

PROTECTIVE ORDERS



THE EMERGENCY PROTECTIVE ORDER (FC 6250)

- Oral order at the request of law enforcement “upon an allegation of domestic violence.”
- FC 6275(b) – Police must advise that it can be requested.
- Standard of Proof: “reasonable grounds.”
- Issued to prevent:
 - Domestic violence of adult or child;
 - Child abduction;
 - Elder abuse (violence – financial only does not apply)
 - Stalking (PC 646.91)

EPO ORDERS

FC 6252

- Personal Conduct Restraints;
- No Contact;
- Kick out;
- Temporary care and control of children;
- Any order that can be made pursuant to FC6320.

LENGTH AND SERVICE OF EPO

FC 6253; FC6271

- In effect for five court days to a maximum of seven calendar days;
- Served on both parties;
- Filed with the court “as soon as practicable.”
- AN EPO TAKES PRECEDENCE OVER ALL OTHER PROTECTIVE ORDERS IN CONFLICT. (PC 136.2(c)(1)(A))

CRIMINAL PROTECTIVE ORDER

PC 136.2

- Can be used at any stage in any criminal court
- Takes precedence over all restraining orders in conflict, except an EPO.
- Can be made on court's own motion. (PC 136.2(e)(1))
- Can include no contact terms but not necessary.
 - No negative contact orders – parties may have contact but it must not be harassing or disturbing of the protected party's peace.
- Even if court does not order stay away/contact orders, criminal court can prohibit firearms and order surrender of firearms on the court's own motion.

CPO PRIOR TO SENTENCING

- The court's jurisdiction to issue a CPO is limited to the jurisdiction the court maintains over the criminal case, except at time of sentencing in a DV case.
- A judicial officer may issue a CPO at any time up to sentencing in a DV case. There need not be a separate act or threat other than the charge. Babalola v. Superior Court (2011)
- Court may consider the nature of offense charged and prior criminal history in deciding whether CPO should issue, among other factors. (PC 136(2)(h))

COURT'S JURISDICTION ENDS

- Dismissal;
- Acquittal;
- Reversal on appeal;
- Termination of probation;
- Prison sentence;
- Denial of probation;
- Infraction.

CPO CAN BE ISSUED AT SENTENCING IN DV CASES

- Court can order a 10 year “no contact” order for any DV case at sentencing.
- Court can order a percipient witness protected if the court is shown the defendant harassed the witness by COC.

CPO AT SENTENCING

- Court can issue stay away (100 yard) conditions but also allow the parties to communicate to effectuate custody and visitation orders (even ones issued after the issuance of the restraining order).
- Family Court may issue appropriate custody and visitation orders so long as the criminal court authorizes contact for visitation purposes. In some cases, this is prevented by the criminal court.

F.C. 6389; P.C. 136.2(B)(I)(II) FIREARMS PROHIBITION

- Firearms must be surrendered within 24 hours of notice of a restraining order issued by any court (includes EPO).
- A court has no authority to delete firearms prohibitions. (Ritchie v. Konrad(2004) 115 CA4th 1275)
- Only two ways to surrender: 1) give to law enforcement; 2) sell to licensed dealer.
- Defendant/respondent must file receipt within 48 hours with the court.

FIREARMS RECOVERY P.C. 12028.5, P.C. 1524(A)(9)

- An officer at the scene of D.V. can take custody of firearm in plain sight and can search for a firearm with consent. (P.C. 12028.5)
- A search warrant can issue to recover firearm at scene of or premises of person arrested for D.V. or who was served a protective order. (P.C. 1524(a)(9), (11))

TEMPORARY RESTRAINING ORDER IN FAMILY COURT

F.C. 6300; F.C. 6320

- Court can grant same orders as in EPO, except child abduction.
- Ex Parte “with or without notice” on court’s consideration of safety factors if notice is given.
- Considers DV-100 affidavit, CLETS, DOJ and criminal records check, including probation and parole as to perpetrator.
- Same standard as EPO- “reasonable proof to the satisfaction of the court of past act or act of abuse.”
- Made without prejudice.
- Noticed hearing (OSC) set in 21 days.
- If TRO denied, hearing must still be set in 21 days and reason for denial must be given. (F.C. 6320.5)

RELATIONSHIPS

FC 6211, PC 13700

- Parents, cohabitants, former cohabitants, spouses, ex-spouses, people in a dating relationship or who had one, child of the parties, or anyone related by “consanguinity or affinity within the second degree.”

ABUSE

FC 6203 PC 13700

- Intentionally or recklessly to cause or attempt to cause bodily injury;
- Sexual assault;
- To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another;
- To engage in any behavior that could be enjoined by FC 6320
 - molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, credibly impersonating [...], falsely personating [...], harassing, telephoning, including, but not limited to, making annoying telephone calls [...], destroying personal property, ... disturbing the peace of the other party...

NOTICED HEARING FOR TRO

- Standard of proof is “preponderance of evidence.”
- Affidavit, response and criminal records information are evidence.
- Parties can testify and be cross-examined.
- Effective for up to five years.
- Support and custody orders survive RO
- (FC 6340(a)); court can enter paternity judgment (FC 6323(B)(vii)(2);
- Criminal case pending—what options?
- Respondent’s 5th amendment rights.

MUTUAL RESTRAINING ORDERS

FC 6305

- Both parties must be personally present.
- Each must produce evidence of abuse.
- Court must make detailed findings that both acted as aggressors.

RESTRAINING ORDERS AFTER HEARING

- Maximum of Five Years
- Court can issue stay away (100 yard) conditions but also allow the parties to communicate to effectuate custody and visitation orders (even ones issued after the issuance of the restraining order).
- May be renewed in the last 90 days before expiration. Court may renew for a 5 year period or issue a permanent order.

FC 3044 PRESUMPTIONS REGARDING CUSTODY AND VISITATION

- Applies if parent convicted of domestic violence against other parent or child within last five years or;
- Any court has made a finding of DV against other parent within the previous five years.
- Rebuttable presumption.
 - Completed batterer's treatment; alcohol or drug treatment; parenting education;
 - Whether perpetrator is complying with probation/parole conditions;
 - Whether perpetrator is complying with restraining order;
 - Whether any further acts of domestic violence have been committed.

QUESTIONS?
