



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

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Title	Agenda Item Type
Domestic Violence: Status Report on Implementation of the Guidelines, Practices, and Recommendations of the Domestic Violence Practice and Procedure Task Force	Information Only
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	July 20, 2010

Submitted by
Domestic Violence Practice and Procedure
Task Force
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Executive Summary

This is an information report on the implementation efforts of the Domestic Violence Practice and Procedure Task Force following submission of its final report and recommendations to the council in February 2008.¹

Previous Council Action

With the approval of the task force's recommendations in February 2008, the Judicial Council directed the task force to report on the status of implementation activities by June 2009. During the period the proposed rule of court on firearms relinquishment procedures was being reviewed

¹ The task force roster is attached at Attachment A. The text of the task force's charge, revised in June 2008, is attached at Attachment B. An annotated version of the 139 guidelines and practices in the task force's final report is attached at Attachment C. This annotated version reflects the implementation status of each guideline or practice.

by several advisory committees and the task force was advised to bring the status report to the council when the proposed rule was resolved. The rule was adopted at the June 25 meeting of the Judicial Council.

Methodology and Process

The task force conducts at least one meeting annually and periodic planning conference calls. The task force also conducts regional court meetings to discuss implementation of specific guidelines and practices and convenes invitational forums that focus on particularly complex issues. Additional implementation methods include new and revised Judicial Council forms, rules of court, publications and bench cards; local court self-assessment tools and technical assistance; judicial branch education; development of a web-based portal to Serranus information; development of a judicial newsletter; a staffing needs study; and support for the California Courts Protective Order Registry (CCPOR) project.

Policy and Cost Implications

The Domestic Violence Practice and Procedure Task Force has received special funds from the Trial Court Improvement Fund, and its activities have been substantially enhanced by receipt of grant funding.

Implementation Efforts

The task force has used seven methods to provide information and assistance to local courts regarding the guidelines and practices and, when applicable, to specifically implement key recommendations. A summary description of these methods and activities follows; Attachment C provides more detail on the recommendations referenced in this summary description.

Rules of court

The Judicial Council directed the task force to collaborate with the Governing Committee of the Center for Judicial Education and Research to propose a rule of court governing judicial education on domestic violence issues (Task Force Court Leadership Recommendation 4). Rule 10.462 of the California Rules of Court was adopted by the Judicial Council on October 23, 2009, effective January 1, 2010. A second proposal, on firearm relinquishment (Task Force Firearm Relinquishment Recommendations 10 and 11), was recently submitted to the Judicial Council. The council adopted rule 4.700 of the California Rules of Court, effective July 1, 2010.

Form changes

Revisions to Judicial Council domestic violence forms based on the task force's recommendation on denials of petitions in domestic violence restraining order proceedings (Task Force Restraining Order Recommendation 11) and based on legislation were adopted by the Judicial Council at its December 2009 meeting, effective January 1, 2010. Effective January 1, 2009, Assembly Bill 2553 (Solorio; Stats. 2008, ch. 263) added section 6320.5 to the Family Code to require a court to state its reasons when denying a petition for an ex parte restraining order. In addition, under section 6320.5, if a court denies a jurisdictionally adequate petition for an ex

parte order, the petitioner has a right to a noticed hearing within a specified number of days. The petitioner, however, has the option of waiving his or her right to the noticed hearing while retaining his or her right to file a new petition, without prejudice, at a later time. Family Code section 6320.5 requires the Judicial Council to develop a form to implement the statute by January 1, 2010.²

In addition, revisions to the *Temporary Restraining Order* (form DV-110), effective January 1, 2010, include the addition of a check box for the court to indicate whether or not it received information that the restrained person owns or possesses a firearm. (Task Force Firearms Relinquishment Recommendation 13).

Finally, revision of the Judicial Council's *Emergency Protective Order* (form EPO-001) is pending before the Protective Order Working Group (Task Force Firearms Relinquishment Recommendation 18). The Protective Order Working Group is currently undertaking a comprehensive review of *all* Judicial Council protective order forms for potential revision. The working group was formed at the request of the Judicial Council's Rules and Projects Committee to bring together members of the council's Family and Juvenile Law, Civil and Small Claims, Criminal Law, and Probate and Mental Health Advisory Committees, as well as the Domestic Violence Practice and Procedure Task Force, to jointly address issues relating to all protective order forms. It is anticipated that forms changes would be effective January 1, 2011.

Judicial and court staff education

Funding provided by the federal Violence Against Women Act and the California Emergency Management Agency has enabled AOC staff to develop and maintain a comprehensive curriculum on domestic violence issues. Following are examples of educational programs:

- Domestic violence components in all primary assignment orientations for judges and subordinate judicial officers who hear criminal, family, juvenile dependency, juvenile delinquency, and probate matters;
- Domestic violence criminal law courses for experienced judicial officers;
- Domestic violence workshops in relevant rural court, criminal, juvenile, and family law institutes;
- Domestic violence courses at the Bernard E. Witkin Judicial College;
- Domestic violence workshops at the Beyond the Bench conference;
- Development of a course on court leadership and administration in domestic violence cases in collaboration with the National Council of Juvenile and Family Court Judges (to be piloted for presiding judges and executive officers in November 2010);
- Development of a lesson plan and delivery of a course on ethics and self-represented litigants in domestic violence cases in May 2009 and March 2010, to be repeated in March 2011;
- Development of an online course for judicial officers about restraining orders;

² Adopted revisions relate to the following Judicial Council forms: DV-110, DV-125, DV-126-INFO, DV-130, DV-200, DV-210-INFO, DV-250, DV-510-INFO, and DV-540-INFO. Two new forms were also adopted: DV-109 and DV-112.

- Development of an online course for court clerks about restraining orders; and
- Staff participation in developing courses and programs for two national projects: National Association of Women Judges annual conference in October 2010 and the National Center for State Courts Domestic Violence Summit in November 2010.

California Courts Protective Order Registry (CCPOR) Project

CCPOR is a judicial branch project to create a statewide repository of complete, accessible information on restraining and protective orders. Access to protective orders through CCPOR will be available 24 hours a day, seven days a week, in all court jurisdictions and venues. The project was developed in response to task force recommendations (Task Force CLETS Recommendations 1–12). Additional information, such as whether the restrained party is subject to a search condition, may be added once the system is up and running on a statewide basis. A fact sheet more fully describing the project and its implementation status is included as Attachment D.

Court meetings and roundtables

The task force determined that providing a forum for courts to compare and discuss local practice and procedure would be beneficial as a means to implement the task force’s proposals at the local level. As a result, in June 2009, the task force convened two court meetings, one in Northern California for smaller courts and one in Southern California for larger courts, to discuss task force recommendations relating to firearm relinquishment and criminal procedure in domestic violence cases. These successful court meetings helped courts share and discuss recommended guidelines and practices and implementation methods.

The task force members participated in an invitational court forum in June 2010 that focused on assessing lethality and dangerousness in domestic violence cases. National expert, Dr. Jacqueline C. Campbell of Johns Hopkins University, presented her comprehensive research. The consensus developed at the forum will be presented to the task force for future action.

Publications

With the guidance of the task force, AOC staff has overseen publication of a revised benchbook, *The Judges Guide to Domestic Violence Cases*. The benchbook is in the process of being distributed to each judge and commissioner. Four bench cards on restraining and protective orders, emergency protective orders, mandatory terms and conditions of probation, and pretrial procedures will also be distributed. An online newsletter connected to the AOC’s *Court News Update* and a judicial website on domestic violence to be posted on Serranus are also under development.

Technical assistance to courts

To support local trial court implementation of task force guidelines and practices, effective September 1, 2009, the AOC received funding from the Federal Violence Against Women Act (VAWA) Series*Training*Officer*Prosecution (STOP) American Recovery and Reinvestment Act of 2009 and launched the Promising Practices Outreach Project. Currently four courts are

participating in the Promising Practice Outreach Project: Inyo, Los Angeles, Santa Clara, and Tulare.

Next Steps

The task force members' terms have been extended to June 13, 2013. During this time the task force will continue its efforts to implement and publicize the guidelines and practices. Based on the importance of domestic violence practices and procedures to the administration of justice, the task force plans to publish its guidelines and recommended practices in a formal guide to be distributed to the judiciary and posted online. The task force plans to conduct an additional set of regional court meetings and will be considering recommendations on lethality and dangerousness arising out of the June 2010 court forum.

Attachments

1. Attachment A: Roster of the Domestic Violence Practice and Procedure Task Force
2. Attachment B: Charge of the Domestic Violence Practice and Procedure Task Force
3. Attachment C: Annotated Guidelines and Practices for Improving the Administration of Justice in Domestic Violence Cases (Implementation Status Report, July 2010)
4. Attachment D: *California Courts Protective Order Registry* (fact sheet, April 2010)

Roster of the
Domestic Violence Practice and Procedure Task Force
(Final as of July 2010)

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Judge of the Superior Court of California,
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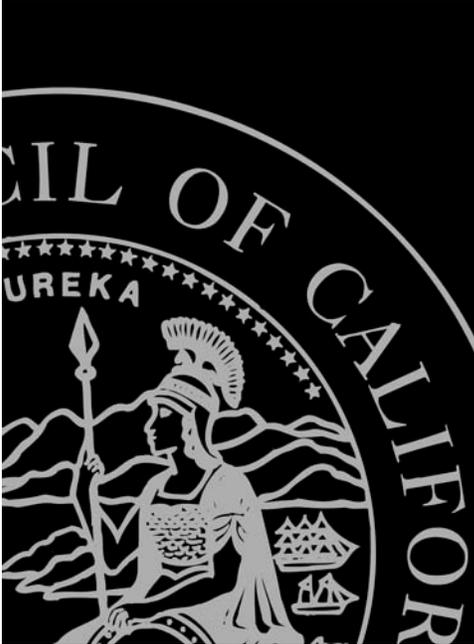
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Charge of the Judicial Council
Domestic Violence Practice and Procedure Task Force

1. Implement, as appropriate, the guidelines and the practices in the *Final Report of the Domestic Violence Practice and Procedure Task Force* accepted by the Judicial Council on February 22, 2008;
2. Select and refer guidelines and practices, as appropriate, to Judicial Council internal committees, advisory committees, AOC divisions, or other entities for implementation, including preparation of suggested legislation, rules, forms, or educational materials to be considered through normal judicial branch processes;
3. Collaborate with the Governing Committee for the Center for Judicial Education and Research to propose revision of the rules relating to minimum judicial educational requirements to address issues of domestic violence;
4. Study the need for additional resources that local courts may require to implement the proposed guidelines and practices; and
5. Report progress to the Judicial Council by October 2009.



Annotated Guidelines and Practices for Improving the Administration of Justice in Domestic Violence Cases

DOMESTIC VIOLENCE PRACTICE AND
PROCEDURE TASK FORCE

IMPLEMENTATION STATUS REPORT
(JULY 2010)

NOTE

This implementation status report contains the original recommended guidelines and practices received by the Judicial Council on February 22, 2008. The text of each guideline is followed by a status note.



ADMINISTRATIVE OFFICE
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Court Leadership

1. ***Court leadership.*** In order to improve public safety and promote public trust and confidence in the justice system, the presiding judge and court leaders should allocate adequate resources, including those for staffing and education, to ensure the fair and accessible adjudication of cases involving domestic violence allegations. The courts should engage in an ongoing process to develop, monitor, and evaluate procedures and protocols designed to improve the administration of justice in these critical cases.

➤ ***Implementation Status.*** This recommendation will be addressed as part of a draft curriculum for presiding judges and court executive officers on court leadership and administration in cases involving domestic violence allegations. The task force is developing the curriculum in collaboration with the National Council of Juvenile and Family Court Judges. A pilot course is scheduled for November 2010.

2. ***Working with justice system entities and community organizations.*** As ethically appropriate, the court should participate in domestic violence coordinating councils or court-convened committees that provide an opportunity for justice system agencies and community organizations to comment on court practices and procedures relating to domestic violence cases, as well as providing a mechanism for improving these practices and procedures. Ethically appropriate councils or committees, at a minimum, (1) are inclusive in that representatives from all interests and sides of the litigation are invited to participate, (2) do not involve discussion of pending cases, (3) do not involve judicial officers in fundraising, and (4) do not involve judicial officers in lobbying for the adoption of legislative measures.

➤ ***Implementation Status.*** The AOC received Recovery Act funding designated for education, training, technical assistance, and policy development relating to domestic violence, sexual assault, stalking, teen dating violence, and elder abuse, effective September 1, 2009. Part of these funds will be used to support local courts in working with justice system entities and community organizations as well as to provide local education and technical assistance. In addition, this recommendation will be a part of the court leadership and administration curriculum (see Recommendation 1, above).

3. ***Use of temporary judges.*** To the extent feasible, the use of temporary judges to adjudicate cases that typically involve domestic violence allegations is discouraged. In no event should temporary judges preside over such cases unless they have received education concerning domestic violence cases.

➤ ***Implementation Status.*** See Recommendation 1 in this section, above.

4. ***Judicial education.*** Presiding judges should ensure that judges and subordinate judicial officers who perform duties in domestic violence matters receive regular training and education in this subject area. They should also ensure, under rule 10.462

of the California Rules of Court, that (1) each new trial court judge and subordinate judicial officer with an assignment in criminal, family, juvenile delinquency, juvenile dependency, or probate attend an orientation course in his or her primary assignment that contains a domestic violence session within one year of taking the oath of office and (2) unless he or she is returning to an assignment after less than two years in another assignment, each judge or subordinate judicial officer who is beginning a new primary assignment in criminal, family, juvenile delinquency, juvenile dependency, or probate complete a course in the new primary assignment that contains a domestic violence session within six months of beginning the new assignment.

➤ **Implementation Status.** This recommendation was fully implemented with the adoption of rule 10.464 of the California Rules of Court, effective January 1, 2010. In addition, this recommendation will be a part of the court leadership and administration curriculum (see Recommendation 1 in this section, above).

5. **California Courts Protective Order Registry (CCPOR).** Each presiding judge and court executive officer should make accessible to judges the CCPOR, a Web-based, statewide centralized system for viewing protective and restraining orders and related information.¹

➤ **Implementation Status.** This recommendation is partially implemented with the development and deployment of the California Courts Protective Order Registry (CCPOR) project, funded by the California Emergency Management Agency. Live demonstrations of CCPOR were presented at regional court meetings sponsored by the task force and at meetings of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee in June 2009. The CCPOR team has completed its system design and is now engaged in application development and testing. The CCPOR team estimates deployment in the initial 20 courts will occur by September 2010.

6. **Court structure and calendars.** Each court should consider whether to create dedicated domestic violence courts or specialized calendars based on the unique circumstances and characteristics of that jurisdiction and the resources available to it. In making the determination, the court should consider the optimal ways to:
- a. Ensure ongoing evaluation and monitoring of practice and procedure in domestic violence cases;
 - b. Provide for trained staff and judicial officers;
 - c. Foster collaborative efforts to improve the administration of justice in domestic violence cases within the court and among other justice system agencies;
 - d. Promote procedural consistency; and
 - e. Enhance and increase accessibility to services for victims of domestic violence.

¹ A project under way at the Administrative Office of the Courts, the CCPOR is designed to make the full text of restraining and protective orders easily accessible to the judiciary, law enforcement, and other justice system partners.

➤ ***Implementation Status.*** See Recommendation 1 in this section, above.

Domestic Violence Prevention Act Restraining Orders

Assistance for Parties (General)

1. **Removal of barriers.** Each court should review its practices and procedures generally and make changes designed to reduce barriers to court access for litigants in restraining order proceedings. Each court may consider working with community agencies in identifying barriers and developing practices.

➤ **Implementation Status.** This recommendation addresses local activities. The task force implementation duties have been completed through judicial education programming. In addition, a new edition of the benchbook *A Judges Guide to Domestic Violence Cases* will highlight the recommendation. This new edition is completed and, as of July 2010, in the process of distribution. A bench card reflecting statutory requirements relating to restraining orders will also be distributed. The recommendation has been incorporated into a self-assessment tool relating to restraining orders as part of the Domestic Violence Safety Partnership (DVSP) project at the Administrative Office of the Courts (AOC); this tool was distributed to courts in December 2009. DVSP allows local courts to assess their practices and request technical assistance and local training relating to any areas identified as needing greater emphasis. Finally, this recommendation has been referred to and incorporated into other relevant AOC projects and activities, such as the Elkins Family Law Task Force and workload and staffing studies.

2. **Access to restraining orders.** Courts should ensure that only those eligibility requirements required by statute or rule are imposed upon a litigant seeking to obtain a restraining order. To ensure public safety, any person can request a restraining order regardless of unrelated factors such as immigration status or alleged criminal conduct.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

3. **Information/resources for the parties.** The court should inform the parties about resources that are available in restraining order proceedings in accordance with their requests and needs and under Family Code section 6343. That section requires courts, in consultation with local domestic violence shelters and programs, to develop a resource list of appropriate community domestic violence programs and services. The list must be provided to each applicant for a domestic violence restraining order. The resources should be available in English and other languages to the extent feasible and could include:

- a. Legal services agencies and pro bono legal resources;
- b. Child support services;
- c. AOC informational pamphlet and video;
- d. Available victim-witness services or funding;
- e. Appropriate referrals to community domestic violence programs and services, including batterer intervention programs;

- f. Self-help services;
 - g. Other community services, including those providing immigration information.
- **Implementation Status.** See Recommendation 1 in this section, above.
4. **Legal services.** Each court should provide information to all parties about the availability of legal services and should explore options with the bar and other agencies to foster increased representation for parties in domestic violence restraining order cases.
- **Implementation Status.** See Recommendation 1 in this section, above.
5. **Family law facilitator/self-help center.** Additional funding should be provided for the family law facilitator or self-help center, if appropriate, to furnish services to all parties beyond those provided by the federally funded child support program. The facilitators and self-help centers should provide information and appropriate assistance to litigants on court practice and procedure in domestic violence cases. So that the parties have access to electronic domestic violence self-help software, facilitators and self-help centers should make every effort to make computers available for use by the parties in restraining order proceedings.
- **Implementation Status.** See Recommendation 1 in this section, above.
6. **Counseling.** Individuals seeking protection in domestic violence cases should not be ordered to attend counseling without careful consideration. Under existing law, a court may not order a protected party to obtain counseling without the consent of the party unless there is a custody or visitation dispute. (Fam. Code, § 3190.) In the event that the court orders counseling under Family Code section 3190, the court must make the requisite findings and should order separate counseling sessions under Family Code section 3192. Nonmandatory referrals to counseling or related services may be made and should be provided under the requirement of Family Code section 6343, which requires that courts develop resource lists for referrals to appropriate community domestic violence programs and services.
- **Implementation Status.** See Recommendation 1 in this section, above.
7. **Confidentiality.** Courts should (1) inform parties that most filed documents are public records and (2) provide information on how to safeguard certain kinds of information such as addresses or confidential locations. (See for example, the Secretary of State’s Safe at Home Program, www.ss.ca.gov/safeathome.)
- **Implementation Status.** See Recommendation 1 in this section, above.

Obtaining and Perfecting Orders

8. ***Emergency protective orders (EPOs)***. Each court should have a workable practice for obtaining EPOs to maximize accessibility. Each court should ensure that a judicial officer is available to law enforcement during both business and nonbusiness hours for review of applications for EPOs. Each court should also encourage and support law enforcement's use of the after-hours procedure for EPOs by using a duty judge system of rotation.

➤ ***Implementation Status.*** See Recommendation 1 in this section, above.

9. ***Reasonable and timely access to review of applications for temporary restraining orders***. Each court should have a mechanism for reviewing each application for a restraining order "on the same day that the application is submitted to the court, unless the application is filed too late in the day to permit effective review, in which case the order shall be issued or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court." (Fam. Code, § 6326.) Courts should develop procedures to (1) ensure timely access at convenient court locations so that travel to the appropriate courthouse will not unduly burden the party seeking review of the application and (2) develop electronic mechanisms such as fax, e-mail, or videoconferencing to facilitate prompt review of the application.

➤ ***Implementation Status.*** See Recommendation 1 in this section, above.

10. ***Notice in ex parte proceedings***. Courts should not have a blanket rule or policy regarding notice for every request for an ex parte restraining order. Notifying a proposed restrained person about an applicant's request for a restraining order can trigger a significant risk of harm to the applicant. As provided in Family Code section 6300, the court should determine *on a case-by-case basis*, depending on the circumstances, whether notice of an application for a temporary restraining order should be required, taking into account the level of danger to the applicant. In all cases, applicants should be referred to community services and should be advised of the National Domestic Violence Hotline (1-800-799-SAFE).

➤ ***Implementation Status.*** See Recommendation 1 in this section, above.

11. ***Right to hearing***. A jurisdictionally adequate petition for an ex parte temporary restraining order under the DVPA may not be summarily denied. The court must either (1) grant the temporary orders requested and set the matter for a noticed hearing or (2) defer ruling on the matter pending a noticed hearing, in which case the court should consider whether failure to make any of these orders would jeopardize the safety of the petitioner and children. (*Nakamura v. Parker* (2007) 156 Cal.App.4th 327.) When no temporary order is issued, some petitioners may be concerned that their safety will be compromised if the court sets the matter for a noticed hearing. Therefore, the court should develop a procedure so that the petitioner

is informed that he or she may withdraw the petition without prejudice to refile it at another time.

- **Implementation Status.** See Recommendation 1 in this section, above.
In addition, this recommendation has been implemented through revision of relevant Judicial Council forms effective January 1, 2010.

12. **Background checks.** To enhance public safety, wherever possible each court should conduct timely criminal background checks on the restrained party and conduct checks for other restraining and protective orders, involving either party, that can be considered by the judicial officer, both at the temporary restraining order stage and at the hearing on the application, as described in Family Code section 6306. However, lack of sufficient resources makes it impossible for some courts to conduct these checks, and significant challenges are associated with accessing and navigating the California Department of Justice’s (DOJ) databases. Therefore, the DOJ should work with the courts to make records easily accessible and reduce the length of time needed to check records. Courts should access the CCPOR, the statewide database containing images of restraining and protective orders.²

- **Implementation Status.** See Recommendation 1 in this section, above.

13. **Service of process.** Each court should collaborate with law enforcement and processing services to ensure timely and effective personal service of process of restraining orders and entry of proof of service into DVROS.

- **Implementation Status.** See Recommendation 1 in this section, above.

14. **Preparation and provision of restraining orders.** The court should ensure that an order is prepared and provided as soon as possible to all parties who are present at the proceeding.

- **Implementation Status.** See Recommendation 1 in this section, above.
In addition, the AOC is supporting a software application in pilot courts that will assist courtroom clerks in preparing orders after hearing in restraining order proceedings. The application is referred to as the Family Courts Case Tracking System (FACCTS). FACCTS has been used in the Superior Courts of Butte, El Dorado, Orange, San Mateo, Solano, Sonoma, Tulare, and Tuolumne Counties.

15. **Past acts.** In reviewing applications for temporary restraining orders, there should be no rigid time frame for determining what constitutes a relevant “past act of abuse.” Such determinations should be made on a case-by-case basis.

- **Implementation Status.** See Recommendation 1 in this section, above.

² See footnote 2.

16. **Availability of child and spousal support orders.** In a DVPA proceeding when child or spousal support is requested and financial documentation is submitted, the court should consider the request and order appropriate support at the same time as the restraining order request is considered or as soon thereafter as possible to ensure safety. (Fam. Code, § 6341(a) and (c).) Each court should establish a cooperative relationship with the Department of Child Support Services and take reasonable steps to expedite the award of child and spousal support in domestic violence cases.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

17. **Availability of custody and visitation orders.** In a DVPA proceeding when child custody and visitation are requested and appropriate documentation is submitted, the court should consider the request and order custody and visitation to a party who has established a parent-child relationship under Family Code section 6323, as appropriate, at the same time as the restraining order. (Fam. Code, § 6340.) The court must consider whether failure to make any of these orders may jeopardize the safety of the petitioner and the children for whom the custody or visitation orders are sought. Each court should take reasonable steps to expedite the determination of custody and visitation in domestic violence cases.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

18. **Additional protected persons.** When the court issues a restraining order, it should consider whether the order should apply to other named family or household members if good cause is demonstrated. (Fam. Code, § 6320.)

➤ **Implementation Status.** See Recommendation 1 in this section, above.

19. **Supervised visitation.** There is a need for greater availability of affordable supervised visitation and safe exchange programs. As a result, every court should encourage the establishment of a facility or provider of supervised visitation and safe exchange services in the county so that in appropriate cases, each party to a restraining order proceeding who has children has access to supervised visitation and safe exchanges. To the extent feasible, the number of multilingual and multicultural programs should be increased.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

20. **Orders generally.** The court shall consider the application for a DVPA restraining order and may issue all appropriate orders without requiring corroborating evidence. As long as the court does not issue a conflicting order, it should consider the application even when a criminal protective order (CPO) exists. This maximizes safety and enables the court to consider custody and visitation.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

21. **Residence-exclusion orders.** When a court issues a residence-exclusion order, the court should consider implementing a protocol that allows the respondent to collect his or her belongings without violating the order.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

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

➤ **Implementation Status.** See Recommendation 1 in this section, above.

Hearings and Services

23. **Staffing.** The court should assign and manage appropriate staff in domestic violence cases to perform the following duties:

- a. Streamline procedures;
- b. Promote safety in the courthouse;
- c. Coordinate court processes and case information;
- d. Provide information to the court regarding existing protective orders and orders in cases involving child custody or visitation;
- e. Serve as liaison with law enforcement, treatment services, Children's Protective Services, victim assistance, advocates, probation departments, and other relevant agencies; and
- f. Participate as ethically appropriate in local family violence coordinating councils or court/community practice and procedure committees.

➤ **Implementation Status.** See Recommendation 1 in this section, above. This recommendation is partially completed through a current AOC workload study that will include calculation of the staffing resources needed in domestic violence restraining order proceedings. Staff estimates that the study will be completed by January 2011.

24. **Court interpreters.** Each court should provide interpreters in domestic violence cases, in family court services mediation sessions, and in self-help centers.³ Each court should analyze its calendaring mechanisms to maximize the availability of court interpreters in domestic violence cases.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

³ Courts should access the Administrative Office of the Courts grant program to fund interpreters in these proceedings. The task force acknowledges that there is a lack of certified interpreters for some languages in some locations.

25. **Training for court interpreters.** Each court should ensure that training for court interpreters includes information about the nature of domestic violence cases and the need for unbiased handling of interpretation in these cases. The AOC should provide support and curricula for developing the training.
- **Implementation Status.** This recommendation addresses local action. The task force implementation tasks have been completed. Currently, all interpreters are required to take an ethics class within the first two years of gaining certified or registered status. The AOC-sponsored course includes issues of domestic violence, unbiased interpreting, and interpreting for self-represented litigants. The availability of certified and registered interpreters and the resources necessary to retain and train them at the local level remain, however, critical issues for the courts.
26. **Services.** The court, in collaboration with community justice partners, should assess community resources, examine any gaps in resources, and inform appropriate officials accordingly, with the goal of increasing available resources for litigants in domestic violence cases.
- **Implementation Status.** See Recommendation 1 in this section, above.
27. **Self-represented litigants.** Each judge hearing domestic violence restraining order proceedings should conduct appropriate dialogue with self-represented litigants to clarify facts and explain the court's procedures as necessary in the specific case.
- **Implementation Status.** See Recommendation 1 in this section, above. In addition, the AOC developed a lesson plan and delivered, with grant funds, an interactive course for judicial officers entitled "Ethics and Self-Represented Litigants in Domestic Violence Cases." As part of the course, initially conducted in May 2009, judicial officers conducted a segment of a hypothetical domestic violence restraining order hearing that was videotaped. The judicial officers then viewed the videotape and discussed with faculty ways to handle issues relating to self-represented parties in domestic violence cases. This highly successful course was repeated in March 2010 and will be repeated in March 2011.
28. **Scheduling hearings.** The court should adhere to the statutory time periods for setting hearings on restraining orders, should endeavor to expedite these proceedings whenever possible to promote public safety, and should avoid unnecessary delays and continuances.
- **Implementation Status.** See Recommendation 1 in this section, above.

Court and Case Management

29. **Local procedures.** To the extent that a court promulgates policies or procedures relating to restraining order proceedings, the procedures should be in written form and made accessible to the public.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

30. **Calendar management.** If a court determines that a dedicated DVPA calendar is not warranted in the jurisdiction, the court should ensure that:

- a. There is a mechanism to identify all domestic violence cases to better provide services and staff; and
- b. Domestic violence matters are given calendar priority to ensure safety and convenience of litigants.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

31. **Court coordination.** Each court must develop a local rule, as required by rule 5.450 of the California Rules of Court, providing a procedure for communication among courts issuing criminal court protective orders and courts issuing orders involving child custody and visitation. Under rule 5.450, the local rule also must include a procedure for modification of a CPO in consultation with the court issuing a subsequent child custody and visitation order. The procedures should include methods for safeguarding confidential information and provide a mechanism for identifying related cases, orders, court dates, and information regarding children and for determining how to best provide appropriate information to judicial officers. The information should be integrated into the court's case management system.

➤ **Implementation Status.** See Recommendation 1 in this section, above.
In addition, AOC staff regularly provides technical assistance to courts relating to model procedures designed to comply with rule 5.450 of the California Rules of Court. Court communication in this regard will be greatly enhanced with the completion of the CCPOR project.

32. **Court communication.** Each court should have a mechanism for internal court communication on practice and procedure in domestic violence cases suitable for the court size and caseload. For example, courts may conduct meetings of judicial officers with criminal, juvenile, and family law assignments.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

33. **Training.** Each court should endorse and ensure periodic training for all court personnel and judicial officers who are involved in domestic violence cases appropriate to their assignments. The court should also regularly provide information to bench-bar groups about court practice and procedure relating to domestic violence cases.

➤ **Implementation Status.** See Recommendation 1 in this section, above.
In addition, the Center for Judicial Education and Research (CJER) has developed an online course for court staff on the technical and statutory aspects of domestic violence restraining orders. This online course is now available to court staff.

34. **Statistics.** Each court should maintain domestic violence statistics, including the number of EPOs issued, temporary restraining orders requested and granted, orders granted after hearing, children involved, reissuances, and proofs of service filed. Court case management systems should support collection of this data.
- **Implementation Status.** See recommendation 1 in this section, above.
In addition, the ability of courts to collect data on domestic violence restraining orders will be enhanced by the CCPOR project and will be integrated into the California Court Case Management System (CCMS).
35. **Facility security.** To handle those cases involving domestic violence, each court should develop reasonable safety procedures. These procedures should address, but are not limited to, the following: (1) making reasonable efforts to keep residential addresses, work addresses, and contact information—including but not limited to telephone numbers and e-mail addresses—confidential in all appropriate cases and on all appropriate documents; (2) ensuring that a trained security officer is present in the courtroom; (3) providing safe ways to depart from the courthouse, such as safe waiting areas, elevators, stairwells, hallways, entrances and exits, and parking; and (4) providing escorts for victims when needed and as feasible. Courts should consider the requirements of Government Code section 69920 et seq. and rule 5.215(i)(2) of the California Rules of Court when designing facilities.
- **Implementation Status.** See Recommendation 1 in this section, above.
36. **CLETS/DVROS.** As required by Family Code section 6380, each court should ensure that all required domestic violence restraining orders and proofs of service as defined under Family Code sections 6218 and 6320 are entered into the DVROS via CLETS within one business day and memorialized on mandatory Judicial Council forms. The statutory scheme contemplates that these orders should be entered into DVROS so that law enforcement agencies will have access to the orders, thus maximizing enforcement. Moreover, under federal law (see generally 18 U.S.C. § 44), any order that purports to prohibit specific threatening conduct carries with it mandatory firearms restrictions that should not be obviated by a state court or by stipulation of the parties.
- **Implementation Status.** See recommendation 1 in this section, above.
In addition, the CCPOR project will ultimately give courts the option to use CCPOR to promptly enter restraining orders into the California Restraining and Protective Order System (CARPOS, formerly DVROS).
37. **Non-CLETS domestic violence restraining orders.** Courts should decline to approve or make domestic violence⁴ restraining orders that cannot be entered into DVROS or CLETS, commonly referred to as “non-CLETS” orders.

⁴ Domestic violence in the civil context is defined as abuse or conduct that is described in Family Code sections 6203 and 6320 that has been perpetrated against an intimate partner, as defined by Family Code section 6211.

➤ *Implementation Status.* See Recommendation 1 in this section, above.

Firearms Relinquishment

Communication and Education

1. ***Communication with local justice system entities.*** Each court should regularly communicate with appropriate local justice system entities, including law enforcement, prosecutors and defense attorneys, domestic violence victim advocates, and the bar, to develop and monitor local firearm relinquishment protocols and procedures.
 - ***Implementation Status.*** This recommendation addresses local action. The task force implementation duties have been completed through inclusion of a firearms chapter in a new edition of the benchbook *A Judges Guide to Domestic Violence Cases*, completed and in the process of being distributed to each judicial officer. AOC staff provides ongoing technical assistance to courts regarding firearm relinquishment and coordinates conference calls in which courts, identified experts, and task force members may discuss common issues.
2. ***Communication with state justice system entities.*** The AOC should establish an ongoing working group with appropriate statewide justice system entities to communicate about and support improvements to statewide and local firearm relinquishment forms, protocols, and procedures.
 - ***Implementation Status.*** This recommendation addresses local action. The task force implementation duties have been completed through creation of an informal working group of knowledgeable experts from the Department of Justice (DOJ) and law enforcement. In addition, the subject of firearm relinquishment was a major topic for discussion at June 2009 regional court meetings sponsored by the task force. Comments from the courts regarding firearm relinquishment were memorialized in local action workbooks.
3. ***Identification of law enforcement and gun dealer policies.*** Courts should make reasonable efforts to learn about the existence and location of local gun dealers and about local law enforcement's relinquishment policies and gun dealers' sale policies, including fees for storage.
 - ***Implementation Status.*** See Recommendation 1 in this section, above.
4. ***Court access to state and federal firearms databases.*** The DOJ should make every effort to encourage and improve court access to state and federal firearms databases.
 - ***Implementation Status.*** See Recommendation 2 in this section, above.

Legislation and Rules of Court

5. ***Firearms search in Automated Firearms System (AFS) conducted by the prosecutor.*** Legislation should require prosecutors to perform a database search of the

defendant's registered firearms and provide that information to the court as currently set forth in Penal Code section 273.75.

➤ **Implementation Status.** This recommendation has not yet been implemented, but this issue is slated for task force consideration during fiscal year 2010–2011.

6. **Firearms search in AFS conducted by the court.** Family Code section 6306 should be amended to provide express authority for the courts to search the firearms database. Funding should be made available to the courts for implementation.

➤ **Implementation Status.** This recommendation has been partially implemented. AOC legislative staff determined that legislation was not required, and the Department of Justice issued a memorandum in January 2009 clarifying that courts have express authority to search the Automated Firearms System. Because of budgetary constraints, however, funding for implementation is not available to courts.

Procedures

Emergency protective orders

7. **Court inquiry.** Prior to issuing an EPO under Family Code section 6240 et seq., the on-call judge should ask the law enforcement officer who is requesting the order if the officer has inquired of the victim, alleged abuser, or both, whether a firearm is present at the location. (Pen. Code, § 13730.)⁵

➤ **Implementation Status.** See Recommendation 1 in this section, above. In addition, a bench card outlining provisions governing emergency protective orders including this recommended practice has been completed and is in the process of being distributed to each judicial officer. Revision of the Judicial Council's *Emergency Protective Order* (form EPO-001) is pending before the Protective Order Working Group. The Protective Order Working Group is currently undertaking a comprehensive review of all Judicial Council protective order forms for potential revision. The working group was formed at the request of the Judicial Council's Rules and Projects Committee to bring together members of the council's Family and Juvenile Law, Civil and Small Claims, Criminal Law, and Probate and Mental Health Advisory Committees, as well as the Domestic Violence Practice and Procedure Task Force, to jointly address issues relating to all protective order forms. It is anticipated that form changes would be effective January 1, 2011.

⁵ Penal Code section 12028.5 requires a law enforcement officer to take temporary custody of any firearm or other deadly weapon in plain sight or discovered as the result of a consensual or other lawful search as necessary for the protection of the peace officer or other persons present, when the officer is at the scene of a domestic violence incident involving a threat to human life or a physical assault. Moreover, if the court issues an EPO, the law enforcement officer who requested the order is required to serve the EPO on the restrained person, if the restrained person can reasonably be located, and then use every reasonable means to enforce the EPO, including firearms restrictions. (See Fam. Code, §§ 6271, 6272; Pen. Code, § 12021(g)(2).)

Criminal court protective orders

8. ***Firearms inquiry conducted by the prosecutor in conjunction with law enforcement.*** At or before the time of arraignment, the prosecutor and law enforcement should conduct a firearms search on the defendant through AFS and any other appropriate databases and sources and provide the results to the court at arraignment.⁶ Any inability to provide the court with timely information should not delay the issuance of an order. If the court finds reason to believe that the defendant owns or possesses a firearm, the court should instruct the prosecutor to make reasonable efforts to notify the victim or witness of the court's finding.⁷
 - ***Implementation Status.*** See Recommendation 1 in this section, above.

9. ***Oral advisement of firearm restrictions.*** The court should orally advise the defendant about state and federal firearms and ammunition prohibitions and the requirement for timely relinquishment.
 - ***Implementation Status.*** See Recommendation 1 in this section, above.

10. ***Set review hearing.*** The court should ask the prosecutor if he or she has reason to believe that the defendant owns or possesses a firearm or ammunition. If the court finds there is reason to believe that the defendant owns or possesses a firearm or ammunition, the court should set a review hearing within 48 hours of service of the protective order on the defendant to determine whether a relinquishment or sale receipt was filed. (Code Civ. Proc., § 527.9.) The court may wish to set the review hearing within 24 hours of service when logistically feasible. The court should order the restrained person to personally appear at the review hearing unless a sale or relinquishment receipt is filed within the statutory time frame.⁸ If the restrained person indicates under oath that he or she no longer owns or possesses any firearms that are entered in his or her name in the AFS database, the court should order the restrained person to submit form FD 4036, *Notice of No Longer in Possession* (NLIP), to the DOJ. The court should order the restrained person to submit a report of an allegedly lost or stolen firearm to local law enforcement and present proof of the report to the court. When the court has reason to believe that the defendant still owns

⁶ Section 273.75 of the Penal Code currently requires the district attorney or prosecuting city attorney to perform a database search of the defendant's history, including but not limited to prior convictions for domestic violence, other forms of violence or weapons offenses, and any current protective or restraining order. The information shall be presented for consideration by the court (1) when setting bond or when releasing a defendant on his or her own recognizance and (2) upon consideration of any plea agreement. The databases include the Violent Crime Information Network, the Supervised Release File, state summary criminal history information maintained by the DOJ, the Federal Bureau of Investigation's nationwide database, and locally maintained criminal history records. The statute should be revised to require a search in the AFS database.

⁷ Section 11106(d) of the Penal Code authorizes prosecutors to release AFS information to victims of domestic violence in some cases.

⁸ This proposal would necessitate an evidentiary hearing to determine whether the defendant owns or possesses a firearm. The defendant could invoke the Fifth Amendment right not to incriminate himself or herself.

or possesses a firearm or ammunition, even if the restrained person has filed a receipt, NLIP, or other type of sale or relinquishment notice, the court should consider holding a review hearing.

➤ **Implementation Status.** This recommendation was the subject of proposed rule 4.700 of the California Rules of Court adopted by the Judicial Council on June 23, 2010, effective July 1, 2010.

11. **Appropriate orders at the hearing.** If no receipt, NLIP, or other notice has been filed or provided and the defendant appears in court at the scheduled hearing, the court should hold a hearing on the firearms issue and (1) issue a search warrant if one is requested, provided the court finds probable cause, (2) increase bail, (3) revoke release on own recognizance (OR), or (4) set a probation revocation hearing. If no receipt, NLIP, or other notice has been filed or provided and the defendant does not appear for the court hearing, the court should issue a no-bail bench warrant.

➤ **Implementation Status.** See Recommendation 10 in this section, above.

Civil court restraining orders

12. **Database search for registered firearms conducted by the court.** The court (through sheriff, court, or pretrial services) should conduct a firearms search on the proposed restrained person through AFS or another appropriate database prior to issuing a restraining order (including a temporary restraining order). However, failure or inability to conduct the firearms search should not delay issuance of an order.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

13. **Note of reported firearms on restraining order.** If firearms, whether registered or not, are reported to the court through an AFS database search or by the protected party, the court should so indicate on the temporary restraining order and order after hearing.

➤ **Implementation Status.** This recommendation was fully implemented through revision of relevant Judicial Council forms effective January 1, 2010.

14. **Oral advisement about firearm restrictions.** The court shall inform parties of the terms of the restraining order, including notice that the restrained person is prohibited from owning, possessing, purchasing, receiving, or attempting to own, possess, purchase, or receive a firearm or ammunition, including notice of the penalty for violation. (See Fam. Code, § 6304.)⁹

⁹ The firearms prohibition of Family Code section 6389(a) “automatically activates . . . when a court imposes or renews any of the enumerated forms of protective orders.” (*Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1294–1295.) The court is “[unable] to eliminate the firearm restriction while a protective order remains in place” except in very limited circumstances that are specifically authorized by Family Code section 6389(h). (*Id.* at p. 1300.)

➤ **Implementation Status.** See Recommendation 1 in this section, above.

15. **Development of Failure to Relinquish or Sell Firearms notification form.** Upon the court's issuance of a DVPA order at a hearing where the respondent has been provided notice and an opportunity to be heard, the court should determine whether the restrained person owns or possesses firearms or ammunition. If the court finds that the restrained person does own or possess a firearm or ammunition, the court should notify law enforcement for appropriate action.¹⁰ The AOC, in consultation with the DOJ and other agencies as appropriate, should develop a form and procedure to ensure the timely notification of law enforcement entities about the court's finding.

➤ **Implementation Status.** This recommendation has not yet been implemented but remains under consideration. The task force has scheduled consideration of firearms issues relating to civil court restraining orders for its fiscal year 2010–2011 agenda.

Forms

16. **Firearm relinquishment information sheet.** The Judicial Council of California has developed a statewide information sheet to explain to restrained persons how to safely and legally relinquish or sell firearms when so ordered. To encourage the widest possible use of this form, the AOC should revise the form so that it is locally modifiable and can be used with all types of protective orders, as well as for criminal sentencing following convictions for offenses that require firearm relinquishment.¹¹ The form should include information about the requirement to file a relinquishment or sales receipt with the court, and it should explain the NLIP form and the method to report a lost or stolen firearm. The court should provide the information sheet to all persons who are prohibited from owning or possessing firearms or ammunition because of a court order or criminal sentence.

➤ **Implementation Status.** Revision of the Judicial Council domestic violence forms is pending before the Protective Order Working Group. (See description of the working group in Recommendation 7, above.) It is anticipated that form changes would be effective January 1, 2011.

17. **Revision of restraining and protective order forms to add check box for reported firearms.** All temporary and permanent restraining and protective orders should indicate whether firearms were reported and whether the report was obtained through

¹⁰ This practice is intended for a DVPA-noticed hearing that is held after the court has issued temporary restraining orders on *Temporary Restraining Order and Notice of Hearing* (form DV-110). Where the court has not issued temporary orders but has issued restraining orders only after a noticed hearing, the court (at the noticed hearing) should determine whether the restrained person owns or possesses a firearm or ammunition. If the court finds that the restrained person owns or possesses a firearm or ammunition, the court should set a compliance hearing to determine whether the restrained person has sold or relinquished the firearm or ammunition. If the restrained person does not comply with the court's relinquishment order, the court should notify law enforcement for appropriate action.

¹¹ See Judicial Council form *What Do I Do With My Gun or Firearm? (Domestic Violence Prevention)* (DV-810).

a database search or from a protected person's declaration or other information presented at a hearing.

➤ **Implementation Status.** See Recommendation 16 in this section, above.

18. **Revision of EPO form to indicate reported firearms.** The EPO form should be revised to include a check box for law enforcement to indicate whether firearms were reported by any person at the scene (under Pen. Code, § 13730) or discovered in a database search.

➤ **Implementation Status.** See Recommendation 16 in this section, above.

Access to and Entry of Orders Into the California Restraining and Protective Order System (CARPOS)/ California Law Enforcement Telecommunications System (CLETS)

Immediate Proposals

1. ***Access to CLETS.*** Each court must have access to the DVROS database and to other databases within CLETS, such as AFS and the firearms registry, as deemed necessary by the court or as required by statute for the purpose of performing data searches and to ensure compliance with rule 5.450 of the California Rules of Court.

➤ ***Implementation Status.*** Implementation of this recommendation is ongoing. The AOC provides technical assistance to courts interested in obtaining access to CLETS through its Information Services Division, its CCPOR project, and its DVSP project. The DVSP project, operated through grant funding, can purchase CLETS terminals for courts and provide funds for training.

2. ***Needs assessment.*** Each court should evaluate current procedures, protocols, and timelines for processing restraining orders, from the granting of the order to its entry into DVROS, and whether the court enters the orders directly or transmits the orders to law enforcement for entry into DVROS. The court should ensure that all orders are being entered into DVROS promptly and are consistent with all statutory requirements. If delays or inconsistencies are discovered, the court should take all necessary steps to eliminate them by enhancing procedures and protocols. Courts should periodically review the assessments to ensure that procedures and protocols remain current.

➤ ***Implementation Status.*** See Recommendation 1 in this section, above.

3. ***Communication: Court and justice partners.*** Courts should hold regular meetings with local law enforcement and other related justice partners to monitor procedures and to review operations to ensure consistency and accountability in handling restraining orders. The courts and the law enforcement agencies responsible for entering the orders into DVROS should develop plans to ensure that orders, proofs of service, and modifications are entered into DVROS promptly and are consistent with all statutory requirements.

➤ ***Implementation Status.*** See Recommendation 1 in this section, above.

4. ***Communication: AOC and DOJ.*** The AOC and the DOJ should establish a user group that conducts regular meetings to review policy and practices regarding entry of restraining orders. This review team could also assist in establishing standards for training, audit practices, and implementation.

➤ ***Implementation Status.*** This recommendation is fully implemented. AOC Information Services Division staff work directly with DOJ representatives and regularly attend meetings of the CLETS Advisory Committee. Staff further

provide technical assistance to courts seeking assistance with training, audit practices, and implementation and work with DOJ to maintain a uniform and consistent approach.

5. **Implementation standards.** The AOC and local courts should recommend that the DOJ streamline the CLETS application process and establish implementation standards statewide to eliminate barriers to court access to DVROS.
 - **Implementation Status.** See Recommendation 4 in this section, above.
6. **Audit standards.** Courts that have access to CLETS are subject to periodic audits by the DOJ to monitor how the court safeguards the database information. The AOC and local courts should recommend that the DOJ standardize CLETS audit procedures statewide.
 - **Implementation Status.** See Recommendation 4 in this section, above.
7. **Training standards.** The AOC and local courts should recommend that the DOJ establish a training program unique and specific to the needs of court staff who handle restraining orders. Local courts should ensure that staff receive adequate training, including access to CLETS-related training and informational Web sites.
 - **Implementation Status.** See Recommendation 4 in this section, above.
8. **Data collection.** The AOC should provide the courts with guidelines for collecting domestic violence statistics. Each court should maintain domestic violence statistics to better inform the justice system and to support the development of domestic violence policy. Statistical information should be available regarding the number of EPOs issued, the number of temporary restraining orders requested and granted, the number of restraining orders granted after hearing, the number of children involved, proofs of service filed, and the number of reissuances. The AOC should encourage participation in its Judicial Branch Statistical Information System (JBSIS), and design of the California Court Case Management System (CCMS) should incorporate the required statistical information.
 - **Implementation Status.** Implementation of this recommendation is ongoing. The ability of courts to collect data on domestic violence cases will be enhanced by the CCPOR project, and data collection will be integrated into the California Court Case Management System (CCMS) when it is completed.

Interim Proposals

9. **Restraining order registry.** Courts are encouraged to participate in the CCPOR when it becomes available.¹² This will provide the judicial branch and law enforcement

¹² See footnote 2.

with the ability to access and view full-text orders issued throughout the state. CCPOR should be included in the design of the CCMS.

- **Implementation Status.** This recommendation is partially implemented with the development and deployment of the California Courts Protective Order Registry (CCPOR) project, funded by the California Emergency Management Agency. Live demonstrations of CCPOR were presented at regional court meetings sponsored by the task force and at meetings of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee in June 2009. The CCPOR team has completed system design, application development, and testing. The CCPOR team estimates that deployment in the initial 20 courts will occur by September 2010.

10. **Computer-generated orders.** The AOC should continue to explore the design of computer-generated orders that will be able to interface with the CCMS, and it should also evaluate existing forms for ease and accuracy of data entry. Local courts are encouraged to explore the feasibility of using the Judicial Council's Family and Children's Court Technology (FACCTS) to produce computer-generated orders after hearing.

- **Implementation Status.** The AOC is supporting a software application in pilot courts that will assist courtroom clerks in preparing orders after hearing in restraining order proceedings. The application is referred to as the Family Courts Case Tracking System (FACCTS). FACCTS has been used in the Superior Courts of Butte, El Dorado, Orange, San Mateo, Solano, Sonoma, Tulare and Tuolumne Counties.

11. **Service of orders.** Using a collaborative process with justice system partners, each court should evaluate ways to improve procedures for prompt and effective service of orders and take steps to facilitate prompt service and entry of service into DVROS.

- **Implementation Status.** Implementation of this recommendation, a suggested practice for local courts, is ongoing. The AOC provides technical assistance and support through its DVSP project and funding obtained through a federal Recovery Act grant to support the implementation of these recommendations and practices.

Long-Term Proposals

12. **Integration with CCMS.** The AOC and local courts should work together to establish a seamless process from the point that the order is granted to its entry in DVROS, using an automated process that is integrated into the CCMS. AOC staff should work together to ensure that relevant domestic violence information is included in the CCMS data elements.

- **Implementation Status.** See Recommendation 9 in this section, above.

Domestic Violence Criminal Procedure

Administration Procedures

1. **Administration of criminal domestic violence cases.** Each court should ensure that the following administrative procedures are followed with respect to domestic violence cases:
 - a. The judicial review of the bail schedule should include consideration of issues relating to domestic violence;
 - b. The court should collaborate with the chief probation officer to ensure that the functions of probation delineated in Penal Code section 1203.097 are adequately performed, including duties to monitor the defendant's compliance with the terms and conditions of probation and to certify batterer intervention programs; and
 - c. In conjunction with the duties enumerated in rule 227.8 of the California Rules of Court, the court should ensure that issues relating to practice and procedure in domestic violence cases are identified and discussed in regular meetings with criminal justice agencies. Additional participants in the regular meetings should include both victim advocacy organizations and local batterer intervention programs to ensure communication and consultation between the court and the organizations involved in probation of convicted batterers.
 - d. In accordance with Penal Code section 136.2(e)(1), the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to consider issuance of a protective order on its own motion.
- **Implementation Status.** This recommendation addresses local action, and technical assistance to the courts will be ongoing. The majority of recommendations in the criminal procedure section involve a recitation of existing law or other mandate. Accordingly, implementation of the recommendations is largely dependent on judicial and court staff education and technical assistance to local courts at their request. Under the guidance of the task force, AOC staff has ensured that the recommended practices and procedures in domestic violence cases relating to criminal law have been fully integrated into existing criminal law education. Aspects of these recommendations were also the focus of task force–sponsored regional court meetings held in June 2009. Additional efforts slated for the task force agenda in 2010–2011 include launching a domestic violence component on Serranus and a newsletter on domestic violence issues to be posted on *Court News Update*. Further, the AOC is the recipient of Recovery Act grant funding for domestic violence education and technical assistance. This funding will focus on ongoing implementation of the practices and guidelines as requested by the local courts. The DVSP project will likewise be augmented to include these practices in the self-assessment tool provided to the courts.

Pretrial

Bail release considerations

2. **Bail schedule.** Every county must adopt and review a bail schedule. (Required by Pen. Code, § 1269c.)

➤ **Implementation Status.** See Recommendation 1 in this section, above.
In addition, a bench card on pretrial issues will be distributed to the judiciary in January 2011.

3. **Standardized procedure.** To enhance public safety in domestic violence cases, local courts should work with probation, pretrial services, and law enforcement agencies to develop a standardized procedure for setting bail so that the court receives the following information: (1) requests for increased bail, (2) indication of relationship between defendant and victim, (3) indication of whether a firearm was involved, (4) description of weapons seized, (5) sources of information regarding crime and firearms present, and (6) indication of whether children were involved or were witnesses.

➤ **Implementation Status.** See Recommendations 1 and 2 in this section, above.

4. **Law enforcement policy.** For all domestic violence arrests, law enforcement should adopt a policy that does not allow own recognizance (OR) or cite and release procedures unless a court hearing is conducted. (Pen. Code, § 1269c, requests for increased bail.)

➤ **Implementation Status.** See Recommendations 1 and 2 in this section, above.

Hearing procedures

5. **Hearing purposes.**

- a. Under Penal Code section 1270.1(a), at arraignment or at any other stage of the proceedings, bail must not be reduced and release on OR must not be granted without a hearing for any person charged with:
- Penal Code section 136.1: Intimidating a witness;
 - Penal Code section 243(e)(1): Battery against a spouse, cohabitant, person who is the parent of the defendant's child, noncohabitating former spouse, fiancée, or a person with whom the defendant currently has or has previously had a dating relationship;
 - Penal Code section 262: Spousal rape;
 - Penal Code section 273.5: Corporal injury;
 - Penal Code section 273.6: Knowing violation of a protective order under specified circumstances;
 - Penal Code section 422: Felony violation of a threat to an immediate family member; or
 - Penal Code section 646.9: Stalking.
- b. The prosecution must be afforded two court days' written notice of the hearing and an opportunity to be heard. (Pen. Code, § 1270.1(b).)
- c. If bail is otherwise set than is provided in the bail schedule, the record must reflect the reasons for the court's decision and address the issue of threats to the victim and victim safety. (Pen. Code, § 1270.1.)

- **Implementation Status.** See Recommendations 1 and 2 in this section, above.
- 6. **Local variations.** The timing and procedures for setting bail and the bail amount may vary from jurisdiction to jurisdiction, but the court should nevertheless obtain all relevant information.
 - **Implementation Status.** See Recommendations 1 and 2 in this section, above.
- 7. **Appearance within 48 hours.** If bail is posted, the defendant should be directed to appear within 48 hours for arraignment.
 - **Implementation Status.** See Recommendations 1 and 2 in this section, above.

Arraignment

- 8. **Defendant's appearance.** Defendant's presence at arraignment is mandatory. (Required by Pen. Code, § 977.)
 - **Implementation Status.** See Recommendations 1 and 2 in this section, above.
- 9. **Procedures.** Practices recommended to assist the court in determining whether to issue a CPO and in setting bail include the following:
 - a. Defense counsel and prosecution should be present at arraignment;
 - b. All probation violations should be calendared with the arraignment to ensure that the court revokes probation as appropriate;
 - c. Prosecution, OR services, or the probation department, as appropriate, should contact the victim prior to arraignment;
 - d. Gun ownership should be determined from DOJ records;
 - e. Issuance of a CPO should be considered; and
 - f. Firearms relinquishment should be ordered. (Pen. Code, § 136.2(7)(B).)
 - **Implementation Status.** See Recommendations 1 and 2 in this section, above.

Setting bail

- 10. **Bail sufficient to ensure appearance and protect victim.** If the defendant is arrested for violating a domestic violence restraining order, the court may deny bail or set bail at any amount that it deems sufficient to ensure the defendant's appearance or the protection of the victim or the victim's family members. (Pen. Code, § 1269c.)
 - **Implementation Status.** See Recommendations 1 and 2 in this section, above.
- 11. **Notice to prosecutor.** When a defendant charged with Penal Code section 646.9 is released on bail, the sheriff must notify the domestic violence unit of the prosecutor's office in the county where the victim resides. (Pen. Code § 646.9(a).)
 - **Implementation Status.** See Recommendations 1 and 2 in this section, above.

12. **Notice to victim.** If there is a request to lower bail, the prosecutor must make all reasonable efforts to notify the victim, and the victim is entitled to attend the hearing. The court should inquire whether the prosecutor has been successful in notifying the victim. (Pen. Code, § 646.93(b).)

➤ **Implementation Status.** See Recommendations 1 and 2 in this section, above.

13. **Additional conditions.** The court may consider imposing additional conditions. For example:

- a. Defendant cannot initiate contact with the victim;
- b. Defendant cannot initiate contact with the children;
- c. Defendant must not knowingly go within a specified distance of the victim or his or her workplace or home;
- d. Defendant must not knowingly go within a specified distance of the children's school;
- e. Defendant must not possess a firearm;
- f. Defendant must obey all laws;
- g. Defendant may be obligated to wear an electronic monitoring device;
- h. Defendant must notify the court of his or her address and telephone number at home and work (Pen. Code, § 646.93(c));
- i. Defendant must refrain from the use of alcohol or other drugs; and
- j. Defendant must report to the court all law enforcement contacts.

➤ **Implementation Status.** See Recommendations 1 and 2 in this section, above.

14. **Factors in setting, modifying, or denying bail.** The court should consider the following factors:

- a. Seriousness of offense charged;
- b. Defendant's character (previous criminal record);
- c. Probability of defendant appearing at hearing or trial;
- d. Alleged threats to the victim or to a witness to the crime charged;
- e. Alleged use of a firearm or other deadly weapon in the commission of the crime charged; and
- f. Alleged use or possession of a controlled substance by the defendant. (Pen. Code, § 1269b.)

➤ **Implementation Status.** See Recommendations 1 and 2 in this section, above.

15. **Relevant information.** Whenever bail is set, reduced, increased, or denied, the court should attempt to obtain and review all relevant information. This includes:

- a. All other pending cases, including probation violations as a result of this case;
- b. Rap sheet and probation or parole status;
- c. Existing and previously issued protective or restraining orders where the defendant is the restrained party;
- d. Any prior failures to appear;
- e. Statements by victims;

- f. Whether children were present or if there are visitation issues;
- g. All information about the status of family, juvenile, probate, or other court orders that may exist;
- h. Firearms registry information from AFS;
- i. Prior unreported incidents of domestic violence; and
- j. Use of alcohol or drugs or prior history of mental illness.

➤ **Implementation Status.** See Recommendations 1 and 2 in this section, above.

Release on own recognizance (OR)

16. **Investigative report.** In all cases involving violent felonies, if there is an investigative staff, a written report is required to be given to the court concerning outstanding warrants, any prior failures to appear, the criminal record of the defendant, and the defendant's residences during the last year. (Pen. Code, § 1318.1.) Funding for such staff should be provided.

➤ **Implementation Status.** See Recommendations 1 and 2 in this section, above.

17. **Reasons for deviation from schedule.** If bail is set in an amount other than that provided for in the bail schedule, the record must reflect the reasons for the court's decision.

➤ **Implementation Status.** See Recommendations 1 and 2 in this section, above.

Issuing CPOs pretrial

18. **Grounds for order.** A stay-away order should be issued when it is shown that there is good cause to believe that harm to, intimidation of, or dissuasion of a victim or witness has occurred or is likely to occur. The order should be issued on the required Judicial Council form (CR 160). (Pen. Code, § 136.2.) (Note that in *People v. Stone* (2004) 123 Cal.App.4th 153, the court required additional evidence that a victim or witness had been intimidated or dissuaded from testifying or that there was a likelihood that it would occur. It is not clear whether this would apply in a case involving a domestic violence crime. Although *People v. Stone* may be distinguishable in domestic violence cases, the question has yet to be addressed in a published opinion.)

➤ **Implementation Status.** See Recommendation 1 in this section, above. Please note that the holding in the *Stone* case was modified by legislation effective January 1, 2009. Penal Code section 136.2(h) was added to read: "In any case in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been filed, the court may consider, in determining whether good cause exists to issue an order under paragraph (1) of subdivision (a), the underlying nature of the offense charged, and the information provided to the court pursuant to Section 273.75." In addition, a bench card outlining procedures relating to criminal protective orders will be distributed to the judiciary in July 2010. A new edition of the bench book *A Judges Guide to Domestic Violence Cases* will include a component on criminal

protective orders. This new edition has been completed and is in the process of being distributed to each judicial officer.

19. **Reasonable restrictions.** The court must consider issuing protective orders on its own motion. The court may impose reasonable restrictions, including restricting the defendant's access to the family residence and barring communication by the defendant or defendant's agent with the victim, except through an attorney. (Pen. Code, § 136.2(d).)

➤ **Implementation Status.** See Recommendation 1 in this section, above. In addition, a bench card outlining procedures relating to criminal protective orders will be distributed to the judiciary in July 2010. A new edition of the benchbook *A Judges Guide to Domestic Violence Cases* will include a component on criminal protective orders. This new edition has been completed and is in the process of being distributed to each judicial officer.

20. **No-contact orders.** No-contact orders may be issued in domestic violence cases as a condition of release on OR and as an independent order. (Pen. Code, §§ 1275, 1318 (a)(2), or 136.2.)

➤ **Implementation Status.** See Recommendations 1 and 19 in this section, above.

21. **Additional considerations.** In addition to the considerations listed above in "Setting bail," the court should consider the following:

- a. Ascertain whether the defendant has any firearms;
- b. Determine if the CPO conflicts with the family court order and advise the defendant that the criminal order controls;
- c. Serve the CPO on the defendant and the victim, if present, in open court. If the protected party is not present in court, the court should request the prosecutor to mail a copy of the order to the protected party; and
- d. Advise the defendant that violation of the CPO may result in additional charges and in immigration consequences.

➤ **Implementation Status.** See Recommendations 1 and 19 in this section, above.

Trial

Trial setting

22. **Case management.** After arraignment, the court should set a pretrial conference, at which the court should consider the following:

- a. Settlement;
- b. Issuance of a stay-away order under Penal Code section 136.2 if there have been new threats or intimidation;
- c. Changes in bail, if appropriate;
- d. Any new information disclosed by counsel; and
- e. Setting the case for preliminary hearing or misdemeanor jury trial.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

Continuances

23. **Good cause.** Good cause for continuance in domestic violence cases includes unavailability of the prosecutor because of a conflict with another trial, preliminary hearing, or motion to suppress. The continuance must be limited to a maximum of 10 additional days. (Pen. Code, § 1050(g)(2).)

➤ **Implementation Status.** See Recommendation 1 in this section, above.

24. **Facts supporting good cause.** The court must state on the record facts constituting good cause for a continuance. (Pen. Code, § 1050(f).)

➤ **Implementation Status.** See Recommendation 1 in this section, above.

25. **Continuances are discouraged.** Domestic violence cases should have high priority. Continuances are strongly discouraged, and motions for continuances must comply with the requirements of Penal Code section 1050.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

Dismissal/Refiling

26. **Refiling within six months.** If the court dismisses a misdemeanor domestic violence case because the victim failed to appear in response to a subpoena, the case may be refiled within six months. This section may be invoked only once in each action. (Pen. Code, § 1387(b).)

➤ **Implementation Status.** See Recommendation 1 in this section, above.

Evidentiary issues

27. **Confidential communications.** Communications between the victim and the domestic violence counselor are confidential. The following factors are to be considered by the court to determine whether a person qualifies as a domestic violence counselor:

- a. Is the person: employed by an organization under Welfare and Institutions Code section 18294?
- b. Does the person have any of the following:
 - Master's degree in counseling or a related field;
 - One year of experience in counseling (a minimum of six months must be in domestic violence counseling);
 - Credentials as a psychotherapist under Evidence Code section 1010; or
 - Experience as an intern, trainee, or other person with a minimum of 40 hours of domestic violence training under someone with a master's degree in counseling or a related field or someone who has one year of counseling experience, of which a minimum of six months is in domestic violence counseling. (Evid. Code, § 1037–1037.7.)

➤ **Implementation Status.** See Recommendation 1 in this section, above.

28. **Evidentiary exclusion of privileged information.** At the trial or preliminary hearing, the court may exclude privileged information from a domestic violence counselor on its own motion if neither the witness nor the party can claim the privilege. (Evid. Code, § 916.) The court should ask the prosecutor if there is any undisclosed statement for which the privilege is asserted. If the victim has not authorized the prosecutor to assert the privilege or is not present to make the assertion, the prosecutor can assert the privilege under Evidence Code section 916. (Evid. Code, § 1040(b)(2).)

➤ **Implementation Status.** See Recommendation 1 in this section, above.

29. **Burden of proof.** The claimant of a privilege has the burden of proving (a) the existence of the relationship, (b) standing to claim the privilege, and (c) that the offered evidence is a confidential communication within that relationship. (Evid. Code, § 1037.)

➤ **Implementation Status.** See Recommendation 1 in this section, above.

30. **Disclosure prohibited.** Disclosure of the address or telephone number of victims and witnesses is prohibited. (Pen. Code, § 1054.2.)

➤ **Implementation Status.** See Recommendation 1 in this section, above.

31. **Special needs.** The court should ensure that the special needs of certain victims or witnesses are taken into consideration. Examples might include the needs of the elderly, children, or dependent adults.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

Discovery

32. **Medical records.** In addition to the requirement that the prosecutor turn over all possibly relevant evidence to the defense, any medical record of the victim or defendant related to the domestic violence is discoverable in a domestic violence criminal case. (Pen. Code, §§ 1054–1054.8; Evid. Code, § 998.)

➤ **Implementation Status.** See Recommendation 1 in this section, above.

33. **Protocols for access to information.** Disclosure to the defendant of the address and contact information of the victim or witness is prohibited. Under Penal Code section 964, courts are to develop protocols with local law enforcement regarding restricting access to victim and witness personal identifying information contained in police reports filed with the courts. (Pen. Code, §§ 841.5(a), 964, and 1054.2.)

➤ **Implementation Status.** See Recommendation 1 in this section, above.

Jury selection in domestic violence cases

34. **Larger juror panel.** The court should consider calling a larger juror panel than in other types of cases because many potential jurors in domestic violence cases may have been victims of or witnesses to domestic violence, or their family or close friends may have been victims or witnesses.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

35. **Juror privacy.** The court should respect the privacy of jurors in voir dire. For example:

- a. The option of being questioned on the record but outside the presence of other jurors should be offered;
- b. Jurors should be informed that questionnaires, transcripts, and juror records are not confidential unless sealed by court order;
- c. For juror safety, the court should not release juror addresses; and
- d. The court should refer to jurors by number rather than by last name.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

Victims

36. **Victim's right to a support person.** The alleged victim is entitled to have a support person or family member present at the hearing. (Pen. Code, §§ 868, 1102.6.)

➤ **Implementation Status.** See Recommendation 1 in this section, above.

37. **Victim's right to be present.** The victim has a limited right to be present at all stages of the criminal proceedings except when subpoenaed as a witness. (Pen. Code, § 1102.6(b)(1).)

➤ **Implementation Status.** See Recommendation 1 in this section, above.

38. **Victim protections.** The court should consider applying the statutory protections available to sexual assault victims to domestic violence cases involving sexual assault charges. If the court does apply these protections, it should state its reasons for doing so on the record.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

39. **Hearsay evidence.** Each court should be cognizant of the limitations of hearsay evidence under the United States Supreme Court opinion in *Crawford v. Washington* (2004) 541 U.S. 36. Under *Crawford*, statements are generally inadmissible if the declarant is not present, if the statement is “testimonial,” and if the victim has not been previously cross-examined. The California Supreme Court has accepted review for numerous cases addressing hearsay issues under *Crawford*.

➤ **Implementation Status.** See Recommendation 1 in this section, above.

40. **Testimony of victim.** If a victim is reluctant to testify, the court should attempt to discover the reasons for the victim’s reluctance and to determine whether the victim has been coerced or intimidated. To assist in this process, the court should consider the strategies and questions outlined in the *California Judges Benchbook: Domestic Violence Cases in Criminal Court* (3rd ed., §§ 4.24 and 4.25, pp. 84–86).

➤ **Implementation Status.** See Recommendation 1 in this section, above.

Compelling participation or testimony

41. **Contempt.** The first time a domestic violence victim refuses to testify in a case, the victim cannot be incarcerated for contempt of court. If the court holds a domestic violence victim in contempt for refusal to testify, the order must be stayed pending filing of a petition for extraordinary relief to determine the lawfulness of the court’s order. Such orders are given a three-day stay of execution. (Code Civ. Proc., § 128(e).) The court can also order 72 hours of domestic violence counseling or “appropriate community service.” (Code Civ. Proc., § 1219(c).)

➤ **Implementation Status.** See Recommendation 1 in this section, above.
Please note that this recommendation must be revised in the formal publication of the task force guidelines and practices because of a legislative change. Effective January 1, 2009, Code of Civil Procedure section 1219 was amended to preclude incarceration as a sanction for refusing to testify in a domestic violence case. Code of Civil Procedure section 1219(b) and (c) now reads: “(b) Notwithstanding any other law, no court may imprison or otherwise confine or place in custody the victim of a sexual assault or domestic violence crime for contempt when the contempt consists of refusing to testify concerning that sexual assault or domestic violence crime. (c) As used in this section, the following terms have the following meanings: (1) ‘Sexual assault’ means any act made punishable by Section 261, 262, 264.1, 285, 286, 288, 288a, or 289 of the Penal Code. (2) ‘Domestic violence’ means ‘domestic violence’ as defined in Section 6211 of the Family Code.”

Dispositions

Sentencing

42. **Fines.** Courts must consider whether the defendant is able to pay a fine or restitution to the victim or to the Restitution Fund as a condition of probation, and the amount thereof. (Pen. Code, § 1203(b)(2)(D)(ii).)

➤ **Implementation Status.** See Recommendation 1 in this section, above.

43. **Restitution.** Restitution to the victim is primary even if the defendant is ordered to repay other costs such as public defender and probation fees. (Pen. Code, § 1202.4(f)(2).)

➤ **Implementation Status.** See Recommendation 1 in this section, above.

Probation

44. **Probation.** If the defendant is convicted and placed on probation for conduct perpetrated against any of the persons defined in Family Code section 6211 and the conduct could be enjoined under Family Code section 6320, the court must impose all of the terms and conditions of probation set forth in Penal Code section 1203.097.

Persons defined under Family Code section 6211 are:

- a. Spouse or former spouse;
- b. Cohabitant or former cohabitant;
- c. Person the defendant is dating or has dated;
- d. Mother or father of the defendant's child;
- e. A person related by blood or marriage within the second degree; or
- f. A registered domestic partner or former registered domestic partner (See Fam. Code § 297.5).

➤ **Implementation Status.** See Recommendation 1 in this section, above. In addition, a bench card relating to the mandatory terms and conditions of probation under Penal Code section 1203.097 will be distributed to the judiciary in January 2011.

45. **Discretionary terms and conditions of probation.** The court also may consider imposing additional terms and conditions of probation, such as:

- a. Prohibiting the use of alcohol and other drugs;
- b. Permitting law enforcement to search and seize all firearms in the defendant's possession; and
- c. Requiring attendance at parenting classes.

➤ **Implementation Status.** See Recommendation 44 in this section, above. In addition, the task force is conducting informal roundtable discussions on risk assessment and evidence-based sentencing practices relating to discretionary terms and conditions of probation in domestic violence cases.

46. **Oral advisement.** At the time a defendant is convicted and placed on probation, the court should orally advise the defendant and explain the specific terms and conditions of probation, including all firearms restrictions. This should occur whether or not the defendant has signed a written probation agreement.

➤ **Implementation Status.** See Recommendation 44 in this section, above.

47. **Batterer's intervention programs.** A 52-week intervention program must meet the following requirements:

- a. The program must be approved by the probation department;
- b. The defendant must enroll within 30 days of sentencing or release date;
- c. The program must provide periodic progress reports at least every 3 months;
- d. The defendant must complete the program within 18 months of enrollment;
- e. The defendant can have only three unexcused absences; and

f. The court cannot waive program fees, but the court must consider the defendant's ability to pay and ensure that a program with a sliding fee scale is available. (Pen. Code, § 1203.097.)

➤ **Implementation Status.** See Recommendation 44 in this section, above.

48. **Protective orders.** A protective order under Penal Code section 1203.097 is mandatory to protect “the victim from further acts of violence, threats, stalking, sexual abuse, and harassment.” (Pen. Code, § 1203.097(a)(2).)

➤ **Implementation Status.** See Recommendation 44 in this section, above.

49. **Protective order provisions and procedures.** The protective order:

- a. Must prohibit violence, intimidation, or threats;
- b. May prohibit contact with the victim;
- c. May allow contact for visitation allowed by custody order;
- d. Must be issued on the mandatory Judicial Council CPO form, *Criminal Protective Order—Domestic Violence*, (form CR-160) for any order issuing, modifying, extending, or terminating a CPO, including probation conditions; and
- e. Must be kept by the court in the original in the court file. (Pen. Code, §§ 136.2, 1203.097.)

➤ **Implementation Status.** See Recommendation 44 in this section, above.

50. **Notice.** Penal Code section 1203.097(a)(3) provides that if probation has been granted, the victim is to be notified of the disposition of the case. Prosecutors should provide this notice because they have (or have access to) the victim's address and the court often does not. Moreover, if the court were to give this notice, the notice, including the victim's address, could become a publicly accessible court record that may jeopardize victim safety.

➤ **Implementation Status.** See Recommendation 44 in this section, above.

51. **Restitution fine.** On probationary sentences, the court may increase the amount of the restitution fine above the statutory minimum, and if all the conditions of probation are satisfied, the court can then waive the elevated fine. On the other hand, if probation is revoked, the court has the flexibility to impose a restitution fine other than the statutory minimum.

➤ **Implementation Status.** See Recommendation 44 in this section, above.

52. **Review of other orders.** Before sentencing, the court should review all orders regarding the defendant in any related family law matter and in all other relevant cases.

➤ **Implementation Status.** See Recommendation 44 in this section, above.

Protective Orders Generally

53. ***Firearms restrictions.*** The court must make all applicable firearm restriction orders under state and federal law. (Pen. Code, § 136.2(a)(7)(A).)
- ***Implementation Status.*** See Recommendation 1 in this section, above. In addition, a bench card outlining procedures relating to criminal protective orders will be distributed to the judiciary in July 2010. A new edition of the benchbook *A Judges Guide to Domestic Violence Cases* will include a component on criminal protective orders. This new edition has been completed and is in the process of being distributed to each judicial officer.
54. ***Cases involving children.*** In a case involving children, a court that issues a CPO either pretrial or as a term of probation should consider whether to provide for peaceful contact between the restrained person and the protected person for the safe exchange of the children under an existing or future family law order. For this purpose, the court may consider whether to check the appropriate box on the Judicial Council mandatory form, *Criminal Protective Order—Domestic Violence* (form CR-160).
- ***Implementation Status.*** See Recommendation 53 in this section, above.
55. ***Entry into DVROS.*** CPOs; orders to modify, extend, or terminate CPOs; and proofs of service of CPOs must be entered in DVROS by the court or its designee within one business day. (Pen. Code, § 136.2(a)(7)(A); Fam. Code, § 6380(a).)
- ***Implementation Status.*** See Recommendation 53 in this section, above.
56. ***Copies.*** All interested parties must receive a copy of the CPO. (Pen. Code, § 136.2(e)(1).)
- ***Implementation Status.*** See Recommendation 53 in this section, above.
57. ***Procedure to retrieve belongings.*** Each court should encourage the establishment of a local law enforcement procedure to allow a restrained person who is restricted from his or her residence to safely retrieve personal belongings.
- ***Implementation Status.*** See Recommendation 53 in this section, above.
58. ***Modification or termination of a CPO.*** If a protected person or a defendant requests modification or termination of a CPO, the court should consider referring the protected person to a domestic violence advocate or other support person for the purpose of discussing the safety implications of the request. If the request is submitted to the court after sentencing, the prosecutor must be given an opportunity to respond to the request. (Pen. Code, § 1203.3.) The court should conduct a hearing at which the prosecutor and defense counsel are present to determine whether the person requesting the modification or termination is in fact the protected person,

whether there is good cause for the modification or termination, and whether the modification or termination request, if made by the protected person, is voluntary and not a result of coercion or duress. Other factors the court should consider include (1) the reason for the request, (2) the existence of a safety plan for the protected person, (3) whether the defendant is participating in a batterer's intervention program, and (4) the impact on any children who are in the home. The court also may wish to consider conducting its inquiry in an alternate setting, such as requesting a waiver of the defendant's appearance and conducting a reported chambers interview with the victim or requesting a probation officer or domestic violence counselor to conduct the interview. If the court modifies or terminates the order, the court should ensure that the modification or termination is memorialized on the mandatory Judicial Council form, *Notice of Termination of Protective Order in Criminal Proceedings (CLETS)*, (form CR-165, and duly entered into DVROS.

➤ **Implementation Status.** See Recommendation 53 in this section, above.

59. **Expiration.** CPOs issued under Penal Code section 136.2 expire on or before the date that criminal jurisdiction over the defendant terminates. (*People v. Stone* (2004), 123 Cal.App.4th 153.) If criminal jurisdiction over the defendant terminates early, a *Notice of Termination of Protective Order in Criminal Proceedings (CR-165)* must be entered into DVROS within one business day. However, new legislation, effective January 1, 2008, provides for the issuance of a CPO for a period of up to 10 years for conviction of certain specified domestic violence crimes whether or not the defendant is sentenced to probation or state prison. (See Assem. Bill 289; Stats. 2007, ch. 582).

➤ **Implementation Status.** See Recommendation 53 in this section, above.

60. **Local rule for communication.** The court must promulgate a local rule delineating the procedure for communication among courts issuing or modifying CPOs and courts issuing orders involving child custody and visitation. (Pen. Code, § 136.2(f); Cal. Rules of Court, rule 5.450.) Courts also must delineate a similar procedure for communication among courts issuing or modifying CPOs and courts issuing civil or other restraining orders involving the same parties.

➤ **Implementation Status.** See Recommendation 53 in this section, above.

Postconviction

61. **Assessment.** As soon as feasible after a defendant is convicted and placed on probation, the court or a designated justice system agency, such as probation program or a batterer intervention program, should conduct an initial lethality assessment and should determine whether the defendant's ability to comply with the terms and conditions of probation is affected by mental health or substance abuse problems.

➤ **Implementation Status.** See Recommendations 1 and 44 in this section, above.

62. **Progress reports.** The court should order the defendant to appear at a review hearing within 30 days of placing the defendant on probation, at which time the court should determine whether the defendant is in compliance with the terms and conditions of probation. Further, the court must receive “periodic progress reports . . . every three months or less” regarding the defendant’s participation in the batterer intervention program. (Pen. Code, § 1203.097(a)(6) and (c)(1)(O)(ii).) Judicial Council form, *Batterer Intervention Progress Report* (form CR-168), should be used by the probation department or the program provider to periodically inform the court of the defendant’s progress in the program.

➤ **Implementation Status.** See Recommendations 1 and 44 in this section, above.

63. **Final evaluation.** The court must receive a “final evaluation that includes the program’s evaluation of the defendant’s progress” in the batterer’s intervention program and the program should also inform the court as to whether the fees for the program and any restitution have been paid. (Pen. Code, § 1203.097(c)(1)(O)(iii).)

➤ **Implementation Status.** See Recommendations 1 and 44 in this section, above.

64. **Defendant’s appearance during probation.** The court should consider requiring the defendant to appear for periodic progress reports during the probationary period. This appearance may help increase compliance with the probationary conditions. After an initial appearance, courts may consider waiving the appearance requirement if the defendant is in full compliance.

➤ **Implementation Status.** See Recommendations 1 and 44 in this section, above.

65. **Graduated sanctions.** The court should consider graduated sanctions for probation violations, including the failure to comply with the condition requiring attendance at a batterer intervention program. Graduated sanctions take into account the totality of the circumstances of the defendant’s performance and progress while on probation, as well as the impact on the victim. By using graduated sanctions, the court maintains discretion and flexibility in addressing the unique circumstances in each case.

➤ **Implementation Status.** See Recommendations 1 and 44 in this section, above.

66. **Role of probation.** In addition to the statutory duties of the probation department set forth in Penal Code section 1203.097, probation can be helpful to the court in the following ways:

- a. Conducting assessments regarding lethality, mental health, and substance abuse;
- b. Conducting an orientation to the batterer intervention program;
- c. Evaluating the probationer’s ability to pay the fee for the batterer intervention program; and
- d. Maintaining regular communication with batterer intervention programs to determine the progress and status of the probationers and to improve the administration of the programs.

The defendant's successful completion of the terms and conditions of probation and therefore the rehabilitation of the defendant, public safety, and the safety of the victim are directly tied to the involvement of the probation department and probation officer. Accordingly, the court should advocate for adequate funding for probation services needed to appropriately review and certify programs that meet the statutory requirements and those that provide services necessary to monitor, supervise, and counsel the defendant.

➤ ***Implementation Status.*** See Recommendations 1 and 44 in this section, above.



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FACT SHEET

April 2010

California Courts Protective Order Registry

The California Courts Protective Order Registry (CCPOR) is a judicial branch project to create a statewide repository that will provide more complete, accessible information on restraining and protective orders. By promoting victim safety and perpetrator accountability, the CCPOR supports the Judicial Council's strategic Goal IV, Quality of Justice and Service to the Public, and the related operational plan objective (IV.1.e) of improving "practices and procedures to ensure fair, expeditious, and accessible administration of justice for litigants in domestic violence cases.201D

Project History

The CCPOR project resulted from a recommendation to the Judicial Council submitted by its Domestic Violence Practice and Procedure Task Force to provide a statewide protective order registry. The proposed registry would contain up-to-date information, including order images, that would be readily available to judges and law enforcement. In February of 2008, the Judicial Council approved the recommendation and the creation of the CCPOR project.

The Domestic Violence Practice and Procedure Task Force also sought to enhance and improve court access to the California Law Enforcement Telecommunications System (CLETS), an information system managed by the state's Department of Justice. Current law requires that all protective orders be entered into CLETS within one business day of issuance. One of the important goals of the CCPOR project is to ensure timely and accurate entry of these important orders into the CLETS system. As the largest statewide database of protective orders, CLETS is essential for safeguarding both victims of violence and law enforcement officers in the field.

Goals of CCPOR

To address the task force's recommendations, CCPOR has three primary goals:

- To provide the trial courts in all 58 California counties access to CCPOR, enhancing the ability of bench officers to make more informed decisions and avoid issuing conflicting orders;
- To improve public safety and the safety of law enforcement officers by providing access to the full text (images) and more accurate, complete, and up-to-date order information; and
- To automate the exchange of information between the courts and CLETS.

Two key components of CCPOR are the ability to enter and upload protective order data into the system, and to search and retrieve that data—including electronic images of court orders. Viewing these electronic images is particularly valuable because this allows users to see any special conditions and notes added by judges that are not available through CLETS. In addition, information about court orders that is keyed into CCPOR will be extracted and automatically imported into CLETS.

Key Features

The key features of the CCPOR provide the capability to:

- View order data and images from all 58 California superior courts;
- Gain secure Web site access via the Administrative Office of the Courts' Integration Services Backbone (ISB);
- Access data and order images 24/7;
- Search orders by name, case number, and other criteria;
- Facilitate protective order sharing between courts;
- Automate California Restraining and Protective Order System (CARPOS—formerly “DVROS”) submission through CLETS;
- Integrate into the California Court Case Management System (CCMS) in order to provide access to judges on the bench and law enforcement officers in the field;
- Provide shared access to law enforcement agencies.

Orders that will be captured in the registry include:

- Civil Harassment Restraining Orders
- Domestic Violence Restraining Orders
- Emergency Protective Orders
- Out-of-State Domestic Violence Restraining Orders
- Criminal Protective Orders
- Elder Abuse Restraining Orders
- Juvenile Restraining Orders
- Workplace Violence Orders

Use of Enterprise Technology

The CCPOR will be implemented using technology currently at the California Courts Technology Center (CCTC). Implementation and integration into the ISB, the CCMS, and the Enterprise Web Content Management System, as well as the CCTC connection to CLETS, will facilitate the design, development, and deployment of CCPOR to the courts. By taking advantage of these tools and systems, CCPOR can be administered through the existing technology architecture to better ensure the integrity of stored data and access to the registry.

While CCPOR will be deployed in advance of the complete rollout of the CCMS, it will be tightly integrated with CCMS to promote venue transparency. When CCMS is fully deployed, it will directly feed into CCPOR and other statewide registries to help promote increased access to court information across jurisdictional boundaries.

Development and Deployment Timeline

September 2008–June 2009: Define business and technical requirements and system design

July 2009–May 2010: CCTC build-out; application development and testing

April–June 2010: Pilot courts on-boarding; training, user acceptance testing, and go-live

July–December 2010: On-board 16+ courts interested to go-live

A generous grant from the California Office of Emergency Services provides up to \$1 million for the deployment of CCPOR and on-boarding of the first 20 California superior courts.

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Additional resources:

Guidelines and Recommended Practices for Improving the Administration of Justice in Domestic Violence Cases: Final Report of the Domestic Violence Practice and Procedure Task Force,
www.courtinfo.ca.gov/jc/documents/com/dvpp_judicialcouncilreport.pdf