

**JUDICIAL COUNCIL OF CALIFORNIA**  
**ADMINISTRATIVE OFFICE OF THE COURTS**  
455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee  
Hon. Marvin R. Baxter, Chair  
Civil and Small Claims Advisory Committee  
Hon. Dennis M. Perluss, Chair  
Family and Juvenile Law Advisory Committee  
Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs  
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DATE: November 13, 2009

SUBJECT: Judicial Council–sponsored Legislation: Protective Orders (amend Code Civ. Proc., Welf. & Inst. Code, and Fam. Code) (Action Required)

Issue Statement

The law on protective orders and the forms to implement that law are in need of improvement. The statutes on protective orders have evolved over time in a piecemeal manner. New statutory provisions have sometimes been added to one type of protective order but not to others, even though the provisions should be applicable to all. Improvements to procedures in some types of protective order proceedings have not been carried over to other types. Considered as a whole, the protective order statutes contain inconsistencies, unnecessary statutory differences, gaps, and uncertainties.

The Judicial Council forms that implement the protective order statutes have also evolved in a piecemeal fashion. Particular forms are developed and subsequently revised in response to new legislation. Individual forms or sets of forms have been improved over time based on recommendations from the public and the courts and on suggestions from experts on plain language. But, until recently, the Judicial Council's protective order forms have not been developed or revised in a systematic manner.

The purpose of the proposal is to create greater consistency in procedures and practices, eliminate unnecessary statutory differences, fill in procedural gaps, clarify uncertain

matters, and generally improve the statutes that relate to protective orders. The improvements in the statutes should also make it possible to have more consistent and usable statewide forms for protective orders.

### Recommendation

The Policy Coordination and Liaison Committee (PCLC), the Civil and Small Claims Advisory Committee, and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council sponsor legislation to improve the statutes relating to protective orders. Specifically, the committees recommend that the council approve in concept the proposed legislation contained in the Invitation to Comment which is currently circulating for public comment. The committees further recommend that the council delegate to the PCLC the authority to finalize the legislation after the proposal has been circulated, the comments have been reviewed, and recommendations for a final version are submitted by the advisory committees.

### Rationale for Recommendation

#### *The issue*

Since 1994, California has enacted a significant number of laws designed to protect victims of domestic violence, civil harassment, elder and dependent adult abuse, and workplace violence. These laws authorize courts to issue temporary restraining orders and injunctions against persons engaging in violent, threatening, abusive, or harassing conduct.

Because many victims are self-represented, the procedures for seeking and obtaining protective orders need to be simple and effective. To help make this process work, the Judicial Council has developed extensive, standardized forms to be used in protective order proceedings. Most of these forms are in plain language and are mandatory. They are widely used and assist the public in obtaining access to the courts in proceedings relating to protective orders.

Two years ago, the Protective Orders Working Group was established to consider, in a comprehensive manner, issues relating to protective orders. The working group is composed of members from the Civil and Small Claims Advisory Committee, the Family and Juvenile Law Advisory Committee, the Criminal Law Advisory Committee, and the Domestic Violence Practice and Procedure Task Force.<sup>1</sup> While the group has been working to improve the Judicial Council protective order forms, it has identified a number of desirable statutory amendments. These amendments are basically procedural. Their enactment will make the protective order statutes clearer and more consistent and will improve the procedures for handling requests for protective orders in all types of cases.

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<sup>1</sup> The cochairs of the working group are Judges Becky Lynn Dugan and Patricia M. Lucas.

### *This proposal*

This proposal recommends that sections of the Code of Civil Procedure, Welfare and Institutions Code, and Family Code be amended to provide clearer, more consistent procedures for handling protective orders in proceedings involving civil harassment, workplace violence, elder or dependent adult abuse, juvenile law, and domestic violence. The proposed amendments relating to the protective order statutes are described in the Invitation to Comment that is provided with this report. The recommendations are summarized below:

#### *1. Terminology and definitions*

Most of the protective order statutes refer to the parties as “petitioners” and “respondents”; however, some use terminology such as “plaintiffs,” “applicants,” and “defendants.” This proposal would amend the statutes to consistently use the same “petitioner/respondent” terminology. Additionally, several of the protective order statutes would benefit from adding definitions for the terms “petitioner” and “respondent.” (See proposed Code Civ. Proc., §§ 527.6(b)(1)–(2) and 527.8(b)(1)–(2) and Welf. & Inst. Code, § 15657.03(b)(1)–(2).)

The need for clearer definitions is especially important in proceedings relating to elder or dependent adult abuse, where often someone other than the abused person is bringing the action on behalf of the person. The proposed new definition would clarify that the “petitioner” as used throughout the statute is the person to be protected. The definition would further state that a petition for a protective order may be brought on behalf of the petitioner by his or her legally appointed conservator.

For the purpose of these proceedings, the term “conservator” would be specifically defined as meaning the legally appointed conservator of the person or of the estate of the petitioner, or both. The current statute, which simply refers to the “conservator” or the “conservator of the petitioner,” is ambiguous and should be clarified.

With regard to the preceding matters, the Invitation to Comment that is circulating specifically solicits public comments on the following:

- Should the statute on elder and dependent adult abuse expressly identify any other categories of persons besides conservators who may petition on behalf of the petitioner?
- Should the definition of “conservator” include both the conservator of the person and the conservator of the estate, as proposed?

#### *2. Guardians ad litem*

Currently, the statutes on protective orders to prevent civil harassment and domestic violence do not refer to the special provisions regarding guardians ad litem applicable to

those types of cases. The statutes for those types of protective orders would be amended to include cross-references to Code of Civil Procedure section 374, which permits a minor under 12 years of age, accompanied by a duly appointed and acting guardian ad litem, to appear in court without counsel for the limited purpose of requesting or opposing a request for a temporary restraining order or an injunction or both. (See amended Code Civ. Proc., § 527.6(a)(2) and new Fam. Code, § 6229.)<sup>2</sup> Providing references to section 374 in these statutes will make the provisions regarding guardians ad litem for minors easier to locate and apply.

### *3. Cross-petitions*

The civil harassment statute currently states that a “cross-complaint” may be filed; this would be revised to refer to a “cross-petition,” which is less confusing and more accurate. (See proposed Code Civ. Proc., § 527.6(i).)

More generally, insofar as cross-petitions are fairly common, especially in civil harassment cases, comments have been invited regarding whether section 527.6 or the other protective order statutes should include any new provisions in the definitions or elsewhere to clarify issues relating to the filing and processing of cross-petitions.

To address issues relating to cross-petitions, an alternative to statutory changes might be to modify some of the Judicial Council protective order forms to indicate whether a cross-petition is involved—for example, by providing a box on the requests for orders for the petitioner to indicate if the document being filed is a cross-petition. Comments have been invited on this alternative as well.

### *4. Specification of the types of restraining orders*

Some of the current protective order statutes provide a definition of “temporary restraining order” and “injunction” that lists the specific types of protective orders that the court may issue. (See, e.g., Welf. & Inst. Code, § 15657.03(b). Other statutes do not. Identifying the specific orders in the statutes seems helpful. This proposal would add such definitions or lists to statutes that do not currently contain them. (See proposed Code Civ. Proc., §§ 527.6(c) and 527.8(e); Welf. & Inst. Code, § 213.5(a)–(b).)

### *5. Scope of orders: other protected persons*

All of the protective order statutes authorize courts to issue orders protecting not only the petitioner but also some other named persons on a showing of good cause. But how these other persons are described in the statutes is not always the same. While the Domestic Violence Prevention Act and the statute to prevent elder and dependent adult abuse refer to the additional persons to be protected simply as “other named family or household members,” the Code of Civil Procedure sections concerning civil harassment and

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<sup>2</sup> Technically, the workplace violence prevention statute might also be amended to contain a cross-reference to section 374; however, it is unlikely that minors under 12 years of age would appear through guardians ad litem in such proceedings. Hence, no cross-reference to section 374 has been included in section 527.8.

workplace violence add, after the words “other named family or household members,” the words “who reside with” [the plaintiff or employee].

In the statutes in which the words “who resides with” are omitted entirely, it appears that family members who do not reside with the petitioner may also be protected. But even in the statutes where these words are included, it is unclear whether the words apply only to household members or to both family and household members. In that case, like the other statutes, the civil harassment and workplace violence statutes would provide protection for nonresident family members. Therefore it might be clearer if the words “who reside with” were omitted from all the statutes.

The present draft of this proposal, except in purely technical respects,<sup>3</sup> does not change the existing language of the statutes relating to the protection of other persons. The language in Family Code section 6320 continues to refer to “other named family and household members,” whereas Code of Civil Procedure section 527.6 continues to add the words “who reside with” [the petitioner]. There may, however, be some benefit to clarifying the statutory language—for example, by eliminating the “who reside with” language entirely.

Comments have been specifically invited on whether this proposal should include any changes to the statutory language relating to other family and household members to be protected.

#### *6. Date of hearing*

The protective order statutes currently provide for several different and inconsistent timelines for hearings to be held on petitions for protective orders. The timelines should be standardized. This proposal recommends that hearings for protective orders in all types of cases be held within 20 days or, if good cause exists, within 25 days from the date that a petition for a temporary order is granted or denied. (The 20- and 25-day periods are found in Family Code section 6320.5 and Welfare and Institutions Code section 15657.03(d)(2).) These timelines, which have been working well for domestic violence and elder abuse prevention cases, would be extended to apply to civil harassment and workplace violence prevention cases. If no request is made for temporary orders, the hearing in all these cases would be held within 20 days or, if good cause exists, 25 days from the date the petition is filed.

#### *7. Time for acting on requests for temporary orders*

Currently, requests for issuance of temporary orders in domestic violence prevention proceedings without notice shall be granted or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be granted or denied on the next business day. (See

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<sup>3</sup> “Plaintiff” has been changed to “petitioner” in a few instances.

Fam. Code, § 246.) Statutes on other types of protective orders are silent on the time for granting or denying requests, although courts generally issue orders in those proceedings within the same time frame as in domestic violence cases. To eliminate ambiguity and standardize practices, new provisions based on Family Code section 246 prescribing the time by which temporary orders shall be granted or denied would be added to the other protective order statutes.

#### *8. Duration of orders after hearing; length of renewal of orders*

The protective order statutes currently specify varying lengths of time for the duration of orders after hearing. Depending on the statute, such orders may last up to three years or five years. This proposal would make the duration of these orders uniform: in the discretion of the court, orders after hearing would last up to five years, subject to termination or modification by the court. (This is based on current Family Code section 6345(a).) Comments have been invited on whether the duration for all orders should be up to five years or whether a shorter period should be provided for certain orders, such as in civil harassment cases.

The current statutes are also inconsistent in their treatment of requests to renew protective orders. Depending on the statute, orders after hearing may be renewed for up to three years, five years, or permanently. This proposal would provide that orders after hearing in domestic violence, civil harassment, workplace violence, and elder and dependent adult abuse prevention cases may be renewed either for five years or permanently, subject to termination or modification by the court. (This is based on current Family Code section 6345(a) and Welfare and Institutions Code section 15657.03(f).) In addition, the protective order statutes would provide that a request for renewal may be brought at any time within three months before the expiration of the order. (This is based on current Code of Civil Procedure section 527.6(d).)

#### *9. Reissuance of temporary orders*

Another area that would benefit from standardization is the procedure for the reissuance of temporary orders. Currently, the statutes have different provisions on this subject or are silent. This proposal would provide that the court may, on the filing of a declaration by the petitioner that the respondent could not be served within the time required by statute, reissue a temporary protective order previously issued and dissolved by the court for failure to serve the respondent.

The reissued order would remain in effect for a reasonable period of time necessary to accomplish service but for no more than 20 days or, if good cause appears to the court, 25 days from the date of reissuance. The reissued order must state on its face the date of expiration of the order. (These provisions are based on Welfare and Institutions Code section 15657.03(h); however, the current language stating that the reissued order “shall be made returnable on the earliest day that the business of the court will permit” would be

changed to “shall remain in effect for a reasonable period of time necessary to accomplish service.”)

Comments have been invited on this standardized reissuance procedure, including whether a definition of “good cause” for the reissuance to take 25 days should be added and, if so, how “good cause” should be defined.

#### *10. Service of orders*

Some protective order statutes explicitly address the situation in which a person named in the order has not been served personally with the order after the hearing but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court. These statutes provide that no additional proof of service is required for enforcement of the order. (See Welf. & Inst. Code, § 15657.03(i)(2); Fam. Code, § 6384(a).) Other protective order statutes are silent on this issue. This proposal would include such a provision regarding proof of service in the protective order statutes relating not only to civil harassment and workplace violence to make all statutes consistent on this point.

In addition, some statutes provide that, if the person named in a temporary restraining order is personally served with the order and a notice of hearing with respect to a restraining order or protective order based on the temporary restraining order, but the person does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order are identical to the temporary restraining order, except for the duration of the order, then the restraining order or protective order may be served on the person by first-class mail sent to the person’s most current address available to the court. (Welf. & Inst. Code, § 15657.03(i)(1); Fam. Code, § 6384(a).) This provision would be included in all protective order statutes.

Finally, the statutes implementing the previously described provisions require that the Judicial Council form for temporary orders contain a statement providing notice about these provisions. This proposal would revise the statutory notice so that it is written in plain language (based on Judicial Council form EA-120, item 19) and would include it in all the applicable statutes.

#### *11. Entry of orders into CLETS*

Currently, the protective order statutes provide various ways for protective orders and proofs of service of those orders to be entered into the California Law Enforcement Telecommunications System (CLETS). For instance, criminal protective orders and domestic violence protective orders must be transmitted to law enforcement by the court or its designee within one business day by either (1) transmitting a copy of the order to a local law enforcement agency authorized to enter orders into CLETS or, (2) with Department of Justice approval, entering the orders into CLETS directly. (Fam. Code, § 6380(a).) The Department of Justice must also be notified of other types of protective

orders. The content of information about those orders, but not the method of transmission, is specified. (See Fam. Code, § 6380(b).)

Reflecting historical practices, the protective order statutes outside the criminal and domestic violence areas still provide that the court shall order the plaintiff or the plaintiff's attorney to deliver copies of orders to law enforcement. (See Code Civ. Proc., §§ 527.6(h) and 527.8(i); see also Welf. & Inst. Code, §§ 213.5 (g) [court shall designate a person or attorney to mail a copy of orders to local law enforcement] and 15657.03(j) [court shall order the petitioner or petitioner's attorneys to deliver, or the clerk of the court to mail, copies of orders to law enforcement].)

This proposal would not change the procedures for criminal or domestic violence protective orders to be entered into CLETS. The procedures for entering juvenile protective orders into CLETS would be amended to conform to those types of cases.

For other types of cases, in addition to the current methods of transmission, this proposal would amend the statutes to allow the courts to use the same methods of transmission provided for in Family Code section 6380(a)—that is, the amendments would authorize the court or its designee to transmit the required information about protective orders within one business day to law enforcement by either (1) transmitting a copy of the order to a local law enforcement agency authorized to enter orders into CLETS or, (2) with Department of Justice approval, entering the orders into CLETS directly. This proposal will modernize the statutes to allow for the more efficient entry of protective orders into CLETS whenever possible. However, based on practical and financial considerations, the proposal retains the provisions that would still allow courts in civil harassment, workplace violence, and elder and dependent adult abuse proceedings to order the parties or their attorneys to provide copies of orders to law enforcement. Comments have been specifically invited on whether it is still necessary to retain these older, alternative methods of entry of orders into CLETS in any of the statutes.

### *12. Incorporation of references to ammunition*

Current protective order statutes contain provisions stating that persons subject to protective orders shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the order is in effect. This proposal would add, after the word firearm, "or ammunition." This reflects existing law. (See Pen. Code, §§ 12316(b)(1) and 12021(g).) Incorporating references to ammunition into each applicable statute will make the law clearer for persons seeking to understand and apply the law on protective orders.

### *13. Accompaniment by a support person*

The current civil harassment and domestic violence statutes provide that a support person may accompany the petitioner in a protective order proceeding and that, if the party is not represented by an attorney, the support person may sit at the table that is generally reserved for the party and the party's attorney. The statutes further clarify the role that the

support person is supposed to serve and give the court the discretion to remove the support person from the courtroom if the court believes that the support person is prompting, swaying, or influencing the party assisted by the support person. (See Code Civ. Proc., § 527.6(f); Fam. Code, § 6303.) Because this same provision would appear to be applicable to proceedings involving claims of elder or dependent adult abuse, this proposal would add language similar to that in the other statutes to the section of the Welfare and Institutions Code on proceedings relating to elder or dependent adult abuse. (See proposed Welf. & Inst. Code, § 15657.03(j).)

*14. Protective orders to protect students at private postsecondary institutions: Senate Bill 188 (Runner) (Stats. 2009, ch. 566)*

In 2009, new legislation was enacted that authorizes chief administrative officers at private postsecondary institutions or persons designated by them to request temporary restraining orders and injunctions to protect students who have suffered a credible threat of violence. The new postsecondary school protective order statute (Code Civ. Proc., § 527.85) is closely modeled after the current workplace violence protective order statute (Code Civ. Proc., § 527.8). The proposed legislation in the attached Invitation to Comment does not include revisions to the new statute, section 527.85. However, because the new statute contains a number of provisions similar to those in the workplace violence statute that would be changed under this proposal, the Invitation to Comment asks whether changes similar to those proposed for section 527.8 should also be made in section 527.85.

*15. Effective date of legislation*

The Protective Orders Working Group is engaged in a comprehensive revision of all of the protective order forms so that they will be up-to-date, clearer, and more consistent with one another to the extent feasible. The enactment of this proposed legislation will permit even greater harmony among, and improvement of, all of the different protective order forms. If this legislative proposal is enacted, it will take some time to incorporate all the changes recommended in this legislation into the forms and integrate the forms into the courts' case management systems. Accordingly, the Invitation to Comment invites comment on whether the operative date of the legislation should be delayed to July 1, 2011, or January 1, 2012.

Alternative Actions Considered

The working group that developed this proposal was given a charge that included identifying statutory impediments to creating greater uniformity among Judicial Council protective order forms and making recommendations for improvements and solutions.

Comments From Interested Parties

This legislative proposal is circulating for public comment. The comment period will conclude in January 2010. Based on the comments received, modifications may be made to the proposed legislation.

### Implementation Requirements and Costs

In many respects, the proposed legislation simply clarifies existing law by providing better definitions, specifying the types of orders authorized, and more clearly identifying the other persons protected under the statutes. If the legislation standardizes or otherwise changes practices or procedures for certain types of protective orders, it will require some implementation. Generally, this will mean that, where currently there are different timelines or procedures for different types of orders, there will be a new, more uniform approach.

The enactment of this legislation will mean that courts' practices, procedures, and case management systems, including the California Court Case Management System, will need to be updated to reflect the statutory changes made. While the changes will require some implementation, they should also result in simpler, more uniform practices. While there will be some immediate implementation efforts required and costs incurred, there should be long-term cost savings and efficiencies. The legislation should also provide the groundwork for future changes to be addressed in a more comprehensive, effective manner.

The legislative changes will also require some updating of, and revisions to, the Judicial Council protective order forms. These forms are currently the subject of a comprehensive review process; the changes required by this legislation would be incorporated into the final versions of the forms that are being revised. The legislation should ultimately make the forms more uniform, consistent, and easier to use.

Because the changes to procedures and forms that will result from this legislation will take time to implement, comments have been invited on whether there should be a delayed effective date, ranging from six months to one year.

Attachment

## Invitation to Comment

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| Title      | Judicial Council–Sponsored Legislation: Protective Orders<br>(amend Code Civ. Proc., Welf. & Inst. Code, and Fam. Code)  |
| Summary    | This legislative proposal would amend sections of the Code of Civil Procedure, Welfare and Institutions Code, and Family Code that provide for protective orders relating to civil harassment, workplace violence, elder and dependent adult abuse, juvenile law, and domestic violence. The purpose of the proposal is to create greater consistency in procedures and practices, eliminate unnecessary statutory differences, fill in procedural gaps, clarify uncertain matters, and generally improve the statutes that relate to protective orders.   |
| Source     | Civil and Small Claims Advisory Committee<br>Hon. Dennis M. Perluss, Chair<br><br>Family and Juvenile Law Advisory Committee,<br>Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs   |
| Staff      | Patrick O’Donnell, Supervising Attorney, Office of the General Counsel, 415-865-7665, patrick.o’donnell@jud.ca.gov<br><br>Tamara Abrams, Senior Attorney, Center for Families, Children, & the Courts, 415-865-7712, tamara.abrams@jud.ca.gov  |
| Discussion | <p><b>The Issue</b></p> <p>During the past decade and a half, California has enacted a significant number of laws designed to protect victims of domestic violence, civil harassment, elder and dependent adult abuse, and workplace violence. These laws authorize courts to issue temporary restraining orders and injunctions against persons engaging in violent, threatening, abusive, or harassing conduct.</p> <p>Because many victims are self-represented, the procedures for seeking and obtaining protective orders need to be simple and effective. To help make this process work, the Judicial Council has developed extensive, standardized forms to be used in protective order proceedings. Most of these forms are in plain language and are mandatory. They are widely used and greatly assist the public in obtaining access to the courts in proceedings relating to protective orders.</p> |

The law on protective orders and the forms to implement that law could be improved. The statutes on protective orders have evolved over time in a piecemeal manner. New statutory provisions have sometimes been added to one type of protective order but not to others, even though the provisions should be applicable to all. Improvements to procedures in some types of protective order proceedings have not been carried over to other types. Considered as a whole, the protective order statutes contain inconsistencies, unnecessary statutory differences, gaps, and uncertainties.

The Judicial Council forms that implement the protective order statutes have also evolved in a piecemeal fashion. Particular forms are developed and subsequently revised in response to new legislation. Individual forms or sets of forms have been improved over time based on recommendations from the public and the courts and on suggestions from experts on plain language. But, until recently, the Judicial Council's protective order forms have not been developed or revised in a systematic manner.

Approximately two years ago, a Protective Orders Working Group was established to consider, in a comprehensive manner, issues relating to protective orders. The working group is composed of members from the Civil and Small Claims Advisory Committee, the Family and Juvenile Law Advisory Committee, the Criminal Law Advisory Committee, and the Domestic Violence Practice and Procedure Task Force.<sup>4</sup> While the group has been working to improve the Judicial Council protective order forms, it has identified a number of desirable statutory amendments. These amendments are essentially procedural. Their enactment will make the protective order statutes clearer and more consistent and will improve the procedures for handling requests for protective orders in all types of cases.

#### This Proposal

This proposal recommends that sections of the Code of Civil Procedure, Welfare and Institutions Code, and Family Code be amended to provide clearer, more consistent procedures for handling protective orders in proceedings involving civil harassment, workplace violence, elder or dependent adult abuse, juvenile law, and domestic violence. The main proposed

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<sup>4</sup> The cochairs of the working group are Judges Becky Lynn Dugan and Patricia M. Lucas.

amendments relating to the protective order statutes are described below.

*Terminology and definitions*

Most of the protective order statutes refer to the parties as “petitioners” and “respondents”; however, some use terminology such as “plaintiffs,” “applicants,” and “defendants.” This proposal would amend the statutes to consistently use the same “petitioner/respondent” terminology.

Statutes relating to a particular type of protective order generally contain a subdivision or section providing definitions of the terms used in relation to that type of order. These definitions could be improved. In particular, several types of protective orders would benefit from adding definitions for the terms “petitioner” and “respondent.” (See proposed Code Civ. Proc., §§ 527.6(b)(1)–(2) and 527.8(b)(1)–(2); Welf. & Inst. Code, § 15657.03(b)(1)–(2).)

The need for clearer definitions is especially important in proceedings relating to elder or dependent adult abuse, where often someone other than the abused person is bringing the action on behalf of the person. The proposed new definition would clarify that the “petitioner” as used throughout the statute means the person to be protected. The section would also provide that a “petition may be brought on behalf of an abused elder or dependent adult by a conservator or other person legally authorized to seek such relief.” (Welf. & Inst. Code, § 15657.03(a)(2).)

For the purpose of the protective order proceedings, the term “conservator” would be specifically defined as meaning the legally appointed conservator of the person or of the estate of the person to be protected, or both. The current statute, which simply refers to the “conservator” or the “conservator of the petitioner,” is ambiguous, though it most likely has the same meaning as that specified in the new definition.

With regard to the preceding matters, public comments are specifically sought on the following:

- Should the statute on elder and dependent adult abuse specifically identify any other persons besides a conservator who may petition on behalf of the petitioner?<sup>5</sup>
- Should the definition of “conservator” include both the conservator of the person and the conservator of the estate, as proposed?

#### *Guardians ad litem*

Currently, the statutes on protective orders to prevent civil harassment and domestic violence do not refer to the special provisions regarding guardians ad litem applicable to those types of cases. The statutes for those types of cases would be amended to include cross-references to Code of Civil Procedure section 374, which permits a minor under 12 years of age, accompanied by a duly appointed and acting guardian ad litem, to appear in court without counsel for the limited purpose of requesting or opposing a request for a temporary restraining order or an injunction or both. (See proposed Code Civ. Proc., § 527.6(a)(2) and Fam. Code, § 6229.)<sup>6</sup> Providing references to section 374 in these statutes will make the provisions regarding guardians ad litem for minors easier to locate and apply.

#### *Cross-petitions*

The civil harassment statute currently states that a “cross-complaint” may be filed. This would be revised to refer to a “cross-petition,” which is more accurate and less confusing. (See proposed Code Civ. Proc., § 527.6(i).)

More generally, insofar as cross-petitions are fairly common, especially in civil harassment cases, comments are invited regarding whether section 527.6 or the other protective order statutes should include any new provisions in the definitions or elsewhere to clarify issues relating to the filing and processing of cross-petitions.

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<sup>5</sup> For instance, another section of the Welfare and Institutions Code defines a “representative” for the purposes of that section as a person or entity that is either (1) a “conservator, trustee, or other representative of the estate” or (2) an “attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.” (Welf. & Inst. Code, § 15610.30(d).)

<sup>6</sup> Technically, the workplace violence prevention statute might also be amended to contain a cross-reference to section 374; however, it is unlikely that minors under 12 years of age would appear through guardians ad litem in such proceedings. Hence, no cross-reference to section 374 has been included in section 526.8.

To address issues relating to cross-petitions, an alternative to statutory changes might be to modify some of the Judicial Council protective order forms to indicate whether a cross-petition is involved—for example, by providing a box on the requests for orders for the petitioner to indicate if the document being filed is a cross-petition. Comments are invited on this alternative as well.

*Specification of the types of restraining orders*

Some of the current protective order statutes provide a definition of “temporary restraining order” and “injunction” that lists the specific types of protective orders that the court may issue. (See Welf. & Inst. Code, § 15657.03(b)). Other statutes do not. Identifying the specific orders in the statutes seems helpful. This proposal would add such definitions or lists to statutes that do not currently contain them. (See proposed Code Civ. Proc., §§ 527.6(c) and 527.8(e); Welf. & Inst. Code, § 213.5(a)–(b).)

*Scope of orders: other protected persons*

All of the protective order statutes authorize courts to issue orders protecting not only the petitioner but also some other named persons on a showing of good cause. But how these other persons are described in the statutes is not always the same. While the Domestic Violence Prevention Act and the statute to prevent elder and dependent adult abuse refer to the additional persons to be protected simply as “other named family or household members,” the Code of Civil Procedure sections concerning civil harassment and workplace violence add, after the words “other named family or household members,” the words “who reside with” [the plaintiff or employee].

In the statutes in which the words “who resides with” are omitted entirely, it appears that family members who do not reside with the petitioner may also be protected. But even in the statutes where these words are included, it is unclear whether the words apply to only household members or to both family and household members. In that case, like the other statutes, the civil harassment and workplace violence statutes would provide protection for nonresident family members. So it might be clearer if the words “who reside with” were omitted from all the statutes.

The present draft of this proposal, except in purely technical

respects,<sup>7</sup> does not change the existing language of the statutes relating to the protection of other persons. The language in Family Code section 6320 continues to refer to “other named family and household members,” whereas Code of Civil Procedure section 527.6 continues to add the words “who reside with” [the petitioner]. There may, however, be some benefit to clarifying the statutory language—for example, by eliminating the “who reside with” language entirely.

Comments are invited on whether this proposal should include any changes to the statutory language relating to other family and household members to be protected. Or should the statutes be left unchanged?

#### *Date of hearing*

The protective order statutes currently provide for several different and inconsistent timelines for hearings that are held on petitions for protective orders. The timelines should be standardized. This proposal recommends that hearings for protective orders in all types of cases be held within 20 days or, if good cause exists, within 25 days, from the date that a petition for a temporary order is granted or denied. (The 20- and 25-day periods are found in Family Code section 6320.5 and Welfare and Institutions Code section 15657.03(d)(2).) These timelines, which have been working well for domestic violence and elder abuse prevention cases, would be extended to apply to civil harassment and workplace violence prevention cases. If no request is made for temporary orders, the hearing in all these cases would be held within 20 days or, if good cause exists, 25 days, from the date the petition is filed.

#### *Time for acting on requests for temporary orders*

Currently, requests for issuance of temporary orders in domestic violence prevention proceedings without notice are granted or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be granted or denied on the next business day. (See Fam. Code, § 246.) Statutes on other types of protective orders are silent on the time for granting or denying requests, although courts generally issue orders in those proceedings within the same time frame as in domestic violence

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<sup>7</sup> “Plaintiff” has been changed to “petitioner” in a few instances.

cases. To eliminate ambiguity and standardize practices, new provisions based on Family Code section 246 prescribing the time by which temporary orders shall be granted or denied would be added to the other protective order statutes.

*Duration of orders after hearing; length of renewal of orders*

The protective order statutes currently specify varying lengths of time for the duration of orders after hearing. Depending on the statute, such orders may last up to three years or five years. This proposal would make the duration of these orders uniform: in the discretion of the court, orders after hearing would last up to five years, subject to termination or modification by the court. (This is based on current Family Code section 6345(a).) Comments are invited on whether the duration for all orders should be up to five years or whether a shorter period should be provided for certain orders. In particular, should the duration of orders in civil harassment cases remain at three years?

The current statutes are also inconsistent in their treatment of requests to renew protective orders. Depending on the statute, orders after hearing may be renewed for up to three years, five years, or permanently. This proposal would provide that orders after hearing in domestic violence, civil harassment, workplace violence, and elder and dependent adult abuse prevention cases may be renewed either for five years or permanently, subject to termination or modification by the court. (This is based on current Family Code section 6345(a) and Welfare and Institutions Code section 15657.03(f).) In addition, the protective order statutes would provide that a request for renewal may be brought at any time within three months before the expiration of the order. (This is based on current Code of Civil Procedure section 527.6(d).)

*Reissuance of temporary orders*

Another area that would benefit from standardization is the procedure for the reissuance of temporary orders. Currently, the statutes have different provisions on this subject or are silent. This proposal would provide that the court may, on the filing of a declaration by the petitioner that the respondent could not be served within the time required by statute, reissue a temporary protective order previously issued and dissolved by the court for failure to serve the respondent.

The reissued order would remain in effect for a reasonable period of time necessary to accomplish service but for no more than 20 days or, if good cause appears to the court, 25 days, from the date of reissuance. The reissued order must state on its face the date of expiration of the order. (These provisions are based on Welfare and Institutions Code section 15657.03(h); however, the current language stating that the reissued order “shall be made returnable on the earliest day that the business of the court will permit” would be changed to “shall remain in effect for a reasonable period of time necessary to accomplish service.”)

Comments are invited on this standardized reissuance procedure, including whether a definition of “good cause” for the reissuance to take 25 days should be added and, if so, how “good cause” should be defined.

#### *Service of orders*

Some protective order statutes explicitly address the situation in which a person named in the order has not been served personally with the order after the conclusion of the hearing but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court. These statutes provide that no additional proof of service is required for enforcement of the order. (See Welf. & Inst. Code, § 15657.03(i)(2); Fam. Code, § 6384(a).) Other protective order statutes are silent on this situation. This proposal would include this provision regarding proofs of service in the protective order statutes relating not only to elder and dependent adult abuse and domestic violence but also to civil harassment and workplace violence.

In addition, some statutes provide that, if the person named in a temporary restraining order is personally served with the order and a notice of hearing with respect to a restraining order or protective order based on the temporary restraining order, but the person does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order are identical to the temporary restraining order, except for the duration of the order, then the restraining order or protective order may be served on the person by first-class mail sent to that person at the person’s most current address available to the court. (Welf. & Inst. Code, § 15657.03(i)(1); Fam. Code, § 6384(a).) This provision would generally be included in the

protective order statutes.

Finally, the statutes implementing the previously described provisions require that the Judicial Council form for temporary orders contain a statement providing notice about these provisions. This proposal would revise the statutory notice so that it is written in plain language (based on Judicial Council form EA-120, item 19) and would include it in all the applicable statutes.

#### *Entry of orders into CLETS*

Currently, the protective order statutes provide various ways for protective orders and proofs of service of those orders to be entered into the California Law Enforcement Telecommunications System (CLETS). For instance, criminal protective orders and domestic violence protective orders must be transmitted to law enforcement by the court or its designee within one business day by either (1) transmitting a copy of the order to a local law enforcement agency authorized to enter orders into CLETS or, (2) with Department of Justice approval, entering the orders into CLETS directly. (Fam. Code, § 6380(a).) The Department of Justice must also be notified of other types of protective orders. The content, but not the method of transmission, of information about those orders is specified. (See Fam. Code, § 6380(b).)

Reflecting historical practices, the protective order statutes outside the criminal and domestic violence areas still provide that the court shall order the plaintiff or the plaintiff's attorney to deliver copies of orders to law enforcement. (See Code Civ. Proc., §§ 527.6(h) and 527.8(i); see also Welf. & Inst. Code, §§ 213.5(g) [court shall designate a person or attorney to mail a copy of orders to local law enforcement] and 15657.03(j) [court shall order the petitioner or petitioner's attorneys to deliver, or the clerk of the court to mail, copies of orders to law enforcement].)

This proposal would not change the procedures for criminal or domestic violence protective orders to be entered into CLETS. The procedures for entering juvenile protective orders into CLETS would be amended to conform to those types of cases.

For other types of cases, in addition to the current methods of

transmission, this proposal would amend the statutes to allow the courts to use the same methods of transmission provided for in Family Code section 6380(a)—that is, the amendments would authorize the court or its designee to transmit the required information about protective orders within one business day to law enforcement by either (1) transmitting a copy of the order to a local law enforcement agency authorized to enter orders into CLETS or, (2) with Department of Justice approval, entering the orders into CLETS directly. In other words, this proposal will modernize the statutes to allow for the more efficient entry of protective orders into CLETS whenever possible. However, based on practical and financial considerations, the proposal retains the older provisions that would still allow courts in civil harassment, workplace violence, and elder and dependent adult abuse proceedings to order the parties or their attorneys to provide copies of orders to law enforcement. Comments are specifically invited on whether it is still necessary to retain these older, alternative methods of entry of orders into CLETS in any of the statutes.

*Incorporation of references to ammunition*

The current protective order statutes contain provisions stating that persons subject to protective orders shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the order is in effect. This proposal would add, after the word firearm, “or ammunition.” This reflects existing law. (See Pen. Code, §§ 12316(b)(1) and 12021(g).) Incorporating references to ammunition into each applicable statute will make the law clearer for persons seeking to understand and apply the law on protective orders.

*Accompaniment by a support person*

The current civil harassment and domestic violence statutes provide that a support person may accompany the petitioner in a protective order proceeding and that, if the party is not represented by an attorney, the support person may sit at the table that is generally reserved for the party and the party’s attorney. The statutes further clarify the role that the support person is supposed to serve and give the court the discretion to remove the support person from the courtroom if the court believes that the support person is prompting, swaying, or influencing the party assisted by the support person. (See Code Civ. Proc., § 527.6(f); Fam. Code, § 6303.) Because this same provision would appear

to be applicable to proceedings involving claims of elder or dependent adult abuse, this proposal would add language similar to that in the other statutes to the section of the Welfare and Institutions Code on proceedings relating to elder or dependent adult abuse. (See proposed Welf. & Inst. Code, § 15657.03(j).)

*Protective orders to protect students at private postsecondary institutions: Senate Bill 188 (Runner) (Stats. 2009, ch. 566)*

In 2010, legislation was enacted that authorizes chief administrative officers at private postsecondary institutions or persons designated by them to request temporary restraining orders and injunctions to protect students who have suffered a credible threat of violence. The new postsecondary school protective order statute (Code Civ. Proc., § 527.85) is closely modeled after the current workplace violence protective order statute (Code Civ. Proc., § 527.8). The proposed legislation attached to this Invitation to Comment does not include revisions to the new statute, section 527.85. However, because the new statute contains a number of provisions similar to those in the workplace violence statute that would be changed under this proposal, this invitation asks whether changes similar to those proposed for section 527.8 should also be made in section 527.85. Also, it appears that cross-references to section 527.85 should be added to some of the protective order statutes, such as Code of Civil Procedure section 527.9 and Family Code section 6380. Such cross-references might be included in the proposed legislation.

*Effective date of legislation*

The Protective Orders Working Group is engaged in a comprehensive revision of all of the protective order forms so that they will be up-to-date, clearer, and more consistent with one another to the extent feasible. The enactment of this proposed legislation will permit even greater harmony among, and improvement of, all of the different protective order forms.

If this legislative proposal is enacted, it will take some time to incorporate all the changes recommended in this legislation into the forms and to integrate the forms into the courts' case management systems. Accordingly, the final issue raised in this Invitation to Comment is whether the effective date for the legislation should be delayed if it is introduced next year, and, if so, whether the legislation should become effective on July 1,

2011, or January 1, 2012. Comments are specifically invited on this issue.

Attachment

The Code of Civil Procedure, Welfare and Institutions Code, and Family Code would be amended to read as follows:

**Code of Civil Procedure**

**[Civil Harassment]**

*[COMMENT: Section 527.6, on civil harassment, would be amended as indicated below. All of the protective order statutes have been revised to consistently use the terms “petitioner” and “respondent.”]*<sup>8</sup>

527.6. (a) (1) A person who has suffered harassment as defined in subdivision (b)(3) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section.

(2) A minor under 12 years of age, accompanied by a duly appointed and acting guardian ad litem, shall 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, under this section as provided in section 374.

(b) For the purposes of this section,:

(1) “Petitioner” means the person to be protected by the temporary restraining order and injunction and, if the court grants the petition, the protected person.

(2) “Respondent” means the person against whom the temporary restraining order and injunction are sought and, if the petition is granted, the restrained person.

(3) “Harassment” is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the ~~plaintiff~~ petitioner.

~~As used in this subdivision:~~

~~(4)~~(4) “Unlawful violence” is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

~~(2)~~(5) “Credible threat of violence” is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

~~(3)~~(6) “Course of conduct” is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the

<sup>8</sup> The italicized comments in this Invitation to Comment are provided to assist the members of the public who are reviewing this proposal in understanding the background and rationale for the proposed changes. The comments will not be part of the final report or the legislation.

1 use of public or private mails, interoffice mail, fax, or computer e-mail. Constitutionally  
2 protected activity is not included within the meaning of “course of conduct.”

3  
4 *[Two new subdivisions (c) and (d)—similar to Welfare and Institutions Code section*  
5 *15657.03(b)(1)—would be added describing what may be contained in the temporary*  
6 *restraining order or injunction and who else may be protected. These subdivisions would*  
7 *read as follows:]*

8  
9 (c) “Temporary restraining order” and “injunction” mean orders that include any of the  
10 following restraining orders, whether issued ex parte, after notice and hearing, or in a  
11 judgment:

12 (1) An order enjoining a party from harassing, intimidating, molesting, attacking,  
13 striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning  
14 (including, but not limited to, making annoying telephone calls as described in Section  
15 653m of the Penal Code), destroying the personal property of, contacting (either directly  
16 or indirectly, by mail or otherwise), or coming within a specified distance of, or  
17 disturbing the peace of the petitioner.

18 (2) An order enjoining a party from specified behavior that the court determines is  
19 necessary to effectuate orders described in paragraph (1).

20  
21 (d) In the discretion of the court, on a showing of good cause, a temporary restraining  
22 order or injunction issued under this section may include other named family or  
23 household members who reside with the petitioner.

24  
25 *[COMMENT: With the addition of new (d), the last sentence of new (e) below would be*  
26 *deleted as it would be redundant:]*

27  
28 ~~(e)(e) Upon filing a petition for an injunction under this section, the plaintiff petitioner~~  
29 ~~may obtain a temporary restraining order in accordance with Section 527, except to the~~  
30 ~~extent this section provides a rule that is inconsistent. The temporary restraining order~~  
31 ~~may include any of the restraining orders described in subdivision (c). A temporary~~  
32 ~~restraining order may be issued with or without notice upon an affidavit based on a~~  
33 ~~declaration that, to the satisfaction of the court, shows reasonable proof of harassment of~~  
34 ~~the plaintiff petitioner by the defendant respondent, and that great or irreparable harm~~  
35 ~~would result to the plaintiff petitioner. ~~In the discretion of the court, and on a showing of~~~~  
36 ~~good cause, a temporary restraining order or injunction, issued under this section may~~  
37 ~~include other named family or household members who reside with the plaintiff.~~

38  
39 *[COMMENT: The following subdivision based on Family Code section 246 would be*  
40 *added to this section and to the workplace violence and elder and dependent adult abuse*  
41 *statutes. Adding this provision will clarify an ambiguity under current law concerning the*  
42 *timeline for acting on requests for temporary orders other than in domestic violence*  
43 *proceedings: ]*

1  
2 (f) A request for the issuance of a temporary restraining order without notice under this  
3 section shall be granted or denied on the same day that the petition is submitted to the  
4 court, unless the petition is filed too late in the day to permit effective review, in which  
5 case the order shall be granted or denied on the next day of judicial business in sufficient  
6 time for the order to be filed that day with the clerk of the court.

7  
8 (g) A temporary restraining order issued under this section shall remain in effect, at the  
9 court's discretion, for a period not to exceed ~~15~~ 20 days, or, if the court extends the time  
10 for hearing under subdivision ~~(d)~~ (h), not to exceed ~~22~~ 25 days, unless otherwise  
11 modified or terminated by the court.

12  
13 ~~(d)~~ (h) Within ~~15~~ 20 days, or, if good cause appears to the court, ~~22~~ 25 days, from the  
14 date ~~the temporary restraining order is issued~~ that a petition for a temporary order is  
15 granted or denied, a hearing shall be held on the petition for the injunction. If no request  
16 for temporary orders is made, the hearing shall be held within 20 days, or, if good cause  
17 appears to the court, 25 days, from the date that the petition is filed.

18  
19 *[COMMENT: The preceding provision on the time for hearing should be standardized*  
20 *for all the types of protective orders, to the extent feasible. The 20- and 25-day periods*  
21 *are found in Family Code section 6320.5 and Welfare and Institutions Code section*  
22 *15657.03 (d)(2). Family Code section 6320.5 calculates the time "from the date of the*  
23 *order" denying the petition. The proposed new language above was selected because it is*  
24 *consistent with the domestic violence statute, the most recently enacted version of this*  
25 *provision.*

26  
27 *It may be noted that one protective order statute, the workplace violence statute,*  
28 *calculates the time for the hearing from "the filing of the petition" rather than the date*  
29 *the temporary order is issued, granted, or denied. (See current Code Civ. Proc., §*  
30 *527.8(f).) Unless the workplace violence approach is used, a new sentence such as the*  
31 *last one in (h) needs to be added to cover the situation where no temporary order is*  
32 *sought and so no order is granted or denied.]*

33  
34 ~~(i)The defendant respondent~~ (i)The defendant respondent may file a response that explains, excuses, justifies, or  
35 denies the alleged harassment or may file a cross-~~complaint~~ petition under this section.

36  
37 (j) At the hearing, the judge shall receive any testimony that is relevant, and may make  
38 an independent inquiry. If the judge finds by clear and convincing evidence that unlawful  
39 harassment exists, an injunction shall issue prohibiting the harassment.

40  
41 ~~(k)(1) An injunction issued pursuant to this section shall have a duration of not more~~  
42 ~~than three years. At any time within the three months before the expiration of the~~  
43 ~~injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition~~

1 ~~for an injunction under this section.~~ In the discretion of the court, an order issued after  
2 notice and hearing under this section may have a duration of not more than five years,  
3 subject to termination or modification by further order of the court either on written  
4 stipulation filed with the court or on the motion of a party. These orders may be renewed,  
5 upon the request of a party, either for five years or permanently, without a showing of  
6 any further harassment since the issuance of the original order, subject to termination or  
7 modification by further order of the court either on written stipulation filed with the court  
8 or on the motion of a party. The request for renewal may be brought at any time within  
9 the three months before the expiration of the order.

10  
11 (2) The failure to state the expiration date on the face of the form creates an order with  
12 a duration of three years from the date of issuance.

13  
14 *[COMMENT: Revised Code of Civil Procedure section 527.6(d) (new subdivision (k)) is*  
15 *based on Family Code section 6345(a) and (c). The renewal provision in (k)(1) retains*  
16 *the requirement in the current statute that the request shall be made within three months*  
17 *before the expiration of the injunction; and this three-month provision has been added to*  
18 *the other protective order statutes.]*

19  
20 ~~(e)~~ (l) This section does not preclude either party from representation by private counsel  
21 or from appearing on the party's own behalf.

22  
23 ~~(f)~~ (m) In a proceeding under this section if there are allegations of unlawful violence or  
24 credible threats of domestic violence, a support person may accompany a party in court  
25 and, if the party is not represented by an attorney, may sit with the party at the table that  
26 is generally reserved for the party and the party's attorney. The support person is present  
27 to provide moral and emotional support for a person who alleges he or she is a victim of  
28 ~~domestic~~ violence. The support person is not present as a legal adviser and may not  
29 provide legal advice. The support person may assist the person who alleges he or she is a  
30 victim of ~~domestic~~ violence in feeling more confident that he or she will not be injured or  
31 threatened by the other party during the proceedings if the person who alleges he or she is  
32 a victim of ~~domestic~~ violence and the other party are required to be present in close  
33 proximity. This subdivision does not preclude the court from exercising its discretion to  
34 remove the support person from the courtroom if the court believes the support person is  
35 prompting, swaying, or influencing the party assisted by the support person.

36  
37 ~~(g)~~ (n) Upon the filing of a petition for an injunction under this section, the ~~defendant~~  
38 respondent shall be personally served with a copy of the petition, temporary restraining  
39 order, if any, and notice of hearing of the petition. Service shall be made at least five days  
40 before the hearing. The court may, for good cause, on motion of the ~~plaintiff~~ petitioner or  
41 on its own motion, shorten the time for service on the ~~defendant~~ respondent.

1 *[The following subdivision based on Family Code section 6302 would be added to this*  
2 *section:]*

3  
4 (o) A notice of hearing under this section shall notify the respondent that if he or she  
5 does not attend the hearing, the court may make orders against him or her that could last  
6 up to five years.

7  
8 *[COMMENT: The following provisions on reissuance and service based on Welfare and*  
9 *Institutions Code section 15657.03(h)–(i) and Family Code section 6384 would be*  
10 *added:]*

11  
12 (p)(1) The court may, upon the filing of a declaration by the petitioner that the  
13 respondent could not be served within the time required by statute, reissue an order  
14 previously issued and dissolved by the court for failure to serve the respondent. The  
15 reissued order shall remain in effect for a reasonable period of time necessary to  
16 accomplish service, but for no more than 20 days, or, if good cause appears to the court,  
17 25 days, from the date of reissuance.

18 (2) The reissued order shall state on its face the date of expiration of the order.

19  
20 (q)(1) If a person named in an order issued under this section, after a hearing, has not  
21 been served personally with the order but has received actual notice of the existence and  
22 substance of the order through personal appearance in court to hear the terms of the order  
23 from the court, no additional proof of service is required for enforcement of the order.

24 (2) If the person named in a temporary restraining order is personally served with the  
25 order and notice of hearing with respect to a restraining order or protective order based  
26 on the temporary restraining order, but the person does not appear at the hearing, either  
27 personally or by an attorney, and the terms and conditions of the restraining order or  
28 protective order are identical to the temporary restraining order, except for the duration of  
29 the order, then the restraining order or protective order may be served on the person by  
30 first-class mail sent to that person at the most current address for the person available to  
31 the court.

32 (3) The judicial form for temporary orders issued pursuant to this subdivision shall  
33 contain a statement in substantially the following form:

34  
35 *[COMMENT: The following language is based on the statement contained in current*  
36 *form EA-120, item 19. It is similar to the all-capitalized text of the statement in Welfare*  
37 *and Institutions Code section 15657.03(i)(3) but is clearer:]*

38  
39 “If you have been personally served with a temporary restraining order and notice of  
40 hearing, but you do not appear at the hearing either in person or by a lawyer, and a  
41 restraining order that does not differ from the previous temporary restraining order is  
42 issued at the hearing, a copy of the restraining order will be served on you by mail at the  
43 following address (insert the address of the restrained person):

1  
2 “If that address is not correct or you wish to verify that the temporary restraining order  
3 was converted to a restraining order at the hearing without substantive change and to find  
4 out the duration of that order, contact the clerk of the court.

5  
6 “If both you and the person protected by the order are personally present at the hearing  
7 where the order is issued, no additional proof of service will be required.”

8  
9 *[COMMENT: The amended text of (r)(1) below is based on current Code of Civil*  
10 *Procedure section 527.6(o). The text of (r)(2) is based on current Welfare and*  
11 *Institutions Code section 15657.03(j)(1). The alternative procedure provided in new*  
12 *subdivision (r)(3) below, for getting orders entered into CLETS, is based on Family Code*  
13 *section 6380(a)–(b).]*

14  
15 (h)(r)(1) Information on any temporary restraining order or injunction relating to civil  
16 harassment issued by a court pursuant to this section shall be transmitted to the  
17 Department of Justice in accordance with either subparagraph (2) or (3) below.

18 (2) The court shall order the ~~plaintiff petitioner~~ or the attorney for the ~~plaintiff~~  
19 ~~petitioner~~ to deliver a copy of each temporary restraining order or injunction, or  
20 ~~modification or termination thereof, granted under this section~~ an order issued under this  
21 section, or a reissuance, an extension, a modification, or a termination of the order, and  
22 any subsequent proof of service, by the close of the business day on which the order, was  
23 ~~granted, to the law enforcement agencies within the court’s discretion as are requested by~~  
24 ~~the plaintiff~~ reissuance, extension, modification, or termination was made, to a law  
25 enforcement agency having jurisdiction over the residence of the petitioner and to any  
26 additional law enforcement agencies within the court’s discretion as are requested by the  
27 petitioner.

28 (3) Alternatively, the court or its designee shall transmit within one business day to law  
29 enforcement personnel all information required under Family Code section 6380(b)  
30 regarding any order issued under this section, or a reissuance, an extension, a  
31 modification, or a termination of the order, and any subsequent proof of service, by either  
32 one of the following methods:

33 (A) Transmitting a physical copy of the order or proof of service to a local law  
34 enforcement agency authorized by the Department of Justice to enter orders into CLETS.

35 (B) With the approval of the Department of Justice, entering the order or proof of  
36 service into CLETS directly.

37 (3) Each appropriate law enforcement agency shall make available information as to the  
38 existence and current status of these orders to law enforcement officers responding to the  
39 scene of reported harassment.

40 (4) An order issued under this section shall, on request of the ~~plaintiff petitioner~~, be  
41 served on the ~~defendant respondent~~, whether or not the ~~defendant respondent~~ has been  
42 taken into custody, by any law enforcement officer who is present at the scene of reported  
43 harassment involving the parties to the proceeding. The ~~plaintiff~~ ~~petitioner~~ shall provide

1 the officer with an endorsed copy of the order and a proof of service that the officer shall  
2 complete and send to the issuing court.

3 (5) Upon receiving information at the scene of an incident of harassment that a  
4 protective order has been issued under this section, or that a person who has been taken  
5 into custody is the subject of an order, if the protected person cannot produce a certified  
6 copy of the order, a law enforcement officer shall immediately attempt to verify the  
7 existence of the order.

8 (6) If the law enforcement officer determines that a protective order has been issued,  
9 but not served, the officer shall immediately notify the ~~defendant~~ respondent of the terms  
10 of the order and shall at that time also enforce the order. Verbal notice of the terms of the  
11 order shall constitute service of the order and is sufficient notice for the purposes of this  
12 section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the  
13 Penal Code.

14  
15 (i)(s) The prevailing party in any action brought under this section may be awarded  
16 court costs and attorney's fees, if any.

17  
18 (j)(t) Any willful disobedience of any temporary restraining order or injunction granted  
19 under this section is punishable pursuant to Section 273.6 of the Penal Code.

20  
21 *[COMMENT: Subdivision (u)(1) and (3) below would be amended to include*  
22 *ammunition, which reflects existing law. See Penal Code sections 12316(b)(1) and*  
23 *12021(g). Identifying ammunition in this subdivision will make it clearer that the*  
24 *restrictions apply to ammunition as well as firearms.]*

25  
26 (k)(u) (1) A person subject to a protective order issued under this section shall not own,  
27 possess, purchase, receive, or attempt to purchase or receive a firearm or ammunition  
28 while the protective order is in effect.

29 (2) The court shall order a person subject to a protective order issued under this section  
30 to relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

31 (3) Every person who owns, possesses, purchases or receives, or attempts to purchase  
32 or receive a firearm or ammunition while the protective order is in effect is punishable  
33 pursuant to subdivision (g) of Section 12021 of the Penal Code.

34  
35 (l)(v) This section does not apply to any action or proceeding covered by Title 1.6C  
36 (commencing with Section 1788) of the Civil Code or by Division 10 (commencing with  
37 Section 6200) of the Family Code. This section does not preclude a ~~plaintiff~~ petitioner  
38 from using other existing civil remedies.

39  
40 *[The language in subdivision (w)(1) below would be modified to be consistent with Code*  
41 *of Civil Procedure section 527.8 (m).]*

1     ~~(m)~~ (w) (1) The Judicial Council shall ~~promulgate~~ develop forms, and instructions  
2     ~~therefor, and rules for service of process, scheduling of hearings, and relating to any other~~  
3     ~~matters required by~~ in this section. The petition and response forms shall be simple and  
4     concise, and their use by parties in actions brought pursuant to this section shall be  
5     mandatory.

6  
7     ~~(n)~~ (2) A temporary restraining order or injunction relating to civil harassment or  
8     ~~domestic violence~~ issued by a court pursuant to this section shall be issued on forms  
9     adopted by the Judicial Council of California and that have been approved by the  
10    Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code.  
11    However, the fact that an order issued by a court pursuant to this section was not issued  
12    on forms adopted by the Judicial Council and approved by the Department of Justice  
13    shall not, in and of itself, make the order unenforceable.

14  
15    ~~[COMMENT: If (r)(1)–(3) are added as proposed above, the following subdivision would~~  
16    ~~no longer be necessary:]~~

17  
18    ~~(o) Information on any temporary restraining order or injunction relating to harassment~~  
19    ~~or domestic violence issued by a court pursuant to this section shall be transmitted to the~~  
20    ~~Department of Justice in accordance with subdivision (b) of Section 6380 of the Family~~  
21    ~~Code.~~

22  
23    ~~(p)~~ (x) There is no filing fee for a petition that alleges that a person has inflicted or  
24    threatened violence against the petitioner, or stalked the petitioner, or acted or spoken in  
25    any other manner that has placed the petitioner in reasonable fear of violence, and that  
26    seeks a protective or restraining order or injunction restraining stalking or future violence  
27    or threats of violence, in any action brought pursuant to this section. No fee shall be paid  
28    for a subpoena filed in connection with a petition alleging these acts. No fee shall be paid  
29    for filing a response to a petition alleging these acts.

30  
31    ~~(q)~~ (y) (1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the  
32    Government Code, there shall be no fee for the service of process of a protective order, a  
33    restraining order, or an injunction to be issued under this section, if ~~any~~ either of the  
34    following conditions apply:

35    (A) The protective order, restraining order, or injunction issued pursuant to this section  
36    is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

37    (B) The protective order, restraining order, or injunction issued pursuant to this section  
38    is based ~~upon~~ on unlawful violence or a credible threat of violence.

39    ~~(C) The protective order, restraining order, or injunction is issued pursuant to Section~~  
40    ~~6222 of the Family Code.~~

41    (2) The Judicial Council shall prepare and develop application forms for applicants who  
42    wish to avail themselves of the services described in this subdivision.

43

1 [Workplace Violence]

2  
3 [COMMENT: Section 527.8 on workplace violence would be amended as indicated  
4 below.]

5  
6 527.8. (a) Any employer, whose employee has suffered unlawful violence or a credible  
7 threat of violence from any individual, that can reasonably be construed to be carried out  
8 or to have been carried out at the workplace, may seek a temporary restraining order and  
9 an injunction on behalf of the employee and, at the discretion of the court, any number of  
10 other employees at the workplace, and, if appropriate, other employees at other  
11 workplaces of the employer.

12  
13 (b) For the purposes of this section:

14 (1) “Petitioner” means the employer that petitions under subdivision (a) for a temporary  
15 restraining order and injunction.

16 (2) “Respondent” means the person against whom the temporary restraining order and  
17 injunction are sought and, if the petition is granted, the restrained person.

18 ~~(1)~~(3) “Unlawful violence” is any assault or battery, or stalking as prohibited in Section  
19 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of  
20 others.

21 ~~(2)~~(4) “Credible threat of violence” is a knowing and willful statement or course of  
22 conduct that would place a reasonable person in fear for his or her safety, or the safety of  
23 his or her immediate family, and that serves no legitimate purpose.

24 ~~(3)~~(5) “Course of conduct” is a pattern of conduct composed of a series of acts over a  
25 period of time, however short, evidencing a continuity of purpose, including following or  
26 stalking an employee to or from the place of work; entering the workplace; following an  
27 employee during hours of employment; making telephone calls to an employee; or  
28 sending correspondence to an employee by any means, including, but not limited to, the  
29 use of the public or private mails, interoffice mail, fax, or computer e-mail.

30  
31 (c) This section does not permit a court to issue a temporary restraining order or  
32 injunction prohibiting speech or other activities that are constitutionally protected, or  
33 otherwise protected by Section 527.3 or any other provision of law.

34  
35 (d) For purposes of this section, the terms “employer” and “employee” mean persons  
36 defined in Section 350 of the Labor Code. “Employer” also includes a federal agency, the  
37 state, a state agency, a city, county, or district, and a private, public, or quasi-public  
38 corporation, or any public agency thereof or therein. “Employee” also includes the  
39 members of boards of directors of private, public, and quasi-public corporations and  
40 elected and appointed public officers. For purposes of this section only, “employee” also  
41 includes a volunteer or independent contractor who performs services for the employer at  
42 the employer’s worksite.

1 *[Two new subdivisions (e) and (f) —similar to Welfare and Institutions Code section*  
2 *15657.03(b)(1)—would be added describing what may be contained in the temporary*  
3 *restraining order or injunction and who else may be protected:]*  
4

5 (e) For the purposes of this section, “temporary restraining order” and “injunction”  
6 mean orders that include any of the following restraining orders, whether issued ex parte,  
7 after notice and hearing, or in a judgment:

8 (1) An order enjoining a party from harassing, intimidating, molesting, attacking,  
9 striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning  
10 (including, but not limited to, making annoying telephone calls as described in Section  
11 653m of the Penal Code), destroying the personal property of, contacting (either directly  
12 or indirectly, by mail or otherwise), or coming within a specified distance of, or  
13 disturbing the peace of the employee.

14 (2) An order enjoining a party from specified behavior that the court determines is  
15 necessary to effectuate orders described in paragraph (1).  
16

17 (f) In the discretion of the court, on a showing of good cause, a temporary restraining  
18 order or injunction issued under this section may include other named family or  
19 household members who reside with the employee, or other persons employed at his or  
20 her workplace or workplaces.  
21

22 *[COMMENT: With the addition of new (f), the last sentence of new (g) below would be*  
23 *eliminated as redundant.]*  
24

25 ~~(e)(g) Upon filing a petition for an injunction under this section, the plaintiff petitioner~~  
26 ~~may obtain a temporary restraining order in accordance with subdivision (a) of Section~~  
27 ~~527, if the plaintiff petitioner also files an affidavit a declaration that, to the satisfaction~~  
28 ~~of the court, shows reasonable proof that an employee has suffered unlawful violence or a~~  
29 ~~credible threat of violence by the defendant respondent, and that great or irreparable~~  
30 ~~harm would result to an employee. The temporary restraining order may include any of~~  
31 ~~the protective orders described in subdivision (e). In the discretion of the court, and on a~~  
32 ~~showing of good cause, a temporary restraining order or injunction issued under this~~  
33 ~~section may include other named family or household members who reside with the~~  
34 ~~employee, or other persons employed at his or her workplace or workplaces.~~  
35

36 *[The following subdivision based on Family Code section 246 would be added to this*  
37 *section and to the sections on civil harassment and on elder and dependent adult abuse:]*  
38

39 (h) A request for the issuance of a temporary restraining order without notice under this  
40 section shall be granted or denied on the same day that the petition is submitted to the  
41 court, unless the petition is filed too late in the day to permit effective review, in which  
42 case the order shall be granted or denied on the next day of judicial business in sufficient  
43 time for the order to be filed that day with the clerk of the court.

1  
2 (i) A temporary restraining order granted under this section shall remain in effect, at the  
3 court's discretion, for a period not to exceed ~~15~~ 20 days, or, if the court extends the time  
4 for hearing under subdivision (h), not to exceed 25 days, unless otherwise modified or  
5 terminated by the court.

6  
7 ~~(f)(j)~~ Within 20 days, or, if good cause appears to the court, 25 days, of the filing of  
8 the petition from the date that a petition for a temporary order is granted or denied, a  
9 hearing shall be held on the petition for the injunction. If no request for temporary orders  
10 is made, the hearing shall be held within 20 days, or, if good cause appears to the court,  
11 25 days, from the date that the petition is filed.

12  
13 *[COMMENT: This provision on the time for hearing has been standardized for all the*  
14 *types of protective orders, to the extent feasible. The 20- and 25-day periods are found in*  
15 *Family Code section 6320.5 and Welfare and Institutions Code section 15657.03(d)(2).*  
16 *Family Code section 6320.5 calculates the time "from the date of the order" denying the*  
17 *petition. The proposed new language above was chosen because it is consistent with the*  
18 *domestic violence statute, the most recently enacted version of this provision.*

19  
20 *It may be noted that the current workplace violence statute calculates the time for the*  
21 *hearing from "the filing of the petition" rather than the date the temporary order is*  
22 *issued, granted, or denied. Unless the workplace violence approach is used in all the*  
23 *statutes, a new sentence, such as the last one in (j), needs to be added to cover the*  
24 *situation where no temporary order is sought and so no order is granted or denied.]*

25  
26 (k) The ~~defendant~~ respondent may file a response that explains, excuses, justifies, or  
27 denies the alleged unlawful violence or credible threats of violence ~~or may file a cross-~~  
28 ~~complaint under this section.~~

29  
30 (l) At the hearing, the judge shall receive any testimony that is relevant and may make  
31 an independent inquiry. Moreover, if the ~~defendant~~ respondent is a current employee of  
32 the entity requesting the injunction, the judge shall receive evidence concerning the  
33 employer's decision to retain, terminate, or otherwise discipline the ~~defendant~~  
34 respondent. If the judge finds by clear and convincing evidence that the ~~defendant~~  
35 respondent engaged in unlawful violence or made a credible threat of violence, an  
36 injunction shall issue prohibiting further unlawful violence or threats of violence.

37  
38 ~~(m)(1) An injunction issued pursuant to this section shall have a duration of not more~~  
39 ~~than three years. At any time within the three months before the expiration of the~~  
40 ~~injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition~~  
41 ~~for an injunction under this section. In the discretion of the court, an order issued after~~  
42 notice and hearing under this section may have a duration of not more than five years,  
43 subject to termination or modification by further order of the court either on written

1 stipulation filed with the court or on the motion of a party. These orders may be renewed,  
2 upon the request of a party, either for five years or permanently, without a showing of  
3 any further violence or threats of violence since the issuance of the original order, subject  
4 to termination or modification by further order of the court either on written stipulation  
5 filed with the court or on the motion of a party. The request for renewal may be brought  
6 at any time within the three months before the expiration of the order.

7 (2) The failure to state the expiration date on the face of the form creates an order with  
8 a duration of three years from the date of issuance.

9  
10 *[COMMENT: Revised Code of Civil Procedure section 527.8(f) [new subdivision (m)] is*  
11 *based on Family Code section 6345(a) and (c). The requirement that the request be made*  
12 *within three months before the expiration of the injunction is retained from the current*  
13 *statute, but the requirement to file a new petition is not.]*

14  
15 (g)(n) This section does not preclude either party from representation by private  
16 counsel or from appearing on his or her own behalf.

17  
18 (h)(o) Upon filing of a petition for an injunction under this section, the ~~defendant~~  
19 respondent shall be personally served with a copy of the petition, temporary restraining  
20 order, if any, and notice of hearing of the petition. Service shall be made at least five days  
21 before the hearing. The court may, for good cause, on motion of the ~~plaintiff~~ petitioner or  
22 on its own motion, shorten the time for service on the ~~defendant~~ respondent.

23  
24 *[The following subdivision based on Family Code section 6302 would be added to this*  
25 *section:]*

26  
27 (p) A notice of hearing under this section shall notify the respondent that if he or she  
28 does not attend the hearing, the court may make orders against him or her that could last  
29 up to five years.

30  
31 *[The following provisions on reissuance and service based on Welfare and Institutions*  
32 *Code section 15657.03(h)–(i) and Family Code section 6384 would be added:]*

33  
34 (q) (1) The court may, upon the filing of a declaration by the petitioner that the  
35 respondent could not be served within the time required by statute, reissue an order  
36 previously issued and dissolved by the court for failure to serve the respondent. The  
37 reissued order shall remain in effect for a reasonable period of time necessary to  
38 accomplish service, but for no more than 20 days, or, if good cause appears to the court,  
39 25 days, from the date of reissuance.

40 (2) The reissued order shall state on its face the date of expiration of the order.

41  
42 (r)(1) If a person named in an order issued under this section, after a hearing, has not  
43 been served personally with the order but has received actual notice of the existence and

1 substance of the order through personal appearance in court to hear the terms of the order  
2 from the court, no additional proof of service is required for enforcement of the order.

3 (2) If the person named in a temporary restraining order is personally served with the  
4 order and notice of hearing with respect to a restraining order or protective order based  
5 on the temporary restraining order, but the person does not appear at the hearing, either  
6 personally or by an attorney, and the terms and conditions of the restraining order or  
7 protective order are identical to the temporary restraining order, except for the duration of  
8 the order, then the restraining order or protective order may be served on the person by  
9 first-class mail sent to that person at the most current address for the person available to  
10 the court.

11 (3) The judicial form for temporary orders issued pursuant to this subdivision shall  
12 contain a statement in substantially the following form:

13  
14 *[The following language is based on the statement in current form EA-120, item 19. It is*  
15 *similar to the all-capitalized text of the statement in Welfare and Institutions Code*  
16 *section 15657.03(i)(3) but is clearer:]*

17  
18 “If you have been personally served with a temporary restraining order and notice of  
19 hearing, but you do not appear at the hearing either in person or by a lawyer, and a  
20 restraining order that does not differ from the previous temporary restraining order is  
21 issued at the hearing, a copy of the order will be served on you by mail at the following  
22 address (*insert the address of the restrained person*):

23  
24 “If that address is not correct or you wish to verify that the temporary restraining order  
25 was converted to a restraining order at the hearing without substantive change and to find  
26 out the duration of that order, contact the clerk of the court.

27  
28 “If both you and the person protected by the order are personally present at the hearing  
29 where the order is issued, no additional proof of service will be required.”

30  
31 *[COMMENT: The text of (s)(1) below is based on Code of Civil Procedure section*  
32 *527.8(o). The amendments to (s)(2) below are based on current Welfare and Institutions*  
33 *Code section 15657.03(j)(1). The alternative procedure provided in new subdivision*  
34 *(s)(3) below for getting orders entered into CLETS is based on Family Code section*  
35 *6380(a)–(b).]*

36  
37 (i)(s)(1) Information on any temporary restraining order or injunction relating to  
38 workplace violence issued by a court pursuant to this section shall be transmitted to the  
39 Department of Justice in accordance with either subparagraph (2) or (3) below.

40 (2) The court shall order the ~~plaintiff petitioner~~ or the attorney for the ~~plaintiff~~  
41 ~~petitioner~~ to deliver a copy of each ~~temporary restraining order or injunction, or~~  
42 ~~modification or termination thereof, granted under this section~~ an order issued under this  
43 section, or a reissuance, an extension, a modification, or a termination of the order, and

1 any subsequent proof of service, by the close of the business day on which the order, was  
2 granted, to the law enforcement agencies within the court's discretion as are requested by  
3 the plaintiff reissuance, extension, modification, or termination was made, to each law  
4 enforcement agency having jurisdiction over the residence of the petitioner and to any  
5 additional law enforcement agencies within the court's discretion as are requested by the  
6 petitioner.

7 (3) Alternatively, the court or its designee shall transmit within one business day to law  
8 enforcement personnel all information required under Family Code section 6380(b)  
9 regarding any order issued under this section, or a reissuance, an extension, a  
10 modification, or a termination of the order, and any subsequent proof of service, by either  
11 one of the following methods:

12 (A) Transmitting a physical copy of the order or proof of service to a local law  
13 enforcement agency authorized by the Department of Justice to enter orders into CLETS.

14 (B) With the approval of the Department of Justice, entering the order or proof of  
15 service into CLETS directly.

16 (4) Each appropriate law enforcement agency shall make available information as to the  
17 existence and current status of these orders to law enforcement officers responding to the  
18 scene of reported ~~harassment~~ unlawful violence or credible threat of violence.

19 ~~(2)(5)~~ At the request of the plaintiff petitioner, an order issued under this section shall  
20 be served on the defendant respondent, regardless of whether the defendant respondent  
21 has been taken into custody, by any law enforcement officer who is present at the scene  
22 of reported unlawful violence or a credible threat of violence involving the parties to the  
23 proceedings. The plaintiff petitioner shall provide the officer with an endorsed copy of  
24 the order and proof of service that the officer shall complete and send to the issuing court.

25 ~~(3)(6)~~ Upon receiving information at the scene of an incident of unlawful violence or a  
26 credible threat of violence that a protective order has been issued under this section, or  
27 that a person who has been taken into custody is the subject of an order, if the plaintiff  
28 petitioner or the protected person cannot produce an endorsed copy of the order, a law  
29 enforcement officer shall immediately attempt to verify the existence of the order.

30 ~~(4)(7)~~ If the law enforcement officer determines that a protective order has been issued,  
31 but not served, the officer shall immediately notify the defendant respondent of the terms  
32 of the order and obtain the defendant's respondent's address. The law enforcement officer  
33 shall at that time also enforce the order, but may not arrest or take the defendant  
34 respondent into custody for acts in violation of the order that were committed prior to the  
35 verbal notice of the terms and conditions of the order. The law enforcement officer's  
36 verbal notice of the terms of the order shall constitute service of the order and constitutes  
37 sufficient notice for the purposes of this section and for the purposes of Section 273.6 and  
38 subdivision (g) of Section 12021 of the Penal Code. The plaintiff petitioner shall mail an  
39 endorsed copy of the order to the defendant's respondent's mailing address provided to  
40 the law enforcement officer within one business day of the reported incident of unlawful  
41 violence or a credible threat of violence at which a verbal notice of the terms of the order  
42 was provided by a law enforcement officer.

43

1 *[Note: Nothing comparable to the last sentence above appears in section 527.6.]*

2  
3 *[COMMENT: To reflect existing law, subdivision (t)(1) and (3) below would be amended*  
4 *to include a reference to ammunition. See Penal Code sections 12316(b)(1) and*  
5 *12021(g). Identifying ammunition in this subdivision will make it clearer that the*  
6 *restrictions apply to ammunition as well as firearms.]*

7  
8 ~~(j)~~(t)(1) A person subject to a protective order issued under this section shall not own,  
9 possess, purchase, receive, or attempt to purchase or receive a firearm or ammunition  
10 while the protective order is in effect.

11 (2) The court shall order a person subject to a protective order issued under this section  
12 to relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

13 (3) Every person who owns, possesses, purchases or receives, or attempts to purchase  
14 or receive a firearm or ammunition while the protective order is in effect is punishable  
15 pursuant to subdivision (g) of Section 12021 of the Penal Code.

16  
17 ~~(k)~~(u) Any intentional disobedience of any temporary restraining order or injunction  
18 granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

19  
20 ~~(h)~~(v) Nothing in this section may be construed as expanding, diminishing, altering, or  
21 modifying the duty, if any, of an employer to provide a safe workplace for employees and  
22 other persons.

23  
24 ~~(m)~~(w)(1) The Judicial Council shall develop forms, instructions, and rules ~~for~~  
25 ~~scheduling of hearings and other procedures established pursuant to~~ relating to matters in  
26 this section. The forms for the petition and response shall be simple and concise, and  
27 their use by parties in actions brought pursuant to this section shall be mandatory.

28 ~~(n)~~(2) A temporary restraining order or injunction relating to ~~harassment or domestic~~  
29 ~~violence~~ unlawful violence or a credible threat of violence issued by a court pursuant to  
30 this section shall be issued on forms adopted by the Judicial Council of California and  
31 that have been approved by the Department of Justice pursuant to subdivision (i) of  
32 Section 6380 of the Family Code. However, the fact that an order issued by a court  
33 pursuant to this section was not issued on forms adopted by the Judicial Council and  
34 approved by the Department of Justice shall not, in and of itself, make the order  
35 unenforceable.

36  
37 *[COMMENT: If (s)(1)–(3) are added as proposed above, the following subdivision would*  
38 *no longer appear to be necessary. Should it be deleted?]*

39  
40 ~~(o)~~(x) Information on any temporary restraining order or injunction relating to  
41 harassment or domestic violence issued by a court pursuant to this section shall be  
42 transmitted to the Department of Justice in accordance with subdivision (b) of Section  
43 6380 of the Family Code.

1  
2 (p)(y) There is no filing fee for a petition that alleges that a person has inflicted or  
3 threatened violence against an employee of the petitioner, or stalked the employee, or  
4 acted or spoken in any other manner that has placed the employee in reasonable fear of  
5 violence, and that seeks a protective or restraining order or injunction restraining stalking  
6 or future violence or threats of violence, in any action brought pursuant to this section.  
7 No fee shall be paid for a subpoena filed in connection with a petition alleging these acts.  
8 No fee shall be paid for filing a response to a petition alleging these acts.  
9

10 (q)(z)(1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the  
11 Government Code, there shall be no fee for the service of process of a temporary  
12 restraining order or injunction to be issued pursuant to this section if either of the  
13 following conditions apply:

14 (A) The temporary restraining order or injunction issued pursuant to this section is  
15 based upon stalking, as prohibited by Section 646.9 of the Penal Code.

16 (B) The temporary restraining order or injunction issued pursuant to this section is  
17 based upon on unlawful violence or a credible threat of violence.

18 (2) The Judicial Council shall prepare and develop application forms for ~~applicants~~  
19 petitioners who wish to avail themselves of the services described in this subdivision.  
20

21 *[COMMENT: The language in current section 527.10(a) referring to “a protected*  
22 *person’s family members, caretakers, or guardians” is somewhat confusing. It appears to*  
23 *be somewhat under- and over-inclusive with respect to the provision in section 527.6 that*  
24 *provides protection to “other family or household members” and to the provision in*  
25 *section 527.8 that provides protection for “other persons employed at his or her*  
26 *workplace or workplaces.” To reflect the intent of the statute to broadly shield protected*  
27 *persons’ addresses, in subdivision (a) the words “any protected person” would be used*  
28 *instead of “a protected party,” and the more specific references to other categories of*  
29 *protected persons (that is, caretakers and guardians) would be omitted.]*  
30

31 527.10. (a) The court shall order that any party enjoined pursuant to Sections 527.6 and  
32 527.8 be prohibited from taking any action to obtain the address or location of a any  
33 protected party person ~~or a protected party’s family members, caretakers, or guardian,~~  
34 unless there is good cause not to make that order.  
35

36 (b) The Judicial Council shall promulgate forms necessary to effectuate this section.  
37  
38

39 **Welfare and Institutions Code**

40  
41 **[Juvenile Protective Orders]**  
42

1 *[COMMENT: Section 213.5 of the Welfare and Institutions Code, on juvenile protective*  
2 *orders, would be amended as described below.]*  
3

4 213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a  
5 dependent child of the juvenile court, and until the time that the petition is dismissed or  
6 dependency is terminated, upon application in the manner provided by Section 527 of the  
7 Code of Civil Procedure or in the manner provided by Section 6300 of the Family Code if  
8 related to domestic violence, the juvenile court may has exclusive jurisdiction to issue ex  
9 parte orders (1) enjoining any person from molesting, attacking, striking, sexually  
10 assaulting, stalking, or battering stalking, threatening, sexually assaulting, battering,  
11 harassing, telephoning (including, but not limited to, making annoying telephone calls as  
12 described in Section 635m of the Penal Code), destroying the personal property of,  
13 contacting (either directly or indirectly, by mail or otherwise), coming within a specified  
14 distance of, or disturbing the peace of the child or any other child in the household; and  
15 (2) excluding any person from the dwelling of the person who has care, custody, and  
16 control of the child; and (3) enjoining any person from behavior, including contacting,  
17 threatening, or disturbing the peace of the child, that the court determines is necessary to  
18 effectuate orders under paragraph (1) or (2). A court may also issue an ex parte order  
19 enjoining any person from ~~contacting, threatening, molesting, attacking, striking, sexually~~  
20 ~~assaulting, stalking, battering, or disturbing the peace~~ molesting, attacking, striking,  
21 stalking, threatening, sexually assaulting, battering, harassing, telephoning (including, but  
22 not limited to, making annoying telephone calls as described in Section 635m of the  
23 Penal Code), destroying the personal property of, contacting (either directly or indirectly,  
24 by mail or otherwise), coming within a specified distance of, or disturbing the peace of  
25 any parent, legal guardian, or current caretaker of the child, regardless of whether the  
26 child resides with that parent, legal guardian, or current caretaker, upon application in the  
27 manner provided by Section 527 of the Code of Civil Procedure or, if related to domestic  
28 violence, in the manner provided by Section 6300 of the Family Code. A court may also  
29 issue an ex parte order enjoining any person from molesting, attacking, striking, stalking,  
30 threatening, sexually assaulting, battering, harassing, telephoning (including, but not  
31 limited to, making annoying telephone calls as described in Section 635m of the Penal  
32 Code), destroying the personal property of, contacting (either directly or indirectly, by  
33 mail or otherwise), coming within a specified distance of, or disturbing the peace of the  
34 child's current or former social worker or Court Appointed Special Advocate, upon  
35 application in the manner provided by Section 527 of the Code of Civil Procedure.  
36

37 (b) After a petition has been filed pursuant to Section 601 or 602 to declare a child a  
38 ward of the juvenile court, and until the time that the petition is dismissed or wardship is  
39 terminated, upon application in the manner provided by Section 527 of the Code of  
40 Civil Procedure or, if related to domestic violence, in the manner provided by Section  
41 6300 of the Family Code, the juvenile court may issue ex parte orders (1) enjoining any  
42 person from molesting, attacking, threatening, sexually assaulting, stalking, or battering,  
43 striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning

1 (including, but not limited to, making annoying telephone calls as described in Section  
2 635m of the Penal Code), destroying the personal property of, contacting (either directly  
3 or indirectly, by mail or otherwise), coming within a specified distance of, or disturbing  
4 the peace of the child or any other child in the household; (2) excluding any person from  
5 the dwelling of the person who has care, custody, and control of the child; or (3)  
6 enjoining the child from contacting, threatening, stalking, or disturbing the peace of any  
7 person the court finds to be at risk from the conduct of the child, or with whom  
8 association would be detrimental to the child. A court may also issue an ex parte order  
9 enjoining any person from molesting, attacking, striking, stalking, threatening, sexually  
10 assaulting, battering, harassing, telephoning (including, but not limited to, making  
11 annoying telephone calls as described in Section 635m of the Penal Code), destroying the  
12 personal property of, contacting (either directly or indirectly, by mail or otherwise),  
13 coming within a specified distance of, or disturbing the peace of any parent, legal  
14 guardian, or current caretaker of the child, regardless of whether the child resides with  
15 that parent, legal guardian, or current caretaker, upon application in the manner provided  
16 by Section 527 of the Code of Civil Procedure or, if related to domestic violence, in the  
17 manner provided by Section 6300 of the Family Code. A court may also issue an ex parte  
18 order enjoining any person from molesting, attacking, striking, stalking, threatening,  
19 sexually assaulting, battering, harassing, telephoning (including, but not limited to,  
20 making annoying telephone calls as described in Section 635m of the Penal Code),  
21 destroying the personal property of, contacting (either directly or indirectly, by mail or  
22 otherwise), coming within a specified distance of, or disturbing the peace of the child's  
23 current or former probation officer or Court Appointed Special Advocate, upon  
24 application in the manner provided by Section 527 of the Code of Civil Procedure.  
25

26 (c) If a temporary restraining order is granted without notice, the matter shall be made  
27 returnable on an order requiring cause to be shown why the order should not be granted,  
28 on the earliest day that the business of the court will permit, but not later than ~~15~~ 20 days,  
29 or, if good cause appears to the court, ~~20~~ 25 days, from the date the temporary restraining  
30 order is granted. The court may, on the motion of the person seeking the restraining  
31 order, or on its own motion, shorten the time for service of the order to show cause on the  
32 person to be restrained. The court may, upon its own motion or the filing of ~~an affidavit~~ a  
33 declaration by the person seeking the restraining order, find that the person to be  
34 restrained could not be served within the time required by law and reissue an order  
35 previously issued and dissolved by the court for failure to serve the person to be  
36 restrained. The reissued order shall remain in effect for a reasonable period of time  
37 necessary to accomplish service, but for no more than 20 days, or, if good cause appears  
38 to the court, 25 days, from the date of reissuance. The reissued order shall state on its face  
39 the date of expiration of the order. Any hearing pursuant to this section may be held  
40 simultaneously with any regularly scheduled hearings held in proceedings to declare a  
41 child a dependent child or ward of the juvenile court pursuant to Section 300, 601, or  
42 602, or subsequent hearings regarding the dependent child or ward.  
43

1 (d) The juvenile court may issue, upon notice and a hearing, any of the orders set forth  
2 in subdivisions (a), (b), and (c). Any restraining order granted pursuant to this subdivision  
3 shall remain in effect, in the discretion of the court, no more than three years, unless  
4 otherwise terminated by the court, extended by mutual consent of all parties to the  
5 restraining order, or extended by further order of the court on the motion of any party to  
6 the restraining order.

7  
8 (e) (1) The juvenile court may issue an order made pursuant to subdivision (a), ~~(e)~~ (b),  
9 or (d) excluding a person from a residence or dwelling. This order may be issued for the  
10 time and on the conditions that the court determines, regardless of which party holds  
11 legal or equitable title or is the lessee of the residence or dwelling.

12 (2) The court may issue an order under paragraph (1) only on a showing of all of the  
13 following:

14 (A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling  
15 has a right under color of law to possession of the premises.

16 (B) That the party to be excluded has assaulted or threatens to assault the other party or  
17 any other person under the care, custody, and control of the other party, or any minor  
18 child of the parties or of the other party.

19 (C) That physical or emotional harm would otherwise result to the other party, to any  
20 person under the care, custody, and control of the other party, or to any minor child of the  
21 parties or of the other party.

22  
23 (f) Any order issued pursuant to subdivision (a), (b), (c), or (d) shall state on its face the  
24 date of expiration of the order.

25  
26 ~~(g) The juvenile court shall order any designated person or attorney to mail a copy of~~  
27 ~~any All data with respect to a juvenile court protective order, or an extension, a~~  
28 ~~modification, or a termination thereof, granted pursuant to subdivision (a), (b), (c), or (d),~~  
29 ~~by the close of the business day on which the order, extension, modification, or~~  
30 ~~termination was granted, and any subsequent proof of service thereof, to each local law~~  
31 ~~enforcement agency designated by the person seeking the restraining order or his or her~~  
32 ~~attorney having jurisdiction over the residence of the person who has care, custody, and~~  
33 ~~control of the child and other locations where the court determines that acts of domestic~~  
34 ~~violence or abuse against the child or children are likely to occur. Each appropriate law~~  
35 ~~enforcement agency shall make available through an existing system for verification,~~  
36 ~~information as to the existence, terms, and current status of any order issued pursuant to~~  
37 ~~subdivision (a), (b), (c), or (d) to any law enforcement officer responding to the scene of~~  
38 ~~reported domestic violence or abuse. shall be transmitted by the court or its designee~~  
39 ~~within one business day to law enforcement personnel by either one of the following~~  
40 ~~methods:~~

41 (1) Transmitting a physical copy of the order to a local law enforcement agency  
42 authorized by the Department of Justice to enter orders into CLETS; or

1     (2) With the approval of the Department of Justice, entering the order into CLETS  
2     directly.

3  
4     (h) Any willful and knowing violation of any order granted pursuant to subdivision (a),  
5     (b), (c), or (d) shall be a misdemeanor punishable under Section 273.65 of the Penal  
6     Code.

7  
8     (i) A juvenile court restraining order related to domestic violence issued by a court  
9     pursuant to this section shall be issued on forms adopted by the Judicial Council of  
10    California and that have been approved by the Department of Justice pursuant to  
11    subdivision (i) of Section 6380 of the Family Code. However, the fact that an order  
12    issued by a court pursuant to this section was not issued on forms adopted by the Judicial  
13    Council and approved by the Department of Justice shall not, in and of itself, make the  
14    order unenforceable.

15  
16    *[COMMENT: If (g) is amended as proposed above, subdivision (j) below may no longer*  
17    *be necessary. Should it be deleted?]*

18  
19    (j) Information on any juvenile court restraining order related to domestic violence  
20    issued by a court pursuant to this section shall be transmitted to the Department of Justice  
21    in accordance with subdivision (b) of Section 6380 of the Family Code.

22  
23    (k) (1) Prior to a hearing on the issuance or denial of an order under this part, a search  
24    shall be conducted as described in subdivision (a) of Section 6306 of the Family Code.

25    (2) Prior to deciding whether to issue an order under this part, the court shall consider  
26    the following information obtained pursuant to a search conducted under paragraph (1):  
27    any conviction for a violent felony specified in Section 667.5 of the Penal Code or a  
28    serious felony specified in Section 1192.7 of the Penal Code; any misdemeanor  
29    conviction involving domestic violence, weapons, or other violence; any outstanding  
30    warrant; parole or probation status; any prior restraining order; and any violation of a  
31    prior restraining order.

32    (3) (A) If the results of the search conducted pursuant to paragraph (1) indicate that an  
33    outstanding warrant exists against the subject of the search, the court shall order the clerk  
34    of the court to immediately notify, by the most effective means available, appropriate law  
35    enforcement officials of any information obtained through the search that the court  
36    determines is appropriate. The law enforcement officials notified shall take all actions  
37    necessary to execute any outstanding warrants or any other actions, as appropriate and as  
38    soon as practicable.

39    (B) If the results of the search conducted pursuant to paragraph (1) indicate that the  
40    subject of the search is currently on parole or probation, the court shall order the clerk of  
41    the court to immediately notify, by the most effective means available, the appropriate  
42    parole or probation officer of any information obtained through the search that the court  
43    determines is appropriate. The parole or probation officer notified shall take all actions

1 necessary to revoke any parole or probation, or any other actions, with respect to the  
2 subject person, as appropriate and as soon as practicable.

3  
4 (l) Upon making any order for custody or visitation pursuant to this section, the court  
5 shall follow the procedures specified in subdivisions (c) and (d) of Section 6323 of the  
6 Family Code.

7  
8  
9 **[Elder and Dependent Adult Abuse]**

10  
11 *[COMMENT: Section 15657.03 of the Welfare and Institutions Code, on elder and*  
12 *dependent adult abuse, would be amended as described below.]*

13  
14 15657.03. (a) (1) An elder or dependent adult who has suffered abuse as defined in  
15 Section 15610.07 may ~~seek protective orders~~ petition for a temporary restraining order  
16 and an injunction as provided in this section.

17 (2) A petition may be brought on behalf of an abused elder or dependent adult by a  
18 conservator or other person legally authorized to seek such relief.

19  
20 (b) For the purposes of this section,:

21 (1) “Petitioner” means the elder or dependent adult to be protected by the temporary  
22 restraining order and injunction and, if the court grants the petition, the protected person.

23 (2) “Respondent” means the person against whom the temporary restraining order and  
24 injunction are sought and, if the petition is granted, the restrained person.

25 (3) “Conservator” means the legally appointed conservator of the person or estate of  
26 the petitioner, or both.

27 (4) ~~“protective order”~~ “Temporary restraining order” and “injunction” means an orders  
28 that includes any of the following restraining orders, whether issued ex parte, after notice  
29 and hearing, or in a judgment:

30 (1) (A) An order enjoining a party from abusing, intimidating, molesting, attacking,  
31 striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning,  
32 (including, but not limited to, making annoying telephone calls as described in Section  
33 653m of the Penal Code), destroying the personal property of, contacting, (either directly  
34 or indirectly, by mail or otherwise), or coming within a specified distance of, or  
35 disturbing the peace of the petitioner, and, in the discretion of the court, on a showing of  
36 good cause, of other named household members or of a conservator, if any, of the

37 petitioner. (2) (B) An order excluding a party from the petitioner’s residence or  
38 dwelling, except that this order shall not be issued if legal or equitable title to, or lease of,  
39 the residence or dwelling is in the sole name of the party to be excluded, or is in the name  
40 of the party to be excluded and any other party besides the petitioner.

41 (3) (C) An order enjoining a party from specified behavior that the court determines is  
42 necessary to effectuate orders described in paragraph (1)(A) or (2)(B).

1 (c) An order may be issued under this section, with or without notice, to restrain any  
2 person for the purpose of preventing a recurrence of abuse, if ~~an affidavit~~ a declaration  
3 shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of  
4 the petitioning elder or dependent adult.

5  
6 (d) ~~(1)~~ Upon filing a petition for protective orders under this section, the petitioner may  
7 obtain a temporary restraining order in accordance with Section 527 of the Code of Civil  
8 Procedure, except to the extent this section provides a rule that is inconsistent. The  
9 temporary restraining order may include any of the protective orders described in  
10 subdivision (b)~~(4)~~. However, the court may issue an ex parte order excluding a party from  
11 the petitioner's residence or dwelling only on a showing of all of the following:

12 (A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling  
13 has a right under color of law to possession of the premises.

14 (B) That the party to be excluded has assaulted or threatens to assault the petitioner,  
15 other named family or household member of the petitioner, or the conservator of the  
16 petitioner.

17 (C) That physical or emotional harm would otherwise result to the petitioner, other  
18 named family or household member of the petitioner, or the conservator of the petitioner.

19  
20 *[To clarify the timeline for acting on requests for temporary orders, the following*  
21 *subdivision based on Family Code section 246 would be added to this section:]*  
22

23 (e) A request for the issuance of a temporary restraining order without notice under this  
24 section shall be granted or denied on the same day that the petition is submitted to the  
25 court, unless the petition is filed too late in the day to permit effective review, in which  
26 case the order shall be granted or denied on the next day of judicial business in sufficient  
27 time for the order to be filed that day with the clerk of the court.  
28

29 ~~(2) (f) If a temporary restraining order is granted without notice, the matter shall be~~  
30 ~~made returnable on an order requiring cause to be shown why a permanent order should~~  
31 ~~not be granted, on the earliest day that the business of the court will permit, but not later~~  
32 ~~than 20 days or, if good cause appears to the court, 25 days from the date the temporary~~  
33 ~~restraining order is granted, unless the order is otherwise modified or terminated by the~~  
34 ~~court. Within 20 days, or, if good cause appears to the court, 25 days, from the date that a~~  
35 ~~request for a temporary order is granted or denied, a hearing shall be held on the petition~~  
36 ~~for the injunction. If no request for temporary orders is made, the hearing shall be held~~  
37 ~~within 20 days, or, if good cause appears to the court, 25 days, from the date that the~~  
38 ~~petition is filed.~~  
39

40 *[COMMENT: This provision on the time for hearing should be standardized for all types*  
41 *of protective orders, to the extent feasible. The 20- and 25-day periods are found in*  
42 *Family Code section 6320.5 and current Welfare and Institutions Code section*  
43 *15657.03(d)(2). Family Code section 6320.5 calculates the time “from the date of the*

1 order” denying the petition. The proposed new language above was chosen because it is  
2 consistent with the domestic violence statute, the most recently enacted version of this  
3 provision.

4  
5 It may be noted that one protective order statute, the workplace violence statute,  
6 calculates the time for the hearing from “the filing of the petition” rather than the date  
7 the temporary order is issued, granted, or denied. See current Code of Civil Procedure  
8 section 527.8(f). Unless the workplace violence approach is used, a new sentence such as  
9 the last one in (f) needs to be added to cover the situation where no temporary order is  
10 sought and so no order is granted or denied.]

11  
12 (g) The respondent may file a response that explains, excuses, justifies, or denies the  
13 alleged abuse.

14  
15 ~~(e)~~(h) The court may issue, upon notice and a hearing, any of the orders set forth in  
16 subdivision (b)~~(4)~~. The court may issue, after notice and hearing, an order excluding a  
17 person from a residence or dwelling if the court finds that physical or emotional harm  
18 would otherwise result to the petitioner, ~~a other~~ named family or household member ~~of~~  
19 who resides with the petitioner, or the conservator of the petitioner.

20  
21 *[COMMENT: Subdivision (i) below has been modified to be consistent with Family Code*  
22 *section 6345(a) and (c). It also includes a provision from other protective order statutes*  
23 *that the request may be brought at any time within the three months before the expiration*  
24 *of the injunction.]*

25  
26 ~~(f)~~(i) (1) In the discretion of the court, an order issued after notice and a hearing under  
27 this section may have a duration of not more than ~~three~~ five years, subject to termination  
28 or modification by further order of the court either on written stipulation filed with the  
29 court or on the motion of a party. These orders may be renewed upon the request of a  
30 party, either for ~~three~~ five years or permanently, without a showing of any further abuse  
31 since the issuance of the original order, subject to termination or modification by further  
32 order of the court either on written stipulation filed with the court or on the motion of a  
33 party. The request for renewal may be brought at any time within the three months before  
34 the expiration of the order.

35 (2) The failure to state the expiration date on the face of the form creates an order with  
36 a duration of three years from the date of issuance.

37  
38 *[COMMENT: The new section (j) below is based on the current civil harassment statute,*  
39 *Code of Civil Procedure section 527.6(f), and a domestic violence statute, Family Code*  
40 *section 6303]:*

41  
42 (j) In a proceeding under this section if there are allegations of abuse, a support person  
43 may accompany a party in court and, if the party is not represented by an attorney, may

1 sit with the party at the table that is generally reserved for the party and the party's  
2 attorney. The support person is present to provide moral and emotional support for a  
3 person who alleges he or she is a victim of abuse. The support person is not present as a  
4 legal adviser and may not provide legal advice. The support person may assist the person  
5 who alleges he or she is a victim of abuse in feeling more confident that he or she will not  
6 be injured or threatened by the other party during the proceedings if the person who  
7 alleges he or she is a victim of abuse and the other party are required to be present in  
8 close proximity. This subdivision does not preclude the court from exercising its  
9 discretion to remove the support person from the courtroom if the court believes the  
10 support person is prompting, swaying, or influencing the party assisted by the support  
11 person.

12  
13 ~~(g)~~(k) Upon the filing of a petition for protective orders under this section, the  
14 respondent shall be personally served with a copy of the petition, notice of the hearing or  
15 order to show cause, temporary restraining order, if any, and any affidavits declarations  
16 in support of the petition. Service shall be made at least five days before the hearing. The  
17 court may, on motion of the petitioner or on its own motion, shorten the time for service  
18 on the respondent.

19  
20 *[The following subdivision based on Family Code section 6302 would be added to this*  
21 *section]:*

22  
23 (l) A notice of hearing under this section shall notify the respondent that if he or she  
24 does not attend the hearing, the court may make orders against him or her that could last  
25 up to five years.

26  
27 ~~(h)~~ (m)(1) The court may, upon the filing of an affidavit a declaration by the applicant  
28 petitioner that the respondent could not be served within the time required by statute,  
29 reissue an order previously issued and dissolved by the court for failure to serve the  
30 respondent. The reissued order shall be made returnable on the earliest day that the  
31 business of the court will permit, but not later than 20 days or, if good cause appears to  
32 the court, 25 days from the date of reissuance remain in effect for a reasonable period of  
33 time necessary to accomplish service, but for no more than 20 days, or, if good cause  
34 appears to the court, 25 days, from the date of reissuance.

35 (2) The reissued order shall state on its face the date of expiration of the order.

36  
37 ~~(i)~~(n)(1) If a person named in an order issued under this section, after a hearing, has not  
38 been served personally with the order but has received actual notice of the existence and  
39 substance of the order through personal appearance in court to hear the terms of the order  
40 from the court, no additional proof of service is required for enforcement of the order.

41 (2) If the person named in a temporary restraining order is personally served with the  
42 order and notice of hearing with respect to a restraining order or protective order based  
43 thereon on the temporary restraining order, but the person does not appear at the hearing,

1 either personally or by ~~counsel~~ an attorney, and the terms and conditions of the  
2 restraining order or protective order are identical to the temporary restraining order,  
3 except for the duration of the order, then the restraining order or protective order may be  
4 served on the person by first-class mail sent to that person at the most current address for  
5 the person available to the court.

6 (3) The judicial form for temporary orders issued pursuant to this subdivision shall  
7 contain a statement in substantially the following form:  
8

9 ~~“NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF THE FACE OF  
10 THIS FORM INDICATES THAT BOTH PARTIES WERE PERSONALLY PRESENT  
11 AT THE HEARING WHERE THE ORDER WAS ISSUED. IF YOU HAVE BEEN  
12 PERSONALLY SERVED WITH A TEMPORARY RESTRAINING ORDER OR  
13 EMERGENCY PROTECTIVE ORDER AND NOTICE OF HEARING, BUT YOU DO  
14 NOT APPEAR AT THE HEARING EITHER IN PERSON OR BY COUNSEL, AND A  
15 RESTRAINING ORDER OR PROTECTIVE ORDER IS ISSUED AT THE HEARING  
16 THAT DOES NOT DIFFER FROM THE PRIOR TEMPORARY RESTRAINING  
17 ORDER OR EMERGENCY PROTECTIVE ORDER, A COPY OF THE ORDER WILL  
18 BE SERVED UPON YOU BY MAIL AT THE FOLLOWING ADDRESS \_\_\_\_\_.  
19 IF THAT ADDRESS IS NOT CORRECT OR YOU WISH TO VERIFY THAT THE  
20 TEMPORARY OR EMERGENCY ORDER WAS MADE PERMANENT WITHOUT  
21 SUBSTANTIVE CHANGE, CALL THE CLERK OF THE COURT AT \_\_\_\_\_.”~~  
22

23 *[The following language, based on the statement in current form EA-120, item 19, would*  
24 *be substituted for the above language]:*  
25

26 “If you have been personally served with a temporary restraining order and notice of  
27 hearing, but you do not appear at the hearing either in person or by a lawyer, and a  
28 restraining order that does not differ from the previous temporary restraining order is  
29 issued at the hearing, a copy of the order will be served on you by mail at the following  
30 address (insert the address of the restrained person):  
31

32 “If that address is not correct or you wish to verify that the temporary restraining order  
33 was converted to a restraining order at the hearing without substantive change and to find  
34 out the duration of that order, contact the clerk of the court.  
35

36 “If both you and the person protected by the order are personally present at the hearing  
37 where the order is issued, no additional proof of service will be required.”  
38

39 *[COMMENT: The text of (o)(2) is based on current Welfare and Institutions Code section*  
40 *15657.03(j)(1). The alternative procedure provided in new subdivision (o)(3) below, for*  
41 *getting orders entered into CLETS, is based on Family Code section 6380(a)–(b).]*  
42

1 ~~(j)~~(o) (1) Information on any temporary restraining order or injunction relating to elder  
2 or dependent adult abuse issued by a court pursuant to this section shall be transmitted to  
3 the Department of Justice in accordance with either subparagraph (2) or (3) below.

4 (2) The court shall order the petitioner or the attorney for the petitioner to deliver, ~~or the~~  
5 ~~clerk of the court to mail~~ a copy of an order issued under this section, or a reissuance, an  
6 extension, a modification, or a termination of the order, and any subsequent proof of  
7 service, by the close of the business day on which the order, reissuance, extension,  
8 modification, or termination was made, to each local law enforcement agency designated  
9 by the petitioner or the attorney for the petitioner having jurisdiction over the residence of  
10 the petitioner, and to any additional law enforcement agencies within the court's  
11 discretion as are requested by the petitioner.

12 (3) Alternatively, the court or its designee shall transmit within one business day to law  
13 enforcement personnel all information required under Family Code section 6380(b)  
14 regarding any order issued under this section, or a reissuance, an extension, a  
15 modification, or a termination of the order, and any subsequent proof of service, by either  
16 one of the following methods:

17 (A) Transmitting a physical copy of the order or proof of service to a local law  
18 enforcement agency authorized by the Department of Justice to enter orders into CLETS.

19 (B) With the approval of the Department of Justice, entering the order or proof of  
20 service into CLETS directly.

21 (4) Each appropriate law enforcement agency shall make available information as to the  
22 existence and current status of these orders to law enforcement officers responding to the  
23 scene of reported abuse.

24 ~~(2)~~(5) An order issued under this section shall, on request of the petitioner, be served on  
25 the respondent, whether or not the respondent has been taken into custody, by any law  
26 enforcement officer who is present at the scene of reported abuse involving the parties to  
27 the proceeding. The petitioner shall provide the officer with an endorsed copy of the  
28 order and a proof of service, which the officer shall complete and send to the issuing  
29 court.

30 ~~(3)~~(6) Upon receiving information at the scene of an incident of abuse that a protective  
31 order has been issued under this section, or that a person who has been taken into custody  
32 is the respondent to that order, if the protected person cannot produce an endorsed copy  
33 of the order, a law enforcement officer shall immediately attempt to verify the existence  
34 of the order.

35 ~~(4)~~(7) If the law enforcement officer determines that a protective order has been issued,  
36 but not served, the officer shall immediately notify the respondent of the terms of the  
37 order and where a written copy of the order can be obtained, and the officer shall at that  
38 time also enforce the order. The law enforcement officer's verbal notice of the terms of  
39 the order shall constitute service of the order and is sufficient notice for the purposes of  
40 this section and for the purposes of Section 273.6 of the Penal Code.

41  
42 ~~(k)~~(p) Nothing in this section shall preclude either party from representation by private  
43 counsel or from appearing on the party's own behalf.

1  
2 ~~(d)(q)~~ There is no filing fee for a petition, response, or paper seeking the reissuance,  
3 modification, or enforcement of a protective order filed in a proceeding brought pursuant  
4 to this section.

5  
6 ~~(m)(r)~~ Pursuant to paragraph (4) of subdivision (b) of Section 6103.2 of the  
7 Government Code, a petitioner shall not be required to pay a fee for law enforcement to  
8 serve an order issued under this chapter.

9  
10 ~~(n)(s)~~ The prevailing party in any action brought under this section may be awarded  
11 court costs and attorney's fees, if any.

12  
13 *[COMMENT: Subdivision (t)(1) below is amended to use language similar to that in other*  
14 *protective order statutes. To reflect existing law, subdivision (t)(1) and (3) is amended to*  
15 *include a reference to ammunition. See Penal Code sections 12316(b)(1) and 12021(g).*  
16 *Identifying ammunition in this subdivision will make it clearer that the restrictions apply*  
17 *to ammunition as well as firearms. Subpart (2) has been relocated to (4) and revised for*  
18 *clarity.]*

19  
20 ~~(e) (t)(1) An order issued pursuant to this section shall prohibit the person subject to it~~  
21 ~~from owning, possessing, purchasing, receiving, or attempting to purchase or receive, a~~  
22 ~~firearm. A person subject to a protective order under this section shall not own, possess,~~  
23 ~~purchase, receive, or attempt to receive a firearm or ammunition while the protective~~  
24 ~~order is in effect.~~

25 ~~(2) Paragraph (1) shall not apply to a case consisting solely of financial abuse~~  
26 ~~unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.~~

27 ~~(3)(2)~~ The court shall order a person subject to a protective order issued under this  
28 section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9  
29 of the Code of Civil Procedure.

30 ~~(4)(3)~~ Every person who owns, possesses, purchases, or receives, or attempts to  
31 purchase or receive a firearm or ammunition while the protective order is in effect is  
32 punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

33 ~~(4) This subdivision shall not apply in a case in which the protective order issued under~~  
34 ~~this section was made solely on the basis of financial abuse unaccompanied by force,~~  
35 ~~threat, harassment, intimidation, or any other form of abuse.~~

36  
37 ~~(p)(u)~~ Any willful disobedience of any temporary restraining order or restraining order  
38 after hearing granted under this section is punishable pursuant to Section 273.6 of the  
39 Penal Code.

40  
41 ~~(q)(v)~~ This section does not apply to any action or proceeding ~~covered~~ governed by  
42 Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code,  
43 by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil

1 Procedure, or by Division 10 (commencing with Section 6200) of the Family Code.  
2 Nothing in this section shall preclude a petitioner’s right to use other existing civil  
3 remedies.  
4

5 ~~(r)~~(w) (1) The Judicial Council shall ~~promulgate~~ develop forms, ~~and~~ instructions  
6 ~~therefor, and rules for service of process, scheduling of hearings, and any other relating to~~  
7 matters required by in this section. The petition and response forms shall be simple and  
8 concise, ~~and their use by parties in actions brought pursuant to this section shall be~~  
9 mandatory.  
10

11 ~~(s) This section shall become operative on January 1, 2010.~~  
12

13 *[COMMENT: The language in section 15657.04(a) below referring to “a protected*  
14 *person’s family members, caretakers, or guardians” is confusing. It appears to be*  
15 *somewhat under- and overinclusive with respect to the provisions in section 15657.03*  
16 *providing protection to “family or household members or a conservator, if any, of the*  
17 *petitioner.” To reflect the intent of the statute to broadly shield protected persons’*  
18 *addresses, in subdivision (a) the words “any protected person” would be used instead of*  
19 *“a protected party” and the more specific references to other categories of protected*  
20 *persons omitted.]*  
21

22 15657.04. (a) The court shall order that any party enjoined pursuant to Section 15657.03  
23 be prohibited from taking any action to obtain the address or location of ~~a~~ any protected  
24 party person ~~or a protected party's family members, caretakers, or guardian~~, unless there  
25 is good cause not to make that order.  
26

27 (b) The Judicial Council shall promulgate forms necessary to effectuate this section.  
28  
29

### 30 [Domestic Violence]

31  
32 *[COMMENT: The sections of the Family Code on domestic violence would be amended*  
33 *as follows:]*  
34

### 35 Family Code

36  
37 241. Except as provided in Section 6300, an order described in Section 240 may not be  
38 granted without notice to the respondent unless it appears from facts shown by the  
39 ~~affidavit~~ declaration in support of the ~~application~~ petition for the order, or in the  
40 ~~application~~ petition for the order, that great or irreparable injury would result to the  
41 ~~applicant~~ petitioner before the matter can be heard on notice.  
42

1 242. (a) ~~Except as provided in subdivision (b), if an order described in Section 240 is~~  
2 ~~issued, the matter shall be made returnable on an order requiring cause to be shown why~~  
3 ~~a permanent order should not be granted, on the earliest day that the business of the court~~  
4 ~~will permit, but not later than 20 days or, if good cause appears to the court, 25 days from~~  
5 ~~the date of the order. Within 20 days, or, if good cause appears to the court, 25 days, from~~  
6 ~~the date that a temporary order is granted or denied, a hearing shall be held on the~~  
7 ~~petition. If no request for temporary orders is made, the hearing shall be held within 20~~  
8 ~~days, or, if good cause appears to the court, 25 days, from the date that the petition is~~  
9 ~~filed.~~

10  
11 (b) If a hearing is not held within the time provided in subdivision (a), the court may  
12 nonetheless hear the matter, but the order is unenforceable unless reissued under Section  
13 245.

14  
15 243. (a) When the matter first comes up for hearing, the ~~applicant~~ petitioner must be  
16 ready to proceed.

17  
18 (b) If a petition under this section has been filed, the respondent shall be personally  
19 served with a copy of the petition, the temporary restraining order, if any, and the notice  
20 of hearing on the petition. Service shall be made at least five days before the hearing. If  
21 ~~an order described in Section 240 has been issued without notice pending the hearing, the~~  
22 ~~applicant must have served on the respondent, at least five days before the hearing, a~~  
23 ~~copy of each of the following:~~

24 (1) ~~The order to show cause.~~

25 (2) ~~The application and the affidavits and points and authorities in support of the~~  
26 ~~application.~~

27 (3) ~~Any other supporting papers filed with the court.~~

28 (c) ~~If an order described in Section 240 has been issued with notice pending the~~  
29 ~~hearing, the applicant must have served on the respondent the documents described in~~  
30 ~~subdivision (b) at least 15 days before the hearing.~~

31  
32 (d)(c) If the ~~applicant~~ petitioner fails to comply with subdivision (a) and ~~either~~  
33 ~~subdivision (b) or (c), the court shall dissolve the order.~~

34  
35 (e)(d) If service is made under subdivision (b), the respondent may file a response that  
36 explains, excuses, justifies, or denies the allegations in the petition. The respondent is  
37 entitled, as of course, to one continuance for a reasonable period, to respond to the  
38 application petition for the order orders.

39  
40 (f)(e) On motion of the ~~applicant~~ petitioner or on its own motion, the court may shorten  
41 the time provided in this section for service on the respondent.

1 ~~(g)(f)~~The respondent may, in response to the order to show cause, present affidavits  
2 relating to the granting of the order, and ~~If the affidavits are~~ response is served on the  
3 applicant petitioner at least two days before the hearing, the applicant petitioner is not  
4 entitled to a continuance on account of the ~~affidavits~~ response.

5  
6 244. (a) On the day ~~upon which the order is made returnable~~ of the hearing, the hearing  
7 on the petition shall take precedence over all other matters on the calendar ~~of the~~ that day,  
8 except older matters of the same character, and matters to which special precedence may  
9 be given by law.

10  
11 (b) ~~When the cause is at issue, it~~ The hearing on the petition shall be set for trial at the  
12 earliest possible date and shall take precedence over all other ~~eases~~ matters, except older  
13 matters of the same character, and matters to which special precedence may be given by  
14 law.

15  
16 245. (a) The court may, upon the filing of ~~an affidavit~~ a declaration by the applicant  
17 petitioner that the respondent could not be served within the time required by statute,  
18 reissue an order previously issued and dissolved by the court for failure to serve the  
19 respondent. The reissued order shall remain in effect for a reasonable period of time  
20 necessary to accomplish service, but for no more than 20 days, or, if good cause appears  
21 to the court, 25 days, from the date of reissuance.

22  
23 (b) The reissued order shall state on its face the date of expiration of the order.

24  
25 (c) No fee shall be charged for the reissuance of the order unless the order had been  
26 dissolved three times previously.

27  
28 246. ~~An ex parte~~ request for a temporary restraining order described in Section 240  
29 issued without notice shall be ~~issued~~ granted or denied on the same day that the  
30 ~~application~~ petition is submitted to the court, unless the ~~application~~ petition is filed too  
31 late in the day to permit effective review, in which case the order shall be ~~issued~~ granted  
32 or denied on the next day of judicial business in sufficient time for the order to be filed  
33 that day with the clerk of the court.

34  
35 *[COMMENT: The following new section would be added to Part 2 (General Provisions)*  
36 *of Division 10 (Prevention of Domestic Violence) of the Family Code. Providing a cross-*  
37 *reference to section 374 of the Code of Civil Procedure in the division of the Family*  
38 *Code concerning domestic violence will make this provision easier to locate and apply.]*  
39

40 6229. A minor under 12 years of age, accompanied by a duly appointed and acting  
41 guardian ad litem, shall be permitted to appear in court without counsel for the limited  
42 purpose of requesting or opposing a request for a temporary restraining order or

1 injunction, or both, under this Division as provided in section 374 of the Code of Civil  
2 Procedure.

3  
4 *[The notice in section 6304 below needs to be changed to accurately reflect Family Code*  
5 *section 6345(a), which permits the orders to last up to five years. In the most recent*  
6 *version of the domestic violence prevention forms, the notice required by section 6302*  
7 *has been placed in the separate new notice of hearing rather than in a combined notice of*  
8 *hearing and temporary order form. Also, the notice on the form uses somewhat plainer*  
9 *language than that in current section 6302. To reflect these developments, the statute*  
10 *would be amended to state the following]:*

11  
12 ~~6302. An order issued under this part shall set forth on its face a notice in substantially~~  
13 ~~the following form:~~

14 ~~—"NOTICE TO RESTRAINED PERSON: If you do not appear at the court~~  
15 ~~hearing specified herein, the court may grant the requested orders for a period of up to 3~~  
16 ~~years without further notice to you." A notice of hearing under this section shall notify~~  
17 ~~the respondent that if he or she does not attend the hearing, the court may make orders~~  
18 ~~against him or her that could last up to five years.~~

19  
20 *[COMMENT: To reflect current law, section 6304 would be amended to include a*  
21 *reference to ammunition. See Penal Code sections 12316(b)(1) and 12021(g). Identifying*  
22 *ammunition in this subdivision will make it clearer that the restrictions apply to*  
23 *ammunition as well as to firearms.]*

24  
25 6304. When making a protective order, as defined in Section 6218, where both parties are  
26 present in court, the court shall inform both the petitioner and the respondent of the terms  
27 of the order, including notice that the respondent is prohibited from owning, possessing,  
28 purchasing, ~~or~~ receiving, or attempting to own, possess, purchase, or receive a firearm or  
29 ammunition, and including notice of the penalty for violation.

30  
31 6320. (a) The court may issue an ex parte order enjoining a party from molesting,  
32 attacking, striking, stalking, threatening, sexually assaulting, battering, harassing,  
33 telephoning, (including, but not limited to, making annoying telephone calls as described  
34 in Section 653m of the Penal Code), destroying the personal property of, contacting;  
35 (either directly or indirectly, by mail or otherwise), coming within a specified distance of,  
36 or disturbing the peace of the other party, and, in the discretion of the court, on a showing  
37 of good cause, of other named family or household members.

38  
39 (b) On a showing of good cause, the court may include in a protective order a grant to  
40 the petitioner of the exclusive care, possession, or control of any animal owned,  
41 possessed, leased, kept, or held by either the petitioner or the respondent or a minor child  
42 residing in the residence or household of either the petitioner or the respondent. The court  
43 may order the respondent to stay away from the animal and forbid the respondent from

1 taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening,  
2 harming, or otherwise disposing of the animal.

3 ~~(e) On or before July 1, 2009, the Judicial Council shall modify the criminal and civil~~  
4 ~~court forms consistent with this section.~~

5  
6 6320.5. (a) An order denying a petition for an ex parte order pursuant to Section 6320  
7 shall include the reasons for denying the petition.

8  
9 (b) An order denying a jurisdictionally adequate petition for an ex parte order, pursuant  
10 to Section 6320, shall provide the petitioner the right to a noticed hearing on the earliest  
11 date that the business of the court will permit, but not later than 20 days, or, if good cause  
12 appears to the court, 25 days, from the date of the order. The petitioner shall serve on the  
13 respondent, at least 5 days before the hearing, copies of all supporting papers filed with  
14 the court, including the application and affidavits.

15  
16 (c) Notwithstanding subdivision (b), upon the denial of the ex parte order pursuant to  
17 Section 6320, the petitioner shall have the option of waiving his or her right to a noticed  
18 hearing. However, nothing in this section shall preclude a petitioner who waives his or  
19 her right to a noticed hearing from refileing a new petition, without prejudice, at a later  
20 time.

21  
22 ~~(d) The Judicial Council, on or before January 1, 2010, shall develop a form to~~  
23 ~~implement this section.~~

24  
25 6322.7. (a) The court shall order that any party enjoined pursuant to an order issued under  
26 this part be prohibited from taking any action to obtain the address or location of a  
27 ~~protected party or a protected party's family members, caretakers, or guardian, any~~  
28 protected person, unless there is good cause not to make that order.

29  
30 (b) The Judicial Council shall promulgate forms necessary to effectuate this section.

31  
32 *[COMMENT: Subdivisions (a) and (c) of the following section, with minor modifications,*  
33 *have been included in new Code of Civil Procedure sections 527.6(h) and 527.8(j) and*  
34 *new Welfare and Institutions Code section 15657.02(g). To be consistent with a useful*  
35 *provision in one of those sections, a new sentence has been added at the end of (a)*  
36 *below]:*

37  
38 6345. (a) In the discretion of the court, the personal conduct, stay-away, and residence  
39 exclusion orders contained in a court order issued after notice and a hearing under this  
40 article may have a duration of not more than five years, subject to termination or  
41 modification by further order of the court either on written stipulation filed with the court  
42 or on the motion of a party. These orders may be renewed, upon the request of a party,  
43 either for five years or permanently, without a showing of any further abuse since the

1 issuance of the original order, subject to termination or modification by further order of  
2 the court either on written stipulation filed with the court or on the motion of a party. The  
3 request for renewal may be brought at any time within the three months before the  
4 expiration of the orders.

5  
6 (b) Notwithstanding subdivision (a), the duration of any orders, other than the protective  
7 orders described in subdivision (a), that are also contained in a court order issued after  
8 notice and a hearing under this article, including, but not limited to, orders for custody,  
9 visitation, support, and disposition of property, shall be governed by the law relating to  
10 those specific subjects.

11  
12 (c) The failure to state the expiration date on the face of the form creates an order with a  
13 duration of three years from the date of issuance.

14  
15 *[Family Code section 6384—which would also be incorporated into Code of Civil*  
16 *Procedure section 527.6 as subdivision (m) and Code of Civil Procedure section 527.8 as*  
17 *subdivision (n)—would be amended to read as follows]:*

18  
19 6384. (a) If a person named in an order issued under this part after a hearing has not been  
20 served personally with the order but has received actual notice of the existence and  
21 substance of the order through personal appearance in court to hear the terms of the order  
22 from the court, no additional proof of service is required for enforcement of the order.

23 If a person named in a temporary restraining order or emergency protective order is  
24 personally served with the order and notice of hearing with respect to a restraining order  
25 or protective order based ~~thereon~~ on the temporary restraining order, but the person does  
26 not appear at the hearing either in person or by counsel, and the terms and conditions of  
27 the restraining order or protective order are identical to the temporary restraining or  
28 emergency protective order, except for the duration of the order, the restraining order or  
29 protective order may be served on the person by first-class mail sent to that person at the  
30 most current address for the person available to the court.

31 (b) The Judicial Council forms for orders issued under this part shall contain a  
32 statement in substantially the following form:

33  
34 ~~"NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF THE FACE OF~~  
35 ~~THIS FORM INDICATES THAT BOTH PARTIES WERE PERSONALLY PRESENT~~  
36 ~~AT THE HEARING WHERE THE ORDER WAS ISSUED. IF YOU HAVE BEEN~~  
37 ~~PERSONALLY SERVED WITH A TEMPORARY RESTRAINING ORDER OR~~  
38 ~~EMERGENCY PROTECTIVE ORDER AND NOTICE OF HEARING, BUT YOU DO~~  
39 ~~NOT APPEAR AT THE HEARING~~  
40 ~~EITHER IN PERSON OR BY COUNSEL, AND A RESTRAINING ORDER OR~~  
41 ~~PROTECTIVE ORDER IS ISSUED AT THE HEARING THAT DOES NOT DIFFER~~  
42 ~~FROM THE PRIOR TEMPORARY RESTRAINING ORDER OR EMERGENCY~~

1 ~~PROTECTIVE ORDER, A COPY OF THE ORDER WILL BE SERVED UPON YOU~~  
2 ~~BY MAIL AT THE FOLLOWING ADDRESS~~

3 \_\_\_\_\_.  
4 ~~IF THAT ADDRESS IS NOT CORRECT OR YOU WISH TO VERIFY THAT THE~~  
5 ~~TEMPORARY OR EMERGENCY ORDER WAS MADE PERMANENT WITHOUT~~  
6 ~~SUBSTANTIVE CHANGE, CALL THE CLERK OF THE COURT AT \_\_\_\_\_."~~

7  
8 *[COMMENT: The following new language, which is based on the statement in form EA-*  
9 *120, item 18, would be substituted for the above language:]*

10  
11 "If you have been personally served with a temporary restraining order and notice of  
12 hearing, but you do not appear at the hearing either in person or by a lawyer, and a  
13 restraining order that does not differ from the previous temporary restraining order is  
14 issued at the hearing, a copy of the order will be served on you by mail at the following  
15 address (insert the address of the restrained person):

16  
17  
18 "If that address is not correct or you wish to verify that the temporary restraining order  
19 was converted to a restraining order at the hearing without substantive change and to find  
20 out the duration of that order, contact the clerk of the court.

21  
22 "If both you and the person protected by the order are personally present at the hearing  
23 where the order is issued, no additional proof of service will be required."

24  
25 6387. The court shall order the clerk of the court to provide to a petitioner upon request,  
26 without cost, up to five three certified, stamped, and endorsed copies of any order issued  
27 under this part, and of an extension, a modification, or a termination of the order.

28  
29 *[COMMENT: Section 6389(a) below is amended to include ammunition, which reflects*  
30 *existing law. See Penal Code sections 12316(b)(1) and 12021(g). Identifying ammunition*  
31 *in this subdivision will make it clearer that the restrictions apply to ammunition as well*  
32 *as firearms.]*

33  
34 6389. (a) A person subject to a protective order, as defined in Section 6218, shall not  
35 own, possess, purchase, or receive a firearm or ammunition while that protective order is  
36 in effect. Every person who owns, possesses, purchases, ~~or~~ receives, or attempts to  
37 purchase or receive a firearm or ammunition while the protective order is in effect is  
38 punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

39 (b) On all forms providing notice that a protective order has been requested or granted,  
40 the Judicial Council shall include a notice that, upon service of the order, the respondent  
41 shall be ordered to relinquish possession or control of any firearms and not to purchase or  
42 receive or attempt to purchase or receive any firearms for a period not to exceed the  
43 duration of the restraining order.

1 (c) (1) Upon issuance of a protective order, as defined in Section 6218, the court shall  
2 order the respondent to relinquish any firearm in the respondent's immediate possession  
3 or control or subject to the respondent's immediate possession or control.

4 (2) The relinquishment ordered pursuant to paragraph (1) shall occur by immediately  
5 surrendering the firearm in a safe manner, upon request of any law enforcement officer,  
6 to the control of the officer, after being served with the protective order. Alternatively, if  
7 no request is made by a law enforcement officer, the relinquishment shall occur within 24  
8 hours of being served with the order, by either surrendering the firearm in a safe manner  
9 to the control of local law enforcement officials, or by selling the firearm to a licensed  
10 gun dealer, as specified in Section 12071 of the Penal Code. The law enforcement officer  
11 or licensed gun dealer taking possession of the firearm pursuant to this subdivision shall  
12 issue a receipt to the person relinquishing the firearm at the time of relinquishment. A  
13 person ordered to relinquish any firearm pursuant to this subdivision shall file with the  
14 court that issued the protective order, within 48 hours after being served with the order,  
15 the receipt showing the firearm was surrendered to a local law enforcement agency or  
16 sold to a licensed gun dealer. Failure to timely file a receipt shall constitute a violation of  
17 the protective order.

18 (3) The application forms for protective orders adopted by the Judicial Council and  
19 approved by the Department of Justice shall ~~be amended to~~ require the petitioner to  
20 describe the number, types, and locations of any firearms presently known by the  
21 petitioner to be possessed or controlled by the respondent.

22 (4) It is recommended that every law enforcement agency in the state develop, adopt,  
23 and implement written policies and standards for law enforcement officers who request  
24 immediate relinquishment of firearms.

25 (d) If the respondent declines to relinquish possession of any firearm based on the  
26 assertion of the right against self-incrimination, as provided by the Fifth Amendment to  
27 the United States Constitution and Section 15 of Article I of the California Constitution,  
28 the court may grant use immunity for the act of relinquishing the firearm required under  
29 this section.

30 (e) A local law enforcement agency may charge the respondent a fee for the storage of  
31 any firearm pursuant to this section. This fee shall not exceed the actual cost incurred by  
32 the local law enforcement agency for the storage of the firearm. For purposes of this  
33 subdivision, "actual cost" means expenses directly related to taking possession of a  
34 firearm, storing the firearm, and surrendering possession of the firearm to a licensed  
35 dealer as defined in Section 12071 of the Penal Code or to the respondent.

36 (f) The restraining order requiring a person to relinquish a firearm pursuant to  
37 subdivision (c) shall state on its face that the respondent is prohibited from owning,  
38 possessing, purchasing, or receiving a firearm while the protective order is in effect and  
39 that the firearm shall be relinquished to the local law enforcement agency  
40 for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale  
41 shall be filed with the court within a specified period of receipt of the order. The order  
42 shall also state on its face the expiration date for relinquishment. Nothing in this section

1 shall limit a respondent's right under existing law to petition the court at a later date for  
2 modification of the order.

3 (g) The restraining order requiring a person to relinquish a firearm pursuant to  
4 subdivision (c) shall prohibit the person from possessing or controlling any firearm for  
5 the duration of the order. At the expiration of the order, the local law enforcement agency  
6 shall return possession of any surrendered firearm to the respondent, within five days  
7 after the expiration of the relinquishment order, unless the local law enforcement agency  
8 determines that (1) the firearm has been stolen, (2) the respondent is prohibited from  
9 possessing a firearm because the respondent is in any prohibited class for the possession  
10 of firearms, as defined in Sections 12021 and 12021.1 of the Penal Code and Sections  
11 8100 and 8103 of the Welfare and Institutions Code, or (3) another successive restraining  
12 order is used against the respondent under this section. If the local law enforcement  
13 agency determines that the respondent is the legal owner of any firearm deposited with  
14 the local law enforcement agency and is prohibited from possessing any firearm, the  
15 respondent shall be entitled to sell or transfer the firearm to a licensed dealer as  
16 defined in Section 12071 of the Penal Code. If the firearm has been stolen, the firearm  
17 shall be restored to the lawful owner upon his or her identification of the firearm and  
18 proof of ownership.

19 (h) The court may, as part of the relinquishment order, grant an exemption from the  
20 relinquishment requirements of this section for a particular firearm if the respondent can  
21 show that a particular firearm is necessary as a condition of continued employment and  
22 that the current employer is unable to reassign the respondent to another position where a  
23 firearm is unnecessary. If an exemption is granted pursuant to this subdivision, the order  
24 shall provide that the firearm shall be in the physical possession of the respondent only  
25 during scheduled work hours and during travel to and from his or her place of  
26 employment. In any case involving a peace officer who as a condition of employment  
27 and whose personal safety depends on the ability to carry a firearm, a court may allow the  
28 peace officer to continue to carry a firearm, either on duty or off duty, if the court finds  
29 by a preponderance of the evidence that the officer does not pose a threat of harm. Prior  
30 to making this finding, the court shall require a mandatory psychological evaluation of  
31 the peace officer and may require the peace officer to enter into counseling or other  
32 remedial treatment program to deal with any propensity for domestic violence.

33 (i) During the period of the relinquishment order, a respondent is entitled to make one  
34 sale of all firearms that are in the possession of a local law enforcement agency pursuant  
35 to this section. A licensed gun dealer, who presents a local law enforcement agency with  
36 a bill of sale indicating that all firearms owned by the respondent that are in the  
37 possession of the local law enforcement agency have been sold by the respondent to the  
38 licensed gun dealer, shall be given possession of those firearms, at the location where a  
39 respondent's firearms are stored, within five days of presenting the local law enforcement  
40 agency with a bill of sale.

41 (j) The disposition of any unclaimed property under this section shall be made pursuant  
42 to Section 1413 of the Penal Code.

1 (k) The return of a firearm to any person pursuant to subdivision (g) shall not be subject  
2 to the requirements of subdivision (d) of Section 12072 of the Penal Code.

3 (l) If the respondent notifies the court that he or she owns a firearm that is not in his or  
4 her immediate possession, the court may limit the order to exclude that firearm if the  
5 judge is satisfied the respondent is unable to gain access to that firearm while the  
6 protective order is in effect.

7 (m) Any respondent to a protective order who violates any order issued pursuant to this  
8 section shall be punished under the provisions of subdivision (g) of Section 12021 of the  
9 Penal Code.