Code Sections

Family Code Sections

3011. In making a determination of the best interest of the child in a proceeding described in Section 3021, the court shall, among any other factors it finds relevant, consider all of the following:

(a) The health, safety, and welfare of the child.

(b) Any history of abuse by one parent or any other person seeking custody against any of the following:

(1) Any child to whom he or she is related by blood or affinity or with whom he or she has had a caretaking relationship, no matter how temporary.

(2) The other parent.

(3) A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.

As a prerequisite to considering allegations of abuse, the court may require substantial independent corroboration, including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence. As used in this subdivision, "abuse against a child" means "child abuse" as defined in Section 11165.6 of the Penal Code and abuse against any of the other persons described in paragraph (2) or (3) means "abuse" as defined in Section 6203 of this code.

(c) The nature and amount of contact with both parents, except as provided in Section 3046.

(d) The habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances by either parent. Before considering these allegations, the court may first require independent corroboration, including, but not limited to, written reports from law enforcement agencies, courts, probation departments, social welfare agencies, medical facilities, rehabilitation facilities, or other public agencies or nonprofit organizations providing drug and alcohol abuse services. As used in this subdivision, "controlled substances" has the same meaning as defined in the California Uniform Controlled Substances Act, Division 10 (commencing with Section 11000) of the Health and Safety Code.

(e) (1) Where allegations about a parent pursuant to subdivision (b) or (d) have been brought to the attention of the court in the current proceeding, and the court makes an order for sole or joint custody to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any order regarding custody or visitation is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision (b) of Section 6323.

(2) The provisions of this subdivision shall not apply if the parties stipulate in writing or on the record regarding custody or visitation.

3027. (a) If allegations of child abuse, including child sexual abuse, are made during a child custody proceeding and the court has concerns regarding the child's safety, the court may take any reasonable, temporary steps as the court, in its discretion, deems appropriate under the circumstances to protect the child's safety until an investigation can be completed. Nothing in this section shall affect the applicability of Section 16504 or 16506 of the Welfare and Institutions Code.

(b) If allegations of child abuse, including child sexual abuse, are made during a child custody proceeding, the court may request that the local child welfare services agency conduct an investigation of the allegations pursuant to Section 328 of the Welfare and Institutions Code. Upon completion of the investigation, the agency shall report its findings to the court.

3044. (a) Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence against the other party seeking custody of the child or against the child or the child's siblings within the previous five years, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child, pursuant to Section 3011. This presumption may only be rebutted by a preponderance of the evidence.

(b) In determining whether the presumption set forth in subdivision (a) has been overcome, the court shall consider all of the following factors:

(1) Whether the perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interest of the child. In determining the best interest of the child, the preference for frequent and continuing contact with both parents, as set forth in subdivision (b) of Section 3020, or with the noncustodial parent, as set forth in paragraph (1) of subdivision (a) of Section 3040, may not be used to rebut the presumption, in whole or in part.

(2) Whether the perpetrator has successfully completed a batterer's treatment program that meets the criteria outlined in subdivision (c) of Section 1203.097 of the Penal Code.

(3) Whether the perpetrator has successfully completed a program of alcohol or drug abuse counseling if the court determines that counseling is appropriate.

(4) Whether the perpetrator has successfully completed a parenting class if the court determines the class to be appropriate.

(5) Whether the perpetrator is on probation or parole, and whether he or she has complied with the terms and conditions of probation or parole.

(6) Whether the perpetrator is restrained by a protective order or restraining order, and whether he or she has complied with its terms and conditions.

(7) Whether the perpetrator of domestic violence has committed any further acts of domestic violence.

(c) For purposes of this section, a person has "perpetrated domestic violence" when he or she is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to

another, or to have engaged in any behavior involving, but not limited to, threatening, striking, harassing, destroying personal property or disturbing the peace of another, for which a court may issue an ex parte order pursuant to Section 6320 to protect the other party seeking custody of the child or to protect the child and the child's siblings.

(d) (1) For purposes of this section, the requirement of a finding by the court shall be satisfied by, among other things, and not limited to, evidence that a party seeking custody has been convicted within the previous five years, after a trial or a plea of guilty or no contest, of any crime against the other party that comes within the definition of domestic violence contained in Section 6211 and of abuse contained in Section 6203, including, but not limited to, a crime described in subdivision (e) of Section 243 of, or Section 261, 262, 273.5, 422, or 646.9 of, the Penal Code.

(2) The requirement of a finding by the court shall also be satisfied if any court, whether that court hears or has heard the child custody proceedings or not, has made a finding pursuant to subdivision (a) based on conduct occurring within the previous five years.

(e) When a court makes a finding that a party has perpetrated domestic violence, the court may not base its findings solely on conclusions reached by a child custody evaluator or on the recommendation of the Family Court Services staff, but shall consider any relevant, admissible evidence submitted by the parties.

(f) In any custody or restraining order proceeding in which a party has alleged that the other party has perpetrated domestic violence in accordance with the terms of this section, the court shall inform the parties of the existence of this section and shall give them a copy of this section prior to any custody mediation in the case.

4320. In ordering spousal support under this part, the court shall consider all of the following circumstances:

(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following:

(1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.

(2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.

(b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party.

(c) The ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living.

(d) The needs of each party based on the standard of living established during the marriage.

(e) The obligations and assets, including the separate property, of each party.

(f) The duration of the marriage.

(g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.

(h) The age and health of the parties.

(i) Documented evidence of any history of domestic violence, as defined in Section 6211, between the parties or perpetrated by either party against either party's child, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party.

(j) The immediate and specific tax consequences to each party.

(k) The balance of the hardships to each party.

(l) The goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in Section 4336, a "reasonable period of time" for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court's discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section, Section 4336, and the circumstances of the parties.

(m) The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award in accordance with Section 4324.5 or 4325.

(n) Any other factors the court determines are just and equitable.

6306. (a) Prior to a hearing on the issuance or denial of an order under this part, the court shall ensure that a search is or has been conducted to determine if the subject of the proposed order has any prior criminal conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; has any misdemeanor conviction involving domestic violence, weapons, or other violence; has any outstanding warrant; is currently on parole or probation; has a registered firearm; or has any prior restraining order or any violation of a prior restraining order. The search shall be conducted of all records and databases readily available and reasonably accessible to the court, including, but not limited to, the following:

(1) The California Sex and Arson Registry (CSAR).

(2) The Supervised Release File.

(3) State summary criminal history information maintained by the Department of Justice pursuant to Section 11105 of the Penal Code.

(4) The Federal Bureau of Investigation's nationwide database.

(5) Locally maintained criminal history records or databases.

However, a record or database need not be searched if the information available in that record or database can be obtained as a result of a search conducted in another record or database.

(b) (1) Prior to deciding whether to issue an order under this part or when determining appropriate temporary custody and visitation orders, the court shall consider the following information obtained pursuant to a search conducted under subdivision (a): any conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; any misdemeanor conviction involving domestic violence, weapons, or other violence; any outstanding warrant; parole or probation status; any

prior restraining order; and any violation of a prior restraining order.

(2) Information obtained as a result of the search that does not involve a conviction described in this subdivision shall not be considered by the court in making a determination regarding the issuance of an order pursuant to this part. That information shall be destroyed and shall not become part of the public file in this or any other civil proceeding.

(c) (1) After issuing its ruling, the court shall advise the parties that they may request the information described in subdivision (b) upon which the court relied. The court shall admonish the party seeking the proposed order that it is unlawful, pursuant to Sections 11142 and 13303 of the Penal Code, to willfully release the information, except as authorized by law.

(2) Upon the request of either party to obtain the information described in subdivision (b) upon which the court relied, the court shall release the information to the parties or, upon either party's request, to his or her attorney in that proceeding.

(3) The party seeking the proposed order may release the information to his or her counsel, court personnel, and court-appointed mediators for the purpose of seeking judicial review of the court's order or for purposes of court proceedings under Section 213.5 of the Welfare and Institutions Code.

(d) Any information obtained as a result of the search conducted pursuant to subdivision (a) and relied upon by the court shall be maintained in a confidential case file and shall not become part of the public file in the proceeding or any other civil proceeding. However, the contents of the confidential case file shall be disclosed to the court-appointed mediator assigned to the case or to a child custody evaluator appointed by the court pursuant to Section 3111 of the Family Code or Section 730 of the Evidence Code. All court-appointed mediators and child custody evaluators appointed or contracted by the court pursuant to Section 3111 of the Family Code or Section 730 of the Evidence Code who may receive information from the search conducted pursuant to subdivision (a) shall be subject to, and shall comply with, the California Law Enforcement Telecommunications System policies, practices, and procedures adopted pursuant to Section 15160 of the Government Code.

(e) If the results of the search conducted pursuant to subdivision (a) indicate that an outstanding warrant exists against the subject of the order, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of the issuance and contents of any protective order and of any other information obtained through the search that the court determines is appropriate. The law enforcement officials so notified shall take all actions necessary to execute any outstanding warrants or any other actions, with respect to the restrained person, as appropriate and as soon as practicable.

(f) If the results of the search conducted pursuant to subdivision (a) indicate that the subject of the order is currently on parole or probation, the court shall order the clerk of the court to immediately notify, by the most effective means available, the appropriate parole or probation officer of the issuance and contents of any protective order issued by the court and of any other information obtained through the search that the court determines is appropriate. That officer shall take all actions necessary to revoke any parole or probation, or any other actions, with respect to the

restrained person, as appropriate and as soon as practicable.

(g) Nothing in this section shall delay the granting of an application for an order that may otherwise be granted without the information resulting from the database search. If the court finds that a protective order under this part should be granted on the basis of the affidavit presented with the petition, the court shall issue the protective order and shall then ensure that a search is conducted pursuant to subdivision (a) prior to the hearing.

Welfare and Institutions Code Sections

204. Notwithstanding any other provision of law, except provisions of law governing the retention and storage of data, a family law court and a court hearing a probate guardianship matter shall, upon request from the juvenile court in any county, provide to the court all available information the court deems necessary to make a determination regarding the best interest of a child, as described in Section 202, who is the subject of a proceeding before the juvenile court pursuant to this division. The information shall also be released to a child protective services worker or juvenile probation officer acting within the scope of his or her duties in that proceeding. Any information released pursuant to this section that is confidential pursuant to any other provision of law shall remain confidential and may not be released, except to the extent necessary to comply with this section. No records shared pursuant to this section may be disclosed to any party in a case unless the party requests the agency or court that originates the record to release these records and the request is granted. In counties that provide confidential family law mediation, or confidential dependency mediation, those mediations are not covered by this section.

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure or in the manner provided by Section 6300 of the Family Code, if related to domestic violence, the juvenile court has exclusive jurisdiction to issue ex parte orders (1) enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the child or any other child in the household; and (2) excluding any person from the dwelling of the person who has care, custody, and control of the child. A court may also issue an ex parte order enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of any parent, legal guardian, or current caretaker of the child, regardless of whether the child resides with that parent, legal guardian, or current caretaker, upon application in the manner provided by Section 527 of the Code of Civil Procedure or, if related to domestic violence, in the manner provided by Section 6300 of the Family Code. A court may also issue an ex parte order enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the

child's current or former social worker or court appointed special advocate, upon application in the manner provided by Section 527 of the Code of Civil Procedure.

(b) After a petition has been filed pursuant to Section 601 or 602 to declare a child a ward of the juvenile court, and until the time that the petition is dismissed or wardship is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure or, if related to domestic violence, in the manner provided by Section 6300 of the Family Code, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the child or any other child in the household; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; or (3) enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child, or with whom association would be detrimental to the child. A court may also issue an ex parte order enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of any parent, legal guardian, or current caretaker of the child, regardless of whether the child resides with that parent, legal guardian, or current caretaker, upon application in the manner provided by Section 527 of the Code of Civil Procedure or, if related to domestic violence, in the manner provided by Section 6300 of the Family Code. A court may also issue an ex parte order enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the child's current or former probation officer or court appointed special advocate, upon application in the manner provided by Section 527 of the Code of Civil Procedure.

(c) If a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 21 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service of the order to show cause on the person to be restrained. The court may, upon its own motion or the filing of a declaration by the person seeking the restraining order, find that the person to be restrained could not be served within the time required by law and reissue an order previously issued and dissolved by the court for failure to serve the person to be restrained. The reissued order shall remain in effect until the date set for the

hearing. The reissued order shall state on its face the date of expiration of the order. Any hearing pursuant to this section may be held simultaneously with any regularly scheduled hearings held in proceedings to declare a child a dependent child or ward of the juvenile court pursuant to Section 300, 601, or 602, or subsequent hearings regarding the dependent child or ward.

(d) (1) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivisions (a), (b), and (c). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, no more than three years, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(2) If an action is filed for the purpose of terminating or modifying a protective order prior to the expiration date specified in the order by a party other than the protected party, the party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure, of the proceeding by personal service or, if the protected party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified prior to the hearing for modification or termination of the protective order, the juvenile court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive his or her right to notice if he or she is physically present and does not challenge the sufficiency of the notice.

(e) (1) The juvenile court may issue an order made pursuant to subdivision (a), (b), or (d) excluding a person from a residence or dwelling. This order may be issued for the time and on the conditions that the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling.

(2) The court may issue an order under paragraph (1) only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.

(C) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

(f) Any order issued pursuant to subdivision (a), (b), (c), or (d) shall state on its face the date of expiration of the order.

(g) All data with respect to a juvenile court protective order, or extension, modification, or termination thereof, granted pursuant to subdivision (a), (b), (c), or (d), shall be transmitted by the court or its designee, within one business day, to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law

enforcement agency authorized by the Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS).

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(h) Any willful and knowing violation of any order granted pursuant to subdivision (a), (b), (c), or (d) shall be a misdemeanor punishable under Section 273.65 of the Penal Code.

(i) A juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(j) (1) Prior to a hearing on the issuance or denial of an order under this part, a search shall be conducted as described in subdivision (a) of Section 6306 of the Family Code.

(2) Prior to deciding whether to issue an order under this part, the court shall consider the following information obtained pursuant to a search conducted under paragraph (1): any conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; any misdemeanor conviction involving domestic violence, weapons, or other violence; any outstanding warrant; parole or probation status; any prior restraining order; and any violation of a prior restraining order.

(3) (A) If the results of the search conducted pursuant to paragraph (1) indicate that an outstanding warrant exists against the subject of the search, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of any information obtained through the search that the court determines is appropriate. The law enforcement officials notified shall take all actions necessary to execute any outstanding warrants or any other actions, as appropriate and as soon as practicable.

(B) If the results of the search conducted pursuant to paragraph (1) indicate that the subject of the search is currently on parole or probation, the court shall order the clerk of the court to immediately notify, by the most effective means available, the appropriate parole or probation officer of any information obtained through the search that the court determines is appropriate. The parole or probation officer notified shall take all actions necessary to revoke any parole or probation, or any other actions, with respect to the subject person, as appropriate and as soon as practicable.

(k) Upon making any order for custody or visitation pursuant to this section, the court shall follow the procedures specified in subdivisions (c) and (d) of Section 6323 of the Family Code.

328. Whenever the social worker has cause to believe that there was or is within the county, or residing therein, a person described in Section 300, the social worker shall immediately make any investigation he or she deems necessary to determine whether child welfare services should be offered to the family and whether proceedings in the juvenile court should be commenced. If the social worker determines that it is appropriate to offer child welfare services to the family, the social worker shall make a referral to these services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. No inference regarding the credibility of the allegations or the need for child welfare services shall be drawn from the mere existence of a child custody or visitation dispute.

However, this section does not require an investigation by the social worker with respect to a child delivered or referred to any agency pursuant to Section 307.5.

The social worker shall interview any child four years of age or older who is a subject of an investigation, and who is in juvenile hall or other custodial facility, or has been removed to a foster home, to ascertain the child's view of the home environment. If proceedings are commenced, the social worker shall include the substance of the interview in any written report submitted at an adjudicatory hearing, or if no report is then received in evidence, the social worker shall include the substance of the interview in the social study required by Section 358. A referral based on allegations of child abuse from the family court pursuant to Section 3027 of the Family Code shall be investigated to the same extent as any other child abuse allegation.

827.10. (a) Notwithstanding Section 827, the child welfare agency is authorized to permit its files and records relating to a minor, who is the subject of either a family law or a probate guardianship case involving custody or visitation issues, or both, to be inspected by, and to provide copies to, the following persons, if these persons are actively participating in the family law or probate case:

(1) The judge, commissioner, or other hearing officer assigned to the family law or probate case.

(2) The parent or guardian of the minor.

(3) An attorney for a party to the family law or probate case.

(4) A family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code.

(5) A court-appointed investigator, evaluator, or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the Family Code or Part 2 (commencing with Section 1500) of Division 4 of the Probate Code.

(6) Counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code. Prior to allowing counsel appointed for the minor in the family law case to inspect the file, the court clerk may require counsel to provide a certified copy of the court order appointing him or her as the counsel for the minor.

(b) If the child welfare agency files or records, or any portions thereof, are privileged or confidential pursuant to any other state law, except Section 827, or federal law or regulation, the requirements of that state law or federal law or regulation

prohibiting or limiting release of the child welfare agency files or records, or any portions thereof, shall prevail.

(c) A social worker may testify in any family or probate proceeding with regard to any information that may be disclosed under this section.

(d) Any records or information obtained pursuant to this section, including the testimony of a social worker, shall be maintained solely in the confidential portion of the family law or probate file.

Probate Code Section

1514.5. Notwithstanding any other provision of law, except provisions of law governing the retention and storage of data, a family law court shall, upon request from the court in any county hearing a probate guardianship matter proceeding before the court pursuant to this part, provide to the court all available information the court deems necessary to make a determination regarding the best interest of a child, as described in Section 3011 of the Family Code, who is the subject of the proceeding. The information shall also be released to a guardianship investigator, as provided in subdivision (a) of Section 1513, acting within the scope of his or her duties in that proceeding. Any information released pursuant to this section that is confidential pursuant to any other provision of law shall remain confidential and may not be released, except to the extent necessary to comply with this section. No records shared pursuant to this section may be disclosed to any party in a case unless the party requests the agency or court that originates the record to release these records and the request is granted. In counties that provide confidential family law mediation, or confidential dependency mediation, those mediations are not covered by this section.

Penal Code Sections

136.2. (a) (1) 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, a court with jurisdiction over a criminal matter may issue orders, including, but not limited to, the following:

(A) An order issued pursuant to Section 6320 of the Family Code.

(B) An order that a defendant shall not violate any provision of Section 136.1.

(C) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(D) An order that a person described in this section shall have no communication whatsoever with a specified witness or a victim, except through an attorney under reasonable restrictions that the court may impose.

(E) An order calling for a hearing to determine if an order as described in subparagraphs (A) to (D), inclusive, should be issued.

(F) (i) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a

witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

(ii) For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(G) (i) An order protecting a victim or witness of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(ii) (I) If a court does not issue an order pursuant to clause (i) in a case in which the defendant is charged with a crime involving domestic violence as defined in Section 13700 or in Section 6211 of the Family Code, the court on its own motion shall consider issuing a protective order 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, that provides as follows:

(ia) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(ib) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(II) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to Section 29825.

(iii) An order issued, modified, extended, or terminated by a court pursuant to this subparagraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(iv) A protective order issued under this subparagraph may require the defendant to be placed on electronic monitoring if the local government, with the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy to authorize electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order electronic monitoring to be paid for by the local government that adopted the policy to authorize electronic monitoring. The duration of electronic monitoring shall not exceed one year from the date the order is

issued. At no time shall the electronic monitoring be in place if the protective order is not in place.

(2) For purposes of this subdivision, a minor who was not a victim of, but who was physically present at the time of, an act of domestic violence, is a witness and is deemed to have suffered harm within the meaning of paragraph (1).

(b) A person violating an order made pursuant to subparagraphs (A) to (G), inclusive, of paragraph (1) of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, a person so held in contempt shall be entitled to credit for punishment imposed therein against a sentence imposed upon conviction of an offense described in Section 136.1. A conviction or acquittal for a substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) (A) Notwithstanding subdivision (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(i) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(ii) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in clause (i).

(iii) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in clause (i).

(B) An emergency protective order that meets the requirements of subparagraph (A) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(2) Except as described in paragraph (1), a no-contact order, as described in Section 6320 of the Family Code, shall have precedence in enforcement over any other restraining or protective order.

(d) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, or receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) A person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while the protective order is in effect is punishable pursuant to Section 29825.

(e) (1) In all cases in which the defendant is charged with a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, or a violation of Section 261, 261.5, or 262, or any crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court shall consider

issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence or a violation of Section 261, 261.5, or 262, or any crime that requires the defendant to register pursuant to subdivision (c) of Section 290, shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, or a violation of Section 261, 261.5, or 262, or any crime that requires the defendant to register pursuant to subdivision (c) of Section 290, has been issued, except as described in subdivision (c), a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over a civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and, if there is not an emergency protective order that has precedence in enforcement pursuant to paragraph (1) of subdivision (c), or a no-contact order, as described in Section 6320 of the Family Code, acknowledge the precedence of enforcement of, an appropriate criminal protective order. On or before July 1, 2014, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for ensuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) An order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a "no-contact order" issued by a criminal court.

(2) Safety of all parties shall be the courts' paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

(h) (1) In any case in which a complaint, information, or indictment charging a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, has been filed, the court may consider, in determining whether good cause exists to issue an order under subparagraph (A) of paragraph (1) of subdivision (a), the underlying nature of the offense charged, and the information provided to the court pursuant to Section 273.75.

(2) In any case in which a complaint, information, or indictment

charging a violation of Section 261, 261.5, or 262, or any crime that requires the defendant to register pursuant to subdivision (c) of Section 290, has been filed, the court may consider, in determining whether good cause exists to issue an order under paragraph (1) of subdivision (a), the underlying nature of the offense charged, the defendant's relationship to the victim, the likelihood of continuing harm to the victim, any current restraining order or protective order issued by any civil or criminal court involving the defendant, and the defendant's criminal history, including, but not limited to, prior convictions for a violation of Section 261, 261.5, or 262, or any crime that requires the defendant to register pursuant to subdivision (c) of Section 290, or any other forms of violence, or any weapons offenses.

(i) (1) In all cases in which a criminal defendant has been convicted of a crime involving domestic violence as defined in Section 13700 or in Section 6211 of the Family Code, a violation of Section 261, 261.5, or 262, or any crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with the victim. The order may be valid for up to 10 years, as determined by the court. This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail, or whether imposition of sentence is suspended and the defendant is placed on probation. It is the intent of the Legislature in enacting this subdivision that the duration of any restraining order issued by the court be based upon 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.

(2) An order under this subdivision may include provisions for electronic monitoring if the local government, upon receiving the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy authorizing electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order the electronic monitoring to be paid for by the local government that adopted the policy authorizing electronic monitoring. The duration of the electronic monitoring shall not exceed one year from the date the order is issued.

(j) For purposes of this section, "local government" means the county that has jurisdiction over the protective order.

1203.097. (a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following:

(1) A minimum period of probation of 36 months, which may include a period of summary probation as appropriate.

(2) A criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions.

(3) Notice to the victim of the disposition of the case.

(4) Booking the defendant within one week of sentencing if the defendant has not already been booked.

(5) (A) A minimum payment by the defendant of a fee of five hundred dollars ($500) to be disbursed as specified in this paragraph. If, after a hearing in open court, the court finds that the defendant does not have the ability to pay, the court may reduce or waive this fee. If the court exercises its discretion to reduce or waive the fee, it shall state the reason on the record.

(B) Two-thirds of the moneys deposited with the county treasurer pursuant to this section shall be retained by counties and deposited in the domestic violence programs special fund created pursuant to Section 18305 of the Welfare and Institutions Code, to be expended for the purposes of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code. Of the moneys deposited in the domestic violence programs special fund, no more than 8 percent may be used for administrative costs, as specified in Section 18305 of the Welfare and Institutions Code.

(C) The remaining one-third of the moneys shall be transferred, once a month, to the Controller for deposit in equal amounts in the Domestic Violence Restraining Order Reimbursement Fund and in the Domestic Violence Training and Education Fund, which are hereby created, in an amount equal to one-third of funds collected during the preceding month. Moneys deposited into these funds pursuant to this section shall be available upon appropriation by the Legislature and shall be distributed each fiscal year as follows:

(i) Funds from the Domestic Violence Restraining Order Reimbursement Fund shall be distributed to local law enforcement or other criminal justice agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (b) of Section 6380 of the Family Code, based on the annual notification from the Department of Justice of the number of restraining orders issued and registered in the state domestic violence restraining order registry maintained by the Department of Justice, for the development and maintenance of the domestic violence restraining order databank system.

(ii) Funds from the Domestic Violence Training and Education Fund shall support a statewide training and education program to increase public awareness of domestic violence and to improve the scope and quality of services provided to the victims of domestic violence. Grants to support this program shall be awarded on a competitive basis and be administered by the State Department of Public Health, in consultation with the statewide domestic violence coalition, which is eligible to receive funding under this section.

(D) The fee imposed by this paragraph shall be treated as a fee, not as a fine, and shall not be subject to reduction for time served

as provided pursuant to Section 1205 or 2900.5.

(E) The fee imposed by this paragraph may be collected by the collecting agency, or the agency's designee, after the termination of the period of probation, whether probation is terminated by revocation or by completion of the term.

(6) Successful completion of a batterer's program, as defined in subdivision (c), or if none is available, another appropriate counseling program designated by the court, for a period not less than one year with periodic progress reports by the program to the court every three months or less and weekly sessions of a minimum of two hours class time duration. The defendant shall attend consecutive weekly sessions, unless granted an excused absence for good cause by the program for no more than three individual sessions during the entire program, and shall complete the program within 18 months, unless, after a hearing, the court finds good cause to modify the requirements of consecutive attendance or completion within 18 months.

(7) (A) (i) The court shall order the defendant to comply with all probation requirements, including the requirements to attend counseling, keep all program appointments, and pay program fees based upon the ability to pay.

(ii) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(B) Upon request by the batterer's program, the court shall provide the defendant's arrest report, prior incidents of violence, and treatment history to the program.

(8) The court also shall order the defendant to perform a specified amount of appropriate community service, as designated by the court. The defendant shall present the court with proof of completion of community service and the court shall determine if the community service has been satisfactorily completed. If sufficient staff and resources are available, the community service shall be performed under the jurisdiction of the local agency overseeing a community service program.

(9) If the program finds that the defendant is unsuitable, the program shall immediately contact the probation department or the court. The probation department or court shall either recalendar the case for hearing or refer the defendant to an appropriate alternative batterer's program.

(10) (A) Upon recommendation of the program, a court shall require a defendant to participate in additional sessions throughout the probationary period, unless it finds that it is not in the interests of justice to do so, states its reasons on the record, and enters them into the minutes. In deciding whether the defendant would benefit from more sessions, the court shall consider whether any of the following conditions exists:

(i) The defendant has been violence free for a minimum of six months.

(ii) The defendant has cooperated and participated in the batterer's program.

(iii) The defendant demonstrates an understanding of and practices positive conflict resolution skills.

(iv) The defendant blames, degrades, or has committed acts that dehumanize the victim or puts at risk the victim's safety, including, but not limited to, molesting, stalking, striking, attacking, threatening, sexually assaulting, or battering the victim.

(v) The defendant demonstrates an understanding that the use of coercion or violent behavior to maintain dominance is unacceptable in an intimate relationship.

(vi) The defendant has made threats to harm anyone in any manner.

(vii) The defendant has complied with applicable requirements under paragraph (6) of subdivision (c) or subparagraph (C) to receive alcohol counseling, drug counseling, or both.

(viii) The defendant demonstrates acceptance of responsibility for the abusive behavior perpetrated against the victim.

(B) The program shall immediately report any violation of the terms of the protective order, including any new acts of violence or failure to comply with the program requirements, to the court, the prosecutor, and, if formal probation has been ordered, to the probation department. The probationer shall file proof of enrollment in a batterer's program with the court within 30 days of conviction.

(C) Concurrent with other requirements under this section, in addition to, and not in lieu of, the batterer's program, and unless prohibited by the referring court, the probation department or the court may make provisions for a defendant to use his or her resources to enroll in a chemical dependency program or to enter voluntarily a licensed chemical dependency recovery hospital or residential treatment program that has a valid license issued by the state to provide alcohol or drug services to receive program participation credit, as determined by the court. The probation department shall document evidence of this hospital or residential treatment participation in the defendant's program file.

(11) The conditions of probation may include, in lieu of a fine, but not in lieu of the fund payment required under paragraph (5), one or more of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, to make payments to a battered women's shelter, or to pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. Determination of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. When the injury to a married person is caused, in whole or in part, by the criminal acts of his or her spouse in violation of this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse, as required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse, until all separate property of the offending spouse is exhausted.

(12) If it appears to the prosecuting attorney, the court, or the

probation department that the defendant is performing unsatisfactorily in the assigned program, is not benefiting from counseling, or has engaged in criminal conduct, upon request of the probation officer, the prosecuting attorney, or on its own motion, the court, as a priority calendar item, shall hold a hearing to determine whether further sentencing should proceed. The court may consider factors, including, but not limited to, any violence by the defendant against the former or a new victim while on probation and noncompliance with any other specific condition of probation. If the court finds that the defendant is not performing satisfactorily in the assigned program, is not benefiting from the program, has not complied with a condition of probation, or has engaged in criminal conduct, the court shall terminate the defendant's participation in the program and shall proceed with further sentencing.

(b) If a person is granted formal probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, in addition to the terms specified in subdivision (a), all of the following shall apply:

(1) The probation department shall make an investigation and take into consideration the defendant's age, medical history, employment and service records, educational background, community and family ties, prior incidents of violence, police report, treatment history, if any, demonstrable motivation, and other mitigating factors in determining which batterer's program would be appropriate for the defendant. This information shall be provided to the batterer's program if it is requested. The probation department shall also determine which community programs the defendant would benefit from and which of those programs would accept the defendant. The probation department shall report its findings and recommendations to the court.

(2) The court shall advise the defendant that the failure to report to the probation department for the initial investigation, as directed by the court, or the failure to enroll in a specified program, as directed by the court or the probation department, shall result in possible further incarceration. The court, in the interests of justice, may relieve the defendant from the prohibition set forth in this subdivision based upon the defendant's mistake or excusable neglect. Application for this relief shall be filed within 20 court days of the missed deadline. This time limitation may not be extended. A copy of any application for relief shall be served on the office of the prosecuting attorney.

(3) After the court orders the defendant to a batterer's program, the probation department shall conduct an initial assessment of the defendant, including, but not limited to, all of the following:

(A) Social, economic, and family background.

(B) Education.

(C) Vocational achievements.

(D) Criminal history.

(E) Medical history.

(F) Substance abuse history.

(G) Consultation with the probation officer.

(H) Verbal consultation with the victim, only if the victim desires to participate.

(I) Assessment of the future probability of the defendant committing murder.

(4) The probation department shall attempt to notify the victim regarding the requirements for the defendant's participation in the

batterer's program, as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(c) The court or the probation department shall refer defendants only to batterer's programs that follow standards outlined in paragraph (1), which may include, but are not limited to, lectures, classes, group discussions, and counseling. The probation department shall design and implement an approval and renewal process for batterer's programs and shall solicit input from criminal justice agencies and domestic violence victim advocacy programs.

(1) The goal of a batterer's program under this section shall be to stop domestic violence. A batterer's program shall consist of the following components:

(A) Strategies to hold the defendant accountable for the violence in a relationship, including, but not limited to, providing the defendant with a written statement that the defendant shall be held accountable for acts or threats of domestic violence.

(B) A requirement that the defendant participate in ongoing same-gender group sessions.

(C) An initial intake that provides written definitions to the defendant of physical, emotional, sexual, economic, and verbal abuse, and the techniques for stopping these types of abuse.

(D) Procedures to inform the victim regarding the requirements for the defendant's participation in the intervention program as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(E) A requirement that the defendant attend group sessions free of chemical influence.

(F) Educational programming that examines, at a minimum, gender roles, socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children and others.

(G) A requirement that excludes any couple counseling or family counseling, or both.

(H) Procedures that give the program the right to assess whether or not the defendant would benefit from the program and to refuse to enroll the defendant if it is determined that the defendant would not benefit from the program, so long as the refusal is not because of the defendant's inability to pay. If possible, the program shall suggest an appropriate alternative program.

(I) Program staff who, to the extent possible, have specific knowledge regarding, but not limited to, spousal abuse, child abuse, sexual abuse, substance abuse, the dynamics of violence and abuse, the law, and procedures of the legal system.

(J) Program staff who are encouraged to utilize the expertise, training, and assistance of local domestic violence centers.

(K) A requirement that the defendant enter into a written agreement with the program, which shall include an outline of the contents of the program, the attendance requirements, the requirement to attend group sessions free of chemical influence, and a statement that the defendant may be removed from the program if it is determined that the defendant is not benefiting from the program or is disruptive to the program.

(L) A requirement that the defendant sign a confidentiality statement prohibiting disclosure of any information obtained through participating in the program or during group sessions regarding other participants in the program.

(M) Program content that provides cultural and ethnic sensitivity.

(N) A requirement of a written referral from the court or probation department prior to permitting the defendant to enroll in the program. The written referral shall state the number of minimum sessions required by the court.

(O) Procedures for submitting to the probation department all of the following uniform written responses:

(i) Proof of enrollment, to be submitted to the court and the probation department and to include the fee determined to be charged to the defendant, based upon the ability to pay, for each session.

(ii) Periodic progress reports that include attendance, fee payment history, and program compliance.

(iii) Final evaluation that includes the program's evaluation of the defendant's progress, using the criteria set forth in subparagraph (A) of paragraph (10) of subdivision (a), and recommendation for either successful or unsuccessful termination or continuation in the program.

(P) A sliding fee schedule based on the defendant's ability to pay. The batterer's program shall develop and utilize a sliding fee scale that recognizes both the defendant's ability to pay and the necessity of programs to meet overhead expenses. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee, if the defendant has the ability to pay the nominal fee. Upon a hearing and a finding by the court that the defendant does not have the financial ability to pay the nominal fee, the court shall waive this fee. The payment of the fee shall be made a condition of probation if the court determines the defendant has the present ability to pay the fee. The fee shall be paid during the term of probation unless the program sets other conditions. The acceptance policies shall be in accordance with the scaled fee system.

(2) The court shall refer persons only to batterer's programs that have been approved by the probation department pursuant to paragraph (5). The probation department shall do both of the following:

(A) Provide for the issuance of a provisional approval, provided that the applicant is in substantial compliance with applicable laws and regulations and an urgent need for approval exists. A provisional approval shall be considered an authorization to provide services and shall not be considered a vested right.

(B) If the probation department determines that a program is not in compliance with standards set by the department, the department shall provide written notice of the noncompliant areas to the program. The program shall submit a written plan of corrections within 14 days from the date of the written notice on noncompliance. A plan of correction shall include, but not be limited to, a description of each corrective action and timeframe for implementation. The department shall review and approve all or any part of the plan of correction and notify the program of approval or disapproval in writing. If the program fails to submit a plan of correction or fails to implement the approved plan of correction, the department shall consider whether to revoke or suspend approval and, upon revoking or suspending approval, shall have the option to cease referrals of defendants under this section.

(3) No program, regardless of its source of funding, shall be approved unless it meets all of the following standards:

(A) The establishment of guidelines and criteria for education services, including standards of services that may include lectures,

classes, and group discussions.

(B) Supervision of the defendant for the purpose of evaluating the person's progress in the program.

(C) Adequate reporting requirements to ensure that all persons who, after being ordered to attend and complete a program, may be identified for either failure to enroll in, or failure to successfully complete, the program or for the successful completion of the program as ordered. The program shall notify the court and the probation department, in writing, within the period of time and in the manner specified by the court of any person who fails to complete the program. Notification shall be given if the program determines that the defendant is performing unsatisfactorily or if the defendant is not benefiting from the education, treatment, or counseling.

(D) No victim shall be compelled to participate in a program or counseling, and no program may condition a defendant's enrollment on participation by the victim.

(4) In making referrals of indigent defendants to approved batterer's programs, the probation department shall apportion these referrals evenly among the approved programs.

(5) The probation department shall have the sole authority to approve a batterer's program for probation. The program shall be required to obtain only one approval but shall renew that approval annually.

(A) The procedure for the approval of a new or existing program shall include all of the following:

(i) The completion of a written application containing necessary and pertinent information describing the applicant program.

(ii) The demonstration by the program that it possesses adequate administrative and operational capability to operate a batterer's treatment program. The program shall provide documentation to prove that the program has conducted batterer's programs for at least one year prior to application. This requirement may be waived under subparagraph (A) of paragraph (2) if there is no existing batterer's program in the city, county, or city and county.

(iii) The onsite review of the program, including monitoring of a session to determine that the program adheres to applicable statutes and regulations.

(iv) The payment of the approval fee.

(B) The probation department shall fix a fee for approval not to exceed two hundred fifty dollars ($250) and for approval renewal not to exceed two hundred fifty dollars ($250) every year in an amount sufficient to cover its costs in administering the approval process under this section. No fee shall be charged for the approval of local governmental entities.

(C) The probation department has the sole authority to approve the issuance, denial, suspension, or revocation of approval and to cease new enrollments or referrals to a batterer's program under this section. The probation department shall review information relative to a program's performance or failure to adhere to standards, or both. The probation department may suspend or revoke an approval issued under this subdivision or deny an application to renew an approval or to modify the terms and conditions of approval, based on grounds established by probation, including, but not limited to, either of the following:

(i) Violation of this section by any person holding approval or by a program employee in a program under this section.

(ii) Misrepresentation of any material fact in obtaining the

approval.

(6) For defendants who are chronic users or serious abusers of drugs or alcohol, standard components in the program shall include concurrent counseling for substance abuse and violent behavior, and in appropriate cases, detoxification and abstinence from the abused substance.

(7) The program shall conduct an exit conference that assesses the defendant's progress during his or her participation in the batterer's program.

(d) An act or omission relating to the approval of a batterer's treatment programs under paragraph (5) of subdivision (c) is a discretionary act pursuant to Section 820.2 of the Government Code.

13700. As used in this title:

(a) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.

(b) "Domestic violence" means abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, and any peace officer of the Department of the California Highway Patrol, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, a peace officer of the Department of General Services of the City of Los Angeles, as defined in subdivision (c) of Section 830.31, a housing authority patrol officer, as defined in subdivision (d) of Section 830.31, a peace officer as defined in subdivisions (a) and (b) of Section 830.32, or a peace officer as defined in subdivision (a) of Section 830.33.

(d) "Victim" means a person who is a victim of domestic violence.

2015 California Rules of Court

Rule 5.440. Related cases

Where resources permit, courts should identify cases related to a pending family law case to avoid issuing conflicting orders and make effective use of court resources.

(a) Definition of "related case"

For purposes of this rule, a pending family law case is related to another pending case, or to a case that was dismissed with or without prejudice, or to a case that was disposed of by judgment, if the cases:

(1) Involve the same parties or the parties' minor children;

(2) Are based on issues governed by the Family Code or by the guardianship provisions of the Probate Code; or

(3) Are likely for other reasons to require substantial duplication of judicial resources if heard by different judges.

(b) Confidential information

Other than forms providing custody and visitation (parenting time) orders to be filed in the family court, where the identification of a related case includes a disclosure of information relating to a juvenile dependency or delinquency matter involving the children of the parties in the pending family law case, the clerk must file that information in the confidential portion of the court file.

(c) Coordination of title IV-D cases

To the extent possible, courts should coordinate title IV-D (government child support) cases with other related family law matters.

Rule 5.440 adopted effective January 1, 2013.

Rule 5.445. Court communication protocol for domestic violence and child custody orders.

(a) Definitions

For purposes of this rule:

(1) "Criminal court protective order" means any court order issued under California Penal Code section 136.2 arising from a complaint, an information, or an indictment in which the victim or witness and the defendant have a relationship as defined in Family Code section 6211.

(2) "Court" means all departments and divisions of the superior court of a single county.

(3) "Cases involving child custody and visitation" include family, juvenile, probate, and guardianship proceedings.

(Subd (a) amended effective January 1, 2007.)

(b) Purpose

(1) This rule is intended to:

(A) Encourage courts to share information about the existence and terms of criminal court protective orders and other orders regarding child custody and visitation that involve the defendant and the victim or witness named in the criminal court protective orders.

(B) Encourage courts hearing cases involving child custody and visitation to take every action practicable to ensure that they are aware of the existence of any criminal court protective orders involving the parties to the action currently before them.

(C) Encourage criminal courts to take every action practicable to ensure that they are aware of the existence of any child custody or visitation court orders involving the defendant in the action currently before them.

(D) Permit appropriate visitation between a criminal defendant and his or her children under civil court orders, but at the same time provide for the safety of the victim or witness by ensuring that a criminal court protective order is not violated.

(E) Protect the rights of all parties and enhance the ability of law enforcement to enforce orders.

(F) Encourage courts to establish regional communication systems with courts in neighboring counties regarding the existence of and terms of criminal court protective orders.

(2) This rule is not intended to change the procedures, provided in Family Code section 6380, for the electronic entry of domestic violence restraining orders into the Domestic Violence Restraining Order System.

(Subd (b) amended effective January 1, 2007.)

(c) Local rule required

Every superior court must, by January 1, 2004, adopt local rules containing, at a minimum, the following elements:

(1) *Court communication*

A procedure for communication among courts issuing criminal court protective orders and courts issuing orders involving child custody and visitation, regarding the existence and terms of criminal protective orders and child custody and visitation orders, including:

(A) A procedure requiring courts issuing any orders involving child custody or visitation to make reasonable efforts to determine whether there exists a criminal court protective order that involves any party to the action; and

(B) A procedure requiring courts issuing criminal court protective orders to make reasonable efforts to determine whether there exist any child custody or visitation orders that involve any party to the action.

(2) *Modification*

A procedure by which the court that has issued a criminal court protective order may, after consultation with a court that has issued a subsequent child custody or visitation order, modify the criminal court protective order to allow or restrict contact between the person restrained by the order and his or her children.

(3) *Penal Code section 136.2*

The requirements of Penal Code section 136.2(f)(1) and (2).

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 2005.)

Rule 5.445 renumbered effective January 1, 2013; adopted as rule 5.500 effective January 1, 2003; previously amended effective January 1, 2005; previously amended and renumbered as rule 5.450 effective January 1, 2007.

Additional Resources:

Improving Coordination Handbook for California Courts:
http://www.courts.ca.gov/documents/ImprovingCoordination.pdf

Manual on Protecting Children in Families Experiencing DV; Published by US Dept. of Health and Human Services, Office on Child Abuse and Neglect:
https://www.childwelfare.gov/pubs/usermanuals/domesticviolence/

Families Change (guide to separation and divorce for parents, teens and kids):
http://www.familieschange.ca/

Judge Town's Article on Unified Family Courts:
http://www.preventivelawyer.org/main/default.asp?pid=essays/town.htm

Bench Guide for Recognizing Dangerousness in Domestic Violence Cases

By Jacquelyn C. Campbell, PhD, RN, FAAN and
Hon. Sharon Chatman, Superior Court of California, County of Santa Clara

This tool is a research-based bench guide for use by judicial officers at all stages of judicial proceedings involving allegations of domestic violence and orders of protection in civil and criminal domestic violence cases.

Research has proven that there are several factors associated with an increased risk of homicides (murders) of women in intimate partner domestic violence relationships. This bench guide is not intended to predict what will happen in any given case; it is an informational tool for your consideration as you review a case and become aware of the extent to which the evidence reveals how many lethality factors (danger of homicide) are present. This bench guide is not a substitute for judicial experience, knowledge, skills, and intuition.[1]

Pending/Prior:
☐ Emergency Protective Order ☐ Criminal Protective Order ☐ Civil Protective Order
☐ Criminal History Check ☐ Registered Firearms Check

Lethality Factors

Does the alleged **perpetrator own a gun**?	Yes	No	Does the alleged **perpetrator use any of these illegal drugs**: "uppers" or amphetamines, Meth, speed, angel dust, cocaine, "crack," street drugs, or mixers?	Yes	No
Has the physical violence increased in **severity** or **frequency** over the past year?	Yes	No	Is the alleged perpetrator an **alcoholic** or **problem drinker**?	Yes	No
Has the alleged **victim left** the alleged **perpetrator** after they lived together **during the past year**?	Yes	No	Does the alleged **perpetrator** try to **control** most or all of the alleged v**ictim's daily activities**? (i.e., tells victim when to see friends or family members or how much money to spend)	Yes	No
Is the alleged **perpetrator unemployed**?	Yes	No	Is the alleged **perpetrator violently** and **constantly jealous** of the alleged victim? (i.e., "If I can't have you, no one can.")	Yes	No
Has the alleged **perpetrator** ever **used** or **threatened** the victim with a **lethal weapon**?	Yes	No	Has the alleged **victim** been **beaten** by the alleged perpetrator **while pregnant**?	Yes	No
Has the alleged perpetrator ever **threatened to kill** the **victim**?	Yes	No	Has the alleged **perpetrator** ever **threatened** or **tried** to **commit suicide**?	Yes	No
Has the alleged perpetrator avoided being **arrested f**or **domestic violence**?	Yes	No	Has the alleged **perpetrator ever threatened to harm the alleged victim's children**?	Yes	No
Does the alleged victim have a **child** that **is not** the alleged **perpetrator's child**?	Yes	No	Does the alleged victim believe that the alleged **perpetrator** is **capable of killing** her/him?	Yes	No
Has the alleged perpetrator **forced** the alleged **victim** to have **sex** when the victim did not want to?	Yes	No	Does the alleged **perpetrator follow or spy** on the alleged victim, leave threatening notes or messages, destroy personal property or make unwanted calls?	Yes	No
Has the alleged perpetrator ever **tried** to **choke/strangle** the alleged **victim**?	Yes	No	Has the alleged **victim** ever **threatened or tried** to **commit suicide?**	Yes	No

NOTES:

[1] Please note that this checklist of lethality factors is not exhaustive. The listed factors are the ones most commonly present when the risk of serious harm or death exists. The presence of these factors can indicate elevated risk of serious injury or lethality. The absence of these factors is not, however, evidence of the absence of risk of lethality or evidence that any particular judicial action (for example, granting an Order of Protection) should not be taken.

RESTRAINING ORDERS CHEAT SHEET

EPO (Family Code §§6240 et seq)

EPOs may have enforcement precedence over other restraining or protective orders. (Penal Code §136.2(e)(2))

Proof	• Reasonable grounds to believe immediate & present danger of DV, child abuse or abduction, elder or dependent abuse, or stalking[1], *and* • EPO is necessary to prevent occurrence or recurrence of DV, child abuse or abduction, elder or dependent abuse, or stalking. (FC §6251, PC §646.91)
Action	• 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)), *or* • Child in immediate & present danger of abuse by family or household member based on allegation of recent abuse or threat of abuse (FC§6250(b)) *or* • Child in immediate & present danger of abduction by parent or relative based reasonable belief that person has intent to abduct or flee jurisdiction or on allegation of recent threat to abduct or flee jurisdiction (FC §6250(c)), *or* • 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 EPO for financial abuse only), *or* • Person in immediate danger of stalking[1] based on allegation that s/he has been willfully, maliciously, & repeatedly followed or harassed by another person who has made credible threat with intent to place person in reasonable fear for his/her safety or safety of immediately family (PC §646.91; FC §6274), *or* • School/campus peace officer asserts reasonable grounds to believe there is demonstrated threat to campus safety, if MOU in place (FC §6250.5)
Required Relationship for EPO Based on Domestic Violence	Per FC§6211 **domestic violence** is abuse vs: • Spouse/former spouse, *or* • Cohabitant/former cohabitant[5] FC§6209 *or* • Dating/engagement partner[6] (current or former) FC§ 6210, *or* • Party with whom person has child(ren), *or* • Child of party or child subject to paternity action, *or* • Consanguinity or affinity to 2nd degree (parents, grandparents, siblings, children)
Who Can Be Protected	Person & child(ren) in danger
Orders	• Personal conduct (FC §§6252(a), 6218(a), 6320) • Stay away (FC §§6252(a), 6218(a), 6320) • Residence exclusion (FC §§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 or dependent adults (§6252(e))
Duration	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)
Notice	Police personally serves respondent if can locate, & gives copy to protected party. (FC §6271)
CLETS	Law enforcement officer shall enter EPO into DOJ database (§6271(d)).

DVPA (Family Code §§6200 et seq)

Proof	**TRO:** *Reasonable proof* of past act(s) of abuse (FC §6300) **OAH:** *Preponderance of evidence* (Evidence Code §115)
Abuse §6203	• Intentionally or recklessly cause/attempt to cause bodily injury, *or* • Sexual assault, *or* • Place person in reasonable apprehension of imminent serious bodily injury to that person or another, *or* • FC §6320(a) behavior that has been or could be enjoined: molest, attack, strike, stalk[1], threaten, sexually assault, batter, credibly impersonate another person[2], falsely personate[3], harass, telephone (including but not limited to annoying telephone calls[4]), destroy personal property, contact directly/indirectly by mail or otherwise, come within specified distance, disturb peace
Required Relationship	Per FC §6211, **domestic violence** is abuse against: • Spouse or former spouse, *or* • Cohabitant/former cohabitant[5] FC§6209, *or* • Current or former dating/engagement partner[6] §6210 *or* • Party with whom person has child(ren), *or* • Child of party or child subject to paternity action, *or* • Consanguinity or affinity to 2nd degree (parents, grandparents, siblings, children)
Who Can Be Protected	Petitioner; for good cause, other named family or household members (FC§6320a) Minor 12, older needs no GAL (FC §6301a, CCP§372(b)(1))
Mutual Orders	Not allowed unless 1) both parties personally appear, 2) both present written evidence of abuse, *and* 3) court makes detailed findings of fact that both acted primarily as aggressors & neither acted primarily in self-defense. (FC §6305)

Orders	**Ex Parte TRO**	**OAH**
	• Personal conduct (§6320 (a)) • No contact; stay away (§6320 (a)) • Animals: care, stay away, personal conduct towards animal (§6320 (b)) • 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) • Prohibit insurance changes (§6325.5) • Parentage by stipulation (§6323(b)(2))	• 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)

Duration	21 days, or 25 days if good cause (FC §242) **Re-issuance:** until the date of the hearing (FC §245) Child support survives even if stipulation to drop TRO (§6340(a)).	Not more than **5 years** for protective orders, firearms (§6345(a)); custody/ support/ visitation orders survive expiration of RO (§6340(a)). If order is silent, 3 years.
Notice (§243)	**Ex parte TRO:** personal service at least 5 days before hearing (§b) **Response:** at least 2 days before hearing (§f) **Renewal:** personal service at least 5 days before hearing	
Continuance	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))	
Modification	Personally serve protected party§ at least 16 days in advance of hearing (CCP §1005) to terminate or modify restraining order prior to expiration date; may waive notice. (§6345(d))	
Renewal	5 years or permanently, filed within 3 months before expiration of order, without showing of further abuse since issuance of original order. (§6345(a)) See Avalos v. Perez (2011) 196 CA 4th 773, and Loeffler v. Medina (2009) 174 CA 4th 1495.	
Fees	**Filing:** No fee for petition or response. (FC §6222) **Service**: No fee for service from sheriff.	

Priorities for Enforcement Fam Code §6405(b)	• If more than one order and one is EPO: EPO to be enforced (Penal Code §136.2(e)(2)). • If more than one order (but no EPO), and one is no-contact order: no-contact order to be enforced. • If both civil and criminal orders (but no EPO and no no-contact order): criminal order issued last to be enforced. • If more than one civil order (but no EPO and no no-contact order): order issued last to be enforced.

Hon. Shawna Schwarz sschwarz@scscourt.org **Superior Court of Santa Clara County** **May 2015** **v.4.4**

	Civil Harassment (CCP §527.6)	Workplace Violence (CCP § 527.8)
Proof	**TRO:** *Reasonable proof* of harassment by respondent, and great or irreparable harm would result to petitioner (§527.6(d)) **Injunction:** *Clear & convincing evidence* (§527.6(i))	**TRO:** *Reasonable proof* of unlawful violence or credible threat of violence by respondent, and great or irreparable harm would result to employee (§527.8(e)) **Injunction:** *Clear & convincing evidence* (§527.8(j))
Action	Petitioner has suffered harassment (§527.6(b)(3)): • *Unlawful violence* – assault, battery, or stalking[2]; not lawful self defense or defense of others (§527.6(b)(7)), *or* • *Credible threat of violence* – 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* • *Knowing & willful course of conduct* directed at specific person that seriously alarms, annoys, or harasses person & that serves no legitimate purpose (§527.6(b)(3)) ▪ "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)) • *Credible threat of violence* – 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). • *Course of conduct* – 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 needs CCP §374 GAL (§527.6(a)(2)) Minor 12 and older does not need GAL (CCP§372(b)(1)(A))	Employer files on behalf of employee (§527.8(a)). Employer/employee per Labor Code §350 (§527.8(b)(3)) Minor 12 and older does not need GAL (CCP§372(b)(1)(B))
Who Can Be Protected	Petitioner, and, for good cause, all family or household members (§527.6(c))	Employee; for good cause, family or household members & others employed at workplace or other workplaces (§527.8(d))
Mutual Orders	Respondent may file cross-petition. (§527.6(h))	
Orders	• 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 & Penal §29830) • 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 5 years (§527.6(j))	**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 11th hour service prejudices petitioner, continue hearing to cure prejudice).[7] **Modification/termination:** Per CCP §1005, personal service on protected party at least 16 days before hearing to terminate or modify restraining order before expiration date; protected party may waive notice (§527.6(j)(3), §527.8(k)(3))	
Renewal	For not more than 5 years upon request of party, w/out showing of further harassment since issuance of original order; brought w/in 3 months of expiration (§527.6(j)(1))	For not more than 3 years upon request of party, w/out showing of further violence/threat of violence since issuance of original order; brought w/in 3 months of expiration (§527.8(k)(1))
Continuance	Discretionary (CRC 3.1332). (§527 says respondent gets 1 continuance but cases have not read §527 into other statutes.)[7]	
Fees	**Filing:** • 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:** • 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))	

[1] **Credibly impersonate (Penal Code §528.5)**
- Knowingly and without consent credibly impersonates another actual person through or on website or by other electronic means for purpose of harming, intimidating, threatening, or defrauding another person.
- Credible if another person would reasonably believe, or did reasonably believe, that defendant was or is person who was impersonated.
- Electronic means includes opening email account or account or profile on social networking website in another person's name.

[2] **Falsely personate (Penal Code §529)**
- Falsely personates in private or official capacity and in that assumed character, also:
  - Becomes bail or surety for any party, *or*
  - Verifies, publishes, acknowledges, or proves, in name of another person, any written instrument with intent that instrument may be recorded, delivered or used as true, *or*
  - Does any other act that subjects falsely personated party to be liable in suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or where benefit accrues to party personating

[3] **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.

[4] **Harassing by phone (Penal Code §653m)**
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.

[5] **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))

[6] **Dating relationship (Family Code §6210)**
- Frequent, intimate association characterized by expectation of affection or sexual involvement independent of financial considerations.

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

JUVENILE RESTRAINING ORDERS CHEAT SHEET

	Dependency	Delinquency
Proof	**TRO:** If related to domestic violence, reasonable proof of past acts of abuse. If not related to DV, reasonable proof of harassment, unlawful violence or credible threat of violence, & great or irreparable harm would result to petitioner (WIC §213.5(a) & (b); FC §6300; CCP §527.6(d) & §527.8 (e)) **OAH:** If related to domestic violence, preponderance of evidence (Evid. Code §115). If not related to DV, clear & convincing evidence (CCP §527.6(i) & §527.8(j))	
When Can R.O. Petition Be Filed	After §300 petition filed and until petition is dismissed or dependency is terminated (WIC §213.5a; CRC 5.620(b))	After §601/602 petition filed and until petition is dismissed or wardship terminated (WIC §213.5b; CRC 5.625(a))
How Can R.O. Petition Be Made	• Orally at any scheduled hearing (CRC 5.630(b)), or • Written application must be submitted on form JV-245 (CRC 5.630(b)) or • On court's own motion (WIC §304; CRC 5.630(b))	
Who Can Petition	Parent, child, guardian, social worker, probation officer, present caregiver of child, court-appointed special advocate, representative of Indian tribe, or other with interest or relationship to child	
Who Can Be Protected	• Dependent or child subject to §300 petition (Juvenile court has exclusive jurisdiction for restraining orders regarding dependent children. WIC §213.5(a))) • Other children in household (Juvenile court has exclusive jurisdiction for restraining orders regarding children in home of dependent children. WIC§213.5(a)) • Parent, legal guardian or current caregiver of child, whether or not child resides with parent, legal guardian or current caregiver • Current or former social worker • Current or former court appointed special advocate (WIC §213.5(a); CRC 5.630(c) & (d))	• Ward or child subject to §601/602 petition • Other children in household • Parent, legal guardian or current caregiver of child, whether or not child resides with parent, legal guardian or current caregiver • Current or former probation officer • Current or former court appointed special advocate *If restrained party is ward or subject to §601/602 petition:* • Any person court finds to be at risk from conduct of child • Any person with whom association with child would be detrimental to child (WIC §213.5(b); CRC 5.630(c) & (d))
Who Can Be Restrained	• Any person	• Any person • Ward or child subject to § 601/602 petition
Hearings	• Application may be heard simultaneously with any scheduled hearing (WIC §213.5(c) & CRC 5.630(h)(1)) • Proof at hearing may be by application and attachments, additional declarations or documentary evidence, contents of juvenile court file, testimony, or any combination (CRC 5.630(h)(2)) • Order must be prepared on Restraining Order – Juvenile form (JV-250) (CRC 5.620(b), 5.625(a), 5.630(h)(3))	
Orders / Enjoined Actions	• Do not molest, attack, strike, stalk, threaten, sexually assault, batter, harass, telephone (including, but not limited to, making annoying calls as described in Penal Code §635m), destroy personal property, contact (either directly or indirectly, by mail or otherwise), come within specific distance or, or disturb peace of (WIC §213.5(a)) • Enjoin any person from behavior as necessary to effectuate court's orders (CRC 5.630(3)(3)) • Exclude any person from dwelling of person who has care, custody, control of child (WIC §213.5(a), (b) & (e)) (Juvenile court has exclusive jurisdiction for residence exclusion orders regarding dependents. WIC §213.5(a)) • Do not take any action to get address/location of protected person/family members/caregivers/guardians WIC §213.7 • Do not use/own/possess any guns/firearms/ammunition; relinquish those in or subject to immediate possession or control within 72 hours of receiving order (Fam Code §6389)	
		• Enjoin delinquent child or child subject to §601/602 petition: do not contact, threaten, stalk, or disturb peace of any person 1) whom court finds to be at risk from conduct of child; or 2) with whom association would be detrimental to child (WIC §213.5(b); CRC 5.630(e))
Requirements for Residence Exclusion Order	Court may exclude person from dwelling of person who has care/custody/control of child, regardless of which party holds legal or equitable title or is lessee, on showing that: • Party who will stay in dwelling has right under color of law to possession of premises; and • Party to be excluded has assaulted or threatened to assault other party or any other person under care, custody, and control of other party, or any minor child of party or of other party; and • Physical or emotional harm would otherwise result to other party, to any person under care, custody, and control of the other party, or any minor child of the party or of the other party. (WIC §213.5(e); CRC 5.630(e)(2))	
Duration	**Ex Parte TRO:** 21 days; 25 days if good cause (WIC §213.5(c); CRC 5.630(g)) **Re-issuance:** in effect until the date set for the hearing (WIC §213.5(c); CRC 5.630(g)) **Order After Hearing:** no more than 3 years (WIC §213.5(d); CRC 5.630(h))	
Termination & Renewal	May be terminated by court before expiration date; or extended by mutual consent of all parties to restraining orders; or extended by further order of court on motion by any party to restraining order. (WIC § 213.5(d); CRC 5.630(j))	
Violation	Willful and knowing violation is misdemeanor, punishable under Penal Code §273.65 (WIC 213.5(h); CRC 5.630(k))	
Notice	**TRO:** may be granted ex parte (CCP § 527(c); CRC 5.630(f)) **Hearing:** personal service sooner of: within 5 days of TRO being granted or 2 days before hearing (CCP § 527(d)(2))	
Continuance	Per CCP § 527(d)(4), restrained party entitled to one continuance.	
Priorities for Enforcement **Fam Code §6405(b)**	• If more than one order and one is EPO: EPO to be enforced (Penal Code §136.2(e)(2)). • If more than one order (but no EPO), and one is no-contact order: no-contact order to be enforced. • If both civil and criminal orders (but no EPO and no no-contact order): criminal order issued last to be enforced. • If more than one civil order (but no EPO and no no-contact order): order issued last to be enforced.	

Rule 19 - Court Communication Protocol For Domestic Violence and Child Custody Orders; Modifications of Criminal Protective Orders; Referrals from Criminal to Unified Family Court; Procedures in Juvenile and Probate Courts

19.0 Statement of Principles And Goals.

A. This protocol is adopted to reflect the joint goals of protecting all victims of domestic violence and promoting the best interests of children. Exposure to violence within the home and between parents can result in long term emotional and behavioral damage to minor children. Severing all contact between an offending parent and the children may exacerbate the harm and not be in the best interests of the children or family unit. The Unified Family Court has programs and services, such as supervised visitation and parenting education programs, that enable children to have visitation with an offending parent in a safe and constructive setting. At the discretion of the Judge presiding over a domestic violence criminal case, a referral can be made to the Unified Family Court giving the latter Court the authority to modify a criminal protective order as to minor children.

B. This protocol recognizes the statutory preference given to criminal protective orders. Such orders will not be modified by the Unified Family Court unless specifically authorized by the Judge in the criminal proceeding.

C. A plea or conviction of domestic violence in the Criminal Division triggers the presumption regarding physical and legal custody set forth in Family Code §3044.

D. Services and programs are available through the Unified Family Court to provide and facilitate safe parent-child contact and assist people in providing violence free parenting to their children.

E. Courts hearing cases involving child custody and visitation will take every action practicable to ensure that they are aware of the existence of any protective orders involving the parties to the action currently before them.

19.1 Procedure in Criminal Court.

A. When the Criminal Court does or has issued a protective order from the minor children of the defendant:
1. The Court may, at the Judge's discretion:
a. Allow the protective order, as to the minor children, to be modified by the Unified Family Court;
b. Mail a copy of its order to the Unified Family Court Case Manager. A copy of the order shall be given to the defendant and

the victim by the Criminal Court;
c. Advise the defendant and victim that the Unified Family Court may be able to provide services that will assist them in meeting the needs of their children in a safe and supportive way and advise the defendant and victim of the right to seek visitation through the Unified Family Court; and
d. Provide the defendant with the Judicial/Information letter which shall inform the defendant the protective order, with respect to the minor children, will not be modified unless he or she files a motion

and participates in all programs required by the Unified Family Court. The Information letter will also advise defendant that the Unified Family Court will be informed of all court dates in the criminal department and any violations of the protective order or other probation conditions.
2. The District Attorney's Office will:
a. Provide the victim with the Information letter; and
b. Advise the victim of the right to seek a restraining order, child support and supervised visitation through the Unified Family Court.
3. Upon receipt of the Unified Family Court orders, the Criminal Court shall either give the order to the appropriate department (if there is a future date) or place the order in the case file (if the case has been adjudicated).

B. At Other Hearings: The Criminal Court will inform the Unified Family Court of any changes in Court orders, violations of probation.

19.2 Procedure in Unified Family Court.

A. The Court will:
1. Set all cases referred from the Criminal Court on the Domestic Violence Calendar;
2. Include the criminal case number as a cross-reference on all orders that result in a modification of the criminal protective order;
3. Specify the fact, on any Visitation Order, that the criminal protective order is being modified and have the order registered on the CLETS network;
4. Schedule periodic appearances for progress reports.

B. Family Court Services will:
1. Provide a parent orientation program specific to domestic violence issues;
2. Provide mediation services to the parents in conformance with safe practices in domestic violence cases; and

3. Provide a referral to Parenting Without Violence education program that highlights the effects of domestic violence on children, if appropriate.

C. The Unified Family Court Case Manager will:
1. Track Unified Family Court hearings involving custody and visitation issues and cross-reference orders from both the Criminal Court and Unified Family Court;
2. Send a copy of Unified Family Court orders to the Adult Probation Department and to the Criminal Court; and;
3. Assist both parents in accessing the following services when ordered by the Court:
a. Parent Orientation
b. Mediation
c. Supervised Visitation
d. Parent Education
e. Child Trauma Project
f. SafeStart
g. Family Law Facilitator (when there are child support issues).
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D. Self-Help Center will:
1. Provide legal assistance to both Defendant and or Victim, to properly place the matter on calendar.
2. Include a copy of the protective order in Criminal Proceedings in the motion with all requests to modify a criminal protective order.

19.3 Procedure in Juvenile Dependency Court.

A. The San Francisco HSA will:
1. Perform a search for criminal and civil court protective orders involving a prospective custodian when filing a dependency petition and recommending a minor's change of custody to that person;
2. The HSA must not place a minor with a prospective custodian who is restrained by a protective order, but must inform the Dependency Court of the existence and terms of the protective order.

19.4 Procedure in Juvenile Delinquency Court.

A. The San Francisco Juvenile Probation Department will:
1. Perform a search for criminal and civil court protective orders involving a prospective custodian other than the minor's regular legal custodian before releasing a minor to that person.

2. The Juvenile Probation Department must not release a minor to a prospective custodian who is restrained by a protective order, but must inform the Delinquency Court of the existence and terms of the protective order.

19.5 Procedure in Probate Court. The Probate Court will cross check petitions for probate guardianship for cases in juvenile and family court. The Probate Court will also search for criminal and civil protective orders involving the proposed guardian and other adults living in the proposed guardian's household.

Rule 19 adopted January 1, 2005.