK RAC/X SEX/M
SOC/123456789
MIS/CAT1, ADDICT
ADR/4065 46TH ST
CTY/HOLLYWOOD
COURT NAME/HOLLYWOOD STUDIOS
COURT CASE NUMBER/OCA/319000000
RECORD TYPE-ORDER AFTER HEARING
ISSUE DATE/031809 SERVED DATE/032709 TIME/1730
SERVED BY/ARNOLD,*
AGENCY/SOMO
EXPIRATION DATE/031814
IMMEDIATELY CONFIRM WITH CA0379100 SAN DIEGO CO.MRSHL SMR
TELEPHONE 619 531-4172
*****END OF ROS MESSAGE*****
```

Information is transmitted to CLETS through the California Restraining and Protective Order System (CARPOS), a restraining order database maintained by the California Department of Justice.

### ***Inter-Agency Data Sharing***

The information from CARPOS that is taken from a litigant’s CLETS form may be shared by the California Department of Justice to national entities such as the FBI’s National Crime Information Center and the National Law Enforcement Telecommunications System (NLETS) network.<sup>316</sup>

However, this information sharing is permissive and not mandatory, as California is currently not a party to the National Crime Prevention and Privacy Compact (34 U.S.C. §§ 40311–40316) and is, therefore, not legally obligated to report data to the FBI, and as NLETS is a private, nonprofit organization and not a government agency.<sup>317</sup>

<sup>316</sup> 28 U.S.C. § 534.

<sup>317</sup> Federal Bureau of Investigation, “Compact States and Territories as of December 2021,” <https://www.fbi.gov/file-repository/compact-council-states-territories-map/view>.

## **Part 10 Special Procedures for Minors (Under 18 Years Old)**

A minor 12 years of age or older may seek or oppose a protective order without a guardian, counsel, or guardian ad litem.<sup>318</sup> The court, by motion or its own discretion, may appoint a guardian ad litem to assist the minor after considering reasonable objections by the minor to specific individuals. The appointment cannot delay the issuance or denial of the order. Before appointment, the court must also consider whether the minor and guardian have divergent interests.<sup>319</sup> If the court issues an order and the minor appears without a guardian or guardian ad litem, and the minor is residing with a parent or guardian, the court must send a copy of the order to at least one parent or guardian designated by the minor, unless the court determines notice would be contrary to the best interests of the minor.<sup>320</sup>

A minor under 12 years of age, accompanied by a duly appointed and acting guardian ad litem, must be permitted to appear in court without counsel for the limited purpose of requesting or opposing a request for a temporary restraining order or injunction, or both.<sup>321</sup>

Minors or their guardian can also request that certain information be kept confidential. See page 23.

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<sup>318</sup> Code Civ. Proc., § 372(b)(1).

<sup>319</sup> Code Civ. Proc., § 372(b)(1)(D).

<sup>320</sup> Code Civ. Proc., § 372(b)(2).

<sup>321</sup> Code Civ. Proc., § 374; Fam. Code, § 6229.

**Appendix A**  
**At-A-Glance: Orders That May Be Granted in a DVRO**

<b>Order</b>	<b>Without Notice (TRO)</b>	<b>At a Noticed Hearing (ROAH)</b>
Protecting Family or Household members	Yes	Yes
Protecting information related to a minor	Yes	Yes
Order Not to Abuse	Yes	Yes
Stay-Away Orders	Yes	Yes
Move-Out Order	Yes	Yes
No Firearms (Guns), Firearm Parts, and Ammunition	Automatic	Automatic
Record Unlawful Communications	Yes	Yes
Protecting Animals	Yes	Yes
Property Control	Yes	Yes
Property Restraint Against Either Party	Yes	Yes
Debt Payment	Yes	Yes
Health and Other Insurance	Yes	Yes
Child Custody and Visitation Orders	Yes	Yes
Orders to Prevent Child Abduction	Yes	Yes
Other Orders (under Fam. Code, § 6322)	Yes	Yes
Child Support	No	Yes
Spousal Support	No	Yes
Transfer of Wireless Phone Account	No	Yes
Payments for Costs and Services (restitution)	No	Yes
Lawyer's Fees and Costs	No	Yes



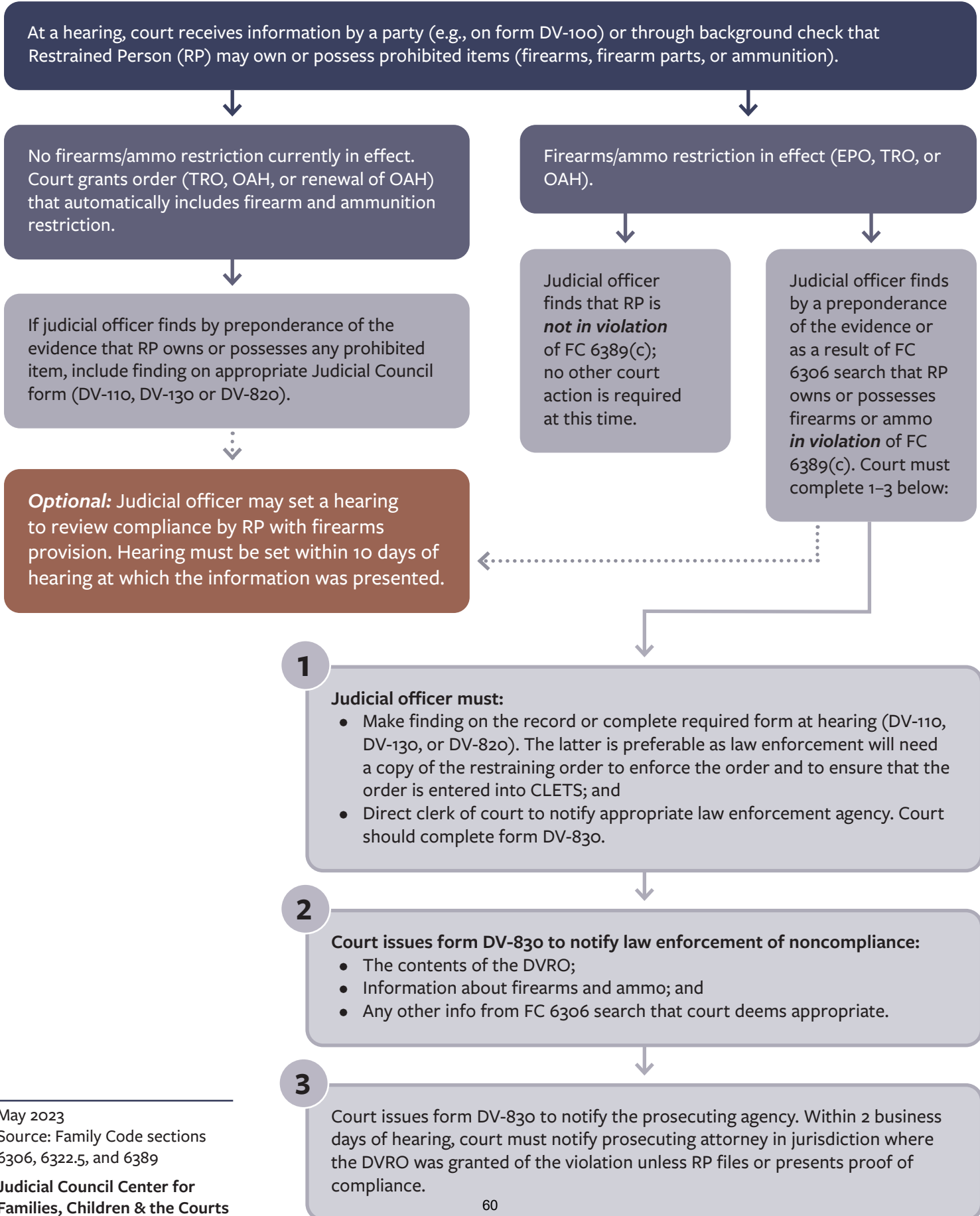
## Appendix B

### Judicial Council Forms: Domestic Violence Restraining Orders

Forms commonly used in these matters are listed below; for a complete list see [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm).

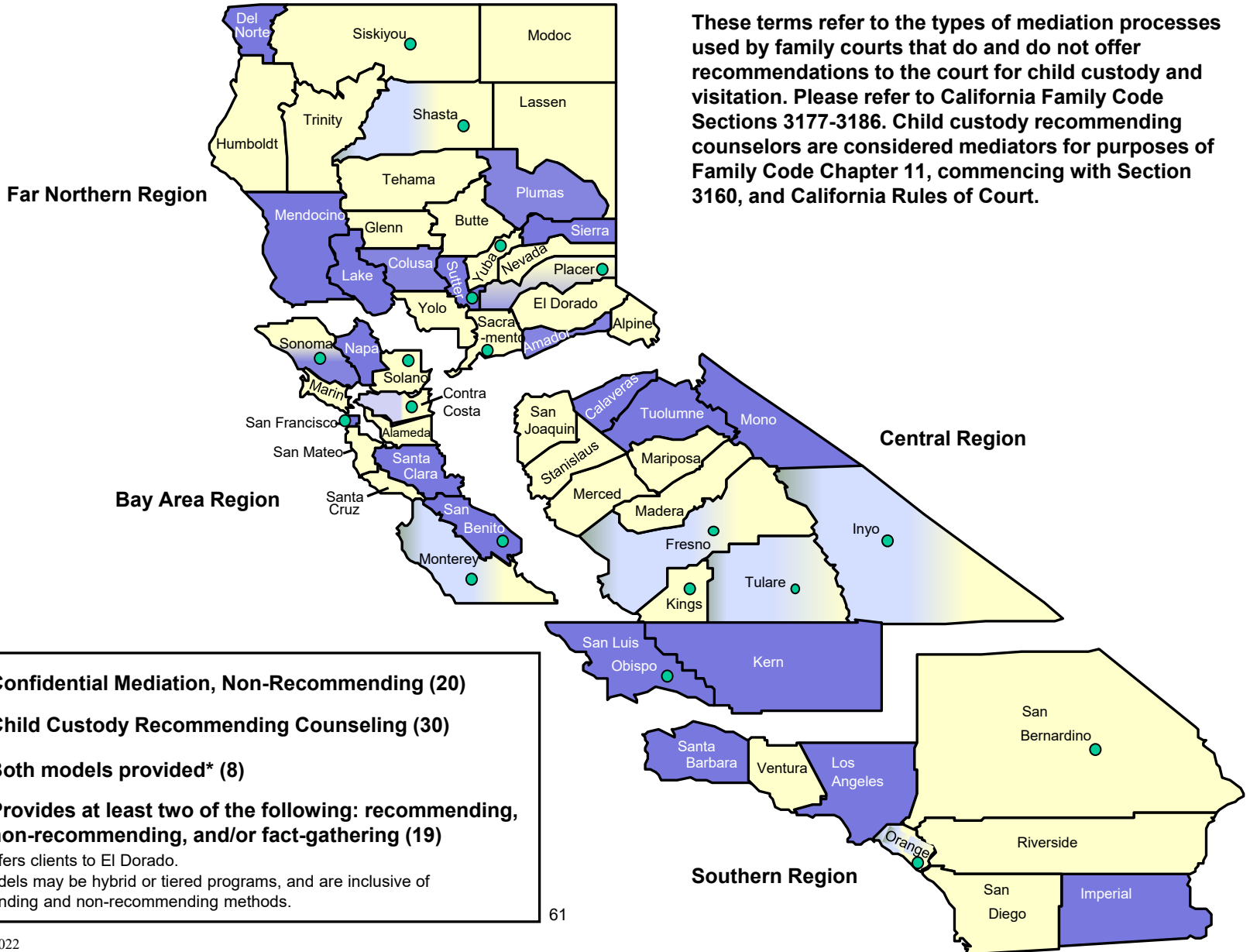
Purpose	Forms
Required at time of request	<ol style="list-style-type: none"> <li>1. DV-100</li> <li>2. DV-109 (items 3 and beyond completed by court)</li> <li>3. DV-110 (items 3 and beyond completed by court)</li> <li>4. CLETS-001 (turned into court but not filed)</li> </ol> <p>A petitioner requesting child custody or visitation orders must also complete:</p> <ol style="list-style-type: none"> <li>5. DV-105 and</li> <li>6. DV-140 (may be completed by court)</li> </ol> <p>A petitioner requesting orders to prevent child abduction must also complete:</p> <ol style="list-style-type: none"> <li>7. DV-108 and</li> <li>8. DV-145 (may be completed by court)</li> </ol>
Reschedule court hearing (continuance)	<ol style="list-style-type: none"> <li>1. DV-116 (order)</li> <li>2. DV-115 (Written request may be filed by either party. Filing this form is optional. A request may be made orally at the hearing (example: Petitioner was not able to serve request and needs more time to have other party served).)</li> </ol>
If court grants long-term restraining order	<ol style="list-style-type: none"> <li>1. DV-130</li> <li>2. DV-140 (if court grants custody or visitation orders)</li> <li>3. DV-145 (if court grants orders to prevent child abduction)</li> <li>4. FL-342 (if court makes child support order)</li> <li>5. FL-343 (if court makes spousal support order)</li> </ol>
If court makes finding that restrained person has prohibited item (firearm, firearm parts, ammunition)	<ul style="list-style-type: none"> <li>• DV-820 (Use as an attachment to DV-110, DV-116, or other order form.)</li> <li>• DV-840 (Use when DV-130 has already been issued and court finds need to set a hearing to review compliance with firearms and ammunition restrictions.)</li> <li>• DV-830 (Use when court has found restrained person non-compliant.)</li> </ul>
Renew restraining order	<ol style="list-style-type: none"> <li>1. DV-700 (request by protected party)</li> <li>2. DV-710 (issued by court)</li> <li>3. DV-730 (if court grants request to renew)</li> </ol>

# Appendix C: Compliance With Order to Relinquish Firearms, Firearm Parts, and Ammunition



# Appendix D: Map of Counties: Confidential Mediation vs. Recommending Counseling

These terms refer to the types of mediation processes used by family courts that do and do not offer recommendations to the court for child custody and visitation. Please refer to California Family Code Sections 3177-3186. Child custody recommending counselors are considered mediators for purposes of Family Code Chapter 11, commencing with Section 3160, and California Rules of Court.



**Confidential Mediation, Non-Recommending (20)**

**Child Custody Recommending Counseling (30)**

**Both models provided\* (8)**

**Provides at least two of the following: recommending, non-recommending, and/or fact-gathering (19)**

Alpine refers clients to El Dorado.  
 \*Both models may be hybrid or tiered programs, and are inclusive of recommending and non-recommending methods.