



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 25, 2014

Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Amend Civil Restraining Order Statutes to Clarify Procedures for Continuance of Hearings	Action Required
	Effective Date
	July 1, 2015
Rules, Forms, Standards, or Statutes Affected	Date of Report
Amend Code Civ. Proc., §§ 527.6, 527.8, 527.85; and Welf. & Inst. Code, § 15657.03	April 8, 2014
Recommended by	Contact
Policy Coordination and Liaison Committee	Bruce Greenlee, 415-865-7698 bruce.greenlee@jud.ca.gov
Hon. Kenneth K. So, Chair	Patrick O'Donnell, 415-865-7665 patrick.o'donnell@jud.ca.gov
Civil and Small Claims Committee	Daniel Pone, 916-323-3121 daniel.pone@jud.ca.gov
Hon. Patricia M. Lucas, Chair	

Executive Summary

The Policy Coordination and Liaison Committee and Civil and Small Claims Advisory Committee recommend the Judicial Council sponsor legislation to amend the statutes on civil restraining orders to clarify and improve the procedures for continuing hearings.

Recommendation

The Policy Coordination and Liaison and Civil and Small Claims Advisory Committee (committees) recommend that the Judicial Council sponsor legislation to amend, effective July 1, 2015:

1. Code of Civil Procedure section 527.6 on restraining orders to prevent civil harassment;

2. Code of Civil Procedure section 527.8 on restraining orders to prevent workplace violence;
3. Code of Civil Procedure section 527.85 on restraining orders to prevent private post-secondary school violence; and
4. Welfare and Institutions Code section 15657.03 on restraining orders to prevent elder and dependant adult abuse.

The text of the amended statutes is attached at pages 9–11.

Previous Council Action

In 2010, the Judicial Council sponsored legislation that resulted in an extensive revision of the statutes providing for restraining orders to prevent civil harassment, workplace violence, private post-secondary school violence, elder and dependent adult abuse, domestic violence, and juvenile violence. (See Assem. Bill 1596; Stats. 2010, ch. 572.) The legislation created greater consistency in procedure and practices, eliminated many unnecessary statutory differences, filled in procedural gaps, clarified uncertain matters, and generally improved the statutes that relate to protective orders.

Rationale for Recommendation

Statutory amendments: continuances

One important area that remained unaddressed in the 2010 legislation was the law on reissuing temporary restraining orders and continuing hearings. The statutes on these matters were not amended to reflect best practices or to be consistent across all different case types. Indeed, for civil (i.e., non-domestic violence and non-juvenile) restraining orders, the provisions on continuances remain in the rules of court rather than in the codes.¹

For cases involving civil harassment, workplace violence, private post-secondary school violence, and elder and dependent adult abuse, the protective order statutes currently provide a procedure for petitioners to request the reissuance of a temporary order.² A rule of court provides a procedure for respondents to request a continuance.³

¹ See Cal. Rules of Court, rule 3.1152 [This rule applies to requests for protective orders under Code of Civil Procedure sections 527.6, 527.8, and 527.85, and Welfare and Institutions Code section 15657.03].

² The statutory provisions for reissuance (Code Civ. Proc., §§ 527.6(o), 527.8(o), 527.85(o); Welf. & Inst. Code, § 5657.03(m)) provide:

(1) The court may, upon the filing of a declaration by the petitioner that the respondent could not be served within the time required by statute, reissue an order previously issued and dissolved by the court for failure to serve the respondent. The reissued order shall remain in effect until the date set for the hearing.

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

³ Cal. Rules of Court, rule 3.1152(e) provides:

(e) Continuance

A respondent may request continuance of the hearing upon a showing of good cause. If the court in its discretion grants the continuance, any temporary restraining order that has been granted remains in effect until the end of the continued hearing unless otherwise ordered by the court.

The committees recommend that the civil restraining order statutes be amended to include clear, consistent, and effective procedures for continuing hearings. Specifically, this proposal would amend the civil restraining order statutes to eliminate the current provisions concerning the reissuance of temporary orders and replace them with new provisions providing a procedure for continuance of hearings. The amendments would benefit the public and the courts by providing simpler, improved means for requesting, and ruling on requests for, continuances in sensitive proceedings involving significant numbers of self-represented litigants.

The new provisions to be placed in each of the restraining order statutes would read as follows:

- (1) Either party may request a continuance of the hearing which the court shall grant on a showing of good cause. The request may be made in writing before or at the hearing or orally at the hearing. The court may also grant a continuance on its own motion.
- (2) If the court in its discretion grants the continuance, any temporary restraining order that has been granted remains in effect until the end of the continued hearing unless otherwise ordered by the court. In granting the continuance, the court may modify or terminate the temporary restraining order.

This continuance provision is based on current rule 3.1152(e), but would apply to both petitioners and respondents. It would allow either party to request a continuance, and require a showing of good cause. The request could be made in writing either before or at the hearing, or orally at the hearing. A court could also grant a continuance on its own motion. Any temporary restraining order that had been granted would remain in effect until the end of the continued hearing unless otherwise ordered by the court. The provision would also allow the court to modify or terminate the temporary restraining order when granting a continuance.

If this new provision on continuances is added to the codes, the current reissuance procedure in rule 3.1152 for petitioners would no longer be necessary and should be repealed. The existing reissuance procedure has been problematic. It limits the ground for a reissuance to the inability to serve the respondent with the moving papers within the time allowed by statute, and provides that reissuances apply only to orders previously dissolved for failure to serve the respondent. This means that a petitioner cannot request a reissuance before a temporary restraining order has been “dissolved by the court,” which is not a good or safe practice.⁴ There is no statutory provision for continuing a pending hearing and keeping the temporary restraining order in place until the new hearing date.

⁴ In fact, temporary restraining orders are seldom “dissolved by the court.” They end because the expiration date passes without the need for any affirmative judicial step or “dissolution.” Therefore, under current law, a temporary restraining order cannot be reissued until after the original hearing date has come and gone and the temporary restraining order has expired.

The committees recommend that the legislation have an effective date of July 1, 2015.⁵ This will provide sufficient time to rename and revise the Judicial Council forms used for reissuances and continuances to fully implement the legislation. If the proposed new provision is added to the codes on restraining orders, rule 3.1152(e) on continuances would be repealed, effective July 1, 2015, because the substantive provisions on continuances would be in all the applicable statutes.

Additional statutory amendment: technical correction to Code Civ. Proc. § 527.6(n)

Last year, Assembly Bill 499 (Stats. 2010, ch. 158)⁶ amended Code of Civil Procedure section 527.6(j)(1) to expand the duration of restraining orders in civil harassment prevention cases from no more than three to no more than five years. However, inadvertently, the legislation failed to include an amendment to Code of Civil Procedure section 527.6(n), which still states “A notice of hearing under this section shall notify the respondent that if he or she does not attend the hearing, the court may make order against him or her that could last up to three years.” A legislative change to correct this oversight is warranted.

This technical problem was not formally circulated for comment, though it was mentioned in the invitation to comment recently circulated recommending revisions to the restraining order forms. To correct this problem, the committees recommend that section 527.6(n) be amended to be consistent with section 527.6(j)(1).

Comments, Alternatives Considered, and Policy Implications

Comments and responses

This legislative proposal to amend the law on continuances was initially circulated for public comment on a special cycle from August 28 through September 30, 2013. Three comments were received during that cycle. Two of the commentators, the California Judges Association (CJA) and the International Support Network for Alienated Families (ISNAF), supported the proposal. The CJA commented that the invitation to comment “has the justification and reasoning for the proposal, which the CJA finds persuasive.” (Comment 1.) ISNAF supported the proposal “to clarify the procedures for continuance of hearings.” (Comment 2.)⁷ The third commentator, a manager writing on behalf of records supervisors at a county sheriff’s office, asked several questions about how service of the notice of new hearing dates would operate and about the forms that would be used to implement the new law. The committees’ responses include specific responses to each of the questions asked by the records manager. (See comment 3.)

Because insufficient notice had been given to the courts of the original special circulation cycle, this legislative proposal was recirculated during the regular winter comment cycle from December 13, 2013 to January 24, 2014. Six additional comments were received. The

⁵ This date is recommended on the assumption that the proposed legislation is enacted in 2014 and would become effective January 1, 2015 unless it includes a delayed effective date. In the event the legislation is not enacted until 2015, the recommended delayed effective date would be July 1, 2016.

⁶ AB 499 is available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB499&search_keywords

⁷ ISNAF had a number of additional comments and suggestions that were outside the scope of the present proposal.

additional commentators consisted of the Los Angeles Center for Law and Justice (comment 4), the Orange County Bar Association (comment 5), the Riverside County Probation Department (comment 6), the State Bar’s Family Law Section (comment 7), and the Superior Courts of Los Angeles and San Diego Counties (comments 8 and 9).⁸ Five of the additional commentators supported the proposal and one—concluding that the proposal had no impact on the probation department— took no position other than to note that the proposal seemed to address its stated purpose.

The Los Angeles Center for Law and Justice stated: “We agree that this legislative proposal appropriately address[es] the stated purpose of clarifying and improving the procedures for continuing hearing[s]” (Comment 4.) The State Bar’s Family Law section stated that it “supports this proposal, as it ensures safety for petitioners seeking orders to prevent civil harassment, workplace violence, private post-secondary school violence and elder/dependent adult abuse by clarifying that the court can extend a temporary restraining order for reasons other than that the restrained party has not yet been served. There are many situations where this might be necessary. The issue might be set for an evidentiary hearing, or either party might have good cause for a continuance as when they or their counsel are sick or otherwise indisposed.” (Comment 7.)

Although the commentators supported the proposal in general, the Los Angeles Center for Law and Justice thought that it was unnecessary for the legislation to have a delayed implementation date of July 1, 2015, instead of January 1, 2015, which would otherwise be the effective date for newly enacted legislation, solely because of the time needed to create a form. (See comment 4.)⁹ The Center suggested that, if the legislation is effective January 1, until new forms are prepared litigants could draft their own pleadings, make oral requests, or modify existing forms. The committee discussed this issue of the effective date of the legislation and concluded that a six-month delay is important so that there will be sufficient time to properly revise all the forms used by parties to request continuances, to circulate the forms for public comment, and to make any needed form changes before the legislation goes into effect. The additional time will also give the public and the courts more time to prepare for the change in the law. The committee disagreed with the suggestion that, if the legislation goes into effect January 1, parties could effectively take steps by themselves to seek continuances during the gap between the effective date of the new law and the revision of the forms. In this area of law, most parties represent themselves; they would not be prepared to draft pleadings, revise existing ones, or present arguments orally without guidance from accurate forms and current information sheets. The proposed six-month delay will not only provide for better forms based on public input, but also prevent confusion and give the public and the courts more time to prepare for and implement the changes in the law. Hence, the committee continues to recommend a July 1, 2015 effective date.

Finally, two commentators noted that the continuance legislation as proposed would apply only to statutes providing for restraining orders to prevent to civil harassment, workplace violence,

⁸ The comments and the committees’ responses are attached at pages 12–21.

⁹ This comment was in response to the question in the invitation to comment: “Would the delay of the effective date of this legislation for six months provide sufficient time for implementation?”

private post-secondary school violence, and elder or dependent adult abuse.¹⁰ These commentators suggested that legislation and rule changes similar to those proposed here should also be considered for domestic violence and juvenile law protective orders. (See comments 7 and 8.) Specifically, the State Bar of California's Family Law Section (FLEXCOM) commented:

...the Invitation to Comment notes that in 2013 the Family and Juvenile Law Advisory Committee reviewed this proposal and considered whether to also recommend changes to the statutes on reissuances and continuances relating to domestic violence and juvenile protective orders. Although the committee decided to recommend no changes to the domestic violence or the juvenile protective order statutes at this time, the Invitation to Comment notes that the committee will continue to consider possible amendments to those statutes in the future. FLEXCOM encourages continued consideration of legislation to amend the domestic violence and juvenile protective order continuance and reissuance process in a way that is similar to the amendments made in this proposal.

(Comment 7.)

As the commentator notes, the committee is recommending that this legislative proposal focus on improving continuance procedures in proceedings to prevent civil harassment, workplace violence, private post-secondary school violence, and elder or dependent adult abuse. Although there may be good reasons eventually to expand the proposed procedures to family and juvenile cases, the scope of this proposal is more limited.

There are a number of reasons not to include domestic violence and juvenile restraining order proceedings in the present legislation. The procedures in the civil proceedings involved here have always been different from those in family and juvenile law. The issue of whether the proposed statutory changes will work for domestic violence and juvenile proceedings requires further study and consideration.

Unlike the civil proceedings involved here, domestic violence proceedings may involve custody and visitation orders that have no parallel in the civil restraining order context. The presence of these additional orders may, or may not, warrant different procedures for continuances. This is a matter to be carefully considered.

Furthermore, each of the types of civil restraining orders that is the subject of this proposal contains its own separate statutory provision on reissuance. (See Code Civ. Proc., §§ 527.6(o),

¹⁰ Before this proposal was circulated for public comment, the Family and Juvenile Law Advisory Committee reviewed it in July 2013 and considered whether also to recommend changes to the statutes on reissuances and continuances relating to domestic violence and juvenile protective orders. (See Family Code section 217, 243, 245, and 6345 and Welfare and Institutions Code section 213.5.) Those statutes contain different procedures from those in either the existing or the proposed amended civil protective order statutes. The Family and Juvenile Law Advisory Committee decided to recommend no changes to the domestic violence or the juvenile protective order statutes at this time but to continue considering possible amendments to those statutes in the future.

527.8(o), 527.85(o); Welf. & Inst. Code, § 15657.03(m).) This proposal would consistently amend each of these statutes to provide a uniform set of continuance procedures for all types of civil restraining order cases. By contrast, the continuance and reissuance statutes that apply to domestic violence prevention cases are Family Code sections 243 and 245. These two statutes apply not only to proceedings involving domestic violence restraining orders but also to many other types of family law proceedings (See Family Code § 240 (application of part).)¹¹ So if the law is changed to make the continuance procedures in domestic violence prevention procedures similar to what it would be under the proposed legislation for other civil restraining orders, it would also make the procedures different from other family law proceedings. In the end, this may be desirable. But it is a matter that requires careful further examination.

Finally, there are benefits of having the proposed legislation go forward without including family and juvenile law restraining order proceedings. Experience will be gained in evaluating how, if they become law, the proposed new procedures work. This experience, in turn, can be used to better determine if the new procedures would work well for family and juvenile restraining order proceedings. Meanwhile, the existing forms and rules applicable to continuances for family and juvenile proceedings can remain in place.

Other alternatives and policies considered

In addition to considering the public comments, the committee considered various alternatives in developing this proposal. First, it recognized that the law on reissuances and continuances could be left unchanged. However, for the reasons explained above, the committee concluded that it would be better for the public and the courts if legislation is enacted providing for a simpler, consistent procedure for continuances in cases involving temporary civil restraining orders.

Second, the committee considered whether the respondent (or both parties) should be able to obtain one continuance as a matter of right without a showing of good cause.¹² The committee preferred requiring a showing of good cause for any motion for a continuance from either party.

Third, this proposal might have included adding detailed provisions for service of orders after a continuance is granted. There were numerous permutations for service depending on which party requested the continuance, whether the respondent had previously been served, and

¹¹ Fam. Code § 240 states:

This part applies where a temporary restraining order, including a protective order as defined in Section 6218, is issued under any of the following provisions:

- (a) Article 2 (commencing with Section 2045) of Chapter 4 of Part 1 of Division 6 (dissolution of marriage, nullity of marriage, or legal separation of the parties).
- (b) Article 3 (commencing with Section 4620) of Chapter 3 of Part 5 of Division 9 (deposit of assets to secure future child support payments).
- (c) Article 1 (commencing with Section 6320) of Chapter 2 of Part 4 of Division 10 (Domestic Violence Prevention Act), other than an order under Section 6322.5.
- (d) Article 2 (commencing with Section 7710) of Chapter 6 of Part 3 of Division 12 (Uniform Parentage Act).

¹² See Fam. Code, § 243(d) [The respondent is entitled, as a matter of course, to one continuance for a reasonable period, to respond to the petition for orders].

whether, in granting the continuance, the court modified the order. The committee decided that the better course was not to add complexities to the relatively simple proposed statutory amendments.

Fourth, the committee considered a suggestion recommending that the continuance statutes clarify whether a continuance may be made orally as well as in writing, and whether a request for continuance of a hearing may be made up to and including the day of the hearing. The committee agreed that it would be beneficial to clarify these issues. It recommends adding the following language to the continuance statutes:

The request may be made in writing before or at the hearing or orally at the hearing.

(See amended Code Civ. Proc., §§ 527.6(o)(1), 527.8(o)(1), 527.85(o)(1); Welf. & Inst. Code, § 15657.03(m)(1).)

Implementation Requirements, Costs, and Operational Impacts

If the proposed legislation is enacted, the result should improve processes for requesting and ruling on continuances in civil cases involving temporary orders to restrain harassment and abuse. Four existing Judicial Council forms on reissuances would need to be revised and renamed to be consistent with the new provisions on continuances.¹³ Although this would not require significant costs or time, a delayed implementation date of July 1, 2015 is recommended so that the form changes can be made in a timely manner, and that courts would have sufficient opportunity to prepare for the use of the revised forms. Also, if the legislation is enacted, subdivision (e) of rule 3.1152 on continuances would no longer be needed and should be repealed.

Attachments

1. Amendments to Code of Civil Procedure sections 527.6, 527.8, 527.85, and Welfare and Institutions Code section 15657.03, at pages 9–11
2. Comment chart, at pages 12–21

¹³ The forms that would need to be revised and renamed are the *Notice of New Hearing Date and Order on Reissuance* (forms CH-116, EA-116, WV-116, and SV-116).

Code of Civil Procedure sections 527.6, 527.8, 527.85, and Welfare and Institutions Code section 15657.03 would be amended, effective July 1, 2015, to read:

1 Code of Civil Procedure section 527.6

2
3 (a)–(m) * * *

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

8
9 ~~(o) (1) The court may, upon the filing of a declaration by the petitioner that the respondent could~~
10 ~~not be served within the time required by statute, reissue an order previously issued and~~
11 ~~dissolved by the court for failure to serve the respondent. The reissued order shall remain in~~
12 ~~effect until the date set for the hearing.~~

13
14 ~~(2) The reissued order shall state on its face the date of expiration of the order.~~

15
16 (1) Either party may request a continuance of the hearing which the court shall grant on a
17 showing of good cause. The request may be made in writing before or at the hearing or orally at
18 the hearing. The court may also grant a continuance on its own motion.

19
20 (2) If the court in its discretion grants the continuance, any temporary restraining order that has
21 been granted remains in effect until the end of the continued hearing unless otherwise ordered by
22 the court. In granting the continuance, the court may modify or terminate the temporary
23 restraining order.

24
25 (p)–(y) * * *

26
27 Code of Civil Procedure section 527.8

28
29 (a)–(n) * * *

30
31 ~~(o) (1) The court may, upon the filing of a declaration by the petitioner that the respondent could~~
32 ~~not be served within the time required by statute, reissue an order previously issued and~~
33 ~~dissolved by the court for failure to serve the respondent. The reissued order shall remain in~~
34 ~~effect until the date set for the hearing.~~

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

37
38 (1) Either party may request a continuance of the hearing which the court shall grant on a
39 showing of good cause. The request may be made in writing before or at the hearing or orally at
40 the hearing. The court may also grant a continuance on its own motion.

1 (2) If the court in its discretion grants the continuance, any temporary restraining order that has
2 been granted remains in effect until the end of the continued hearing unless otherwise ordered by
3 the court. In granting the continuance, the court may modify or terminate the temporary
4 restraining order.

5
6 (p)-(w) * * *

7
8 Code of Civil Procedure section 527.85

9
10 (a)-(n) * * *

11
12 ~~(o) (1) The court may, upon the filing of a declaration by the petitioner that the respondent could~~
13 ~~not be served within the time required by statute, reissue an order previously issued and~~
14 ~~dissolved by the court for failure to serve the respondent. The reissued order shall remain in~~
15 ~~effect until the date set for the hearing.~~

16
17 ~~(2) The reissued order shall state on its face the date of expiration of the order.~~

18
19 (1) Either party may request a continuance of the hearing which the court shall grant on a
20 showing of good cause. The request may be made in writing before or at the hearing or orally at
21 the hearing. The court may also grant a continuance on its own motion.

22
23 (2) If the court in its discretion grants the continuance, any temporary restraining order that has
24 been granted remains in effect until the end of the continued hearing unless otherwise ordered by
25 the court. In granting the continuance, the court may modify or terminate the temporary
26 restraining order.

27
28 (p)-(w) * * *

29
30
31 Welfare and Institutions Code section 15657.03

32
33 (a)-(l) * * *

34
35 ~~(m) (1) The court may, upon the filing of a declaration by the petitioner that the respondent could~~
36 ~~not be served within the time required by statute, reissue an order previously issued and~~
37 ~~dissolved by the court for failure to serve the respondent. The reissued order shall remain in~~
38 ~~effect until the date set for the hearing.~~

39
40 ~~(2) The reissued order shall state on its face the date of expiration of the order.~~

41
42 (1) Either party may request a continuance of the hearing which the court shall grant on a
43 showing of good cause. The request may be made in writing before or at the hearing or orally at
44 the hearing. The court may also grant a continuance on its own motion.

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(2) If the court in its discretion grants the continuance, any temporary restraining order that has been granted remains in effect until the end of the continued hearing unless otherwise ordered by the court. In granting the continuance, the court may modify or terminate the temporary restraining order.

(n)-(w) * * *

LEG 13-08

Judicial Council-Sponsored Legislation: Amend Civil Restraining Order Statutes to Clarify Procedures for Continuance of Hearings

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Lexi Howard Legislative Director California Judges Association Sacramento, CA	A	<p>The California Judges Association (CJA) provides the following comments regarding the above-referenced proposal for legislation with respect to CCP §527.6 (civil harassment), CCP §527.8 (workplace violence), §527.85 (private postsecondary school violence) and Welfare and Institutions Code §15657.03 (elder abuse). The proposed legislation seeks to amend and conform the statutes in these areas of law regarding continuances.</p> <p>The amendments provide that 1) either party may request a continuance of the hearing on a showing of good cause, 2) that the court may also grant a continuance on its own motion, and 3) that when the court grants the continuance, any temporary restraining order that has been granted remains in effect until the end of the continued hearing unless the court otherwise orders. The amendments would also provide the court may modify or terminate the temporary restraining order.</p> <p>The Invitation to Comment also suggests California Rules of Court, Rule 3.1152(e) be repealed because the substantive provisions on continuances would now be in the statutes. Also, the current reissuance procedure would no longer be necessary and the Judicial Council recommends its repeal.</p> <p>The Invitation to Comment has the justification and reasoning for the proposal, which the CJA</p>	The CJA’s support for this legislative proposal, and its conclusion that the rationale for the proposal is persuasive, are noted.

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	Commentator	Position	Comment	Committee Response
			<p>finds persuasive. The Invitation to Comment states "this proposal would amend the civil restraining order statutes to eliminate the current provision concerning the reissuance of temporary orders and replace them with new provisions providing a procedure for continuance of hearings. . . . The reissuance procedure has been problematic. It limits the ground for a reissuance to the inability to serve the respondent with the moving papers within the time allowed by statute and provides that reissuances apply only to orders previously dissolved for failure to serve the respondent. This means that the petitioner cannot request a reissuance before a temporary restraining order has been dissolved, which is not a good or safe practice. There is no statutory provision for continuing a pending hearing and keeping the TRO in place until a new hearing date."</p>	
2.	<p>International Support Network for Alienated Families By: Michael Conzachi Director of Legislative Activities and Advocacy Redondo Beach, CA</p>	A	<p>I am writing in support of the current Judicial Council sponsored legislation LEG13-08, to amend restraining order statutes to clarify procedures for continuance of hearings.</p> <p>As is well known and widely criticized; the restraining order process in California has been abused, misused, exploited and manipulated so frequently that it does not resemble anything close to the original legislative intent. One of the many abuses is the intentional delay of</p>	<p>The commentator’s support for the proposal “to clarify procedures for continuance of hearings” is noted. It should be noted, however, that many of the commentator’s specific comments are beyond the scope of this legislative proposal because the proposal does not apply to protective orders involving claims or issues relating to domestic violence.</p>

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	Commentator	Position	Comment	Committee Response
			<p>hearings when a temporary order has been issued.</p> <p>One of the most heartbreaking aspects of restraining order abuse is the emotional and psychological abuse experienced by children and affected parents; commonly referred to as a Parental Alienation dynamic. The level of emotional and psychological abuse suffered by children and affected parents is rampant and out of control. It can be reduced significantly virtually overnight if civil and criminal sanctions are enforced against false accusers and those who enable them; many who are family law attorneys who use this process to gain a tactical advantage in a family law case. There is a direct connection between those who obtain false restraining orders, and those who engage in some level of parental alienation.</p> <p>The abuse of the restraining order process has morphed to include its misapplication in many other areas, such as business disputes and a variety of civil actions. Recent surveys reveal that restraining orders are used in over half of all divorce cases with nearly 90% involving no actual intimate partner violence or threat of violence, but are obtained for convenience purposes, and to gain control of assets, homes, and to obtain sole custody of children in contentious divorces.</p>	

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	Commentator	Position	Comment	Committee Response
			<p>Reforms to the restraining order process are long overdue. One simple solution; enacting legislation to provide civil and/or criminal sanctions to those who procure, solicit, encourage, or facilitate false restraining orders or who otherwise manipulate the system, such as delaying timely hearings. The evidence is staggering and overwhelming, and has been for years that many areas restraining order law are abused not only by petitioners, but also by many family law attorneys as well.</p> <p>Therefore, I support this proposal, and look forward to future proposals in order to bring a level of sanity and common sense back into this process. Hopefully this will reduce the preventable toil, turmoil, and emotional devastation experienced by children, affected parents, and others who unfortunately happen to be on the receiving end of a civil court process that can entirely change their lives forever; that requires no proof, and provides no sanctions for those who abuse and manipulate this process.</p>	
3.	Solano County Sheriffs Office By: Denise Cantrell, Manager Identification and Records Services		<p>If a continuance is granted for a TRO not yet served, is the continuance, probably just one page with the new court date, just added to the TRO that the deputy is attempting to serve? If that's the case, it doesn't really create a lot more work.</p> <p>If a continuance is granted to either party, that</p>	<p>Currently, if a request for a continuance is granted, a three-page <i>Notice of New Hearing Date and Order on Reissuance</i> (form CH-116, EA-116, WV-116, or SV-116) is issued. The type of service required for this notice and other documents depends on the circumstances. For example, if both the petitioner and the respondent are present at the initial hearing, the request for a</p>

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	Commentator	Position	Comment	Committee Response
			<p>new court date must be served. The petitioner would bring in their new court date and I'm assuming we would have to serve this. But now you have the respondent needing service on the petitioner in order to inform the petitioner of the new date. This would create more service attempts for the deputies (although response papers are provided in the packets that are served on the defendant but it's rare we get a request to serve the response).</p> <p>Do the LEA's be get to review the revised/changed forms that go with these new provisions so that we understand how the courts will implement/utilize them?</p> <p>If there should be changes to the court case/docket # then tracking/inputting/modifying orders in CCPOR (California Courts Protective Order Registry) may create more work.</p>	<p>continuance is granted, and both parties are given a signed copy of the notice, no further service is necessary. However, if only the requesting party is present, the notice must be served on the absent party. (See e.g., form CH-116, item 7, Service of Order.) As the commentator notes, if the temporary restraining order has not yet been served on the respondent, the notice of continued hearing may be served along with the temporary restraining order. If respondents who have already been served with a temporary restraining order need to serve a copy of the notice of continued hearing on the petitioner, they may do so by mail.</p> <p>If the proposed legislation is enacted, the forms will need to be renamed and modified to reflect the new law. Law enforcement agencies will have an opportunity to review the revised forms when they are circulated for public comment in 2015 and also to view the final versions of the forms for a couple of months before they go into effect.</p> <p>It is not anticipated that the legislation or form changes would affect court case or docket numbers.</p>
NEW COMMENTS: LEG 14-01				
4.	Los Angeles Center for Law and Justice	A	We agree that this legislative proposal appropriately addresses the stated purpose of	The general support of the Los Angeles Center for Law and Justice for this legislative proposal is

LEG 13-08

Judicial Council-Sponsored Legislation: Amend Civil Restraining Order Statutes to Clarify Procedures for Continuance of Hearings

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	Commentator	Position	Comment	Committee Response
	Suma Mathai, Esq. Executive Director		clarifying and improving the procedures for continuing hearing. We note, however, that a delay of implementation until July 15, 2015 solely for the purpose of the creation of a form would unnecessarily prevent or delay the protection of scores of applicants for domestic violence restraining orders. If the legislation were to take effect, until a new form could be drafted, litigants could make requests via drafted pleadings, oral requests for orders, or modification of the existing form for reissuance.	<p>noted.</p> <p>The committee discussed the Center’s suggestion not to delay the implementation date until July 1, 2015. It concluded that there were good reasons for recommending a six-month a delay: this will provide sufficient time, after the legislation is enacted, to revise all the forms used by parties to request continuances, to circulate the forms for public comment, and to make any needed form changes before the legislation goes into effect.</p> <p>The suggestion that, if the legislation is effective January 1, until new forms are prepared litigants could draft their own pleadings, make oral requests, or modify existing forms is not the best way to proceed. In this area of law, most parties represent themselves; hence, they would not be prepared to draft pleadings, revise existing ones, or present arguments orally without guidance from legally correct forms and information sheets. The proposed six-month delay will not only provide for better forms based on public input but also prevent confusion and give litigants and the courts and the public more time to prepare for and implement the changes in the law.</p> <p>[Note also: this proposal does not affect domestic violence restraining orders, which are currently subject to a different set of procedures for requesting continuances than the other civil protective orders which would be subject to this</p>

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				proposed legislation. As discussed in the report and in response to other comments, the simplified continuance procedure recommended in this report for non-domestic violence cases will be considered for in the future for possible adoption in domestic violence cases based on a careful review of current practices and the experience learned from implementing this continuance legislation in non-domestic violence cases.]
5.	Orange County Bar Association By: Thomas H. Bienert, Jr. President	A	*No specific comment.	*No specific response required.
6.	Riverside County Probation Department By: Allison Paterson, Executive Secretary	N/I	In 2010, the legislature revised many statutes providing for restraining orders. One important area that remained unaddressed was the law on reissuing temporary restraining orders and continuing hearings. For example, in civil (i.e., non-domestic violence and non-juvenile) restraining orders, the provisions on continuances remain in the Rules of Court rather than in the codes. (CRC 3.1152.) This proposal recommends that these civil restraining order statutes be amended to include clear, consistent, and effective procedures for continuing hearings. Specifically, this proposal would amend the	The Probation Department’s comments indicate that the proposal, which affects only civil protective orders, will not have any impact on it, which is accurate.

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			<p>civil restraining order statutes to eliminate the current provisions concerning the re-issuance of temporary orders and replace them with new provisions providing a procedure for continuance of hearings. The new provisions to be placed in each of the restraining order statutes would read as follows:</p> <ol style="list-style-type: none"> 1. Either party may request a continuance of the hearing on a showing of good cause. The court may also grant a continuance on its own motion. 2. If the court in its discretion grants the continuance, any temporary restraining order that has been granted remains in effect until the end of the continued hearing unless otherwise ordered by the court. The court may modify or terminate the temporary restraining order. <p>Department Response: This does not appear to impact our department.</p> <p>The request for comment had one specific questions relating to the proposed changes. It is:</p> <p>Question: Does this legislative proposal appropriately address the stated purpose? Answer: Based upon our limited</p>	

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			<p>knowledge of civil restraining orders, (they seem to mirror criminal protective orders somewhat), the proposal seems to address its stated purpose.</p>	
7.	<p>State Bar of California Family Law Section Saul Bercovitch FAM, Legislative Counsel</p>	A	<p>FLEXCOM supports this proposal, as it ensures safety for petitioners seeking orders to prevent civil harassment, workplace violence, private post-secondary school violence and elder/dependent adult abuse by clarifying that the court can extend a temporary restraining order for reasons other than that the restrained party has not yet been served. There are many situations where this might be necessary. The issue might be set for an evidentiary hearing, or either party might have good cause for a continuance as when they or their counsel are sick or otherwise indisposed.</p> <p>Footnote 8 in the Invitation to Comment notes that in 2013 the Family and Juvenile Law Advisory Committee reviewed this proposal and considered whether to also recommend changes to the statutes on reissuances and continuances relating to domestic violence and juvenile protective orders. Although the committee decided to recommend no changes to the domestic violence or the juvenile protective order statutes at this time, the Invitation to Comment notes that the committee will continue to consider possible amendments to those statutes in the future. FLEXCOM</p>	<p>FLEXCOM’s support for this proposal and its rationale are noted.</p> <p>The Family and Juvenile Law Advisory Committee plans to continue considering similar legislative changes to the family (domestic violence) and juvenile law statutes in the future. If the proposed legislation is enacted an implemented, that committee will have the benefit of the experience with the civil protective order forms in developing its own legislative proposal.</p>

LEG 13-08**Judicial Council-Sponsored Legislation:** Amend Civil Restraining Order Statutes to Clarify Procedures for Continuance of Hearings

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	Commentator	Position	Comment	Committee Response
			encourages continued consideration of legislation to amend the domestic violence and juvenile protective order continuance and reissuance process in a way that is similar to the amendments made in this proposal.	
8.	Superior Court of California County of Los Angeles	A	*No specific comment.	*No specific response required.
9.	Superior Court of California County of San Diego By: Michael Roddy, Executive Officer	A	The language that is proposed to be replaced is also in Welfare and Institutions Code § 213.5 and California Rules of Court, rule 5.630; therefore, additional changes may be needed to be consistent.	The commentator is correct that the code and the rule relating to juvenile protective orders contain language about reissuance similar to that in the code sections that this legislative proposal would replace. However, amending those provisions relating to juvenile protective orders is beyond the scope of the present proposal that affects only civil protective orders. As indicated above, the Family and Juvenile Law Advisory Committee may consider proposing amendments to the code and rule on juvenile protective orders in the future.