

RESTRAINING ORDERS CHEAT SHEET

| EPRO (Family Code §§6240 et seq) | DVPA (Family Code §§6200 et seq) | | | | |
|--|--|--------------|-----|---|---|
| EPROs may have enforcement precedence over other restraining or protective orders. (Penal Code §136.2(c)(2)) | | | | | |
| Proof <ul style="list-style-type: none"> • Reasonable grounds of immediate & present danger of DV, abuse, abduction or stalking, <i>and</i> • EPRO is necessary to prevent occurrence or recurrence of DV, abuse, abduction or stalking. (FC §6251, PC §646.91) | Proof <ul style="list-style-type: none"> TRO: Reasonable proof of past act(s) of abuse (FC §6300) OAH: Preponderance of evidence (Evidence Code §115) | | | | |
| Action <ul style="list-style-type: none"> • Person in immediate & present danger of domestic violence based on person's allegation of recent abuse or threat of abuse (see FC §6203 for definition of abuse) (FC §6250(a)), <i>or</i> • Child in immediate & present danger of abuse by family or household member based on allegation of recent abuse or threat of abuse (FC §6250b), <i>or</i> • Child in immediate or present danger of abduction by parent or relative based on allegation of recent attempt to abduct or flee jurisdiction or threat to abduct or flee jurisdiction (FC §6250(c)), <i>or</i> • Elder or dependent adult in immediate & present danger of WIC §15610.07 abuse based on allegation of recent abuse or threat of abuse. (FC §6250d) (No EPRO for financial abuse only), <i>or</i> • Person in immediate danger of stalking¹ based on allegation that s/he has been willfully, maliciously, & repeatedly followed or harassed by another person (must be credible threat made with intent to place person in reasonable fear for his/her safety or safety of immediately family.) (PC §646.91; FC §6274), <i>or</i> • School/campus peace officer asserts reasonable grounds to believe there is demonstrated threat to campus safety, if MOU in place (FC §6250.5) | Abuse §6203 <ul style="list-style-type: none"> • Intentionally or recklessly cause/attempt to cause bodily injury, <i>or</i> • Sexual assault, <i>or</i> • Place person in reasonable apprehension of imminent serious bodily injury to that person or another, <i>or</i> • FC §6320 behavior that has been or could be enjoined: molest, attack, strike, stalk¹, threaten, sexually assault, batter, harass, telephone (including annoying telephone calls per Penal Code § 653m²), destroy personal property, contact directly/indirectly by mail or otherwise, come within specified distance, disturb peace | | | | |
| Required Relationship <ul style="list-style-type: none"> • Spouse or former spouse, <i>or</i> • Cohabitant/former cohabitant³ FC§6209, <i>or</i> • Past or present dating/engagement partner⁴ §6210 <i>or</i> • Party with whom have child(ren), <i>or</i> • Child of party or child subject to paternity action, <i>or</i> • Consanguinity or affinity to 2nd degree (parents, grandparents, siblings, children) | Required Relationship <ul style="list-style-type: none"> Per FC §6211, domestic violence is abuse against: <ul style="list-style-type: none"> • Spouse or former spouse, <i>or</i> • Cohabitant/former cohabitant³ FC§6209, <i>or</i> • Past or present dating/engagement partner⁴ §6210 <i>or</i> • Party with whom have child(ren), <i>or</i> • Child of party or child subject to paternity action, <i>or</i> • Consanguinity or affinity to 2nd degree (parents, grandparents, siblings, children) | | | | |
| Who Can Be Protected <ul style="list-style-type: none"> • Person & child(ren) in danger | Who Can Be Protected <ul style="list-style-type: none"> • Petitioner; named family or household members (FC§6320a) • Minor 12 or older can file w/no GAL (FC §6301a, CCP§372) | | | | |
| Required Relationship for EPRO Based on Domestic Violence <ul style="list-style-type: none"> • Spouse/former spouse, <i>or</i> • Cohabitant/former cohabitant³ FC§6209 <i>or</i> • Dating/engagement partner⁴ (past or present) FC§ 6210, <i>or</i> • Party with whom have child(ren), <i>or</i> • Child of party or child subject to paternity action, <i>or</i> • Consanguinity or affinity to 2nd degree (parents, grandparents, siblings, children) | Mutual Orders <ul style="list-style-type: none"> Not allowed unless 1) both parties personally appear, 2) both present written evidence of abuse, <i>and</i> 3) court makes detailed findings of fact that both acted primarily as aggressors & neither acted primarily in self-defense. (FC §6305) | | | | |
| Orders <ul style="list-style-type: none"> • Personal conduct (FC§§6252(a), 6218(a), 6320) • Stay away (FC§§6252(a), 6218(a), 6320) • Residence exclusion (§§6252(a), 6218(b), 6321) • Temporary care/control of child (FC§6252(b)) • Temp care/control of endangered child or other children in home (FC§6252(c), W&I §213.5) • Temporary care/control of child in danger of abduction (FC§6252(d)) • WIC §15657.03 orders; protect elders (§6252(e)) | <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: center;">Ex Parte TRO</th> <th style="width: 50%; text-align: center;">OAH</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> • Personal conduct (§6320 (a)) • No contact; stay away (§6320 (a)) • Animals: care, stay away(6320b) • Residence exclusion (§6321) • Other restraints necessary to effectuate court's orders (§6322) • Prohibit getting address(§6322.7) • Firearms/ammunition (§6389) • Temporary custody & visitation (§§6323, 6346) • Temporary property use/possession, debt payment(§6324) • Parentage by stipulation (§6323(b)(2)) </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> • All ex parte orders (§6340(a)) • Child support (§6341a) • Spousal support (§6341c) • Restitution for loss of earnings & out-of-pocket expenses (§6342) • Batterer's intervention program (§6343) • Attorney's fees & costs (§6344) </td> </tr> </tbody> </table> | Ex Parte TRO | OAH | <ul style="list-style-type: none"> • Personal conduct (§6320 (a)) • No contact; stay away (§6320 (a)) • Animals: care, stay away(6320b) • Residence exclusion (§6321) • Other restraints necessary to effectuate court's orders (§6322) • Prohibit getting address(§6322.7) • Firearms/ammunition (§6389) • Temporary custody & visitation (§§6323, 6346) • Temporary property use/possession, debt payment(§6324) • Parentage by stipulation (§6323(b)(2)) | <ul style="list-style-type: none"> • All ex parte orders (§6340(a)) • Child support (§6341a) • Spousal support (§6341c) • Restitution for loss of earnings & out-of-pocket expenses (§6342) • Batterer's intervention program (§6343) • Attorney's fees & costs (§6344) |
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| Duration <ul style="list-style-type: none"> • Earlier of (a) close of business on 5th court day after day of issuance or (b) 7th calendar day following day of issuance. (FC §6256) | Duration <ul style="list-style-type: none"> • 21 days; 25 days if good cause (FC §242) • Re-issuance: until the date of the hearing (FC §245) | | | | |
| Notice <ul style="list-style-type: none"> • Police personally serves respondent if can locate & gives copy to protected party. (FC §6271) | Notice (§243) <ul style="list-style-type: none"> • Ex parte TRO: personal service at least 5 days bef hearing (§b) • Response: at least 2 days before hearing (§f) • Renewal: personal service at least 5 days before hearing | | | | |
| Duration <ul style="list-style-type: none"> • Earlier of (a) close of business on 5th court day after day of issuance or (b) 7th calendar day following day of issuance. (FC §6256) | Renewal <ul style="list-style-type: none"> • 5 years or permanently, filed within 3 months before expiration of order, without showing of further abuse since issuance of original order. (§6345) See Avalos v. Perez (2011) 196 Cal.App4th 773 and Loeffler v. Medina (2009) 174 Cal.App.4th 1495. | | | | |
| Duration <ul style="list-style-type: none"> • Earlier of (a) close of business on 5th court day after day of issuance or (b) 7th calendar day following day of issuance. (FC §6256) | Continuance <ul style="list-style-type: none"> • Respondent gets one continuance upon request, for reasonable time to respond (FC §243(d)); • Petitioner not entitled to continuance unless response served less than 2 days before hearing, (FC §243(a) & (f)) | | | | |
| Notice <ul style="list-style-type: none"> • Police personally serves respondent if can locate & gives copy to protected party. (FC §6271) | Fees <ul style="list-style-type: none"> • Filing: No fee for petition or response. (FC §6222) • Service: No fee for service from sheriff. | | | | |

¹ Stalking (Penal Code §646.9)

- Willfully, maliciously & repeatedly following *or* willfully & maliciously harassing another person, *and*
- Making credible threat with intent to place person in reasonable fear for his/her safety or safety of immediate family.

² Harassing by phone (Penal Code §653(m))

- a. With intent to annoy; telephones or makes contact by means of electronic communication device, & addresses to or about other person any obscene language or addresses to other person threat to inflict injury to person, property of person, or member of person's family, *or*
- b. Makes repeated telephone calls or makes repeated contact by means of electronic communication device with intent to annoy other person at residence, whether or not conversation ensues from call or electronic contact. Does not apply to calls/contacts made in good faith.

³ Cohabitant (Family Code §6209)

- Person who regularly resides in household; must be social unit, not roommates or sub lessees. (O'Kane v. Irvine, 47 CA4th 207 (1996))

⁴ Dating relationship (Family Code §6210)

- Frequent, intimate association characterized by expectation of affection or sexual involvement independent of financial considerations.

⁵ For a copy of a research memorandum supporting this interpretation of the law, contact Hon. Shawna Schwarz at sschwarz@scscourt.org.

Civil Harassment (CCP §527.6)

Workplace Violence (CCP § 527.8)

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| Proof | TRO: <i>Reasonable proof</i> of harassment by respondent, and great or irreparable harm would result to petitioner (§527.6(d)) Injunction: <i>Clear & convincing evidence</i> (§527.6(i)) | TRO: <i>Reasonable proof</i> of unlawful violence or credible threat of violence by respondent, and great or irreparable harm would result to employee (§527.8(e)) Injunction: <i>Clear & convincing evidence</i> (§527.8(j)) |
| Action | Petitioner has suffered harassment (§527.6(b)(3)): <ul style="list-style-type: none"> • <i>Unlawful violence</i> – assault, battery, or stalking²; not lawful self defense or defense of others (§527.6(b)(7)), or • <i>Credible threat of violence</i> – knowing & willful statement or course of conduct that would place reasonable person in fear for self or immediate family, and serves no legitimate purpose, §527.6(b)(2), or • <i>Knowing & willful course of conduct</i> directed at specific person that seriously alarms, annoys, or harasses person & that serves no legitimate purpose (§527.6(b)(3)) <ul style="list-style-type: none"> ▪ “Course of conduct” is pattern of conduct composed of series of acts over period of time, however short, evidencing continuity of purpose (§527.6(b)(1)) ▪ Conduct would cause reasonable person to suffer substantial emotional distress, & actually caused petitioner substantial emotional distress (§527.6(b)(3)) | Employee has suffered unlawful act of violence or credible threat of violence from any person that can be reasonably construed to be carried out or to have been carried out at workplace (§527.8(a)) <ul style="list-style-type: none"> • <i>Credible threat of violence</i> – knowing & willful statement or course of conduct that would place reasonable person in fear for self or immediate family, and serves no legitimate purpose, §527.8(b)(2). • <i>Course of conduct</i> – pattern of conduct composed of series of acts over time, however short, evidencing continuity of purpose, including following or stalking employee to/from workplace; entering workplace; following employee during work hours; making telephone calls to employee; sending correspondence by any means, including, use of public, private or interoffice mails, fax, or computer e-mail. (§527.8(b)(1)) |
| Who Can Petition | No relationship between petitioner & respondent required. Minor under 12 may have CCP §374 GAL (§527.6(a)(2)) | Employer files on behalf of employee (§527.8(a)). Employer/employee per Labor Code §350 (§527.8(b)(3)) |
| Who Can Be Protected | Petitioner & all household members (§527.6(c)) | Employee; for good cause, household members & others employed at workplace or other workplaces (§527.8(d)) |
| Mutual Orders | Respondent may file cross-petition. (§527.6(h)) | |
| Orders | <ul style="list-style-type: none"> • Personal conduct & stay away orders (§527.6(b)(6)(A)) & §527.8(b)(6)(A)), but not residence exclusion per Marquez-Luque v. Marquez 192 Cal.App.3d 1513 (1987) • Firearms/ammunition: no own/possess; relinquish those owned (§527.6(t) & §527.8(r) & §527.9) • Attorneys fees/costs for prevailing party (specifically authorized in civil harassment only §527.6(r)) | |
| Duration | TRO: 21 days; 25 days if good cause (§527.6(f) & (g)) Re-issuance: until date set for hearing (§527.6(o)(1)) Injunction: not more than 3 years (§527.6(i)) | TRO: 21 days; 25 days if good cause (§527.8(g) & (h)) Re-issuance: until date set for hearing (§527.8(o)(1)) Injunction: not more than 3 years (§527.8(k)) |
| Notice | TRO: personal service at least 5 days before hearing (§527.6(m) & §527.8(m)) Answer: any time up to date of hearing (If 11 th hour service prejudices petitioner, continue hearing to cure prejudice). ⁵ | |
| Renewal | For not more than 3 years, upon request of party, without showing of any further harassment (CH) or violence/threat of violence (WV) since issuance of original order; brought within three months of expiration (§527.6(i)(1) & §527.8(k)(1)). | |
| Continuance | Discretionary (CRC 3.1332). (§527 says respondent gets 1 continuance but cases have not read §527 into other statutes.) ⁵ | |
| Fees | Filing: <ul style="list-style-type: none"> • No filing fee for petition that alleges that respondent has 1) inflicted or threatened violence against petitioner/employee, 2) stalked petitioner/employee, or 3) acted or spoken in manner that has placed petitioner/employee in reasonable fear of violence. (§527.6(w) & §527.8(v)) • No fee for filing response to petition alleging these acts. (§527.6(w) & §527.8(v)) Service: <ul style="list-style-type: none"> • No fee for service by sheriff if 1) order based on stalking, or 2) order based on unlawful violence or credible threat of violence. (§527.6(x) & §527.8(w)) | |

Elder Abuse (WIC §15657.03)

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|-------------------------|---|-----------------|---|--|--|
| Proof | <i>Reasonable proof</i> of past act/acts of abuse (§c) | | | | |
| Abuse | <ul style="list-style-type: none"> • Physical abuse (§15610.63); neglect (§15610.57); financial abuse (§15610.30); abandonment (§15610.05); isolation (§15610.43); abduction (§15610.06); or treatment with resulting physical harm, pain or mental suffering (§15610.53), or • Deprivation by care custodian of goods or services necessary to avoid physical harm or mental suffering. (§15610.07) | Orders | Ex parte TRO <ul style="list-style-type: none"> • Personal conduct (§(b)(3)(A)) • Stay away (§(b)(3)(A)) • Residence exclusion (§(b)(3)(B)), (d)(1)) • Other restraints to effectuate court’s orders (§(b)(3)(C)) • Firearms/ammunition: no own/possess; relinquish; except financial abuse only (§f) | Injunction | <ul style="list-style-type: none"> • Residence exclusion (§h) • All ex parte orders (§h) • Attorney’s fees & costs (§s) |
| Who Can Petition | Elder or dependent adult; conservator; trustee; attorney-in-fact; guardian ad litem; or other person authorized (§a). | Duration | 21 days; 25 days good cause (§f) Re-issuance: until date of hearing (§m) | Not more than 5 years (§(i)(1)) | |
| Who Is Protected | <ul style="list-style-type: none"> • <i>Elder adult</i>: 65 or older (§15610.27); or • <i>Dependent adult</i>: adult between ages 18 & 64 w/ physical or mental limitations that restrict ability to carry out normal activities or to protect rights. Includes those who have physical/developmental disabilities, or whose physical/mental abilities have diminished because of age, or who is between those ages & is admitted as inpatient to 24-hour health facility. (§15610.23(a)) • Family or household member, or conservator, in discretion of court for good cause (§(b)(3)(A)) | Notice | TRO: personal service at least 5 days before hearing (§k) Response: any time up to date of hearing (If 11 th hour service prejudices petitioner, continue hearing to cure). ⁵ | | |
| Mutual Orders | Respondent may file cross-complaint if elder or dependent adult (§15657.03); otherwise, file civil harassment. | Renewal | For five years or permanently, upon request of party; without showing of further abuse since issuance of the original order; may be brought at any time within the three months before the expiration of the order. (§(i)(1)) | | |
| Continuance | Discretionary (CRC 3.1332). ⁵ | Fee | Filing: No fees for petition or response. (§q) Service: No fee for service from sheriff. (§r) | | |