

## COURT ORDERS 2010

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### I. Overview

#### A. Court Orders Are Largely Successful in Protecting Victims.

1. A 2004 multiracial study of 150 women conducted between 2001 and 2002 at the Houston District Attorney's Office family violence unit seeking protective orders in Houston found that even when the final order was not sought or ordered, intimate partner violence including workplace harassment decreased immediately afterwards and continued for the ensuing 18 months. "When an abused woman decides to contact a criminal justice, civil justice, health or social service **agency, information about the abuse is shared and contact is made.**" McFarlane, J. Malecha, A, Gist, J., Batten, E. Hall, I, and Smith, S. (April, 2004), American Journal of Public Health, 94(4), 613-618; Reported in "Speaking Up" (May 27, 2004), Family Violence Prevention Fund, 10(9).
2. A University of Washington study of 2691 women in a 16 month period in 1998 and 1999 who reported domestic violence to Seattle Police and sought a court order found that when women obtained final orders (one year orders in Washington) they were 60% less likely to have further contact with the abuser. There was an 80% reduction in reports of physical violence during the 12 months following the victim's report to police. Holt, V.L., Kernic M.A., Lumley, T., Wolf, M.E., and Rivara, F.P. (August 7, 2002) Journal of the American Medical Association (JAMA), 288(5), 589-594, reviewed at [www.vawprevention.org/research/civil\\_protection.shtml](http://www.vawprevention.org/research/civil_protection.shtml), retrieved January 30, 2005
  - a. Obtaining only the temporary restraining was associated with a four times greater risk for psychological abuse and suffered more psychological abuse than women without TROs. Women who only

obtained TROs did not suffer increased physical violence.

- b. Married women were more likely to seek restraining orders than unmarried women victims of physical violence and the more severe the violence the less likely the victim was to seek a protective order.
  - c. Use of alcohol or drugs by either party was associated with less likelihood the victim would seek a protective order.
3. A 1994 study by the National Center for State Courts examining the effectiveness of civil protection orders found that nearly 75% of petitioners who obtained protective orders felt safer shortly after the order was granted and 80% felt safer six months later. Keilitz, Hannaford & Efke, "Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence", in Domestic Violence Report, April, May, 1997, at 51.
  - a. Seventy-two percent of victims said there were no violations of the order within the first month; at six months, 65% reported no violations.
  - b. Where police are likely to arrest for violations, physical revictimization was much less likely than where police were unlikely to arrest (2% vs. 11%).
  - c. Violation of protective orders was most likely with abusers with violent criminal histories.
  - d. Violations were more likely for women with children than women without children (79% vs. 62%).
4. A study by the Junior League for the San Francisco Cooperative Restraining Order Clinic in 1990-1991, revealed that the issuance of a protective order stopped violence altogether in 70% of the cases and decreased it in another 19% of the cases.
5. See also National Council of Juvenile and Family Court Judges, *Family Violence: Improving Court Practice*, Reno, Nevada, 1990, at 22.

6. In contrast to domestic violence protective orders, stalking orders are often violated. Where men and women obtained restraining orders against their stalker, the stalker violated the order in over 70% of the cases. National Institute of Justice, Department of Justice, and the Centers for Disease Control and Prevention, "Stalking in America: Findings From the National Violence Against Women Survey" Research in Brief April, 1998 (NCJ 169592).

B. The Court Plays a Critical Role In Protecting Victims When It Enforces Court Orders

1. Batterers are more likely to stop their abuse when they perceive that violations will be sanctioned. (Carmody, D.C. & Williams, K.R., 1987, "Wife Assault and Perceptions of Sanctions." *Violence and Victims*,
2. Jaffe, P., Wolfe, D.W., Telford, A. and Austin, G., 1986, "The Impact of Police Charges in Incidents of Wife Abuse," *Journal of Family Violence*, 1, [1]; Hart, B. 1990, *Violent No More: Intervention Against Wife Abuse in Ohio*. Ohio Domestic Violence Network; Attorney General's Family Violence Task Force of Pennsylvania, *Domestic Violence: A Model Protocol for Police Response*, Harrisburg, PA: Office of the Attorney General, January, 1989)

C. Need for Clear, Enforceable Terms

1. "Judges . . . stress that each type of relief provided must be fully explained in the order . . . Providing precise conditions of relief makes the offender aware of the specific behavior prohibited. A high degree of specificity also makes it easier for police officers and other judges to determine later whether the respondent has violated the order . . ." N.I.J. C.P.O. Study at 33.
2. Properly drafted and effectively enforced protective orders are effective in reducing domestic violence. See N.I.J. C.P.O. Study at p.1; Lerman, "A Model State Act: Remedies for Domestic Abuse," *Harvard L Journal on Legislation*, 1984, 21(1), p.70, n. 35; Lenore Walker, *The Battered Woman*, Harper and Row, 1979; Grau, Fagan and Wexler, "Restraining Orders for Battered Women: Issues of Access and Efficacy," *Women and Politics*, 1984, 4: 13-28.

- D. Courts are encouraged to issue orders in domestic violence and stalking cases
  - 1. The court when sentencing a defendant for a violation of Penal Code 273.5, felony or misdemeanor, shall consider issuing a restraining order prohibiting the defendant from having any contact with the victim for up to 10 years.
  - 2. The duration of the order shall be based on "the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family." The order may be issued whether the defendant is sentenced to state prison, county jail, or placed on probation. Penal Code Sections 273.5 and 646.9(k) (1).
  
- E. Courts Can Protect Animals (Family Code 6320)
  - 1. On a showing of good cause as part of domestic violence protective order, the court may order petitioner exclusive care, possession, and control of any animal owned, possessed, leased, kept, or held by petitioner, respondent, or a minor child residing in the residence or household of either party.
  - 2. The court may order respondent to stay away from the animal and forbid respondent from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal. Violations of these provisions are crimes.
  - 3. The Judicial Council shall modify civil and criminal court order forms to reflect this change by July 1, 2009.
  
- E. Ordinarily Mutual Orders Should Not Be Issued.
  - 1. Mutual orders should not be issued as a matter of course as they send the wrong message to the victim and perpetrator that each is equally to blame for the abuse. Chief Justice A.M. Klein, "Domestic Violence and the Court System, 15 Hamlin L.R. 105, 133 (1991).
  - 2. Mutual orders should only be permitted after each party seeks a separate order, allegations of abuse are shown as to each party, and the court evaluates the evidence carefully. The court must make "detailed findings of fact

indicating that both parties acted primarily as aggressors and neither party acted primarily in self defense." California Family Code Section 6305; Toplette, E., "Note: Why Civil Protection Orders Are Effective Remedies for Domestic Violence but Mutual Protective Orders are Not", 67 Ind. L.J. 1039 (1992).

3. Mutual orders are difficult for law enforcement to enforce.

4. Mutual orders are improper in criminal cases as the victim is not a party so the court lacks jurisdiction to issue protective orders against the victim.

5. Where mutual protective orders have been issued relating to domestic violence, liability for arrest applies only to the dominant aggressor. Officers shall make reasonable efforts to identify, and may arrest, the dominant aggressor. The dominant aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the dominant aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense. Penal Code 836(c)(3))

6. Under federal law, mutual orders cannot be enforced under VAWA full, faith, and credit provisions unless there is a showing of due process for both parties, i.e., a cross or counter petition, complaint or other written pleading seeking such a protective order. 18 U.S.C. 2265(c).

7. California courts can enforce provisions of mutual foreign protection orders only if:

- a. Respondent filed a written pleading seeking a protection order; and
- b. The tribunal in the issuing state made specific findings in favor of the respondent. Family Code 6402(g).
- c. California courts cannot issue mutual orders unless both parties personally appear and each presents evidence of abuse or domestic violence and the court makes detailed findings of fact indicating

that both parties acted as aggressors and neither acted primarily in self-defense. Family Code 6305.

## II. Service and Enforcement of Orders

- A. Officers have certain legal duties to serve domestic violence, non-harassment, and elder abuse protective and restraining orders.
1. Officers at domestic violence, elder abuse, and harassment scenes shall, upon victim request, serve unserved protective orders. Family Code Section 6383(a), Code of Civil Procedure Section 527.6(h), Welfare and Institutions Section 15657.03(j)(2)-(4).
  2. Officers at abuse scenes shall serve unserved elder abuse protective orders. Welfare and Institutions Code Section 15657.03(j)(2)-(4)
  3. Officers should document service with a written police report and notice to the Domestic Violence Restraining Order System (DVROS). Family Code Section 6383(f).
  4. Officers must serve orders whenever the suspect is in custody. Penal Code Section 13710(b).
  5. Officers have a continuing duty to attempt to locate and serve emergency protective orders once issued until they expire. Family Code 6271.
  6. Within 1 business day of service of a court order any law enforcement officer who serves a protective order shall submit proof of service directly into the DVROS, including the officer's name and agency, and transmit the original proof of service form to the issuing court. Family Code 6380
- B. Service of Orders
1. Officers present at the scene of a reported domestic violence incident are made aware of an unserved temporary restraining order or emergency protective order by petitioner whether or not an arrest is made, Family Code 6383(a).
    - a. The protected party shall provide an endorsed copy of the order and a proof of service that the officer shall complete and transmit to the issuing court. Family Code 6383(b).

2. If the protected party cannot produce a certified copy of the order, the officer shall check the DVROS to see if the order exists. Family Code 6383(d).
- C. Officers May Enforce California Orders They Confirm Through:
1. Seeing a copy of the order supplied by a protected party, Family Code Section 6381(b), 6383(d)
  2. Law enforcement has received a copy of the order. Family Code 6381(b)
  3. Confirming the existence of the order through the DVROS. Family Code Section 6381(b)
  4. Contacting the issuing court
- D. Service of an order can be achieved by:
1. Restrained party/defendant present in court when the order made. Family Code Section 6384(a).
    - a. Persons charged with misdemeanor domestic violence offenses and violations of Penal Code Section 273.6 must be personally present at arraignment and sentencing. Penal Code 977.
      - (1) Misdemeanor offenses involving domestic violence are those defined in Family Code 6211 and violations of Penal Code Section 273.6.
      - (2) Family Code 6211 provides that "domestic violence" is abuse committed against a spouse or former spouse, cohabitant or former cohabitant as defined in 6209 (a person who regularly resides in or formerly resided in the household); person who has or has had a dating or engagement relationship; person with whom respondent has had a child; child of a party; and any other person related by consanguinity and affinity within the second degree.
      - (3) Family Code 6203 defines "abuse" to include intentionally or recklessly causing or attempt to cause bodily injury; sexual assault; to place another person in reasonable apprehension of imminent serious bodily injury to that person or another; and

to engage in any behavior that could be enjoined pursuant to FC 6320 (molesting, attacking, striking, stalking, threatening, battering, harassing, telephoning, destroying personal property, contacting directly or indirectly by mail or otherwise, coming within a specified distance of, or disturbing the peace of another).

2. Respondent sent by first-class mail a copy of the final order where defendant personally served with notice of the TRO and given notice of the hearing date, and final order is identical to the TRO or EPO except for duration. Family Code Section 6384 for Family Code orders; Welfare and Institutions Code 15657.03(i)(2) for Elder Abuse restraining orders; and Welfare and Institutions Code 213.6 for Juvenile Court orders to protect children.
  - a. **Practice Tip:** Officers should obtain the mailed order and proof of service **as well as** the proof of service of the temporary restraining order.
  - b. Service by mail is complete at the time of deposit into a post office, mail box, subpost office, substation, or mail chute, or similar facility maintained by the US Postal Service, of the order, in a sealed envelope, with adequate postage paid, addressed to the person on whom it is served, served on that person's residence or last provided office address used on any document filed in the cause and served by mail. If the restrained party is required to act or is entitled to act within a prescribed period, then that period is extended 5 calendar days upon service by mail if the place of mailing and address are within California; 10 days if either the place of mailing or address is outside California but within the US; and 20 days if either location is outside the US. Code of Civil Procedure 1013.
  - c. Service by fax is only permitted where the parties agree and a written confirmation of the agreement is made. Code of Civil Procedure 1013.
3. Verbal notice by law enforcement (then documented by an incident report or log entry). Family Code Sections 6383(e), 6383(f).

4. Personal service of the order. Family Code 6384.
5. Community college and school district officers may serve protective orders and then must notify the local sheriff or police department with responsibility for entering orders into the state computer system for that jurisdiction. Penal Code Section 13710(a)(2).
6. When a TRO is issued without notice, it must be served, along with the supporting papers, at least 5 days prior to the hearing. If the TRO is served with notice, it must be served on respondent at least 15 days before the hearing before the hearing. Family Code 243.
7. Sheriff and marshal agencies are prohibited from charging a fee for service of emergency protective orders, protective orders, Domestic Violence Prevention Act restraining orders on a respondent who is in custody. Government Code 26721.
  - a. Sheriff's departments may seek reimbursement of costs for service from the superior court. Government Code 6103.2.
  - b. Counties, by resolution of the Board of Supervisors, may require courts to collect an assessment of \$15 against every person who violates a written promise to appear or a lawfully granted continuance of a written promise to appear or who otherwise fails to comply with any valid court order. Penal Code 832.7a
  - c. The clerk of the county shall deposit monies collected in the county treasury. The money shall first be used to fund, modernize, and maintain an automated county warrant system and if money remains, a county may use it to fund a warrant task force to serve all bench warrants in the county. Penal Code 832.7a
8. Law enforcement cannot charge petitioner a fee to serve an elder abuse restraining order. (Welfare and Institutions Code 15657.03)
9. Protective orders and other domestic violence prevention orders typically contain language that: "NOTICE TO RESTAINED PERSON: If you do not appear at the court hearing specified herein, the court may

grant the requested orders for a period of up to 3 years without further notice to you." Family Code 6302.

10. Evidence that a person was served with an order may be established by receipt of a proof of service form (completed and attested to) without calling the person who served the order. People v. Saffold (2005) 127 Cal. App. 4<sup>th</sup> 979.
11. Receipt of the proof of service document is not violative of the right of confrontation as explained in Crawford v. Washington. It was not testimonial in nature and was a routine duty. People v. Saffold (2005) 127 Cal. App. 4<sup>th</sup> 979.

F. Arrest for Violations

1. Departments shall enact policies which require the arrest, absent exigent circumstances, of perpetrators where there is probable cause to believe that a protective order has been violated. Penal Code Section 13701(b).
2. Policies shall (consistent with PC 13701(b)) encourage the arrest of a person for violating a domestic violence protective order, including orders issued by courts of other states, the District of Columbia, Puerto Rico, the US Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, Indian tribes and bands, and military tribunals with authority to issue protection orders. Penal Code Sections 13701, 836(c)(1); Family Code Section 6401(7).
3. Officers shall arrest for violations of protective orders:
  - a. When the officer has reasonable cause to believe the perpetrator has notice of the order and has violated the order;
  - b. Without a warrant and without a private person's (or citizen's) arrest card; and
  - d. Whether or not the offense occurred in the officer's presence. Penal Code Section 836(c)(1).
4. Covered Orders under PC 836(c)(1) include:

- a. Code of Civil Procedure Section 527.6 (Non Harassment);
  - b. Penal Code Sections 136.2 and 1203.097 (Criminal Court Stay Away Orders and Orders after Conviction and Issued as Conditions of Probation);
  - c. Welfare and Institutions Code 213.5 (Juvenile Court Dependency and Child Abuse Orders);
  - d. Family Court orders;
  - e. Penal Code Section 646.91 (Stalking Emergency Protective Orders)
  - f. Welfare and Institutions Code Section 15657.03 (Elder Abuse Restraining Orders)
  - g. "Foreign orders", that is, protection orders issued by courts of other states, the District of Columbia, Puerto Rico, the US Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, Indian tribes and bands, and military tribunals with authority to issue protection orders. Penal Code 836(c)(1); Family Code 6401(7)
- 5. Officers shall take persons arrested for misdemeanor violations of protective orders before a magistrate instead of releasing them on a citation unless the officer determines there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered. Penal Code Section 853.6(a).
  - 6. Officers are immune from civil liability for false arrest for an arrest pursuant to a protective order that is on its face, if the officer acts in good faith and has reasonable cause to believe that the person arrested has notice of the order and has violated it. Family Code Section 6383(h)

G. Victim Notification

- 1. When a sheriff or marshal serves an order or injunction and is not permitted to charge a fee for

the service, the sheriff or marshal may notify the protected party by electronic or telephonic means within 24 hours of service of the respondent, including the date and time of service if the protected party has requested notification and has registered a telephone number or email address.

2. The sheriff may provide the notification through an Automated statewide victim information and notification system if the sheriff has access to that system, his or her county participates in that system, and local, state, or federal funds are available for the operation of the system. If the marshal serves the order, the marshal shall promptly notify the sheriff with access to the notification system of the date and time of service and the sheriff shall promptly make the notification.
3. This section applies to orders and injunctions under Code of Civil Procedure Sections 527.6 (non harassment); 527.8 (workplace violence/corporate restraining orders); Domestic Violence Restraining Orders (Family Code 6200 et seq.); and Elder Abuse and Dependent Adult Civil Protection Orders. Government Code Section 6103.3

H. Petitioner Notification When Ex Parte Order Denied

1. Orders denying a petition for an ex parte order pursuant to Section 6320 shall include the reasons for the denial
2. An order denying a jurisdictionally adequate petition for an ex parte order, pursuant to Section 6320, shall provide the petitioner the right to a noticed hearing on the earliest date that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date of the order. Petitioner shall serve respondent with copies of all supporting papers filed with the court, including the application and affidavits, at least 5 days before the hearing.
3. When an ex parte order is denied the petitioner shall have the option of waiving his or her right to a noticed hearing. Nothing in this section precludes a petitioner who waives the right to a noticed hearing

from refiling a new petition, without prejudice, at a later time.

4. The Judicial Council must develop conforming forms by

I. "Inviting Over" Situations

1. Protective orders are court orders directed at a named person issued by a court.
2. The victim is not a restrained party under the court's order and therefore cannot violate the order.
3. A protective order remains valid until the court changes its terms.
4. There is no legal validity to the claim (or defense) "the victim invited me over." Officers should treat such instances as violations by the restrained party. Penal Code Section 13710(b). "The terms and conditions of the protective order remain enforceable, notwithstanding the acts of the parties . . ." See also Penal Code Section 13711(c)

G. Inconsistent (Competing) Orders.

1. It is not unusual for a restrained party to be permitted some contact in a civil protective order (e.g., child visitation) and prohibited from engaging in that same conduct in a criminal order (e.g., no-contact order).
2. Criminal court orders take precedence for enforcement over all civil orders, no matter when issued. Penal Code Section 136.2(h)(2); Family Code 6383(h).
3. If there are two or more orders and no other statute governs priority, the most recently issued controls. Family Code Section 6383(h).
4. If there is a criminal protective order and a subsequently issued emergency protective order (EPO) with inconsistent terms, the EPO controls. Penal Code Section 136.2(c)(1)
5. Courts are responsible for avoiding issuing inconsistent orders or civil orders that permit a party to "violate" a criminal court no contact order.

- a. Legislative intent where criminal and civil orders exist, the couple has children, and the court orders visitation and other contact is to "permit appropriate visitation between a defendant and his or her children pursuant to civil court orders, but at the same time provide for the safety of the victim or witness by ensuring that a 'no-contact' order issued by the criminal court is not violated."
- b. The Judicial Council has developed a protocol for coordination of multiple orders with a goal of protecting the rights of all parties and enhancing the ability of law enforcement to enforce orders.
- c. In all cases where defendant is charged with a crime involving domestic violence under PC 13700 "the court shall consider issuing "...a court order "on its own motion." Penal Code section 136.2(h). All interested parties shall receive a copy of the order. All court files involving domestic violence under PC 13700 shall be marked as Domestic Violence to assist the court in identifying cases where it should consider issuing the order.
- d. General rule of exclusive concurrent jurisdiction is that when two California Superior Courts have concurrent jurisdiction over the subject matter and all parties involved in the litigation, the first to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and the parties until all necessarily related matters are resolved. This is a rule of policy which can be overridden by countervailing policies and statutes, such as Penal Code 136.2. In re B.S., Jr. (2009) 172 Cal. App. 4<sup>th</sup> 183, 90 Cal. Rptr. 3d 810 and cases cites therein.
- e. Criminal court orders issued as part of a charged criminal case take precedence in enforcement over any civil court order against the defendant. Penal Code Section 136.2(h)(2).
- f. All orders under Penal Code Section 136.2, including modifications, extensions, or terminations shall be transmitted to law

enforcement within 1 business day, Family Code Section 6380(a). The court is responsible for transmitting modifications, extensions, and terminations to the agency that entered the original order into the Domestic Violence Restraining Order System of CLETS. Penal Code Section 136.2(g).

- g. Pursuant to Legislative mandate, the Judicial Council promulgated a protocol for adoption by each court to provide for timely coordination of all orders against a defendant in favor of the victim or victims, including mechanisms for information sharing between criminal, family, and juvenile courts regarding the same parties and orders and permit a family or juvenile court order to co-exist with a criminal court order subject to:
  - (1) Any order permitting contact between a respondent and his or her children shall provide for the safe exchange of the children and shall not contain language that violates a criminal court "no-contact" order. Penal Code 136.2(i)(1)
  - (2) Safety of all the parties shall be the court's paramount concern." Penal Code 136.2(i)(2).

### III. Restraining Order Systems

#### A. California Domestic Violence Restraining Order System (DVROS)

- 1. Types of orders in Registry: EPOs, criminal court orders, civil harassment, workplace violence, elder abuse restraining orders, juvenile, civil domestic violence orders, and foreign domestic violence protection orders. (Protection orders issued by courts of other states, the District of Columbia, Puerto Rico, the US Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, Indian tribes and bands, and military tribunals with authority to issue protection orders).
- 2. California now part of national system along with nearly every other state. An inquiry through the wanted persons system (WPS) or supervised release

file (SRF) automatically searches the DVROS and the NCIC people files (so long as the date of birth is included in the inquiry).

3. The DVROS holds orders in a suspense file for the 30 days after the order expires. After 30 days the information about an expired order is held in the DVROS history file for 5 years. An inquiry of historical and suspended files will provide information as well as up to 15 violation messages. If there are in excess of 15 violations they can be retrieved from the DOJ Restraining Order Unit at (916) 227-3689.
4. There is no civil liability on the part of, and no cause of action arises against an employee of a law enforcement agency, or court, or the Department of Justice, acting within the scope of their employment, if a person described in PC 12021(g) unlawfully purchases or receives or attempts to purchase or receive a firearm and a person is injured by that firearm or a person is entitled to receive a firearm is denied a firearm and either wrongful action is due to a failure of a court to provide the required notifications. Family Code 6385

#### B. National NCIC Protective Order Registry.

1. In existence since May, 1997
2. California is online. Orders from over 20 other states also appear in the NCIC protective order system

#### IV. Court Responsibilities When Issuing Orders

##### A. When Issuing Orders, Extensions, Modifications or When Deleting An Order

- 1) All orders under Penal Code Section 136.2, including modifications, extensions, or terminations shall be transmitted to law enforcement within 1 business day, Family Code Section 6380(a).
- 2) It is the responsibility of the court to transmit modifications, extensions, and terminations of court orders to the agency that entered the original order into the Domestic Violence Restraining Order System of CLETS within one business day. Family Code 6380.

- 3) All modifications, extensions, and terminations shall be on Judicial Council approved forms. Penal Code Section 136.2(g); Family Code 6380(a).
- 4) Every county must have a procedure to transmit court order information electronically to the Department using CLETS and into the DVROS. Courts can fulfill their responsibilities by either:
  - a. Transmitting a physical copy of the order to the local law enforcement agency authorized by the Department of Justice to enter orders into CLETS; or
  - b. With the approval of the Department of Justice, entering the orders directly into CLETS. Family Code 6380(a).
  - c. Entering agencies are paid a fee for entering orders
5. Civil court orders and proofs of service must be transmitted electronically to CLETS "immediately" upon issuance, receipt of a proof of service, or upon registration of a foreign order. Family Code 6380.

B. Background Information to be Considered

1. Courts considering issuance of civil and juvenile court protective orders must first obtain background information about the party to be restrained, including local, state, and federal criminal history, probation and parole status, outstanding warrants, and the existence of other protective orders and any violations. Family Code 6306
2. Before the court conducts a hearing for the issuance or denial of a court order, the court shall ensure that a search is carried out to determine if the party to be restrained has any prior violent or serious felony convictions (PC 667.5 and 1192.7 respectively); misdemeanor convictions involving domestic violence, weapons, or other violence; outstanding warrants; is on parole or probation; or has previous restraining orders or their violation. Family Code 6306(b)(1)
3. The search to determine prior history shall be conducted of all records and databases readily available and accessible to the court including the Violent Crime Information Network (VCIN), Supervised

Release File, and California, federal (FBI), and local criminal history databases. Family Code 6306(a)

4. Prior to deciding whether to issue a protective order and when determining appropriate child custody and visitation orders, the court shall review these records and sources. Family Code 6306(b)(1)
5. The court shall not consider information that did not result in a conviction. This information shall be destroyed and shall not become part of the public file. Family Code 6306 (b)(2)
6. After issuing its ruling the court shall advise the parties they may request the criminal and court information relied upon by the court. The court shall admonish the party seeking the protective order that unauthorized release of the information is unlawful. The party seeking the order can release the information to his or her counsel, court personnel, and court appointed mediators. Family Code 6306(c)
7. Any criminal history and court order information relied upon by the court shall be placed in a confidential court file and shall not become part of the public file in the proceeding or any other civil proceeding, except to a court-appointed mediator assigned to the case or to a appointed child custody evaluator. Family Code 6306(d)
8. If the review discloses that another protective order already has been issued by a criminal court or if an order is issued in the current criminal proceeding, the prosecutor shall send relevant information about the criminal order or a subsequent conviction to the civil court hearing the request for the civil order. This information can also be sent, upon request, to family, juvenile, and civil courts and upon a showing of a compelling need, to a court of another state. Penal Code 273.75
9. When prosecuting any act of domestic violence the prosecutor must perform or cause to be performed a thorough investigation of the defendant's criminal history and to present the findings to the court when it considers bail and OR release and at consideration of any plea agreement. The search to determine prior history shall be conducted of all records and

databases including the Violent Crime Information Network (VCIN), Supervised Release File, and California, federal (FBI), and local criminal history databases. "In determining bail or release upon a plea agreement, the court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released." Penal Code Section 273.75

10. If a restrained party is on parole or probation, the court shall order that the clerk immediately notify the parole or probation agent of the order and any other relevant information the court discovers in its investigation. Family Code 6306(f)
11. The parole or probation officer shall take all appropriate action against the restrained party as soon as practicable. Family Code 6306(f)
12. The court shall not delay issuance of a temporary order supported by an affidavit and petition because the data base search has not been conducted. The court shall assure that the data base search is completed prior to the hearing.
13. If the search reveals that an outstanding arrest warrant exists, the clerk shall immediately notify law enforcement of the issuance and contents of the court order and any information obtained through the search that the court deems appropriate. The law enforcement agency shall take all necessary actions including effecting an arrest, as soon as practicable. Family Code 6306(e)

B. Modification of a Domestic Violence Condition of Probation

1. A court cannot modify a court order issued as a condition of probation in a domestic violence case without 5 day written notice to the prosecutor
2. A court considering modifying or terminating a protective order that is a term of domestic violence probation must first consider if there are material changes in circumstances since the crime for which the order was issued and if there is good cause for the change, including:
  - a. Has the probationer accepted responsibility for the abuse;

- b. Has the probationer completed parenting and substance abuse counseling;
- c. Is the probationer attending and actively participating in counseling;
- d. Has the probationer moved from the state or is incarcerated;
- e. Whether the probationer is still cohabitating or intends to cohabit with the victim;
- f. The probationer's progress on probation;
- g. Whether the victim desires the changes, and if so, the victim's reasons; whether victim has consulted an advocate; and whether the victim has developed a safety plan and has access to local resources;
- h. Whether the change whether the change will impact any children involved, including consideration of information from Child Protective Services; and
- i. Whether the ends of justice are served by changing or terminating the order. Penal Code 1203.097

D. Consideration of Victim Safety

- 1. Courts considering whether to issue orders enjoining a party from contacting, molesting, attacking, striking, stalking, threatening, sexually assaulting, or engaging in specific conduct; child support, and spousal support orders must consider if the failure to make any of those orders would jeopardize the safety of the petitioner or the children, including safety concerns related to financial needs.
- 2. Covered relationships now include registered domestic partners as well as married parties and other intimate and familial relationships.
- 3. The Judicial Council is required to amend its forms accordingly. Family Code 6340, 6341
- 4. Special Rules in Emergency
  - a. During an emergency (such as war, calamity, destruction of a courthouse, danger to a courthouse, influx of criminal cases), a court may extend the duration of a temporary restraining order (TRO) that would otherwise expire because the emergency prevented the court

from conducting proceedings to determine whether the order should be made permanent. Government Code 68115

5. Weapons Notifications

- a. When issuing an order **in which** both parties are present, the **court** shall notify them of the terms of the order, including that the restrained party is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm and the penalty for any violations. Family Code 6304.

V. Prosecution Responsibilities

- A. When prosecuting any act of domestic violence the prosecutor must perform or cause to be performed a thorough investigation of the defendant's criminal history and to present the findings to the court when it considers bail and OR release and at consideration of any plea agreement. Penal Code Section 273.75
  1. The search to determine prior history shall be conducted of all records and databases including the Violent Crime Information Network (VCIN), Supervised Release File, and California, federal (FBI), and local criminal history databases.
  2. "In determining bail or release upon a plea agreement, the court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released."
- B. If the required investigation reveals a current civil or criminal protection order involving the same or related parties and if an order is issued in the current prosecution, the prosecutor shall send relevant information about the current case protection order and information about a conviction to the other court immediately after the order is issued.
- C. When requested, this information may be sent to a family, juvenile, or civil court. When requested and upon a showing of compelling need, the information may be sent to a court in another state.

VI. California Civil Court Orders

A. Emergency Protective Orders.

1. Obtained telephonically by law enforcement at any hour of the day every day
2. Showing: reasonable belief that there is an immediate and present danger of domestic violence, child abuse, stalking, elder abuse, or child abduction. The officer must believe that the EPO is necessary to prevent the occurrence or reoccurrence of domestic violence, elder abuse, child abuse, stalking or child abduction.
3. The belief must be based upon an allegation of a recent incident of abuse or threat of abuse of domestic violence, stalking, elder abuse or child abuse; or a reasonable belief that a person has an intent to abduct the child or flee with the child from the jurisdiction or based on a recent threat to abduct or flee with the child from the jurisdiction. The elder abuse EPO cannot be based solely on an allegation of financial abuse.
4. The behavior must be by a family or household member for domestic violence and child abuse; by a parent or relative for child abduction; by any person for stalking; and by any person against whom the order is sought for elder abuse.
5. Issued by Superior or Consolidated Court.
6. Valid for five business days or up to seven calendar days (including weekends, holidays); the date of issuance is not counted
7. "Family or household member" includes current or former spouses, children, persons with a child in common, persons who are, or have resided together on a regular basis, persons with a current or former dating relationship, gay and lesbian couples, persons related by blood or marriage to the second degree (grandparents, grandchildren, siblings, parents, children, and in-laws and step relations in these relationships)
8. Legal Authority: Family Code Sections 6240-6274; Penal Code Section 646.91 (stalking only).

9. Violations are charged under Penal Code Section 273.6 IN ALL CASES EXCEPT STALKING. Stalking EPO violations are charged under PC 166. See PC 646.91(p).
10. Notices to protected parties and restrained parties must be printed on the EPO in English and Spanish.
11. In stalking cases, EPOs can include a non-harassment order (as described in Code of Civil Procedure Section 527.6), and/or a workplace violence protective order (as described in Code of Civil Procedure Section 527.8).
12. Persons restrained under a stalking EPO are prohibited from owning, possessing, purchasing or receiving a firearm. Penal Code sections 646.91(b)(4)(B), 646.91(n). Violations fall under PC 12021(g).
13. A law enforcement officer who responds to a situation in which s/he believes the grounds for issuance of an emergency protective order may exist shall inform the person for whom the EPO may be sought, or if a minor, his or her parent or guardian (so long as that person is not the person against whom the order would be sought) that s/he may ask the law enforcement officer to request the EPO. Family Code 6275
14. An officer shall request an EPO if s/he believes the person requesting the EPO is in immediate and present danger notwithstanding the grounds listed in Family Code 6250. Family Code 6275
15. "An emergency protective order is valid only if it is issued by a judicial officer after making the findings required by Section 6251 and pursuant to a specific request by a law enforcement officer." Penal Code Section 6250.3.
16. Officers have a duty to attempt to serve EPOs. Family Code Section 6271(a; and the duty to enforce them. Family Code Section 6272.
17. EPOs can be obtained by community college and school district police. Once they obtain an EPO, the officer who obtained the order must immediately notify the local police or sheriff's department.
18. An EPO can be issued for a campus where there is a demonstrated threat to campus safety when requested by

a community college or school district officer. There must be an existing MOU between the college or school and the local police department or sheriff. Family Code 6250.5.

19. Peace officers employed by the City of Los Angeles Department of General Services authorized to seek EPOs. Family Code 6240
20. "An emergency protective order is valid only if it is issued by a judicial officer after making the findings required by Section 6251 and pursuant to a specific request by a law enforcement officer." (Family Code 6250.3)

B. Domestic Violence Prevention Act Protective Orders.

1. Available from civil courts during regular business hours. Issued by Court to restrain any person to prevent a recurrence of domestic violence and ensuring a period of separation of the parties. Court may issue orders enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including annoying telephone calls, destroying personal property, contacting, or coming within a specified distance of, or disturbing the peace of the other party, etc. Court can also order exclusion from the residence,
2. Showing: Recent and significant violence, or exclusion orders where there is abuse, i.e., intentional and reckless, causing or attempting to cause bodily injury, sexual assault, or placing a person in reasonable apprehension of imminent serious bodily injury to that person or another. Family Code 6300;
3. Applies to abuse committed against spouse, former spouse, current or former cohabitant, person with whom there is a current or former dating relationship, person with a child in common and the male is the presumed father, child, persons related by blood, marriage, or adoption.
4. Orders can be issued with or without notice to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the involved parties, based on a showing by affidavit or if necessary an affidavit and any additional information of a past act or acts of abuse. Family Code 6300

5. Upon application of a petitioner, protected parties cannot be charged a fee to serve a protective order, restraining order, or injunction or to charge for filing a subpoena in connection with an application, pleadings, or orders if based on domestic violence, stalking, threats, or sexual assault. Family Code 6222
6. The court can enter protective provisions for persons living with the plaintiff/protected party
7. There is no filing fee for a petition alleging that a person has inflicted or threatened violence against the petitioner or stalked the petitioner or acted or spoke in any manner that placed the petitioner in reasonable fear of violence and seeks a protective or restraining order or injunction restraining stalking or future violence or threats of violence.
8. Authority: Family Code Sections 6200 et seq., and 6300-6345.
9. Violations are charged under Penal Code Section 273.6.
10. Duration of orders (generally):
  - a. TRO: 15 days.
  - b. Final Order: five years; then can be renewed for three years or permanently.
11. Upon request of a domestic violence victim who is seeking a domestic violence restraining order, the court issuing the order may include a provision permitting the victim to record any prohibited communication made to her/him by the perpetrator. Penal Code 633.6.
12. There is no filing fee for an application or other pleading or specified order, responsive pleading, or subpoena that seeks to obtain, modify, or enforce a protective order when the request for the order is necessary to obtain or give effect to a protective order. Family Code 6222
13. Standard for issuance is preponderance of the evidence. based on a showing of past abuse. Nakamura v. Parker (2007) 156 Cal. App. 4<sup>th</sup> 327.

C. Juvenile Court Orders.

1. Issued by Juvenile Court in child custody and dependency cases.
2. Can enjoin any person
  - a. from striking, assaulting, battering, sexually assaulting, stalking or molesting a dependent child or any other child in the household,
  - b. engaging in other behavior against the child such as by contacting, threatening or disturbing the peace, or
  - c. excluding that person from the residence of the child's parent, guardian, or caretaker
  - d. and simultaneously issuing an order enjoining any person from contacting, threatening, striking, battering, sexually assaulting, stalking, molesting or disturbing the peace of any parent, legal guardian, or current caretaker of the child even if the child does not live at that location.
3. Court can reissue protective orders where the protected party is unable to timely serve the restrained party. Welfare and Institutions 213.5
  - a. Where an order enjoining a person from threatening, molesting, battering, contacting or disturbing the peace of a child and/or excluding a person from a child's residence is dissolved for failure to serve the person to be restrained, the court can reissue the order upon a finding the person to be restrained could not be served within the time provided by law.
  - b. When issuing an order for custody or visitation a court must consider whether the child's best interests are served by requiring a third person to be present during visitation or by suspending visitation altogether. The court order must state the time, date, place, and manner of transfer of the child.
4. Service of a ward or dependent of the juvenile court not in parental custody shall be made on the agent for the child welfare or probation department responsible for the minor. Welfare and Institutions Code 213.5

5. If the restrained party is personally served with the temporary restraining order or emergency protective order and thereafter fails to appear at the hearing and the order is made permanent with substantially the same terms except for duration, service of the final order may be made by first class mail. The order must reflect this procedure and the language. Welfare and Institutions Code 213.6.
  6. The juvenile court has authority to issue an order even when there is also an existing criminal court order. The criminal court order takes precedence as to inconsistent provisions. The standard for issuance is if failure to issue the order may jeopardize the petitioner's safety. In re B.S., Jr. (2009) 172 Cal. App. 4<sup>th</sup> 183, 90 Cal. Rptr. 3d 810.
  7. Duration of Order.
    - a. Temporary: 15 days or with good cause, up to 22 days.
    - b. Final: 3 Years (Welfare & Institutions Code 213.5, 304); until further order of the court (Welfare & Institutions Code 362.4).
  8. Legal Authority: Welfare and Institutions Code Sections 213.5, 304, 362.4.
  9. Violations enforced under Penal Code Section 273.65.
- D. Teen/Adolescent Protective Orders.
1. Issued by Superior or Consolidated Court
  2. Grounds: Same as Domestic Violence Prevention Act, Code of Civil Procedure 527.6 and 527.8, and Family Code 7710-7720. Order is issued under the specific code section. The Code of Civil Procedure Section 372(b)(1) authorizes a minor aged 12 or older to appear in court with or without a guardian, guardian ad litem, or counsel to request or oppose the issuance of one of the listed orders.
  3. Issued on behalf of a minor 12 years and older. Section also applies to incompetent persons, including those for whom a conservator has been appointed.

- a. Can be issued without guardian, counsel, or guardian ad litem (GAL) for petitioner.
    - b. Court can appoint GAL to assist petitioner.
  4. Violations charged under code section applicable to specific order, usually Penal Code Section 273.6.
- E. Non Harassment Orders
  1. Issued by Superior or Consolidated Court.
  2. To enjoin harassment
    - a. Unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person, which seriously alarms, annoys, or harasses, and serves no legitimate purpose. Typically issued in stalking and workplace harassment and violence situations.
    - b. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and
    - c. The victim must actually suffer substantial emotional distress.
  3. Upon application of a petitioner, protected parties cannot be charged a fee to serve a protective order, restraining order, or injunction or be charged for filing a subpoena in connection with an application, pleadings, or orders if based on domestic violence, stalking, threats, or sexual assault. Code of Civil Procedure 527.6
  4. The court can enter protective provisions for persons living with the plaintiff/protected party
  5. There is no filing fee for a petition alleging that a person has inflicted or threatened violence against the petitioner or stalked the petitioner or acted or spoken so as to place the petitioner in reasonable fear of violence and seeks a protective or restraining order or injunction restraining stalking or future violence or threats of violence. Code of Civil Procedure 527.6
  6. Duration.

- a. Temporary: 15 days, can be extended to 22 days.
  - b. Final: Three years.
7. Law enforcement shall notify respondent of the terms of an unserved order if the respondent is present at a harassment call and shall serve a copy of the order if requested by the protected party when the protected party provides an endorsed copy and proof of service. Code of Civil Procedure 527.6(h).
  8. The order is for injunctive relief and requires a showing of unlawful violence or credible threat of violence and that great or irreparable harm would result without issuance of the injunction. The purpose of the injunction is to prevent future harm and prevent threatened injury. It does not punish past conduct. Scripps Health v. Marin (1999) 72 Cal. App. 4<sup>th</sup> 324
  9. The showing required is clear and convincing evidence, Code of Civil Procedure 527.8(f). Gdowski v. Gdowski (2009) \_\_ Cal. App. 4<sup>th</sup> \_\_, 4<sup>th</sup> Dist, Div 3, G040975.
  10. Violations enforced under Penal Code Section 273.6.
  11. Authority to Issue: Code of Civil Procedure 527.6
- F. Workplace Violence/Corporate Restraining Orders
1. Issued by Consolidated Court.
  2. Obtained by an employer. Irrelevant if the target employee(s) has own order. Protects everyone at job location.
  3. Showing: An employer whose employee has suffered unlawful violence or a credible threat of violence from any individual, which can reasonably be construed to be carried out, or have been carried out at the workplace. Unlawful violence includes assault, battery, and stalking.
  4. An employer whose employee has suffered unlawful violence or a credible threat of violence from any individual that can reasonably be construed to be carried or have been carried out at the workplace may seek a restraining order and injunction on behalf of the employee and at the discretion of the court, any

number of other employees at the workplace and if appropriate, other employees at the employer's other worksites. Code of Civil Procedure 527.8

5. A chief administrative officer of a private post secondary educational institution or their designee may seek a workplace violence (corporate) restraining order when: 1) a student has received a credible threat of violence made off campus 2) which can reasonably be construed to be carried out or has been carried out on campus; 3) with the written consent of the student; 4) to protect the student and other students and faculty. Code of Civil Procedure 527.85
  - a. "Chief Administrative Officer" is defined as the principal, president, or highest ranking official of the post secondary educational institution. "Student" means an adult enrolled in or applying for admission to post secondary educational institution.
  - b. There is no fee for filing the request for the order, a subpoena issued in connection with the order, filing a response, or serving the order.
  - c. Any law enforcement officer present at the scene of reported unlawful violence or a credible threat of violence involving the parties is required to serve the defendant with the restraining order, if it has not been served. If a copy of the order is not available at the time of service, the officer shall notify the defendant of the terms of the order and obtain the defendant's address. The officer's verbal notice of the terms of the order constitutes service of the order and sufficient notice for purposes of prosecution pursuant to P.C. 273.6 and 12021(g).
  - d. Intentional disobedience of the temporary restraining order or injunction issued for a campus is a violation under Penal Code § 273.6.
6. There is no filing fee for a petition that alleges workplace violence (i.e., person has inflicted or threatened violence against an petitioner's employee, stalked the employee, or acted or spoken in a manner that has placed the employee in reasonable fear of violence) and that seeks a protective or restraining

order or injunction restraining stalking or future violence or threats of violence. No fee shall be paid for a subpoena filed in connection with a petition alleging these acts or for filing a response to a petition alleging these acts.

7. The court can enter protective provisions for persons living with the plaintiff/protected party.
8. Persons who are restrained under a corporate or workplace restraining order are prohibited from owning, possessing, purchasing or receiving or attempting to purchase or receive a firearm. Violations of the weapons prohibitions fall under Penal Code 12021(g).
9. The order is for injunctive relief and requires a showing of unlawful violence or credible threat of violence and that great or irreparable harm would result without issuance of the injunction. The purpose of the injunction is to prevent future harm and prevent threatened injury. It does not punish past conduct. Scripps Health v. Marin (1999) 72 Cal. App. 4<sup>th</sup> 324
10. The showing required is clear and convincing evidence, Code of Civil Procedure 527.8(f). Gdowski v. Gdowski (2009) \_\_\_ Cal. App. 4<sup>th</sup> \_\_\_, 4<sup>th</sup> Dist, Div 3, G040975.
11. Duration.
  - a. Temporary: 15 days.
  - b. Final: Three years; at any time in the last three months before the injunction expires, plaintiff may apply for renewal of the order.
12. Violations prosecuted under Penal Code 273.6.
13. Why not just terminate the employee's job?
  - a. Americans With Disabilities Act (42 USC 12101)
    - (1) Person with disability from DV cannot be terminated from a job or penalized for that disability and may be entitled to "reasonable accommodation"
    - (2) Impairment may be mental or physical, including depression, PTSD, pain, loss or

impairment of the sense of sight or hearing because of a physical assault or a disfiguring injury

b. Family and Medical Leave Act (FMLA)

- (1) DV Victim may have job protection under FMLA
- (2) Act allows an employee to take up to 12 weeks of unpaid leave annually for certain medical or family reasons
- (3) Employee must have worked for at least 1 year and worked at least 1250 hours in the previous 12 months
- (4) Company must have at least 50 employees within 75 miles
- (5) Advance notice requirements in some cases (6) Employer cannot interfere, restrain, or deny exercise of FMLA rights
- (6) U.S. Dept. Of Labor investigates

c. California Labor Code 230

- (1) Prohibits an employer from discharging, discriminating against, or retaliating against an employee who is a victim of domestic violence and sexual assault
- (2) For taking time off work to obtain or attempt to obtain any relief, including a court order, for themselves and/or children
- (3) For taking time off to appear as a witness in a judicial proceeding
- (4) Section now known as Domestic Violence Employment Leave Act
- (5) Employer prohibited from discharging or discriminating against an employee who is the victim of domestic violence who takes time off to seek medical attention, to obtain services from a domestic violence program, to obtain psychological counseling, or to participate in safety planning, actions to increase safety, and

relocating. If an employer takes action against the employee, and the employee wins an action against the employer, if the employee fails to reinstate under proper terms, the employer has committed a misdemeanor. Labor Code 230.1.

(6) Employer must maintain the confidentiality of an employee who requests time off under this Act.

(7) Employee must give reasonable advance notice

G. Elder Abuse Protective Orders

1. Provides relief for an elder or dependent adult who has suffered abuse. Abuse includes: physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical pain or mental suffering, and deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering (W & I 15610.07)
2. Available relief includes protection of the petitioner's family, household members, and conservators. Elder abuse restraining orders excluding a party from the petitioner's residence or dwelling can be issued ex parte upon a showing that the party to be excluded is harming or threatening to harm the petitioner or other family or household members or the petitioner's conservator. A party may be excluded from the residence or dwelling if the court finds that physical or emotional harm would otherwise result to the petitioner, family, household members or petitioner's conservator.
3. A restrained party who has not been personally served with an order after hearing who has not been personally served but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court needs no additional proof of service for enforcement of the order.
4. Issued by Superior or Consolidated Court. Where claim relates to abduction or a conservator was appointed

prior to the initiation of the action, the Probate Department has concurrent jurisdiction; otherwise, a general civil department shall hear the matter.

5. TRO is valid for 20-25 days; final order is valid for 3 years and can be renewed for another 3 years or permanently.
6. There is no filing fee for a petition, response, or paper seeking the reissuance, modification, or enforcement of a protective order filed in a proceeding brought under the Elder Abuse Protective Order Sections.
7. Law enforcement cannot charge petitioner a fee to serve an elder abuse restraining order. the order.
8. Violations are charged under PC 273.6. W & I 15657.03(n).
9. Officers must serve unserved orders at abuse scenes. Welfare and Institutions 15657.03(j) (2)
  - a. Verbal notice is sufficient for service and enforcement. W & I 15657.03(i) (4)
10. Authority for issuance: Welfare and Institutions 15657.03.
11. Orders shall prohibit the restrained party from owning, possessing, purchasing, receiving or attempting to receive a firearm. This provision is not applicable to cases consisting only of financial abuse unaccompanied by threats, force, harassment, intimidation or any other form of abuse. Welfare and Institutions 15657.03(o)
12. The court shall order relinquishment of all firearms using the procedures of Code of Civil Procedure 527.9. Persons who are restrained under an elder abuse restraining order are prohibited from owning, possessing, purchasing, or receiving, or attempting to purchase or receive a firearm while the order is in effect. Violations are punishable under Penal Code 12021(g). The court can grant an exemption under Family Code 6389(h) and Code of Civil Procedure 527.9.
13. Protective orders under the Elder Abuse Act require proof by a preponderance of the evidence of a past act

or acts of elder abuse; are reviewed for abuse of discretion; and the factual findings underpinning such protective orders are reviewed for substantial evidence. Bookout v. Nielsen (2007)155 Cal.App.4th 1131; Nakamura v. Parker (2007) 156 Cal. App. 4<sup>th</sup> 327, 334.

14. Elder Abuse restraining orders are issued to prevent the reoccurrence of abuse, and may be issued without prior notice. The language of elder abuse orders is similar to that for the DVPA and requires a showing of past abuse not a threat of future harm. Gdowski v. Gdowski (2009) \_Cal. App.\_4<sup>th</sup> \_\_\_, 4<sup>th</sup> Dist, Div 3, G040975.
15. Service of the order after hearing may be served by first class mail if the temporary restraining order was served and it contained a notice that mailed service would be used if the order were made final. Welfare and Institutions Code 15657.03(i) (2)

## VII. California Criminal Court Orders

### A. Criminal Protective Orders (No-Contact, Stay-Away)

1. Issued by court with jurisdiction over defendant. Valid for as long as court has jurisdiction over defendant, including periods of probation
2. upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including:
  - a. Any order issued pursuant to Family Code Section 6320; (2) that defendant shall not violate Section 136.1; (3) that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness other person entering the courtroom of the court, shall not violate Section 136.1; (4) an order that any person described in this section shall have no communication whatsoever with any specified witness or victim, except through an attorney under any reasonable restrictions that the court may impose; (5) an order calling for a hearing to determine if an order should be issued.

- b. An order that a particular law enforcement agency within the court's jurisdiction provide protection for a victim, witness, or their immediate family members who reside in the same household as the victim or witness or within reasonable proximity. The order shall not be made without the consent of the law enforcement agency except for limited and specified time periods upon the court's express finding a clear and present danger of harm to the victim, witness or immediate family
- c. The court or its designee shall transmit these orders to law enforcement within one business day of the issuance, modification, extension, or termination of the order to the same agency that entered the original protective order into the DVROS.
- d. If the court does not issue an order pursuant to prosecution request in a domestic violence case it shall consider issuing a protective order on its own motion upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur

### 3. Authority To Issue.

- a. Criminal Court (Pretrial) Orders: Penal Code Section 136.2.
  - b. Probation (Post-Conviction) Orders: Penal Code Sections 136.2 and 1203.097(a)(2).
4. The crime of aggravated trespass, Penal Code Section 602.5, trespass into a residence when the resident or authorized person is present, is punishable by up to 1 year in jail and the court can issue a restraining order prohibiting the defendant from having any contact with the victim. The order is valid for 3 years. In deciding the duration of the order, the court shall consider the seriousness of the facts, the probability of future violations, and the safety of the victim and the victim's immediate family. PC 602.5(b), (d).

5. Violations are charged under Penal Code Section 166(c)(1) which includes criminal protective and stay away orders issued under Penal Code section 136.2, issued as a condition of probation in a domestic violence matter, or elder or dependent adult abuse under Penal Code 368. Violations are punishable by up to one year in county jail, a fine of not more than \$1,000, or both. Penal Code 166(b)(1) includes telephonic contact in cases in which there is a prior conviction for stalking.
6. Persons charged with misdemeanor domestic violence offenses and violations of Penal Code Section 273.6 must be personally present at arraignment and sentencing. Penal Code 977.
  - a. Misdemeanor offenses involving domestic violence are those defined in Family Code 6211 and violations of Penal Code Section 273.6.
  - b. Family Code 6211 provides that "domestic violence" is abuse committed against a spouse or former spouse, cohabitant or former cohabitant as defined in 6209 (a person who regularly resides in or formerly resided in the household); person who has or has had a dating or engagement relationship; person with whom respondent has had a child; child of a party; and any other person related by consanguinity and affinity within the second degree.
  - c. Family Code 6203 defines "abuse" to include intentionally or recklessly causing or attempting to cause bodily injury; sexual assault; placing another person in reasonable apprehension of imminent serious bodily injury to that person or another; and to engage in any behavior that could be enjoined pursuant to FC 6320 (molesting, attacking, striking, stalking, threatening, battering, harassing, telephoning, destroying personal property, contacting directly or indirectly by mail or otherwise, coming within a specified distance of, or disturbing the peace of another).
7. Officers should make warrantless arrests for violations where there is probable cause to believe

the restrained party has notice of the order and has violated a term. Penal Code 836(c)(1)

8. Persons who are restrained under a criminal protective order issued pursuant to Penal Code 136.2 are prohibited from owning, possessing, purchasing, or receiving, or attempting to purchase or receive a firearm while the order is in effect.
9. The issuing court shall order the restrained party to relinquish all firearms s/he owns or possesses using the procedures in Code of Civil Procedure 527.9 (h)(3).
10. Violations of the firearms prohibitions are punishable under Penal Code 12021(g).
11. A court considering issuance of a criminal protective order in a domestic violence case and whether there is good cause to believe that the victim has been harmed or is likely to be harmed may consider the underlying nature of the offense and criminal history. This statute overrules the court's contrary holding in People v. Stone, (2004) 123 Cal. App. 4<sup>th</sup> 153. (Penal Code 136.2(h))

B. Post-Conviction Stalking Orders.

1. Issued by criminal court at sentence and also ordered by parole agents at parole.
2. Authority:
  - a. Criminal Court: Penal Code Section 646.9(k).
  - b. Parole Agents: Penal Code Section 3053.2.
3. Validity.
  - a. Orders under 646.9 can last for up to ten years, though 5 years is the usual duration. The court's decision as to duration is to be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and the victim's immediate family.
    - (1) Immediate family includes spouse, parent, child, any person related by affinity or consanguinity within the second degree, regular current household members and

regular household members in the prior 6 months. (Penal Code Sections 646.9(k)(1))

b. Parole Conditions under 3053.2: duration of parole.

4. Violations may fall under Penal Code Section 166(b), 166(c), or 166(a)(4).

5. Parole orders must issue upon request of the victim, or if the victim is a minor, on request of their parent or guardian.

a. If the offense involved threats, stalking, sexual abuse, harassing, or violent acts, and

b. The victim is a person listed in Family Code Section 6211.

c. Mandatory conditions include:

(1) An order prohibiting the parolee from having personal, telephonic, electronic, media, or written contact with the victim

(2) An order prohibiting the parolee from coming at least within 100 yards of the victim or the victim's residence or workplace

(3) An order excluding the parolee from the victim's residence. Penal Code 3053.2(a)

## V. Federal Orders: Full Faith and Credit

### A. Full Faith and Credit

1. The Violence Against Women Act (VAWA) requires that California fully recognize and enforce domestic violence protective orders issued by courts in other states, and tribal courts. 18 U.S.C. Section 2265.

2. Applies to final orders and temporary ex parte orders so long as the respondent has notice and an opportunity to be heard within time limits set by law in the issuing jurisdiction or within a reasonable time after the order is issued sufficient to protect the restrained party's due process rights. 18 U.S.C. 2265(b)(2)

3. To meet VAWA requirements:
  - a. Defendant (Respondent) must have been served with notice and given an opportunity to be heard.
  - b. The court must have had personal and subject matter jurisdiction. Under federal law, qualifying relationships include spouse or former spouse, current and former cohabitant of the respondent, parents of a child in common, and a child of the respondent. 18 U.S.C. 922(g) (8)
4. The court must:
  - a. Have made a finding that the defendant presents a credible threat to the physical safety of plaintiff or plaintiff's child, or
  - b. Have entered an explicit prohibition against respondent's use, attempted use, or threatened use of physical force against plaintiff or plaintiff's child, and
  - c. The court must prohibit harassment, stalking, making threats, and/or engaging in conduct that would place plaintiff or plaintiff's child in reasonable fear of bodily injury. 18 U.S.C. Section 922(g) (c) (i)-(ii).
5. Federal court order crimes under VAWA:
  - a. Interstate travel with the specific intent to violate a valid protective order that prohibits credible threats of violence, harassment, or bodily injury. 18 U.S.C. Section 2262(a) (1).
  - b. Causing a spouse or intimate partner to cross state lines (or enter/exit tribal lands) by force, coercion, duress, or fraud during which, or as a result of which, a victim suffers harm in violation of a valid protection order. 18 U.S.C. Section 2261(a).
6. Protection Orders under federal law include:
  - a. "any injunction or other order issued for the purpose of preventing violent or threatening acts

or harassment against, or contact or communication with or physical proximity to, another person

- b. Includes temporary and final orders issued by civil and criminal courts
  - (1) whether obtained by filing an independent action or as a pendente lite order in another proceeding
  - (2) so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection." 18 U.S.C. 2266.
- c. Tribal court orders so long as the court had jurisdiction and due process requirements were met
- d. Protection orders issued based on a consent agreement between the parties so long as the court had jurisdiction and due process requirements were met.
- e. Provisions of child custody and support orders containing injunctions or other orders issued to prevent violent or threatening acts or harassment against, or contact or communication or physical proximity to, fall within full faith and credit provisions and are "qualifying" protection orders. 18 U.S.C. 2266.
  - (1) Under California law, "a tribunal of this state shall enforce the provisions of a valid foreign protection order which govern custody and visitation if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state. Penal Code 6402(c).
  - (2) A court in California shall not enforce a provision of a foreign protection order with respect to support under this part of the Code. Family Code 6402(d).
- f. Criminal Protection orders, including pretrial release, conditional release, probation, and

criminal court stay away orders are entitled to full faith and credit. 18 U.S.C. 2266

7. Enforcement in the non-issuing state is in the same manner as provided for orders issued in the enforcing state. It is irrelevant:
  - a. if the relief under the order is otherwise unavailable in the enforcing state
  - b. if the parties would not qualify for relief if the order were sought in the enforcing state
  - c. if the order could not remain in effect for the period provided for in the order in the enforcing state, or
  - d. if the respondent's conduct would not be a crime in the issuing state but is in the enforcing state.

8. Understanding whose law controls. See Family Code 6402.

- a. Issuing Jurisdiction
  - (1) Who is protected
  - (2) Terms and conditions of the order
  - (3) Duration of the order
- b. Enforcing jurisdiction
  - (1) Whether violation is a crime or contempt
  - (2) Arrest authority of law enforcement
  - (3) Detention/ cite and release procedures
  - (4) Penalty for violation

C. California Laws on Full Faith and Credit

1. The Uniform Interstate Enforcement of Domestic Violence Protection Order Act uses the following definitions: Family Code 6401
  - a. "Foreign Protection Orders" are those issued by a tribunal of another state.

- b. "Respondent" is the person against whom enforcement of a protection order is sought.
  - c. "Protection Order" is an injunction or other order issued by a tribunal under the domestic violence, family violence, or antistalking laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity with, another individual.
  - d. "State" refers to a state of the US, District of Columbia, Puerto Rico, US Virgin Islands, or any territory or insular possession subject to the jurisdiction of the US, Indian tribe or band, or any branch of the US military that has jurisdiction to issue protection orders.
  - e. "Tribunal" refers to a court, agency, or other entity authorized by law to issue or modify a protection order.
2. Provisions of the Uniform Interstate Enforcement of Domestic Violence Protection Order Act include:
- a. A person authorized by law in California to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in this state. The California tribunal shall enforce the terms "including terms that provide relief that a tribunal of this state would lack power to provide but for this section." Family Code 6402.
  - b. California shall enforce the order whether obtained by an independent action or in another proceeding (order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection). The California tribunal enforcing a foreign order shall follow California procedures for enforcement of a protection order. Family Code 6402(a).
  - c. California shall not enforce a foreign protection order issued by another state that does not

recognize the standing of a protected person to seek enforcement of the order. Family Code 6402(b).

d. California shall enforce valid protection orders governing custody and visitation issued in conformity with the issuing state's jurisdictional requirements regarding custody and visitation.

e. The order meets these criteria:

(1) Identifies the protected individual and respondent

(2) Is currently in effect

(3) Is issued by a tribunal with jurisdiction over the parties and subject matter under the law of the issuing state.

(4) Was issued after respondent was given reasonable notice and an opportunity to be heard before the order was issued, or in the case of an ex parte order, respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with respondent's due process rights. Family Code 6402(d).

f. A foreign protection order valid on its face is prima facie evidence of its validity. Absence of any criteria for validity of a foreign protection order is an affirmative defense. Family Code 6402(e) and (f).

3. Law enforcement shall enforce a foreign protection order if there is probable cause to believe that a valid foreign order exists and the order has been violated.

a. Presentation of a protection order that identifies the parties and shows it is in effect is probable cause to believe the order exists.

b. Presentation of a certified copy of the order...is not required for enforcement. Family Code 6403(a).

- c. If no order is presented, law enforcement can consider other information in determining if there is probable cause to believe that a valid order exists. Family Code 6403(b).
4. If a valid protection order has not been served, law enforcement shall inform respondent of the order and make a reasonable effort to serve it. The officer shall give the respondent a reasonable opportunity to comply and then if respondent fails to comply, shall enforce the order. Family Code 6403(c).
5. Foreign protection orders do not need to be registered in California to be enforced. Family Code 6403(d).
6. Foreign orders shall, upon request of the person in possession of the order, be registered with a California court. The Judicial Council shall adopt rules for the process to be used, require the sealing of orders, and limit access to the registered order (law enforcement, person who requested order be registered after producing valid identification, defense after arraignment on a criminal charge involving an alleged violation of the order, or further order of court). No fee may be charged. The county clerk shall provide forms, which are also free. Family Code 6404.
7. There is no civil liability and no cause of action for false arrest or false imprisonment for law enforcement in making an arrest for a violation of a foreign protection order valid on its face made in good faith. Family Code 6405.
8. Orders must be sealed by the court and access is limited to law enforcement officers, the person who requested that the order registered upon written request and proof of identification, the defense after arraignment on criminal charges, or upon order of court. Family Code 6404.

D. Regional Cooperative Efforts to Improve Recognition and Enforcement of Court Orders Project

1. The National Center on State Courts in partnership with the Kentucky Domestic Violence Association with support from the US Office on Violence Against Women have

created a program called Extending Project Passport aimed at improving the recognition and enforcement of interstate and other foreign orders.

2. Its purpose is to encourage states to adopt a recognizable regionally accepted first page for protection orders.
3. California is part of the Western Pacific Region along with Nevada, Oregon, Alaska, Washington, Hawaii, Guam, American Samoa, and the Northern Marianas.
4. The regional meeting was held in October 2004, and concluded with agreement that each state or territory would recommend the adoption of a recognizable first page.
5. The California Judicial Council has proposed a new first page for California order currently named the "Restraining Order After Hearing" (Form DV-130).
6. The Judicial Council recommends renaming it "Order of Protection."
7. Other parts of the order have been moved so the certificate of compliance with VAWA is on page c.
8. If adopted the new form will be in use on July 1, 2005. (Source: California Judicial Council, Winter, 2005 "Invitations to Comment")

## VII. Firearms Limitations

### A. General Prohibitions

1. A person restrained under a protective order issued pursuant to Code of Civil Procedure Sections 527.6 and 527.8, Penal Code Sections 136.1 and 646.91, and Welfare and Institutions Code 15657.03 may not purchase or receive, or attempt to purchase or receive, a firearm. Penal Code Section 12021(g)(1).
  - a. The restrained party must have notice of the restriction.
    - (1) Actual verbal notice by the court of the prohibition and penalty, or
    - (2) The copy served on the respondent contains a notice in bold print

- b. The court must notify respondent of the firearms limitation and penalty for any violation when s/he is present when the order is made. Family Code 6304.
- 2. A person restrained under a protective order issued pursuant to Family Code Section 6218, Code of Civil Procedure Sections 527.6 and 527.8, Penal Code Sections 136.1 and 646.91, and Welfare and Institutions Code 15657.03 may not possess or own, a firearm. Penal Code Section 12021(g) (2).
  - a. The restrained party must have notice of the restriction.
    - (1) Actual verbal notice by the court of the prohibition and penalty, or
    - (2) The copy served on the respondent contains a notice in bold print
  - b. The court must notify respondent of the firearms limitation and penalty for any violation when s/he is present when the order is made. Family Code Section 6304; Penal Code 136.2 and 646.91(b) (4) (B); Welfare and Institutions Code 15657.03(o).
- 3. When a court issues a protective order, the court must order the respondent to relinquish all firearms in his/her immediate possession and control or subject to that person's immediate possession and control. Family Code 6304, 6389; Code of Civil Procedure 527.9.
  - a. Restrained parties in domestic violence protective orders not present when the order is made have 24 hours from service of the order to relinquish all firearms.
  - b. A law enforcement officer may request that a restrained party immediately surrender all firearms in their possession or control to the officer upon service of the protective order. Family Code 6389
  - c. In the absence of a law enforcement request for immediate surrender, a respondent may deliver his or her firearms to the local law enforcement agency for storage or sell them to a licensed

gun dealer. The party or entity taking possession of the firearm shall issue a receipt to the relinquishing party who must file the receipt with the court issuing the order within 48 hours of service of the order. Family Code 6389, Code of Civil Procedure 527.9

- d. Failure to timely file a receipt is a violation of the protective order. Family Code 6389
  - e. If the respondent is the legal owner and is prohibited from owning or possessing a firearm, s/he shall be entitled to sell or transfer the firearm to a licensed gun dealer. Code of Civil Procedure 527.9
3. Firearms in the possession of a court or law enforcement agency may not be returned until the person claiming them has applied to DOJ for a determination of their eligibility to possess a firearm and presented the DOJ finding to the court or law enforcement agency. Penal Code 12021.3
  4. Law enforcement is mandated to determine if a gun is stolen before it is returned to anyone. If the gun is stolen, it may not be returned to the owner until s/he has completed the DOJ application to determine eligibility.
  5. DOJ and the agency holding the firearm may charge for their services. Persons ineligible to possess firearms may sell or transfer the gun to a licensed gun dealer. If a gun remains unclaimed for 180 days after the owner is notified of its availability for return, it may be disposed of.
  6. If a gun is seized for safekeeping pursuant to Penal Code 12028.5 and is stolen, owner must comply with procedures under PC 12021.3.
  7. Providing fictitious or knowingly omitting required information from the DOJ application is a misdemeanor. Penal Code 12021.3
  8. The restraining order shall state on its face that respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the order is in effect and that relinquishment must be to a local law enforcement agency or sale to a licensed gun dealer and proof of surrender or sale must be filed with the court within a specified time. The order shall state on its face the expiration date for relinquishment.

9. Firearms Relinquishment upon request of law enforcement.  
Penal Code Section 6389
  - a. Persons restrained under a protective order under Family Code 6218 shall be ordered to relinquish all firearms in their immediate control or possession or subject to their immediate possession and control.
  - b. Relinquishment shall occur by immediately surrendering the firearm in a safe manner on request of a law enforcement officer to that officer upon service of the protective order.
  - c. If no request for immediate surrender is made, the relinquishment shall be made in a safe manner within 24 hours of service of the order by surrendering firearms to local law enforcement or by selling the gun to a licensed gun dealer.
  - d. The party or entity taking possession of the firearm shall issue a receipt to the relinquishing party who must file the receipt with the court issuing the order within 48 hours of service of the order. Failure to timely file a receipt is a violation of the protective order
  - e. The Judicial Council is ordered to modify protective order application forms to require petitioner to describe the number, type, and location of all firearms known to be possessed and controlled by the respondent.
  - f. Law enforcement agencies are encouraged to develop, adopt, and implement written policies and standards for members who request immediate relinquishment of firearms.
10. Law enforcement and military exemptions
  - a. The court can grant an exemption for a particular firearm if respondent shows that the weapon is necessary for continued employment and the employer cannot reassign respondent to a job where the firearm is not needed. The order must state that respondent may possess the weapon during scheduled work hours and during travel to and from work.
  - b. If the restrained party is a peace officer, it can allow the officer to continue to carry a firearm on

and off duty. Before the court can grant the exemption, it must require a psychological evaluation and may require the person to enter counseling or other remedial treatment to deal with any propensity for domestic violence. The court cannot grant the exemption unless it finds by a preponderance that the person does not pose a threat of harm. Family Code 6389(h, Code of Civil Procedure 527.9(f).)

11. There is no civil liability on the part of,  
  
and no cause of action arises against an employee of a law enforcement agency, or court, or the Department of Justice, acting within the scope of their employment, if a person described in PC 12021(g) unlawfully purchases or receives or attempts to purchase or receive a firearm and a person is injured by that firearm or a person is entitled to receive a firearm is denied a firearm and either wrongful action is due to a failure of a court to provide the required notifications. Family Code 6385
  
12. Attorney General To Develop Protocol to Enforce Firearms Proscriptions. Penal Code 12021(i)
  - a. Subject to available funding, the State Attorney General, working with the Judicial Council, California Alliance Against Domestic Violence, prosecutors, law enforcement, probation and parole officers, shall develop a protocol for the implementation of firearms restrictions.
  - b. The protocol is intended to facilitate the enforcement of restrictions, give notice to defendants subject to restrictions, provide information how to dispose of firearms, and establish their compliance with disposal requirements, and how to obtain possession of firearms they may lawfully possess that were seized by law enforcement.
  - c. Applicants for custodial officer and transportation officer positions are added to those peace officer positions for which DOJ must notify an agency if the applicant is a prohibited person under Penal Code 12021, 12021.11 and Welfare and Institutions Code 8100, 8103. Penal Code 832.15
  
14. Upon request, DOJ must notify an employing agency if a custodial or transportation officer is or subsequently becomes prohibited from possessing or owning a firearm

pursuant to Penal Code 12021, 12021.11 and Welfare and Institutions Code 8100, 8103. Penal Code 832.17

15. Search warrants are available for firearms and other deadly weapons at domestic violence incidents involving a threat to human life or a physical assault (Penal Code 12028.5); when a firearm is owned by, possessed, or in the custody and control of a person subject to Welfare and Institutions Code 8102; or is a firearm owned by, possessed or in the custody and control of a person subject to the firearm prohibitions in Family Code 6389 if the order was issued under Family Code 6218, the person has been lawfully served, and the person has failed to relinquish the firearm(s) as required. Penal Code 1524. (Note: This does not change the authority to seize firearms and deadly weapons under Penal Code section 12028.5.)

B. Federal law

1. Persons subject to protective orders are prohibited from shipping or transporting in interstate or foreign commerce, or possessing in or affecting commerce, any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. 18 U.S.C. 922(g)(8).
  - a. Applies to orders which restrain "such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury..." 18 U.S.C. 922(g)(8)(B).
  - b. "Intimate" includes current and former spouse, current and former cohabitant, and co-parent. It does not include dating persons who have not cohabited. 18 U.S.C. 921(a)(32).
  - c. "Firearm" includes starter pistols, any weapon designed to or may readily be converted to expel a projectile by the action of an explosive...the frame or receiver of any such weapon, any firearm muffler or firearm silencer; or...any destructive device... U.S.C. 921(a)(3)
  - d. "Ammunition" includes ammunition, cartridge cases, primers, bullets, or propellant powder." 18 U.S.C. 921(a)(17)(A).

- e. Statute prohibits mere possession of a firearm whether the order itself specifically prohibits possession of a firearm.
  - f. Maximum punishment is 10 years prison. 18 U.S.C. 924(a)(2).
  - g. Return of a firearm is prohibited even if the state fails to seek forfeiture. New Jersey v. S.A. 1996)290 N.J.Super.240, 251.
- 2. 18 U.S.C. 922(d)(8) prohibits the sale or willful disposition of a firearm or ammunition to any person knowing or having reasonable cause to believe that s/he is subject to a protective order. Maximum sentence is 10 years in prison. 18 U.S.C. 924(a)(2).
  - 3. Neither 922(g)(8) nor 922(d)(8) applies to law enforcement officers required to carry firearms

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