

# Domestic Violence Restraining Orders in California Courts

May 30, 2019

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# **Domestic Violence in California**

The background of the slide is white with abstract, overlapping geometric shapes in various shades of blue (light blue, medium blue, and dark blue) on the right side, creating a modern, professional look.

# What is Domestic Violence?

- ▶ Abuse between spouses, co-habitants, dating partners, co-parents
  - ▶ Current or former
- ▶ **What is abuse?**
  - ▶ Bodily injury, sexual assault, imminent apprehension of injury to self or others
    - ▶ Also *harassing*, attacking, stalking and threatening
    - ▶ And disturbing someone's peace, which can include a broad range of behaviors including via social media
- ▶ Need not show that abuse resulted in ***actual physical injury***

# Who is affected by domestic violence?

- ▶ 1 in 3 women and 1 in 4 men nationally
  - ▶ 4,939,000 women and 4290 men who have experienced domestic violence
- ▶ Females between 18-34 experience the highest rates of intimate partner violence
  - ▶ 8.3% of teens have experienced physical dating violence
- ▶ Domestic violence calls are the **largest** category of calls received by police departments
- ▶ Higher rates of domestic violence among partners with financial strain
- ▶ Children who witness domestic violence are caught in cycle of abuse

# What are the consequences of domestic violence?

- ▶ Half of all murders of women are connected to domestic violence
  - ▶ One third of all female homicide victims are 18-29 years old
- ▶ From 2003-2008, 142 women were murdered in their workplace by former or current partners
  - ▶ 22% of workplace homicides
- ▶ Higher rates of depression
- ▶ Complications with *pregnancy and birth*
- ▶ Monetary effects on victims and community

# **Restraining Orders in CA**

# Why get a restraining order?

- ▶ Makes victims *feel safer*
  - ▶ 77% of women felt safer after
- ▶ Actually keeps victims safer
  - ▶ Most DVROs are not violated
- ▶ **Penalties** for violation
  - ▶ Can include up to 3 years in state prison
  - ▶ Also fines, restitution, counseling, etc.

# Civil Restraining Orders

## ▶ What is a civil restraining order?

- ▶ An order issued by a non-criminal court that can *protect* someone from various types of abuse, harassment, or stalking
- ▶ 4 main types:
  - ▶ DVRO, elder or dependent abuse, harassment, workplace violence

## ▶ What is a Domestic Violence Restraining Order?

- ▶ Civil restraining order to protect victims from future acts of abuse
- ▶ Separate parties to allow them “to seek a resolution of the causes of the violence”

# DVROs

## ▶ Against

- ▶ Abuser or threatened abuser
- ▶ Intimate relationship (marriage, divorce, domestic partnership, “dating” and others)
- ▶ Relative in the 2<sup>nd</sup> degree, by marriage or blood (not discussing today)

## ▶ Types of Relief

- ▶ Enjoining specific acts of abuse
- ▶ Stay away and move-out orders
- ▶ Custody, visitation of minor child
- ▶ Financial protections
- ▶ Communications independence

## ▶ Who can request a DVRO, and what is the showing required?

- ▶ Law enforcement officer: emergency relief for up to 7 days
  - ▶ Reasonable ground to believe there is an immediate and present danger of domestic abuse, child abuse or abduction
- ▶ Victim: *ex parte* relief (TRO) or post-hearing restraining order
  - ▶ “reasonable proof of a past act or acts of abuse”

# Case Example

## ▶ *Phillips v. Campbell* (2016)

- ▶ Woman filed for a DVRO against man who began harassing her after she rejected his interest in a romantic relationship
- ▶ 1) Was this a “*dating relationship*” within the DVPA?
  - ▶ Both parties characterized relationship as *friendship* (no “date”)
  - ▶ There was “frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement...”
- ▶ 2) Was there abuse?
  - ▶ 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

# DVROs

## ▶ Duration

- ▶ Emergency : 3-7 days (from peace officer)
- ▶ Temporary (Ex Parte): no more than 21 days, or with good cause, 25 days, not renewable w/out hearing
- ▶ Post-hearing protective orders: up to 5 years, renewable

## ▶ Violation

- ▶ Jail: up to 1 year
- ▶ Fine: up to \$1,000

## ▶ Court may issue DVRO in **other proceedings**

- ▶ Parentage, dissolution of marriage, legal separation
- ▶ and in juvenile court actions

# Criminal Protective Orders

- ▶ What is a criminal protective order?
  - ▶ Protect a witness or victim *from defendant* in a criminal case
  - ▶ Purpose is to *preserve integrity* of criminal court proceedings
- ▶ Types of relief
  - ▶ Personal conduct/stay away
  - ▶ Witness tampering/obstruction
  - ▶ Other protections
    - ▶ Protection for witness and family members
    - ▶ Defendant relinquish firearms
    - ▶ Electronic monitoring of defendant

# Criminal Protective Orders

## ▶ **When** may they be issued?

- ▶ Prejudgment: if “harm to, or intimidation or dissuasion of, a victim or witness has occurred or is likely to occur”
  - ▶ If crime involves DV, court must consider issuing a protective order
- ▶ Post-judgment: if defendant is convicted of a crime involving DV
  - ▶ Barring contact with victim or witness
  - ▶ Probation

## ▶ **Violation** of a criminal protective order

- ▶ Prejudgment: contempt of court, potential other criminal charges

# DVROs vs. Criminal POs

	DVRO	Criminal Protective Order
<b>Different Purposes</b>		
<b>Purpose</b>	Stop acts of abuse, both for the victim's safety and to facilitate the resolution of violence	Ensure integrity of criminal court proceedings and protect witnesses involved in such proceedings
<b>Different Types of Relief</b>		
<b>Types of relief available</b>	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.
<b>Different Procedures</b>		
<b>Involvement of victim in obtaining the order</b>	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.
<b>Victim's ability to challenge adverse rulings</b>	Petitioner may appeal if court denies relief sought. Court must summarize its reasoning when denying a petition.	Victim isn't a party to the criminal case and generally can't appeal the terms of a protective order.

# DVROs vs. Criminal POs

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

# Requesting a Restraining Order

# Forms

- ▶ Most domestic violence victims are forced to represent themselves because they cannot afford an attorney
- ▶ **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)*

# Service

## 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
  - ▶ You may be allowed to serve notice by mail, publication or other means **with a court order**
- ▶ As of Jan. 1, 2019 you can ask for an order allowing alternative service. You will have to show “due diligence” trying personal service.

# Juvenile Restraining Orders

- ▶ 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.
- ▶ Either court can issue a restraining order under the Domestic Violence Prevention Act, but if there is a juvenile case pending, the family court's orders cannot relate to the children. The family court can still issue a restraining order between the parents.

# Renewing a Restraining Order

# Renewal of a Restraining Order

- ▶ File your request up to 3 months before the expiration of the order
  - ▶ Complete proper renewal form (DV-700 to request renewal, and DV-710 for notice of hearing)
    - ▶ If your restraining order does not have an expiration date on its face, it is 3 years from the issuance
- ▶ Legal standard
  - ▶ by a *preponderance of the evidence* that the protected party has a *reasonable apprehension of future abuse*
  - ▶ reasonable apprehension of future abuse where it is *more probable than not that there is a sufficient risk of future abuse*
  - ▶ Factors:
    - ▶ Facts justifying prior order
    - ▶ Any changed circumstances
    - ▶ Physical violence
    - ▶ Burden of order on restrained person
  - ▶ Need not show “further abuse” to justify renewal
  - ▶ Any violation of original DVRO is significant support for renewal

# Priscila N. v. Leonardo G. (2018)

- ▶ Juvenile Restraining Order issued by Juvenile Court, followed by exit order in Juvenile Court issued to Family Court
- ▶ Petitioner attempted to renew restraining order in Family Court
- ▶ Family Court judge held that court did not have jurisdiction to renew, and instead considered the request as one for a “new” DVRO
- ▶ The Legislature intended that Cal. Family Code and Welfare Code are to be construed broadly to allow juvenile courts and family courts to work together
  - ▶ Issues of different standards of legal representation in Family and Juvenile Court
  - ▶ Higher evidentiary bar if DV victim is forced to restart in Family Court
  - ▶ Permanent renewal is legally superior to initial order

# Garcia v. Escobar (2017)

- ▶ Obtaining a restraining order is the same in juvenile and family court.
- ▶ Family Code § 6345 requires the order to be renewed be issued “after notice and hearing,” and juvenile court’s restraining order is an “order after hearing”
- ▶ 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.

# Appeals

# Appeals

- ▶ If you think the judge made an error you may appeal
  - ▶ May not appeal to present new evidence or dispute facts
- ▶ An appeal will not automatically stay (halt) the lower court's order, if you need a stay you must request it with the superior court
- ▶ Note: Criminal protective orders may not be appealed unless you are a party to the criminal action
- ▶ Deadline to appeal
  - ▶ Generally, 60 days within the Notice of Entry of the order, service of an order signed by a judge and stamped "filed," or 180 days after the entry of judgment
- ▶ Filing fee waivers are available for indigent appellants
- ▶ Designating the record: you must inform the superior court which documents and transcript of hearing you need for your appeal (10 days from Notice of Appeal)
- ▶ Filing a brief

# Resources

- ▶ Family Violence Appellate Project

<https://fvaplaw.org>

[info@fvaplaw.org](mailto:info@fvaplaw.org)

(510) 858-7358

- ▶ California Women's Law Center

[www.cwlc.org](http://www.cwlc.org)

[cwlc@cwlc.org](mailto:cwlc@cwlc.org)

(323) 951-1041

Questions or Comments?!