



Domestic Violence Restraining Orders

What They Are, Why They Matter, and How to Get One

June 2019

Special Thanks to Chelsi DeTurk, Megan Hirsh, Rachel Horn, Laura Lee and Columbia Law School for their invaluable contributions to this guide.

Table of Contents

- DOMESTIC VIOLENCE STATISTICS..... 2**
- ABOUT RESTRAINING ORDERS..... 6**
 - CIVIL RESTRAINING ORDERS 9
 - CRIMINAL PROTECTIVE ORDERS 12
 - SAMPLE CASES..... 13
- REQUESTING A RESTRAINING ORDER 14**
 - FILING YOUR FORMS..... 15
 - SERVING THE FORMS TO THE RESTRAINED PERSON 15
 - 16
 - AFTER THE HEARING 16
- REQUESTING JUVENILE RESTRAINING ORDERS 17**
- RENEWING YOUR RESTRAINING ORDER 18**
 - SERVING THE FORMS TO THE RESTRAINED PERSON 19
 - AFTER THE HEARING 20
- CASE ALERT 22**
- APPEALING A COURT ORDER 23**
 - SERVING YOUR NOTICE OF APPEAL 24
 - FILING YOUR NOTICE OF APPEAL 25
 - DESIGNATING THE RECORD 25
 - SERVING AND FILING DOCUMENTS IN THE COURT OF APPEAL..... 27
 - ORAL ARGUMENT & AFTERWARD 28

Domestic Violence Statistics

What is domestic violence?

“**Domestic violence**” is abuse perpetrated against a current or former spouse; current or former cohabitant; someone with whom the respondent has or previously had a dating or engagement relationship; someone with whom the respondent has had a child; a child of the petitioner or respondent; or others closely related to the respondent.¹

“**Abuse**” includes intentionally or recklessly causing or attempting to cause: bodily injury; sexual assault; placing a person in reasonable apprehension of imminent serious bodily injury to the same person or another; or engaging in any of the behaviors that can be enjoined pursuant to Fam. Code § 6320 (harassing, attacking, stalking, threatening, telephoning, including, but not limited to, making annoying phone calls, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or *disturbing the peace of the other party*).²



A petitioner does **not** need to show that the abuse they experienced resulted in **actual physical injury** or assault.³

¹ CAL. FAM. CODE § 6211 (2019) (explaining that the DVPA, which can be found in Family Code sections 6200 to 6389, permits law enforcement and domestic violence victims to petition a court for various forms of relief).

² CAL. FAM. CODE §§ 6203(a), 6320(a) (2019).

³ CAL. FAM. CODE § 6203(b) (2019).

⁴ *In re Marriage of Nadkarni*, 173 Cal. App. 4th 1483, 1497 (2009).

⁵ *Id.* at 1498.

⁶ *Id.*

Disturbing someone’s peace is a basis for finding abuse. Courts have defined “disturbing the peace of the other party” as “conduct that destroys the mental or emotional calm of the other party.”⁴



Includes abuse of email, text messages and social media.⁵

● **Examples of disturbing the peace:**

- Husband’s actions of accessing, reading, and publicly disclosing his wife’s emails without her permission destroyed her mental and emotional calm.⁶
- Party’s peace was disturbed when a restrained party emailed, sent text messages, and showed up unannounced at his ex-girlfriend’s home after his ex-girlfriend made it clear that she wanted to cease all contact with him.⁷
- Husband destroyed the mental or emotional calm of his wife when he downloaded the contents of her cell phone without her permission and threatened to disclose the personal information.⁸

Who is affected by domestic violence?

- More than **1 in 3 women** and more than **1 in 4 men** in the United States have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime.⁹

⁷ See *Burquet v. Brumbaugh*, 223 Cal. App. 4th 1140, 1144-6 (2014).

⁸ *Evilsizor v. Sweeney*, 237 Cal. App. 4th 1416, 1416-7 (2015).

⁹ Michele C. Black et al., Centers for Disease Control & Prevention, *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report 2* (2011), https://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf (showing that 35.6% of women and 28.5% of men in the U.S. have experienced rape, physical violence, and/or stalking by an intimate partner).



- In California, 34.9% of women and 31.1% of men have, at some point in their lives, been victims of sexual violence, physical violence, or stalking by an intimate partner.¹⁰



That adds up to **4,939,000 women** and **4,290,000 men** who have experienced domestic violence.

- Females **between 18 to 34** generally experience the highest rates of intimate partner violence.¹¹

¹⁰ Sharon G. Smith et al., Centers for Disease Control & Prevention, *The National Intimate Partner and Sexual Violence Survey: 2010-2012* 128 (2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>.

¹¹ Shannan Catalano, U.S. Dep't of Justice, *Intimate Partner Violence, 1993-2010* 1 (2015), <https://www.bjs.gov/content/pub/pdf/ipv9310.pdf>.

¹² Laura Kann et al., *Youth Risk Behavior Surveillance - United States, 2017*, 67 CENTERS FOR DISEASE CONTROL & PREVENTION MMWR SURVEILLANCE SUMMARIES 8, 23 (2018), <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/ss6708.pdf> (showing, on Table 41, the percentage of high school students who experienced physical dating violence, by sex, sexual identity, and sex of sexual contacts).

¹³ Nat'l Ctr. for Injury Prevention & Control, Centers for Disease Control & Prevention, *NISVS: An Overview of 2010 Findings on Victimization by Sexual Orientation* 1, https://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_victimization_final-a.pdf

- In California, **8.3% of teens** have experienced physical dating violence.¹²



- People who identify as **lesbian, gay or bisexual** have an equal or higher prevalence of experiencing intimate partner violence, sexual violence and stalking as compared to heterosexuals.¹³
- Domestic violence related police calls constitute the **single largest category of calls** received by police, accounting for anywhere from 15% to more than 50% of all calls.¹⁴



- As a result, about **9 in 10** local police departments serving 250,000 or more residents operate a **full-time domestic violence unit**.¹⁵

(showing 44% of percent of lesbian women and 61% of bisexual women, compared to 35% of heterosexual women, experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime. 26% percent of gay men and 37% of bisexual men, compared to 29% of heterosexual men, experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime).

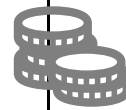
¹⁴ Andrew R. Klein, U.S. Dep't of Justice, *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges* 1 (2009), <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>.

¹⁵ Brian A. Reaves, U.S. Dep't of Justice, *Police Response to Domestic Violence, 2006-2015* 1 (2017), <https://www.bjs.gov/content/pub/pdf/prdv0615.pdf>.

Lifetime Prevalence of Contact Sexual Violence, Physical Violence, and/or Stalking by an Intimate Partner, by Race/Ethnicity for Women in the State of California ¹⁶			
Hispanic	Black	White	Asian or Pacific Islander
30.2%	42.5%	39.3%	18.3%* *No statistically reliable estimate available for California. This is the figure for the United States.

¹⁶ Sharon G. Smith et al., Centers for Disease Control & Prevention, *The National Intimate Partner and Sexual Violence Survey*, supra note 10, at 138-42 (providing statistics in tables 5.11(a) – (d) of the lifetime prevalence of contact sexual violence, physical violence, and/or stalking by an intimate partner broken down by race/ethnicity for women in California).

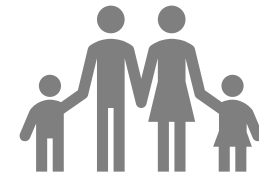
¹⁷ Michael L. Benson & Greer L. Fox, U.S. Dep’t of Justice, *Economic Distress, Community Context and Intimate Violence: An Application and Extension of Social Disorganization Theory* 53-54 (2002), <https://www.ncjrs.gov/pdffiles1/nij/grants/193434.pdf> (showing 9.5 percent of couples with high levels of subjective financial strain experience violence compared to 2.7 percent of couples with low levels of subjective financial strain experience violence).



- The rate of violence among couples with high levels of subjective financial strain is roughly **three and a half times higher** than among couples with subjectively low financial strain.¹⁷

- Women in financially distressed relationships who live in poor neighborhoods are **twice as likely** to be victims of domestic violence than women in equally financially distressed relationships living in more affluent neighborhoods.¹⁸

- **Children** who grow up in a home with domestic violence face an increased risk of being victims of child abuse.¹⁹
- Children who are not direct victims exhibit some of the same behavioral and psychological problems as children who are themselves physically abused.²⁰
- Men who had seen parents physically attack each other were almost three times more likely to have hit their own wives



¹⁸ *Id.* at 99 (analyzing a study that created indexes of neighborhood advantage based on census tract measures defined by the percent of single parents, percent non-white, percent unemployed, percent of families on public assistance, and percent below the poverty line. Among couples in the same category of income-to-needs ratio, couples located in disadvantaged neighborhoods experience higher rates of serious violence than those located in advantaged neighborhoods).

¹⁹ See World Health Org., *World Report on Violence and Health: Summary* 19 (2012), https://www.who.int/violence_injury_prevention/violence/world_report/en/summary_en.pdf.

²⁰ UNICEF, *Behind Closed Doors: The Impact of Domestic Violence on Children*, 7 (2006), <https://www.unicef.org/media/files/BehindClosedDoors.pdf>.

(32%), as compared to those who did not witness violent parents (11%).²¹

In a 2017 study, low-income survivors of domestic violence lacked adequate legal assistance for 86% of their civil legal problems. In proceedings specific to domestic violence restraining orders, reports have estimated more than 90% of litigants appear pro se, without any legal representation. While the vast majority of domestic violence survivors lack access to counsel, those who are represented by attorneys are significantly more likely to successfully obtain a protective order. There are many legal organizations that can assist you in requesting a domestic violence restraining order. Visit <http://www.calbar.ca.gov/Access-to-Justice/Legal-Aid-Grants/Grant-Recipients> to find an organization near you.

²¹ Michael L. Benson & Greer L. Fox, U.S. Dep't of Justice, *Economic Distress, Community Context and Intimate Violence: An Application and Extension of Social Disorganization Theory* 7 (2002), <https://www.ncjrs.gov/pdffiles1/nij/grants/215915.pdf>

²² Emiko Petrosky et al., *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence - United States, 2003-2004*, 66 CENTERS FOR DISEASE CONTROL & PREVENTION MMWR WEEKLY 28, 741-6 (2017), <https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6628a1.pdf> (providing data from 18 states showing that 55.3% of homicides against women 18 years or older during 2003–2014 were IPV-related).

²³ *Id.*

What are the consequences of domestic violence?

- The CDC reports that **more than half of all homicides against women** (55.3%) are connected to intimate partner violence.²²
- Approximately one third of female homicide victims (29.4%) are 18 to 29 years old.²³
- Between 2003 and 2008, 142 women were murdered in their workplace by former or current intimate partners, amounting to **22% of workplace homicides** among women.²⁴
- Intimate partner victimization is correlated with a higher rate of **depression** (victims are almost twice as likely to experience depression) and suicidal behavior.²⁵
 - Victims of intimate partner violence are at increased risk of contracting HIV or other STI's due to forced intercourse and/or prolonged exposure to stress.²⁶
- Women who have been physically or sexually abused by their partners are 16% more likely to have a low-birth-weight baby as



²⁴ Hope M. Tiesman et. al., *Workplace Homicides Among U.S. Women: The Role of Intimate Partner Violence*, National Center for Biotechnology Information (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4687019/>.

²⁵ Sherry Hamby et al., U.S. Dep't of Justice, *Children's Exposure to Intimate Partner Violence and Other Family Violence* 2 (2011), <https://www.ncjrs.gov/pdffiles1/ojdp/232272.pdf>.

²⁶ World Health Org., *Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence* 2 (2013), https://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf;jsessionid=48B531964ABEF1910DD6C2D3E8F89378?sequence=1.

compared to women who have not experienced partner violence.²⁷



- Intimate partner violence is estimated to cost the US economy between **\$5.8 billion and \$12.6 billion annually**, up to 0.125% of the national gross domestic product.²⁸
- Victims of intimate partner violence lose a total of **8,000,000 days** of paid work each year – the equivalent of **32,000 full-time jobs**.²⁹
- Between 21-60% of victims of intimate partner violence **lose their jobs** for reasons stemming from the abuse.³⁰

About Restraining Orders

Why get a restraining order?

- A majority of women report feeling safer after obtaining restraining orders; in a recent study of 700 women with restraining orders, **43%** reported feeling “**extremely safe**” and **34%** reported feeling “fairly safe.”³¹

²⁷ *Id.*

²⁸ World Health Org., *The Economic Dimensions of Interpersonal Violence* (2004), <https://apps.who.int/iris/bitstream/handle/10665/42944/9241591609.pdf?sequence=1>.

²⁹ Centers for Disease Control & Prevention, *Costs of Intimate Partner Violence Against Women in the United States* 1 (2003), <https://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf>.

³⁰ World Health Org., *The Economic Dimensions of Interpersonal Violence*, *supra* note 29.

³¹ Jane K. Stoeber, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Order*, 67 VAND. L. REV. 1015, 1067 (2014).

- Between 30% and 77% of restraining orders issued for partner violence were not violated.³²



- **Penalties**³³: If someone is convicted of violating a California restraining order, the penalties vary depending on whether it's the first or a subsequent violation, and whether the victim suffered a physical injury because of the violation. The penalties may include **up to three years in the California state prison** for a felony, and up to one year in a county jail for a misdemeanor.
- In addition, they could face:
 - **court fines** and penalties,
 - victim **restitution** for any counseling and/or medical services that the victim reasonably incurred in connection with the offense, and
 - the **relinquishment of any firearms** and the inability to acquire any new ones for the length of the protective order.³⁴



³² TK Logan & Robert Walker, *Civil Protective Orders Effective in Stopping or Reducing Partner Violence*, 18 Carsey Inst. 1, 1 (Spring 2011), <https://scholars.unh.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1130&context=carsey>.

³³ Shouse California Law Group, *California Penal Code 273.6: Violating a Restraining or Protective Order*, <https://www.shouselaw.com/violate-restraining-order.html>.

³⁴ Cal. Pen. Code § 273.6.

- Approximately **one-third** of abusers will **reabuse** in the short run, and more will reabuse in the long run.³⁵
- Studies of over 1,000 female victims in Florida, New York City, and Los Angeles found that 31% of victims report being physically abused in the following year and 16% report being stalked or threatened, although only 4% to 6% of abusers were arrested.
- In Rhode Island, 38.4% of abusers were arrested for a new domestic violence offense within two years of being placed on probation supervision for a misdemeanor domestic violence offense.
- Longer-term studies in Massachusetts and Colorado found approximately 60% of abusers were arrested for a new domestic assault over a period of 5 to 10 years.

³⁵ Andrew R. Klein, U.S. Dep’t of Justice, *Practical Implications of Current Domestic Violence Research*, *supra* note 14 (varying depending on how reabuse is measured, the length of time, and the countermeasures taken by the victim or the criminal justice system, such as obtaining a protective order or arresting the abuser. Studies of over 1,000 female victims in Florida, New York City, and Los Angeles found that 31 percent of victims report being physically abused in the following year and 16 percent report being stalked or threatened, although only 4 to 6 percent of abusers

What is a restraining order?

- California law encourages courts to use both **criminal protective orders** and **Domestic Violence Restraining Orders (DVROs)** to protect victims of domestic violence; the two types of orders may be issued concurrently, and the law is clear that they may both be in place simultaneously.³⁶ Generally, criminal protective orders are more limited in purpose and scope and provide less opportunity for victim involvement in the procedure.
- In a recent case in which CWLC served as amicus, the California Court of Appeal clarified in a published decision “that criminal and civil protective orders may coexist, and the issuance of one does not bar the other” in holding that the trial court erred by denying a request for a DVRO for the sole reason that a criminal protective order was already in place.³⁷

The following chart summarizes the key differences between criminal protective orders and civil DVROs:

were arrested. In Rhode Island, 38.4 percent of abusers were arrested for a new domestic violence offense within two years of being placed on probation supervision for a misdemeanor domestic violence offense. Longer-term studies in Massachusetts and Colorado found approximately 60 percent of abusers were rearrested for a new domestic assault over a period of five to ten years).

³⁶ CAL. FAM. CODE §§ 6227, 6383(h)(2) (2019); CAL. PENAL CODE § 136.2(f) (2019).

³⁷ *Lugo v. Corona* (May 28, 2019) --- Cal.Rptr. ----, Case No. B288730, *3.

DVRO		Criminal Protective Order
Different Purposes		
Purpose	Stop acts of abuse, both for the victim’s safety and to facilitate the resolution of violence.	Ensure the integrity of criminal court proceedings and protect witnesses involved in such proceedings.
Different Types of Relief		
Types of relief available	Stop restrained person from engaging in certain physical conduct; financial, custodial, and other relief also available	More limited relief: focus on defendant’s physical actions, may be directed toward, e.g., prohibiting specific acts of abuse, physical proximity, or witness intimidation. ³⁸
Different Procedures		
Involvement of victim in obtaining the order	Victim may participate in the hearing and be involved in crafting the requested relief.	Victim is not required to be heard and might not be present when the criminal protective order is issued. ³⁹
Victim’s ability to challenge adverse rulings	Petitioner may appeal if court denies relief sought. Court must summarize its reasoning when denying a petition. ⁴⁰	Victim isn’t a party to the criminal case and generally can’t appeal the terms of a protective order. ⁴¹

³⁸ See e.g., CAL. PENAL CODE § 136.2(a)(1)(A) (2019) (describing personal conduct and stay-away orders); CAL. PENAL CODE § 136.2(a)(1)(B)–(D) (2019) (describing witness tampering and obstruction); CAL. PENAL CODE § 136.2(a)(1)(F) (2019) (describing witness protection).

³⁹ See Cal. Judges Benchbook, *Domestic Violence Cases in Criminal Court* 71 (2018) (providing § 4.16(2) in full).

⁴⁰ CAL. FAM. CODE § 6340(b) (2019).

⁴¹ CAL. PENAL CODE §§ 1235(a), 1466 (2019).

DVRO		Criminal Protective Order
Different Procedures (cont’d)		
Durational limitations	Post-hearing DVRO can last up to 5 years, renewable.	Pre-judgment: Operative only while criminal proceedings are pending. ⁴² Post-judgment: Can last up to 10 years. ⁴³
Modifying & terminating	Court may not act on respondent’s request to modify or terminate a protective order without first notifying petitioner. ⁴⁴	Protected party might not be notified until after modification or termination, ⁴⁵ crime victims guaranteed notice only “upon request.” ⁴⁶
Ability of victim to have “support person” at hearing	Petitioner has the option of bringing any “support person” of her choosing to the hearing to offer moral and emotional support. ⁴⁷	No express right to a support person.
Court’s authority to appoint counsel to represent victim	Court has express authority to appoint counsel to represent a petitioner in proceeding to enforce an existing DVPA restraining order. ⁴⁸	Victim has no right to her own counsel.

⁴² See *People v. Stone*, 123 Cal. App. 4th 153, 159 (2004).

⁴³ CAL. PENAL CODE § 136.2(i)(1) (2019).

⁴⁴ CAL. FAM. CODE § 6345 (2019).

⁴⁵ CAL. PENAL CODE § 136.2(a)(1)(G)(i) (2019).

⁴⁶ CAL. CONST. of 1879, art. I, § 28(b)(7).

⁴⁷ CAL. FAM. CODE § 6303 (2019).

⁴⁸ CAL. FAM. CODE § 6386(a) (2019).



What happens when criminal protective orders and DVROs overlap?

Usually, a criminal protective order issued in a domestic violence case “has precedence in enforcement over a civil court order against the defendant.” (California Penal Code § 136.2(e)(2)(2019))

The exceptions are:

- DVPA emergency protective order has precedence in enforcement over any other restraining or protective order that restrains the same person and that protects the same person/s, provided the provisions of the emergency protective order are more restrictive than the other order. (California Penal Code § 136.2(c)(1)(A)(2019))
- A no-contact order issued under the DVPA (Fam. Code § 6320) has precedence in enforcement over any other restraining or protective order. (California Penal Code § 136.2(c)(2)(2019))

⁴⁹ Jud. Council of Cal., *Abuse & Harassment: Restraining Orders*, <https://www.courts.ca.gov/1260.htm>.

⁵⁰ *Id.*

⁵¹ Jud. Court of Cal., *Can A Domestic Violence Restraining Order Help Me?* 1 (2012), <https://www.courts.ca.gov/documents/dv500info.pdf>.

Civil Restraining Orders

What is a civil restraining order?

- A **civil restraining order** is a court order that can protect someone from being physically or sexually abused, threatened, stalked, or harassed. The person who obtains the restraining order is called the “protected person,” and the person against whom the restraining order is effective is the “restrained person.” Family or household members of the protected person may also be protected by the restraining order.⁴⁹
- Under California law, there are **four main types** of civil restraining orders: **domestic violence restraining orders (DVROs)**, elder or dependent adult abuse restraining orders, civil harassment restraining orders, and workplace violence restraining orders.⁵⁰ This training focuses on DVROs, which are largely governed by California’s Domestic Violence Prevention Act (DVPA).

What is a DVRO?

- A DVRO is a court order that can help protect people who have been abused or threatened with abuse.⁵¹ DVROs are intended to prevent future acts of abuse and to keep the parties separate long enough to allow them to “seek a resolution of the causes of the violence.”⁵²

⁵² CAL. FAM. CODE § 6220 (2019).

Against whom can a DVRO be obtained?

- A person can get a DVRO against an abuser or threatened abuser with whom she has an **intimate relationship** (marriage, divorce, separation, domestic partnership, have a child together, dating or used to date, engaged or used to be engaged, cohabiting or used to cohabit) or to whom she is **related in the second degree**, either by marriage or blood (parent, child or stepchild, grandparent, sibling, in-law).⁵³

What types of relief can a DVRO provide?

- A DVRO is considered a “**protective order**” if it encompasses the particular types of relief described in Cal. Fam. Code §§ 6320–22. These include **enjoining specific acts of abuse** (e.g. attacking, stalking, threatening, sexually assaulting, contacting, coming within a certain distance of, or “disturbing the peace of” the protected person),⁵⁴ **residence exclusion** (ordering the restrained person not to enter the protected person’s dwelling or a shared dwelling),⁵⁵ or **other specified behaviors** that the court deems necessary to give effect to a protective order.⁵⁶
- Besides protective orders, a DVRO can provide various other kinds of relief, including:



- **Temporary custody of minor child:** Where there is a showing of immediate harm to a minor child, a court may issue an order

⁵³ CAL. FAM. CODE § 6211 (2019).

⁵⁴ CAL. FAM. CODE § 6320 (2019).

⁵⁵ CAL. FAM. CODE § 6321 (2019).

⁵⁶ CAL. FAM. CODE § 6322 (2019).

⁵⁷ CAL. FAM. CODE § 6323 (2019); CAL. FAM. CODE § 3064 (2009) (defining “[i]mmediate harm to the child” as including, but not limited to, sexual abuse, as well as having a parent who has committed recent or ongoing acts of domestic violence).

⁵⁸ See CAL. FAM. CODE § 6324 (2019).

determining the temporary custody and visitation of the child if the parties are married.⁵⁷

- **Financial protections:** The court may order the respondent to yield possession of the parties’ property to the petitioner;⁵⁸ to refrain from disposing of community, quasi-community, or separate property;⁵⁹ not to take actions that would negatively affect any insurance coverage or benefits belonging to the petitioner or her children;⁶⁰ or, after notice and a hearing, to pay child or spousal support.⁶¹



- **Communications independence:** A court can direct a cell phone provider to transfer to the protected person the rights to a particular phone number.⁶²

Who may request a DVRO, and what legal showing must they make?

- Under the DVPA, a law enforcement officer may request an **ex parte emergency protective order**, which can only provide the relief described in Cal. Fam. Code §§ 6320–22. The law enforcement officer must demonstrate reasonable grounds to believe there is an immediate and present danger of domestic violence, child abuse, child abduction, or immediate and present danger to an elder or dependent adult.⁶³

⁵⁹ CAL. FAM. CODE §§ 6325, 2045 (2019).

⁶⁰ CAL. FAM. CODE § 6325.5 (2019).

⁶¹ CAL. FAM. CODE § 6341 (2019).

⁶² CAL. FAM. CODE § 6347(a) (2019).

⁶³ CAL. FAM. CODE §§ 6250–51 (2019).

- The victim may request an **ex parte restraining order**⁶⁴ or **post-hearing restraining order**.⁶⁵ She must offer “reasonable proof of a past act or acts of abuse.”⁶⁶
- DVROs are also available to family members who are within two degrees of relationship to the victim by blood or marriage (grandparents, grandkids, child, etc.).

How long does a DVRO last?

- **Emergency orders** last 3 to 7 days.
- **Ex parte orders** last no more than 21 days or, with good cause, 25 days. If a hearing is not held within that window, the order will no longer be enforceable unless the court grants a continuance “for a reasonable period.”⁶⁷
- **Post-hearing protective orders** (the orders described in Cal. Fam. Code §§ 6320–22, if issued after notice and a hearing) may last up to 5 years and are renewable.⁶⁸
- **Other post-hearing restraining orders**, including orders for custody, visitation, support, and disposition of property, are governed by the law relating to those specific subjects.⁶⁹ Generally, such orders remain in effect until the conclusion of the case and are thereafter superseded by the judgment.⁷⁰



⁶⁴ CAL. FAM. CODE §§ 6320–27 (2019).

⁶⁵ CAL. FAM. CODE §§ 6340–47 (2019).

⁶⁶ CAL. FAM. CODE § 6300 (2019).

⁶⁷ CAL. FAM. CODE § 242 (2019); see generally CAL. FAM. CODE § 245 (2019) (explaining the procedure for a court to grant continuance).

⁶⁸ CAL. FAM. CODE § 6345(a) (2019).

⁶⁹ CAL. FAM. CODE § 6345(b) (2019).

⁷⁰ See *In re Marriage of Hamer*, 81 Cal. App. 4th 712, 717 (2000); William P. Hogoboom et al., CALIFORNIA PRACTICE GUIDE: FAMILY LAW (Rutter Group 2012) (2008) (providing § 5:5.8 in full).

What happens if the restrained person violates a DVRO?

- The restrained person may go to jail, pay a fine, or both. In particular, willful and knowing violation of a protective order is a misdemeanor punishable by a fine of no more than \$1,000, imprisonment up to 1 year, or both.⁷¹

In what other types of court proceedings may a DVRO be issued?

- Besides proceedings under the DVPA, a court may issue a DVRO in actions to establish parent-child relationships under the Uniform Parentage Act,⁷² or in proceedings for the **dissolution or nullity of marriage**, or for **legal separation**.⁷³
- **Juvenile courts** may also issue restraining orders in **dependency proceedings**; when related to domestic violence, such orders are issued in the manner provided by the DVPA.⁷⁴ Juvenile courts are authorized to issue, on their own motion, any type of DVPA protective order— whether ex parte, after a hearing, or in a judgment.⁷⁵ A restraining order issued by a juvenile court is known as a **JVRO**.

⁷¹ CAL. PENAL CODE § 273.6 (2019).

⁷² CAL. FAM. CODE §§ 7600 *et seq* (2019).

⁷³ CAL. FAM. CODE § 6221 (2019).

⁷⁴ CAL. WELF. & INST. CODE § 213.5(a)–(b) (2019).

⁷⁵ CAL. WELF. & INST. CODE § 304 (2019) (describing that “[t]he juvenile court, on its own motion, may issue an order as provided for in Section 213.5, or as described in Section 6218 of the Family Code”).

Criminal Protective Orders

What is a criminal protective order?

- A criminal protective order is a court order that can help protect a witness or victim from the defendant in a criminal case.⁷⁶ Criminal protective orders generally focus on preserving the integrity of criminal court proceedings, rather than being specifically geared toward stopping domestic violence.⁷⁷

What types of relief can a criminal protective order provide?

- **Personal conduct/stay-away:** A criminal court can prohibit the defendant from “molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, credibly impersonating . . . , falsely personating . . . , harassing, telephoning . . . , destroying personal property, contacting . . . , coming within a specified distance of, or disturbing the peace of the other party.”⁷⁸
- **Witness tampering/obstruction:** A criminal court can order the defendant not to engage in witness tampering, obstruct justice, or communicate with a specific witness or victim.⁷⁹
- **Other protections:** A criminal court can:
 - Instruct law enforcement to provide protection for a victim or witness and/or their immediate family members.⁸⁰

⁷⁶ Jud. Council of Cal., *How Does a Criminal Protective Order Help Me?* 1 (2001), <https://www.courts.ca.gov/documents/CPO1.pdf>.

⁷⁷ Cherri N. Allison et al., *Domestic Violence Remedies in California Family Law Cases*, DOMESTIC CAL. PRAC. GUIDE 23, 17 (Cont. Ed. Bar 2009) (providing § 1.20 in full).

⁷⁸ CAL. PENAL CODE § 136.2(a)(1)(A) (2019) (incorporating Family Code § 6320).

⁷⁹ CAL. PENAL CODE § 136.2(a)(1)(B)–(D) (2019).

⁸⁰ CAL. PENAL CODE § 136.2(a)(1)(F) (2019).

⁸¹ CAL. PENAL CODE § 136.2(a)(1)(G) (2019).

- Require the defendant to relinquish and refrain from obtaining any firearms.⁸¹
- Order *electronic monitoring* of the defendant.⁸²

When may a criminal protective order be issued?

- **Pre-judgment:** A criminal court may issue a protective order when the prosecutor demonstrates *good cause* to believe that “harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur.”⁸³ If the defendant is charged with a crime involving domestic violence, the court must, *on its own motion*, consider issuing a protective order.⁸⁴
- **Post-judgment:** If the defendant is convicted of a crime involving domestic violence:
 - The court shall consider including a protective order lasting a maximum of 10 years as part of his sentence.⁸⁵
 - The court shall consider issuing a protective order barring the defendant from any contact with a particular witness, if there is clear and convincing evidence that he has *harassed* that witness.⁸⁶
 - Any terms of *probation* shall include a protective order “protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions.”⁸⁷

⁸² CAL. PENAL CODE § 136.2(a)(1)(G) (2019).

⁸³ CAL. PENAL CODE § 136.2(a)(1) (2019).

⁸⁴ CAL. PENAL CODE § 136.2(e) (2019).

⁸⁵ CAL. PENAL CODE § 136.2(i)(1) (2019).

⁸⁶ CAL. PENAL CODE § 136.2(i)(2) (2019).

⁸⁷ CAL. PENAL CODE § 1203.097 (2019).

What happens if the defendant violates a criminal protective order?

- A defendant who violates a pre-judgment protective order may be held in **contempt** of the court. He may also be punished for the substantive offense of preventing or dissuading a witness or victim from testifying, which **may carry sentences** of 1–4 years.⁸⁸

Sample Cases

- Woman filed for a DVRO against man who began harassing her after she rejected his interest in a romantic relationship. Their relationship fell within the definition of a “dating relationship” for the purposes of the DVPA (“frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement...”), even though they did not go on a “date.” His behavior of sending text messages to her and posting her personal information and photos online was “abuse” which could be enjoined under the DVPA, even though it was not physical abuse.⁸⁹yep
- Father charged with spousal battery was out on bail and living with mother of his 7-month-old son. County department of social services initiated dependency proceedings concerning son in juvenile court after an altercation where father pushed mother, causing her to land on top of son. The criminal court which had the spousal battery case issued a criminal protective

⁸⁸ CAL. PENAL CODE § 136.1 (2019).

⁸⁹ *Phillips v. Campbell*, 206 Cal. Rptr. 3d 492, 497-8 (Cal. Ct. App. 2016).

⁹⁰ *In re B.S., Jr.*, 90 Cal. Rptr. 3d 810, 811-4 (Cal. Ct. App. 2009).

order against father. Three days later, the juvenile court issued an ex parte JVRO prohibiting father from contacting mother or son. The appellate court affirmed the juvenile court’s authority to issue the JVRO despite the concurrent existence of the criminal protective order.⁹⁰

- Ex-boyfriend harassed ex-girlfriend by sending her constant text messages and emails, often in the middle of the night, despite her repeated requests that he stop contacting her. He came to her workplace and prevented her from getting into her car, and on one occasion violently grabbed her wrist and pushed her on a stairwell. The court did not need to find a probability that ex-boyfriend would commit future abuse before issuing a DVRO, given that it found reasonable proof of past acts of abuse.⁹¹
- Mother obtained DVRO prohibiting father from, inter alia, coming within 75 feet of her. Father violated the DVRO by standing within 15 feet of the protected party at their child’s extracurricular activities and school events. Father also sent family members who had previously threatened and harassed mother to their child’s school events, got too close to mother during child exchanges, and insisted via email on attending parent-teacher conference with mother. The court granted mother’s request for a renewal, affirming mother did not need to show fear of future physical abuse and dismissing father’s argument that the restraining order might prevent him from being admitted to the state bar.⁹²

⁹¹ *Nevarez v. Tonna*, 174 Cal. Rptr. 3d 219, 227 (Cal. Ct. App. 2014).

⁹² *Rybolt v. Riley*, 229 Cal. Rptr. 3d 576, 583 (Cal. Ct. App. 2018).

Requesting a Restraining Order

To request a restraining order, complete these forms:

- [DV-100](#) Request for Domestic Violence Restraining Order
- [CLETS-001](#) Confidential CLETS Information
- [DV-109](#) Notice of Hearing
- [DV-110](#) Temporary Restraining Order

If you have children with the person you want protection from, also complete:

- [DV-105](#) Request for Child Custody and Visitation Orders
- [DV-140](#) Child Custody and Visitation Order

If you want child support or spousal/partner support, also complete one of the forms below:

- [FL-150](#) Income and Expense Declaration
- [FL-155](#) Financial Statement (Simplified)

 Use Form [DV-570](#) to determine which form to complete.

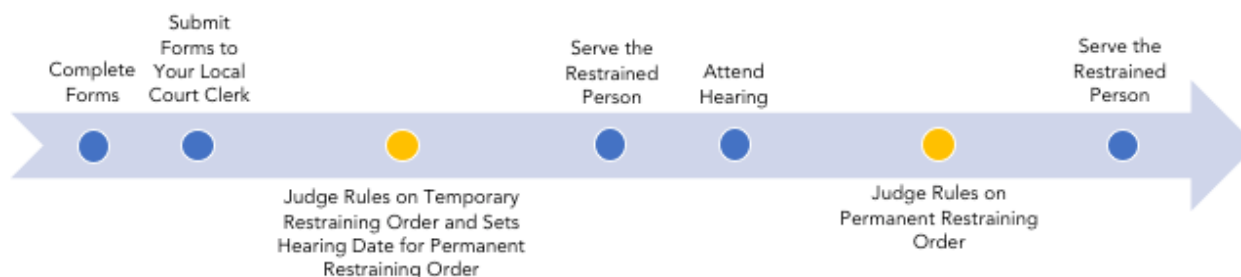
The court recommends making at least 5 copies of all forms:

- One for you to keep
- One for the restrained person
- A copy for each other protected individual
- The remainder should be kept in safe places.
 - You may also wish to leave copies where the restrained person is ordered not to go (your school, workplace, child care).



Important Safety Consideration:

- Note that copies of the restraining order paperwork will go to the restrained person.
- If you are staying at a location that you want to keep confidential from the restrained person, **do not write that address** on the forms.
- California's confidential mail program, **Safe at Home**, can assign you a substitute mailing address that is accepted by state and local government agencies.



Filing Your Forms

- The original and copies of your forms should be submitted in person to the clerk of your superior court.
 - You can find your local courthouse at www.courts.ca.gov/find-my-court.htm.
- The judge will decide whether to issue a temporary restraining order by the next business day.
- If the judge signs the order, the clerk will officially file it, keeping the original for the court and returning the additional copies to you.

The California Department of Justice maintains a computerized database of restraining order so that police across the state are aware of protection orders.

Serving the Forms to the Restrained Person

What to serve:

- Copies of all the forms you filed
- Blank copy of [DV-120](#) Response to Request for Domestic Violence Restraining Order

If you have children with the restrained person:

- Blank copy of [DV-105](#) Request for Child Custody and Visitation Orders
- Blank copy of [FL-150](#) Income and Expense Declaration

What does it mean to “serve” someone?

“Serving” is the act of providing the other party with copies of the documents you filed with the court. Proof of service is required by the court in order to issue any permanent protective orders.

When to serve:

- Your deadline for service can be calculated using Form **DV-109** as completed by the court.
 - Subtract the number of days written in item 5 on page 2 from the court date located on page 1.
- Service can always be completed before the deadline, but this date indicates the latest that you can serve the restrained individual.

How to serve:

- California requires “personal service” for DVROs. Personal service requires:
 - **Documents must be hand-delivered**, in person, to the restrained party.
 - **You may not deliver the papers yourself** (see possible servers below).
 - You may be allowed to serve notice by mail, publication or other means with a court order.
- **As of January 1, 2019, you can request an order allowing alternative service. You must show “due diligence” attempting personal service.**
- According to Family Code Section 6340(a)(2)(2)(A), if at the time of a hearing with respect to an order issued pursuant to this part based on an ex parte temporary restraining order, the court determines that, after diligent effort, the petitioner has been unable to accomplish personal service, and that there is reason to believe that the restrained party is *evading service*, the court may permit an alternative method of service designed to give reasonable notice of the action to the respondent. Alternative methods of service include, but are not limited to, the following:
 - Service by publication pursuant to the standards set forth in Section 415.50 of the Code of Civil Procedure.

- Service by first-class mail sent to the respondent at the most current address for the respondent that is available to the court or delivering a copy of the pleadings and orders at the respondent's home or place of employment, pursuant to the standards set forth in Section 415.20 to 415.40, inclusive, of the Code of Civil Procedure.
- If the court permits one of the preceding alternative methods of service, the court shall grant a continuance to allow for the alternative service pursuant to Section 245.

Possible servers:

- Law enforcement (i.e. a sheriff) will serve the orders for free, upon request.
- Process servers will serve the order for a fee
- Otherwise, the server may be any adult who is:
 - over the age of 18
 - not a party protected by the order

Upon successful service:

- ☐ Your server should fill out [DV-200](#) *Proof of Personal Service (CLETS)*.
- ☐ Make 5 copies of the Proof of Service and submit these copies along with the original to the court clerk before your hearing.
 - The clerk will keep the original for the court and return the copies to you.
- ☐ Keep a copy of this with you and distribute the remaining copies as you distributed copies of the temporary restraining orders.

Why do we serve?

Serving the restrained person puts them on notice of the legal actions against them. In this case, the recently issued temporary restraining order and the request for a permanent restraining order. Service also alerts them to the upcoming hearing for your permanent restraining order, allowing them time to prepare for the court date.

After the Hearing

If the judge issues the permanent restraining order, fill out:

- ☐ [DV-130](#) *Restraining Order After Hearing (Order of Protection) (CLETS)*
 - ☐ Depending on the court, the clerk may prepare **DV-130** for you. If so, be sure to carefully review the order for correctness and completeness.
- Depending on the judge's order, you may also need to complete one or more of the following forms:
 - ☐ [DV-140](#) *Child Custody and Visitation Order*
 - ☐ [DV-145](#) *Order: No Travel With Children*
 - ☐ [DV-150](#) *Supervised Visitation and Exchange Order*

You will also need to fill out:

- ☐ [CLETS-001](#) *Confidential CLETS Information*
 - ☐ This form will be turned in to the clerk of the court but should **not** be filed and **must not** become part of the public court file. This form is confidential and private. It provides valuable information so that police are aware of your protection order.

Make 5 copies of the order of protection and accompanying documents and submit the copies and the originals to the clerk of the court.

- They will file and keep the originals and return the copies to you.

You must serve a copy of these documents to the restrained person.

- If the restrained person was at the hearing or if the restrained person was not at the hearing but the judge's order is the same as the temporary restraining order, you may have the restrained person served by mail. The server must complete:
 - [DV-250](#) *Proof of Service by Mail (CLETS)*
- If the restrained person was not at the hearing and the judge's order differs from the temporary restraining order, service must be in person. The server must complete:
 - [DV-200](#) *Proof of Personal Service (CLETS)*

Upon successful service:

- Make 5 copies of the Proof of Service and file the copies and original with the court clerk.
 - The clerk will keep the original for the court and return the copies to you.
- Keep a copy of this with you and distribute the remaining copies as you distributed copies of the temporary restraining orders.

Requesting Juvenile Restraining Orders

If you are currently in Juvenile Dependency or Delinquency Proceedings, complete these forms to request a restraining order:

- [JV-245](#) *Request for Restraining Order-Juvenile,*
- [JV-250](#) *Restraining Order-Juvenile,* and
- [CLETS-001](#) *Confidential CLETS Information.*

A **juvenile court** is a superior court exercising limited jurisdiction arising under juvenile law. **Family court** refers to the activities of one or more superior court judicial officers who handle litigation arising under the Family Code. **Both courts have the ability to issue restraining orders to protect against domestic violence.** If there is a juvenile case pending, however, the family court's orders cannot relate to the children. The family court can still issue a restraining order between the parents.

When juvenile dependency or delinquency proceedings are initiated, the juvenile court assumes jurisdiction to issue protective orders until that jurisdiction is terminated with the issuance of an "exit order." The family court then acquires jurisdiction over any restraining orders issued by the juvenile court.

All parties in a juvenile court case have attorneys, including children. The attorneys are generally better able to present evidence of abuse and the need for protection than someone representing

Service to the restrained individual must include:

- ❑ **JV-250** *Notice of Hearing and Temporary Restraining Order-Juvenile*
- OR**
- ❑ **JV-255** *Restraining Order-Juvenile,*
- ❑ **JV-252** *Proof of Firearms Turned In, Sold, or Stored, and*
- ❑ **JV-252-INFO** *How Do I Turn In, Sell, or Store My Firearms.*

A restraining order request initially filed in family court may be transferred to and granted by the juvenile court. Similarly, the family court may renew restraining orders initially granted by the juvenile court.

Renewing Your Restraining Order

Renew your restraining order within 3 months before the expiration of the order.

To renew a restraining order, complete these forms:

- ❑ **DV-700** *Request to Renew Restraining Order,* and
- ❑ **DV-710** *Notice of Hearing to Renew Restraining Order.*

Attach a copy of your current restraining order:

- ❑ If your current restraining order was issued by the Family Court, attach **DV-130**.
- ❑ If your current restraining order was issued by the Juvenile Court, attach **JV-255**.

When does my restraining order expire?

- If your current restraining order was issued by the **Juvenile Court:**
 - It was issued on **Form JV-255**.
 - It gives protection for up to 3 years.
- If your current restraining order was issued by the **Family Court:**
 - It was issued on **Form DV-130**.
 - It gives protection for up to 5 years.

**If your current restraining order does not have an expiration date on the face of the form, the expiration date is 3 years from the issuance.*

Make 5 copies of all forms and take the forms to the court clerk.

- The clerk will give your forms to the judge for signature.
 - Sometimes the judge may want to talk to you. If so, the clerk will tell you.
- If the judge signs **DV-710**, the court will send it to law enforcement or CLETS (statewide computer system that notifies law enforcement about the order).

❑ If the clerk will not accept your DV-700 Form, because you are not attaching a DV-130 form:

- ❑ Fill-out **Form DV-100** *Request for Domestic Violence Restraining Order* (instead of Form DV-700).
- ❑ On **Form DV-100**, "Other Orders," write that you are "Requesting a Renewal of a Restraining Order issued by the Juvenile Court."
- ❑ Attach **Form JV-255**.

- Bring **Case Alert** (pages 21-22 of this guide).

The clerk or judge will set a hearing date.

- You must plan to attend the hearing (see **Form DV-710** for the hearing date).

Serving the Forms to the Restrained Person

What to serve:

Service to the restrained individual must take place prior to the hearing and must include:

- DV-700** Request to Renew Restraining Order,
- DV-710** Notice of Hearing to Renew Restraining Order,
- DV-130** or **JV-255** Restraining Order After Hearing (Order of Protection), and a
- Blank copy of **DV-720** Response to Request to Renew Restraining Order.

When to serve:

- Your deadline for service can be calculated using Form **DV-710** as completed by the court.
 - Subtract the number of days written in item 4 on page 2 from the court date located in item 3 on page 1.
- Service can always be completed before the deadline, but this date indicates the latest that you can serve the restrained individual.

How to serve:

- Service requires:
 - Documents must be hand-delivered, in person, to the restrained party.
 - You may not deliver the papers yourself (see possible servers below).
 - You may not serve notice by mail.

Possible servers:

- Law enforcement (i.e. a sheriff) will serve the orders for free, upon request.
- Process servers will serve the order for a fee
- Otherwise, the server may be any adult who is:
 - over the age of 18
 - not a party protected by the order

Upon successful service:

- Your server should fill out **DV-200** Proof of Personal Service (CLETS).
 - If possible, have your court's family law facilitator or self-help center review it to make sure it was filled out properly.
- Make 5 copies of the Proof of Service and submit these copies along with the original to the court clerk at least 2 days before your hearing.
 - The clerk will keep the original for the court and return the copies to you stamped "Filed."
- Keep a copy of this with you and distribute the remaining copies as you distributed copies of the original restraining orders.

After the Hearing

If the judge renews the order at the hearing, fill out:

- [DV-730](#) *Order to Renew Domestic Violence Restraining Order*
- Attach your original restraining order (**DV-130** or **JV-255**)

Make 5 copies of forms and submit the copies and the originals to the clerk of the court.

- They will file and keep the originals and return the copies to you.
- The judge will sign your **DV-730** *Order to Renew Domestic Violence Restraining Order*.

How long will the renewal last?


- The order may be renewed either for five years or permanently.

You must serve a copy of these documents to the restrained person:

- If the restrained person was at the hearing or if the restrained person was not at the hearing but the judge's renewed order is the same as the original restraining order, you may have the restrained person served by mail. The server must complete:
 - [DV-250](#) *Proof of Service by Mail (CLETS)*
- If the restrained person was not at the hearing and the judge's order differs from the original restraining order, service must be in person. The server must complete:
 - [DV-200](#) *Proof of Personal Service (CLETS)*

Upon successful service:

- Make 5 copies of the Proof of Service and file the copies and original with the court clerk.
 - The clerk will keep the original for the court and return the copies to you.
- Keep a copy of this with you and distribute the remaining copies as you distributed copies of the original restraining orders.

 If the clerk cannot send your **DV-200** or **DV-250** *Proof of Service* and **DV-730** *Order to Renew Domestic Violence Restraining Order* to law enforcement on your behalf, take 1 copy to your local police. They will put the information into the state computer system.



Will the court renew my restraining order?

- A court should renew the protective order if it finds by a *preponderance of the evidence* that the protected party entertains a **reasonable apprehension of future abuse**.⁹³
- A court will find that there is a reasonable apprehension of future abuse where it is *more probable than not* that there is a *sufficient risk of future abuse*.⁹⁴
- To get a new DVRO you have to prove that an act of abuse occurred. Evidence from the last hearing may be lost, witnesses may not be available, and if the DVRO has worked, there will not be evidence of abuse since that time. This will make it harder to prove an act of abuse, which is required in order to get a DVRO.
- The court may consider:
 - the facts justifying the prior order,
 - any changed circumstances since that order,
 - whether the threatened abuse rises to the level of physical violence, and
 - the burdens that the order places on the restrained person.⁹⁵
- A protected party **does not have to show any further abuse** since the issuance of the original order.⁹⁶
- If the request is **not contested** by the restrained party, the protected party will be entitled to a renewal.⁹⁷
- Any **violation of the original restraining order** by the restrained party is very significant support for renewal of a restraining order.⁹⁸

⁹³ See e.g., *Ritchie v. Konrad*, 10 Cal. Rptr. 3d 387, 397 (Cal. Ct. App. 2004).

⁹⁴ *Id.*

⁹⁵ *Id.* at 397-99.

⁹⁶ CAL. FAM. CODE § 6345(a).

⁹⁷ See *Ritchie*, 10 Cal. Rptr. 3d 387, 392 (2004).

Tips for ensuring that the restrained party complies:

- **Keep 1 copy of your forms with you AT ALL times:**
 - ❑ **DV-730** *Order to Renew Domestic Violence Restraining Order*
 - ❑ **DV-130** or **Form JV-255** *Restraining Order After Hearing*
 - ❑ **DV-200** or **Form DV-250** *Proof of Service*
- Keep another copy in a safe place in case you need to show it to the police.
- Give a copy of **DV-730** *Order to Renew Domestic Violence Restraining Order* to every person and every place that had a copy of the original *Restraining Order After Hearing* (**Form DV-130** or **Form JV-255**).
- Make sure the local police have a copy of **DV-730** *Order to Renew Domestic Violence Restraining Order*.

⁹⁸ See e.g., *Lister v. Bowen*, 155 Cal. Rptr. 3d 50, 61 (Cal. Ct. App. 2013).

Case Alert

Recent Updates Regarding Procedures for Renewing a JV-250 Juvenile Restraining Order in Family Court:

If your client received a **JV-250 Juvenile Restraining Order** and the juvenile court has issued **exit orders** to the family court, then these cases should make it easier for your client to obtain a **DV-710 Renewal of the Restraining Order** in the family court. These cases are binding legal precedent in all trial courts in California.

*Priscila N. v. Leonardo G.*⁹⁹

A domestic violence restraining order was issued by the juvenile court after a noticed hearing. After the juvenile court issued an exit order to the family court, the family court found that it did not have jurisdiction to renew the restraining order issued by the juvenile court. Priscila appealed with the support of the California Women's Law Center as amicus curiae,¹⁰⁰ and the Court of Appeal held that **domestic violence victims who receive a DVRO from the juvenile court should not have to repeat the process in family court.**

- The California Family Code and the Welfare and Institutions Code, construed broadly, confirm that the Legislature intended for juvenile and family courts to work together to protect victims of domestic violence.

⁹⁹ *Priscila N. v. Leonardo G.*, 226 Cal. Rptr. 3d 221, 222-4 (Cal. Ct. App. 2017) (holding that the family law trial court has jurisdiction to renew a domestic violence restraining order issued by a juvenile court. The Second District reversed the family law trial court orders denying a mother's request to renew the DVRO issued by the juvenile court and issuing a new three-year DVPA restraining order and remanded with directions to the family law trial court to grant the mother's request to renew her DVRO for either 5 years or permanently).

- Construing the statutory scheme broadly effectuates the legislature's purpose of enabling the best protection for domestic violence victims.¹⁰¹
 - Because both parties are represented at public expense in the juvenile court and parties often are unrepresented in the family court, the restrained party may have a better opportunity to defend his or her rights in the juvenile court.¹⁰²
 - A contrary construction would force domestic violence victims who obtained their original DVRO in juvenile court to meet the higher evidentiary bar required for an initial order twice, rather than allowing them to benefit from the lower bar that applies to renewal.¹⁰³
 - A permanent renewal is clearly superior to an initial order, which has a temporal limitation. With a permanent order, appellant can avoid returning to court to gain long-term protection from her abuser.¹⁰⁴

¹⁰⁰ Brief for Priscilla N. as Amici Curiae Supporting Appellant, *Priscila N. v. Leonardo G.*, 226 Cal. Rptr. 3d 221 (Cal. Ct. App. 2017).

¹⁰¹ *Id.* at 19-26.

¹⁰² *Priscila N.*, 226 Cal. Rptr. 3d 221, 225 (2017).

¹⁰³ *Id.* at 226.

¹⁰⁴ *Id.*

*Garcia v. Escobar*¹⁰⁵

Garcia, with the California Women’s Law Center as amicus curiae¹⁰⁶ showed that Family Code § 6345 – which governs the renewal of a *domestic violence restraining order* – applies not only to the renewal of restraining orders issued by the family court but also to the **renewal of a domestic violence restraining order issued by the juvenile court.**

- The process for obtaining a restraining order is the same in juvenile and family court.
- By its plain language, Family Code § 6345 is not limited to restraining orders originating in family court. Family Code § 6345 requires that the order sought to be renewed was issued “after notice and hearing,” and the juvenile court’s restraining order is an “order after hearing” consistent with Family Code § 6340.¹⁰⁷
- Family Code § 6345 was intended to apply to restraining orders regardless of the nature of the proceeding in which they were issued. The same underlying purpose for the lengthy renewal period (saving victims from added stress of regular renewal requirements) applies to family law trial court and juvenile court restraining orders.

¹⁰⁵ *Garcia v. Escobar*, 17 Cal. App. 5th 267 (2017).

¹⁰⁶ Brief for Garcia as Amicus Curiae Supporting Appellant, *Escobar*, 17 Cal. App. 5th 267 (2017).

¹⁰⁷ See e.g., *In re B.S., Jr.*, 90 Cal. Rptr. 3d 810, 817 (Cal. Ct. App. 2009) (holding that a restraining order issued in juvenile court under Welf & Inst. Code § 213.5 is analogous to order issued under Family Code § 6340).

Appealing a Court Order

What does it mean to appeal a civil court order?

- Appealing a civil court order means asking a higher court (appellate court) to review the decision of the lower court (superior court). The appellate court generally only looks at whether the superior court made a legal mistake and whether that mistake affected the outcome. An appeal is not a chance to present new evidence.¹⁰⁸

Can I appeal a civil court order before a judgment is rendered in my case?

- Yes. All family law cases in California are considered **unlimited civil cases**, meaning that they are handled by a Court of Appeals in one of the state’s 6 appellate districts.¹⁰⁹ In an unlimited civil case, you can appeal any court order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.¹¹⁰ This applies to DVROs.

Will my appeal stop the lower court’s order?

- Filing an appeal does not automatically halt (“stay”) enforcement of superior court orders, including those that affect custody and visitation of minor children, or orders for residence exclusion. However, the trial court has discretion to stay such provisions while the appeal is pending.¹¹¹ If you

¹⁰⁸ Jud. Council of Cal., *Civil Appeals: Basics*, <https://www.courts.ca.gov/12429.htm>.

¹⁰⁹ See generally Jud. Council of Cal., *District Courts of Appeal Regional Map*, <https://www.courts.ca.gov/8753.htm> (providing a map of the six appellate districts in California).

¹¹⁰ CAL. CIV. PROC. CODE § 904.1 (2018).

¹¹¹ CAL. CIV. PROC. CODE §§ 917.7, 918 (2001, 1982).

choose to file an appeal and you wish to have the court stay enforcement, you will have to ask the superior court to do so.

- You may also consider asking the superior court to stay termination of your DVRO while the appeal is pending.

Can I appeal an unfavorable criminal protective order against my abuser?

- No. If you are not a party to the criminal case, you cannot appeal the criminal court's protective order, or the court's failure to issue a criminal protective order.

How to Appeal an Order in an Unlimited Civil Case

The following is an overview of the steps required to appeal an order in an unlimited civil case. For more detailed information on appeals, see the following resources:

- **Cal. Rules of Court, rules 8.100–8.276** and **Cal. Code of Civ. Proc. §§ 901–936.1**, which govern procedures for all civil appeals in California.
- California Judicial Council, *Information on Appeal Procedures for Unlimited Civil Cases* ([APP-001](#)).¹¹²
- Family Violence Appellate Project, *Pro Bono Attorney Manual: Procedural Aspects of Handling an Appeal in California*.

¹¹² See Jud. Council of Cal., *Information on Appeal Procedures for Unlimited Civil Cases* (2015), <https://www.courts.ca.gov/documents/app001.pdf>.

¹¹³ CAL. R. CT. 8.104-8.

Serving Your Notice of Appeal

To appeal an order, complete these forms:

- APP-002** *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)*
- Make at least **2 copies** of the completed Notice of Appeal.

What to serve:

- 1 copy** of the **APP-002** *Notice of Appeal* (not the original) on the other side.

When to serve:

- It's important to accurately determine your deadline for serving and filing a Notice of Appeal because being late will cost you your appeal.¹¹³
- You must serve AND file a Notice of Appeal on or before the **earliest** of:
 - **60 days** after you are served with a **Notice of Entry** of the order, or
 - **60 days** after you are served with a **filed-endorsed copy** of the order, or
 - **180 days** after the entry of judgment.¹¹⁴

¹¹⁴ CAL. R. CT. 8.104(a); CAL. R. CT. 8.108 (providing that the deadline can only be extended if, after the order being appealed was made, a party to the case makes a timely motion (1) for a new trial, (2) to vacate or set aside the judgment, (3) for judgment notwithstanding the verdict, or (4) to reconsider an appealable order).

How to serve:

- Service may be made either **by mail** or **by personal delivery**. As a party to the case, **you may not serve the papers yourself**.

Possible servers:

- Law enforcement (i.e. a sheriff) will serve the orders for free, upon request.
- Process servers will serve the order for a fee
- Otherwise, the server may be any adult who is:
 - over the age of 18
 - not a party protected by the order

Upon successful service:

- Your server should fill out [APP-009](#) *Proof of Service (Court of Appeal)*.
 - If possible, have your court's [family law facilitator](#) or [self-help center](#) review it to make sure it was filled out properly.
- Make at least 1 copy of the Proof of Service.

Filing Your Notice of Appeal

What to file:

- **APP-002** *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)*, plus 1 copy
- **APP-009** *Proof of Service (Court of Appeal)*, plus 1 copy
- Filing fee (**\$775**), made payable to "Clerk, Court of Appeal"
- Deposit (**\$100**), made payable to "Clerk of the Superior Court"

Submit your copies along with the originals to the court clerk in the superior court.

- The clerk will keep the original for the court and return the copies to you.

What if I can't pay the filing fee and/or deposit?

- You may qualify for a fee waiver if you are receiving public benefits, if your pre-tax household income is less than the amounts listed in item 5b of **Form FW-001**, or if you don't have enough income to pay for your household's basic needs AND the court fees. If you think you may qualify for a fee waiver, you can submit an application for a waiver of court fees and costs on appeal.¹¹⁵
 - Fill out a [FW-001](#) *Request to Waive Court Fees* and turn it in with your Notice of Appeal.
 - See [Instructions for Form FW-001](#) for help filling out the form.

Designating the Record

¹¹⁵ CAL. R. CT. 8.100.

Unless you are appealing from a juvenile dependency or delinquency proceeding,¹¹⁶ you must **designate the record**, which means informing the superior court which **documents** and **oral proceedings** to include in the record that will be sent to the appellate court.

- You must designate the record within **10 days** of filing the Notice of Appeal in the superior court.

How to designate the record:

- Complete Form **APP-003** *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* and file it in the **superior court**. This will require you to specify:
 - How you want to prepare a record of the **documents** filed in the superior court, and
 - If and how you want to prepare a record of the **oral proceedings**.

Preparing a record of the documents:

You must prepare some record of certain documents filed in the superior court. You can choose to use one of the following methods:

- A **clerk's transcript**: A compilation of the documents filed in the superior court, prepared by the clerk.¹¹⁷

¹¹⁶ See Judicial Council of California, *Designating the Record*, <https://www.courts.ca.gov/12424.htm> (describing that the documents included in the record for juvenile dependency and delinquency appeals is set by the rules of court instead of the appellant. Judicial Council of California).

¹¹⁷ See generally CAL. R. CT. 8.122; Jud. Council of Cal., *Civil Appeals: The Clerk's Transcript*, <https://www.courts.ca.gov/12655.htm>.

¹¹⁸ See generally Jud. Council of Cal., *Civil Appeals: The Original Trial Court File*, <https://www.courts.ca.gov/12660.htm>; Jud. Council of Cal., *Civil Appeals: Statement on Appeal or Settled Statement*, <https://www.courts.ca.gov/12664.htm>; Jud. Council

- If you choose this option, you must identify on **Form APP-003** the documents filed in the superior court that you wish to be included.
- The clerk will bill you for the cost of preparing the transcript. Unless you have received a fee waiver, you must pay the bill within **10 days**.
- An **appendix** that you prepare yourself, following Cal. Rules of Court, rule 8.124.
- The **original superior court file** or a **settled statement**, if the Court of Appeal's rules for your district allow it.¹¹⁸

Preparing a record of oral proceedings:

It's important to prepare a record of what was said in the superior court if you will raise any part of the superior court proceedings on appeal. You can prepare a record of what was said in the superior court using one of the following:

- A **reporter's transcript**: A verbatim typed record of everything that was said in court during the trial or hearing, if a court reporter was present.¹¹⁹
 - If you choose this option, you must specify on **Form APP-003** which proceedings you wish to be included.
 - If you choose this option, you must deposit the approximate cost of transcribing the proceedings (the "transcription fee") with the court, plus a \$50 deposit fee.¹²⁰ While you may be able to receive financial support for these fees, the transcription fee is **NOT covered by the Request**

of Cal., *Welcome to the California Appellate Courts*, <https://www.courts.ca.gov/courtssofarappeal.htm> (providing a tool to find your local rules).

¹¹⁹ See generally CAL. R. CT. 8.130; Jud. Council of Cal., *Civil Appeals: A Reporter's Transcript*, <https://www.courts.ca.gov/12666.htm>.

¹²⁰ See CAL. R. CT. 8.130(b) (describing how to estimate the fee).

to **Waive Court Fees (Form FW-001)** because it is a fee charged by the reporter, not the court.¹²¹

- An **agreed statement**: A summary of the superior court proceedings that all parties have agreed to.¹²²
- A **settled statement**: A summary of the superior court proceedings approved by the superior court.¹²³

What if I make a mistake or need to add new material to the record?

- If you make an error in designating the record, the superior court sends a notice of default. You will have **15 days** from the date the notice is mailed to fix the problem. Otherwise, your appeal may be dismissed.
- If you need to add new material to the record, you must file a **motion to augment the record** and attach any new document or transcript you wish to add.

Serving and Filing Documents in the Court of Appeal

Serve and file a Civil Case Information Statement:

- The Civil Case Information Statement helps the court figure out whether your Notice of Appeal is on time and whether the order is appealable.
- You must serve and file the Civil Case Information Statement within **15 days** after the superior court clerk mails you a notification of the filing of your Notice of Appeal.

¹²¹ See Cal. Dep't of Consumer Aff., *Transcript Reimbursement Fund Guidelines Pro Bono Program*, <https://www.courtreportersboard.ca.gov/licensees/trfguide.shtml>.

¹²² See generally CAL. R. CT. 8.134; Jud. Council of Cal., *Civil Appeals: An Agreed Statement*, <https://www.courts.ca.gov/12662.htm>.

How to serve and file the Civil Case Information Statement:

- Fill out **APP-004** *Civil Case Information Statement*
- Attach a copy of the order that you are appealing.
- Make at least **2 copies** of these forms.
- Have a server serve a copy of the Civil Case Information Statement and a copy of the order that you are appealing on the opposing party.
- Have the server complete **APP-009** *Proof of Service (Court of Appeal)* and return it to you.
- File the original copy of the Civil Case Information Statement, a copy of the order you are appealing, and the original Proof of Service in the **Court of Appeal**.

Prepare, serve, and file appellate briefs:

- A brief is a written document that describes the facts of the case, cites the relevant law, and outlines your argument about whether a legal error in the superior court proceedings affected the outcome. There are often three briefs involved in an appeal:
 1. The **appellant's opening brief**
 2. The **respondent's brief**
 3. The **appellant's reply brief** (optional)
- Briefs may be the most complicated aspect of filing an appeal. Carefully review **Cal. Rules of Court, rules 8.200–8.224**, and any information provided by your district's Court of Appeal.¹²⁴

¹²³ See generally Cal. CAL. R. CT. 8.137 (providing information on how to prepare a settled statement).

¹²⁴ See generally Jud. Council of Cal., *Welcome to the California Appellate Courts*, <https://www.courts.ca.gov/courtsofappeal.htm> (providing information pertaining to your district's Court of Appeal).

Required content and format of a brief:

- Review **Cal. Rules of Court, rule 8.204**, for important details about formatting your brief. If you do not comply with the required format, the court may not accept your brief. Some requirements include:
 - Must clearly explain the legal error/s you believe the superior court made.
 - Must be a maximum of 14,000 words and contain a table of contents and a table of authorities.
 - Cover must be **green** if it is the opening brief, **tan** if it is the reply brief.

When to serve and file briefs:

- **Opening brief:** You must serve and file your opening brief within either:
 - **40 days** after the record is filed in the Court of Appeal, or
 - **70 days** after you choose to proceed with no record of oral proceedings.
- **Reply brief:** If you choose to prepare a reply brief, you must serve and file it within **20 days** after the other party's brief is filed.

Who receives service:

- Have a server serve a copy of your brief on the **other side**.
 - If you have chosen to prepare an **appendix under rule 8.124** (see "Designating the Record" above), include a copy of the appendix.
 - Have the server complete [APP-009 Proof of Service \(Court of Appeal\)](#) and return it to you.
- Have a server serve a copy of your brief on the **clerk of the superior court**, who will deliver it to the trial judge.

¹²⁵ *Id.*

- Have the server complete [APP-009 Proof of Service \(Court of Appeal\)](#) and return it to you.

What to file with the Court of Appeals:

- Your **original brief**,
- **4 paper copies** of your brief, unless your district has a local rule providing that an electronic copy may substitute,¹²⁵
- **Rule 8.124 Appendix**, if applicable (see "Designating the Record," above),
- **APP-009 Proof of Service** on opposing parties & superior court, and
- **1 electronic copy** of your brief
 - If this would cause hardship, you may instead serve 4 paper copies on the California Supreme Court.¹²⁶

Oral Argument & Afterward

Oral arguments:

- In an oral argument, you have a chance to explain to the appellate court in person the arguments you made in your brief.
 - In the Court of Appeal, you have up to **30 minutes** to present your argument.
 - The judges will have already read your brief, so you don't need to read it aloud. Instead, oral argument allows you to clarify points in your brief or answer questions from the judges.
- You may choose to **waive oral argument**, which means the court will evaluate your appeal based on your briefs.
 - If the court sends a notice asking if you want to participate in oral argument and you don't respond, the court will assume you are waiving oral argument. You can also tell the

¹²⁶ CAL. R. CT. 8.212.

appellate court in writing or in person that you wish to waive oral argument.

- **Note:** If you waive oral argument, the other side is still allowed to participate in oral argument unless they also waive it.
- For information about preparing for oral argument, see Judicial Council of California, “Oral Argument,” <https://www.courts.ca.gov/12421.htm>.

What happens afterward?

Once the date for oral argument has passed, the court will make its decision within **90 days**.

- **If you win:**
 - As long as the other side does not file a petition for rehearing, the court’s decision is **finalized** within 30 days.
 - You may be entitled to have your **court costs** paid by the other side. To do this, you will have to file a record of your costs with the superior court.¹²⁷
- **If you lose:**
 - You may choose to accept the court’s decision and do nothing.
 - You may consider filing a **petition for rehearing**, which asks the appellate court to fix a legal or factual error it made in reaching its decision.¹²⁸
 - Alternatively, you may consider filing a **petition for review** in the California Supreme Court within **10 days** after the Court of Appeal’s decision is finalized. It is rare for the Supreme Court to grant review, and your petition must meet certain criteria.¹²⁹

¹²⁷ CAL. R. CT. 3.1700.

¹²⁸ CAL. R. CT. 8.268; see generally Jud. Council of Cal., *Welcome to the California Appellate Courts*, <https://www.courts.ca.gov/courtssofarappeal.htm> (providing more specific information pertaining to your district’s Court of Appeal).



360 N Pacific Coast Highway, El Segundo, CA 90245

www.cwlc.org

Email: cwlc@cwlc.org

Phone: (323) 951-1041

¹²⁹ CAL. R. CT. 8.500.