

# Domestic Violence in Dependency Cases: A Judge's Guide

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JUDICIAL COUNCIL  
OF CALIFORNIA

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OPERATIONS AND PROGRAMS DIVISION  
CENTER FOR FAMILIES, CHILDREN & THE COURTS

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Domestic violence and sexual assault are critical issues facing family, criminal, and juvenile courts in California. The Violence Against Women Education Project (VAWEP) is an initiative designed to provide the courts with information, educational materials, and training on the court's role in responding to these cases. VAWEP is a collaborative project of the Judicial Council's Operations and Programs Division, housed in two of its staff offices: the Center for Families, Children & the Courts (CFCC) and the Center for Judiciary Education and Research (CJER). The project is funded by the California Governor's Office of Emergency Services (CalOES) with resources from the federal Office on Violence Against Women (OVW). The project's planning committee, comprised of judicial officers, attorneys, victim advocates, and other experts, guides the project staff in identifying key training issues and developing appropriate educational programming. Major efforts for the development and augmentation of educational events and curricula related to domestic violence and sexual assault are currently under way.

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The Judicial Council and its Center for Families, Children & the Courts have long provided assistance to enhance the court response to cases involving domestic violence. These issues have been an important priority for the Judicial Council because of the negative effect of domestic violence on a significant percentage of the families and children who appear before the courts. Domestic violence is an issue of particular importance to dependency court judges because of the documented overlap between child maltreatment and adult domestic violence. Given the significance of domestic violence in the lives of many of the children who appear in dependency court, it is essential for judicial officers to recognize the existence and effects of domestic violence issues on families that come before the court. Judges who are familiar with the ways domestic violence impacts children and affects the parenting abilities of the adults can make more accurate assessments of risk and have greater confidence in ordering appropriate services and protections that ultimately lead to improved outcomes for children.

This guide originated as the innovation of Commissioner Jacqueline Lewis of the Superior Court of Los Angeles who produced a document entitled, *Los Angeles County Dependency Court Domestic Violence Guidelines*. With the assistance of an advisory board, the guidelines were revised and expanded to have statewide relevance. We hope this handbook assists dependency court judicial officers in recognizing domestic violence when it is a factor in the cases before them, to issue restraining orders and other protections when necessary, to seriously assess agencies' reasonable efforts to prevent removal, and to ensure that parents and children receive sufficient and appropriate services to address the domestic violence in order to provide for the safety and physical and emotional well-being of each child.

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We appreciate the invaluable contributions of Commissioner Jacqueline H. Lewis, 2010 Juvenile Court Judge of the Year, to the development of the *Domestic Violence in Dependency Cases: A Judge's Guide*. Commissioner Lewis wrote the *Los Angeles County Dependency Court Domestic Violence Guidelines*, the publication on which this guide was originally based. Commissioner Lewis has provided ongoing inspiration and expertise throughout the development of this publication.

We gratefully acknowledge the dedicated commitment of time and expertise by a specially convened editorial advisory group that reviewed and commented on the original edition of the guide, the staff members at the Administrative Office of the Courts who contributed to this guide, and finally, we sincerely appreciate the generous support of the California Emergency Management Agency (CalEMA) and the Office on Violence Against Women.

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## SCOPE

The primary objective of this guide is to provide California judicial officers with a reference tool when considering the impact of domestic violence in juvenile court dependency cases, and a description of the requirements relating to the issuance of juvenile court protective orders in dependency cases based on a variety of statutory authorities. This guide contains information about the effects of domestic violence on children, how domestic violence may affect parenting, safety considerations for the court, addressing domestic violence at each stage of a dependency case, and the issuance of juvenile court protective orders. It provides tips and suggestions, but does not attempt to resolve issues when there is a lack of statutory clarity or differences in interpretation regarding the application of a statute or rule. This guide also includes a discussion of the required precedence in the enforcement of restraining orders issued by various courts.

This guide provides an extensive discussion of juvenile court protective orders, including requirements for issuance, duration, and enforcement, and a brief treatment of protective orders issued by other courts. A similar but less expansive description of juvenile court protective orders (including those issued in delinquency court), together with descriptions of emergency protective orders, criminal protective orders, and Domestic Violence Protection Act (family court) protective orders, may be found in the “California Protective Orders” section of the *Judges Guide to Domestic Violence Cases*, published by the Judicial Council and revised in 2014.

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# INTRODUCTION

This publication is intended to be a practical Guide to assist judicial officers in handling dependency cases that involve domestic violence. This Guide includes information on understanding the dynamics of domestic violence in dependency cases, assessing risk, implementing safety precautions, overseeing the child welfare agency's reasonable efforts, and ordering appropriate protections and services, including restraining orders, for children and their parents.

Why should judges be concerned about ensuring that domestic violence is identified and addressed in dependency cases?

The response is clearly articulated in the National Council of Juvenile and Family Court Judges (NCJFCJ)'s recent publication, *Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence* (2008) (known as the "Reasonable Efforts Checklist"):

- Because judges see families every day who are experiencing domestic violence—whether reported to the judge or not.
- Because children may be profoundly affected by domestic violence.
- Because involvement in the dependency system can trigger greater violence.
- Because judges must assess whether child welfare agencies have made "reasonable efforts" for families experiencing violence (1).

California case law, including two decisions issued in 2010, confirms that domestic violence is a significant issue in dependency cases. As the court stated in *In re Heather A.* (1996) 52 CA4th 183, 194, 60 CR23d 315, "[i]t is clear to this court that domestic violence in the same household where children are living *is* neglect; it is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it." The court in *In re Giovanni F.* (2010) 184 CA4th 594, 598–599 108 CR3d 85, concluded that "the application of section 300, subdivision (a) is appropriate when, through exposure to a parent's domestic violence, a child suffers, or is at substantial risk of suffering, serious physical harm inflicted nonaccidentally by the parent."

This Guide provides information to enable judges to recognize cases involving domestic violence, to be aware of the particular ways domestic violence affects children and their parents, and to ensure that, as part of the reasonable efforts requirements, child welfare agencies are assisting families in addressing domestic violence. It also enables judges to become familiar with the reasons and procedures for issuing restraining orders, for requiring participation in batterers' intervention programs, and for ordering other important protections for children and families affected by domestic violence.

The dependency system has two primary goals for each child who is made a dependent of the juvenile court: first, to provide for the safety, protection, and the physical and emotional well-being of a child who has been abused, neglected, or exploited or who is at risk of harm; and second, preservation of the family, if it can be done safely and in a timely manner. Welf & I C §300.2 (2).

There is substantial overlap between families where a child is abused or neglected, and those in which there is domestic violence where one parent is abusive to the other.

Studies estimate that in 30 to 60 percent of families experiencing one form of family violence, the other is present as well (3). Child welfare agencies estimate that domestic violence plays a role in one-third to one-half of their cases, and this figure is probably low (4).

Despite the fact that a significant percentage of cases handled by dependency courts involve domestic violence, one parent's abuse of the other is not always identified as an issue or included as an underlying basis for dependency court jurisdiction. The reasons for this are complex. Many abused parents feel such shame and fear about the domestic violence that they never disclose it to family or friends—and are understandably reluctant to reveal it to those who are empowered to remove their children. Some agency social workers may not inquire about domestic violence; for those that do, the dynamics of child welfare cases may impede their receiving complete information (5).

When the dependency system intervenes in a family, or when the abused parent initiates separation from the abusive parent, there is a very real risk of an increase in violence. NCJFCJ's *Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence*, cautions that "Interventions that merely require the mother to choose between separating from her abusive partner or losing her children ignore the complex dynamics of family violence. Separation does not necessarily equate to safety for children" (6). Judges who understand how domestic violence affects families can better exercise their oversight to ensure that children and parents are provided appropriate services. When domestic violence is not identified, or not adequately addressed, outcomes for children may be negatively affected. It is critical for all dependency system stakeholders to recognize, understand, and respond appropriately when both child maltreatment and domestic violence occur in a family, but especially judicial officers who are faced with the responsibility for making crucial decisions that affect the safety and well-being of abused and neglected children (7).

In this Guide, the term "domestic violence" (also called "intimate partner violence" or "spousal abuse") denotes the violence that occurs between parents, and does *not* include child abuse, elder abuse, or sibling violence. The term "parent" is used generically to reference a parent, guardian, or anyone acting formally or informally in loco parentis to the child and may include a current or former stepparent, significant other/partner, or boyfriend/girlfriend. The term "abusive parent" will be used to denote the adult perpetrating the domestic violence (occasionally referenced in this Guide as "perpetrator" or "batterer") against the "abused parent" (occasionally referenced in this Guide as a "victim" of domestic violence). The most common form of domestic violence in dependency cases involves a family in which a male (who may or may not be the father of the child in the dependency action) is abusive to the child's mother (8).

Chapters 1 through 11 of this Guide include descriptions of the ways domestic violence issues may arise and be addressed throughout the dependency process, including

- at initial petition, disposition, and review hearings;
- in mediation; and
- upon termination of jurisdiction,

with a particular focus on court oversight of the agency's reasonable efforts to prevent removal or effect reunification. It also includes discussion of the effects of domestic violence on children, on the parenting abilities of abused and abusive parents, and on safety considerations for the court. Chapter 12, Juvenile Court Restraining Orders,

focuses on all aspects of juvenile court restraining orders, including their interaction with emergency, criminal, and family court protective orders.

This publication will cite dependency law where relevant (9). It presumes a basic working knowledge of California dependency law.

Throughout this Guide, numbers in parentheses indicate references made by the author to publications. These numbers correspond to the complete citation of the publication located in the References, starting on page 88. References are arranged in the order they occur in the text.



# Chapter 1

## JUDGES' ROLE IN RECOGNIZING AND ADDRESSING DOMESTIC VIOLENCE IN DEPENDENCY CASES

### I. [§1.1] Addressing Domestic Violence in Dependency Cases

### II. [§1.2] Education on Domestic Violence Issues

#### I. [§1.1] ADDRESSING DOMESTIC VIOLENCE IN DEPENDENCY CASES

“Domestic violence is always a serious concern, and any propensity to it is certainly highly relevant as regards children’s welfare.” *Guardianship of Simpson (1998) 67 CA4th 914, 938, 79 CR2d 389.*

Domestic violence in a family can have grave consequences for children and place them at substantial risk of harm. The Welfare and Institutions Code (Welf & I C) clearly contemplates that dependency court judges will identify and address domestic violence as an issue based on the information provided by child welfare agency staff, court mediators, the parties and their attorneys even when the domestic violence is not pleaded as a basis for the dependency action. [Welf & I C §§213.5, 304.](#)

When domestic violence between parents affects the safety and well-being of children and puts them at risk, the Welfare and Institutions Code provides dependency court judges with authority to take action to protect the children, including accepting jurisdiction to adjudicate the child as a dependent of the court ([Welf & I C §300](#)) and issuing appropriate restraining orders. [Welf & I C §§213.5, 304.](#) See Chapter 12, Juvenile Court Restraining Orders. The Welfare and Institutions Code also empowers the court to order protections for the abused parent and services addressing the domestic violence for both the abused and abusive parent. See Chapter 9, which deals with dispositional hearings, and services for children, abused parents, and abusive parents.

#### *Leadership role*

Judges have a leadership role in addressing domestic violence that affects families served by the juvenile court. The National Council of Juvenile and Family Court Judges (NCJFCJ)’s pioneering publication on the intersection of domestic violence and child welfare, *Effective Interventions in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice* (1999) (known as the “Greenbook”) (10) recommends:

“The juvenile court should take a leadership role within the court system and with court-serving agencies to ensure cooperation among all parts of the juvenile court system, identify needed resources to serve families experiencing domestic violence, and develop strategies to obtain these resources.” (Rec.53)

See Appendix H, “Greenbook”: Chapter 5, Courts: Principles and Recommendations.

Similarly, [Cal Rules of Ct, Standards of J Admin 5.40\(e\)](#) sets forth the “[u]nique role of a juvenile court judge.” The rule encourages juvenile court judges to “[p]rovide active leadership within the community in determining the needs of and obtaining and

developing resources and services for at-risk children and families.” [Cal Rules of Ct, Standards of J Admin 5.40\(e\)\(1\)](#). Among other things, this standard suggests that juvenile court judges are responsible for taking leadership within the community regarding domestic violence-related resources and services for at-risk children and families. [Welfare and Institutions Code §202\(d\)](#) requires the presiding judge of the juvenile court and other juvenile court judges to take into consideration the recommendations contained in Standard 5.40(e) in working to improve system performance in the juvenile courts.

## II. [§1.2] EDUCATION ON DOMESTIC VIOLENCE ISSUES

Questions occasionally arise regarding the extent to which judicial officers may rely upon their education and experience to make assessments and determinations in dependency cases involving domestic violence. The Legislature, Judicial Council, and courts have recognized the importance for judges and others involved with dependency cases to become familiar with the dynamics of domestic violence, the impact it may have on children and on the parenting abilities of their parents, as well as the range of legal protections and services available for addressing domestic violence.

The rules on minimum education requirements and expectations for trial court judges and subordinate judicial officers require dependency court judicial officers to participate in appropriate education on domestic violence issues. [Cal Rules of Ct 10.464, 10.452](#); see [Cal Rules of Ct, Code of Judicial Ethics, Canon 3B\(2\)](#). Each judge whose primary assignment is juvenile dependency or delinquency also must participate in a periodic update on domestic violence issues as part of the education requirements. [Cal Rules of Ct 10.464\(a\)](#).

When a judge obtains background on domestic violence through mandatory education and training, review of statutory and case law, specialized trainings, independent reading, participation in community meetings, and via first-hand experience in handling cases, this knowledge becomes a fundamental element of the judicial officer's expertise and understanding, and an essential component in decisionmaking (11). Judicial officers with an understanding of the effects of domestic violence and with an awareness of safety considerations will be better prepared to arrange their courtrooms, process cases, and craft orders that are in the best interests of children as well as protective of the children and parties, court staff, service providers, and the public (12).

All attorneys in dependency cases, including attorneys for the child welfare agency, court-appointed counsel, and counsel who volunteer their services, are also required to participate in domestic violence training if training is available through existing programs at no cost to the county. [Welf & I C §218.5](#). Continuing education and training for dependency attorneys must include information on domestic violence in addition to other significant topics. [Cal Rules of Ct 5.660\(d\)\(3\)](#).

The NCJFCJ Greenbook recommends: “The juvenile court should ensure that all participants in the court system are trained in the dynamics of domestic violence, the impact of domestic violence on adults and children, and the most effective and culturally responsive interventions in these cases, including safety planning.” (Rec.47)

# Chapter 2

## DEFINITIONS AND DESCRIPTIONS OF DOMESTIC VIOLENCE

- I. **[§2.1] Domestic Violence in the Welfare and Institutions Code and the Family Code**
  - II. **[§2.2] Protective Orders Pursuant to the Welfare and Institutions Code**
  - II. **[§2.3] Social Science Descriptions of Domestic Violence**
- I. **[§2.1] DOMESTIC VIOLENCE IN THE WELFARE AND INSTITUTIONS CODE AND THE FAMILY CODE**

Addressing domestic violence in dependency cases requires familiarity with the legal definitions of domestic violence, and with the social science descriptions of the dynamics of domestic violence and the range of abusive behaviors one parent may use to exercise power and control over the other, as well as the available legal tools and social services.

Although the Welfare and Institutions Code does not contain a specific definition of domestic violence, the Family Code definitions of abuse and domestic violence, referenced indirectly by [Welf & I C §304](#), provide authority. The Family Code’s [Domestic Violence Prevention Act \(DVPA\) \(Fam C §§6200 et seq\)](#), defines “domestic violence” as abuse perpetrated against specified intimate partners (spouse, former spouse, cohabitant, former cohabitant, persons who have a child in common). [Fam C §6211](#). The DVPA defines “abuse” as: “(a) Intentionally or recklessly to cause or attempt to cause bodily injury; (b) Sexual assault; (c) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another; (d) To engage in any behavior that has been or could be enjoined pursuant to [Fam C §6320](#).” [Fam C §6203](#). Under [Cal Rules of Ct 5.630\(c\)](#), the definition of abuse in [Fam C §6203](#) applies to restraining orders issued under [Welf & I C §213.5](#).

The juvenile court’s authority to use restraining orders to enjoin abusive behaviors is discussed briefly in the following section, and extensively in Chapter 12, Juvenile Court Restraining Orders.

### II. **[§2.2] PROTECTIVE ORDERS PURSUANT TO THE WELFARE AND INSTITUTIONS CODE**

One important legal tool for addressing domestic violence in dependency cases is a protective order. [Welf & I C §§213.5\(a\) and 304](#). See Chapter 12, Juvenile Court Restraining Orders. [Welfare and Institutions Code §§213.5\(a\) and 304](#) provide dependency court judicial officers with authority to issue restraining orders enjoining abusive acts to protect children and their parents. These sections also authorize the court to exclude a parent or others from a dwelling and to enjoin the restrained person from other behavior as necessary to effectuate the court’s restraining and exclusion orders.

The Welfare and Institutions Code provides juvenile court judges with authority to enjoin various abusive behaviors pursuant to [Welf & I C §213.5\(a\)](#), including “molesting,

attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in [Pen C §635m](#), 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 caregiver of the child.” The behaviors that can be enjoined pursuant to [Welf & I C §213.5\(a\)](#) are all included in [Fam C §6320](#). As defined by [Fam C §6203\(d\)](#), all of these behaviors may constitute abuse. (For purposes of criminal actions, [Pen C §13700](#) defines “abuse” and “domestic violence” very similarly to the Family Code definitions.)

[Welfare and Institutions Code §304](#) and [Family Code §§6218 and 6320](#) provide the linkage between the governing authority for dependency cases and the Family Code’s [Domestic Violence Prevention Act](#). [Welfare & Institutions Code §304](#) specifically authorizes the juvenile court to issue protective orders as provided for in [Welf & I C §213.5](#), or as described in [Fam C §6218](#). [Family Code §6218](#) defines a protective order as one that includes various restraining orders that enjoin specific acts of abuse as described in [Fam C §§6320, 6321, and 6322](#).

[Welfare and Institutions Code §213.5](#) also allows the issuance of protective orders “upon application . . . if related to domestic violence, in the manner provided by [Section 6300 of the Family Code](#).”

Dependency court judicial officers are empowered to provide the specified protections for the dependent child, and any other child in the household, any parent, legal guardian, or current caregiver of the child, regardless of whether the child resides with that person, and any current or former social worker or CASA. [Welf & I C §§213.5\(a\), 304](#).

[Welfare & Institutions Code §304](#) provides authority for the court to issue these restraining and exclusion orders *on the court’s own motion*.

Together, [Welf & I C §§213.5 and 304](#) and [Fam C §§6218, 6300, and 6320](#) provide the court with authority and tools for addressing domestic violence in dependency cases via restraining orders, exclusion orders, and other protections for children and their abused parents.

### III. [§2.3] SOCIAL SCIENCE DESCRIPTIONS OF DOMESTIC VIOLENCE

While the Welfare and Institutions Code and the Family Code provide judges with authoritative legal definitions, social science provides important analyses of the dynamics of domestic violence as well.

The social science literature defines domestic violence as a *pattern* of assaultive and/or coercive behaviors that one person in a relationship uses against the other person in order to gain compliance and control (13). Judges and court staff are generally well aware that physical abuse is a common and often visible component of domestic violence, but may be less familiar with other elements of abuse. Domestic violence may include

- threats and intimidation;
- isolation;
- stalking/harassment;
- destruction of property (including important documents);

- sexual abuse;
- coercion;
- psychological/emotional abuse;
- economic abuse;
- self-destructive behavior; and
- use of the children in the abuse (14). See [Fam C §6320](#).

See Appendix A, Forms and Patterns of Abusive Behavior, for more complete descriptions of the range of abusive behaviors that may constitute domestic violence.

Although there are variations, domestic violence generally involves one parent's pattern of behaviors that is abusive and controlling of the other. Typically, the behaviors are purposeful rather than impulsive or unintended. Physical abuse, although often the most visible aspect of domestic violence, is rarely an isolated action but rather one part of a series of behaviors an abusive parent may use against his/her partner to gain compliance and control (15).

The dynamics of domestic violence vary across families and affect children differently. See Chapter 3, Assessing the Effects of Exposure to Domestic Violence on Children. Each case must be carefully assessed, and appropriate protections and services must be ordered to address the negative impact on the children and their parents. Judicial officers' awareness of the common elements of domestic violence and indicators of increased danger for children and abused parents is critical to gauging the dangerousness of a particular situation and may be of paramount importance in ensuring the safety of a child. See Chapter 5, Safety and Confidentiality Considerations for the Court. Understanding the range of effects on children and on their parents will enable judges to order appropriate services. See Chapter 9, Dispositional Hearing, and §§9.2, 9.3, and 9.4, which deal with services for children, abused parents, and abusive parents.

# Chapter 3

## ASSESSING THE EFFECTS OF EXPOSURE TO DOMESTIC VIOLENCE ON CHILDREN

- I. [§3.1] Children’s Exposure to Domestic Violence
- II. [§3.2] Short- and Longer-Term Effects on Children Exposed to Domestic Violence
- III. [§3.3] Factors Affecting the Impact of Exposure on Children

### I. [§3.1] CHILDREN’S EXPOSURE TO DOMESTIC VIOLENCE

The dynamics of domestic violence can have significant physical and emotional impacts on children, and in some cases these may rise to a level that requires dependency court involvement pursuant to [Welf & I C §300\(a\)–\(c\)](#). The court in *In re Benjamin D.* (1991) 227 CA3d 1464, 278 CR 468, observed that “[b]oth common sense and expert opinion indicate spousal abuse is detrimental to children.” 227 CA3d at 1470 n5; see also *In re Sylvia R.* (1997) 55 CA4th 559, 64 CR2d 93.

The phrase “children’s exposure to domestic violence” encompasses the multiple ways that children experience domestic violence. Recognizing the differing kinds of possible risk to children who live in a home where domestic violence is present is fundamental to determining whether the child is at a substantial risk of harm. *In re Sylvia R.*, *supra*, citing *In re Heather A.* (1996) 52 CA4th 183, 195, 60 CR2d 315.

Children’s exposure to domestic violence typically falls into three categories:

- (1) Being directly involved;
- (2) Hearing a violent event; and
- (3) Experiencing the aftermath of a violent event (16).

Children who are directly involved in the domestic violence may be eyewitnesses and forced to watch or take part in the abuse. Some children actively intervene to attempt to stop the parent’s abuse. In other instances, children are used as part of the attack or as a shield against abusive actions.

Children may be at physical risk of being injured during a domestic violence incident, either directly by being purposefully injured by the abusive parent, or while trying to intervene. *In re E.B.* (2010) 184 CA4th 568, 575, 109 CR3d 1.

Children’s exposure to domestic violence can include

- having to hide from the abusive parent and fearing for their own safety, the safety of the abused parent, or the safety of siblings;
- witnessing the abused parent being struck, pushed, choked, and restrained;
- hearing the abuse, imagining the severity and possible outcome;
- having special clothes, toys, or other household items destroyed or damaged by the abusive parent;
- hearing the abused parent blamed for minor deficits as the “cause” for the abuse; and
- seeing injuries to the abused parent after the violent incident (17).

Researchers have found that as many as 80 to 90 percent of children in families where domestic violence is present can provide detailed accounts of the violence in their homes (18). In addition to possible risk of physical injury, children may experience an emotional impact from domestic violence incidents and their aftermath even if the children are not physically present or injured by the violence. This may include

- feeling helpless and powerless;
- feeling that they need to protect the abused parent and/or siblings; and
- feeling guilty that they might have done something to cause the abusive incident.

The aftermath of a domestic violence incident may result in these negative consequences for the children:

- Missing school because they took care of the abused parent or their siblings;
- Feeling exhausted after being up during the night witnessing the abuse and dealing with its aftermath;
- Having the abused parent temporarily unable to care for the children or emotionally unavailable due to the effects of the assault;
- Modeling aggressive behaviors with their siblings or friends;
- Blaming the abused parent, and parroting the abusive parent's behavior and/or blaming statements;
- Withdrawing, or having trouble concentrating;
- Trying to be "perfect" so as not to create problems and/or to avoid further domestic violence;
- Being directly or indirectly blamed for the domestic violence, or having his/her feelings about it denied or minimized; and
- Feeling guilty for having told someone about the violence in their home.

## II. [§3.2] SHORT- AND LONGER-TERM EFFECTS ON CHILDREN EXPOSED TO DOMESTIC VIOLENCE

Children who are exposed to domestic violence reveal wide variation both in short-term effects and longer-term outcomes (19). Children's risk levels and reactions to domestic violence span a continuum where some children demonstrate enormous resiliency while others show signs of significant problems and maladaptive adjustment.

The following is a list of commonly observed behaviors in children that may indicate recent exposure to domestic violence:

- Physical symptoms such as headaches or stomachaches;
- Fearfulness and hypervigilance to danger or being hurt;
- “Reexperiencing” the traumatic event;
- Agitation, irritability;
- Aggression, fighting with others, hurting other children or animals;
- Temper tantrums or defiant behaviors;
- Withdrawal from people or typical activities;
- Listlessness, depression;
- Nightmares and sleep disturbances;
- Feelings of loneliness and isolation;
- Decreased verbal, motor, and cognitive skills;
- Poor school performance;
- Excessive worrying, difficulties concentrating and paying attention;
- Fear of being separated from the abused parent;
- Taking on adult or parental responsibilities;
- Bed-wetting or regression to earlier developmental stages;
- Identifying with or mirroring the behaviors of the abusive parent;
- Substance abuse;
- Suicide attempts or other dangerous behaviors; and
- Dissociation (20).

Some of these negative effects are more obvious than others but all should be taken into consideration when the court is assessing risk, ordering the provision of services, and making determinations regarding removal and reunification.

Longer-term exposure to domestic violence may result in children with

- higher levels of aggression, anger, hostility, oppositional behavior;
- fear, anxiety, withdrawal, depression;
- poor peer, sibling, and social relationships;
- low self-esteem;
- lower cognitive functioning;
- poor school performance;
- limited problem-solving skills and lack of conflict resolution skills;
- acceptance of violent behaviors and attitudes;
- belief in rigid gender stereotypes;
- higher levels of adult depression and trauma symptoms; and
- increased tolerance for and use of violence in adolescent and adult relationships (21).

The interventions necessary to protect children from the negative impact of domestic violence span a wide range of possible options. It is important for child welfare agency staff and the parties’ attorneys to provide judicial officers with the evidence and analysis that will enable the court to make a case-by-case assessment and to issue orders that will protect children in the short term and support them in addressing the short- and long-term effects of exposure to domestic violence.

### III. [§3.3] FACTORS AFFECTING THE IMPACT OF EXPOSURE TO DOMESTIC VIOLENCE ON CHILDREN

The child welfare agency staff must have the expertise to take the lead in identifying the presence of domestic violence in a family and in assessing the impact of exposure to domestic violence on each child. Child welfare social workers should provide the court with recommendations for protections and services that address the domestic violence-related needs of the children and their parents. It is essential for agency staff to provide judicial officers with relevant information and recommendations as the court has ultimate responsibility for making informed decisions and issuing orders to ensure the safety, protection, and physical and emotional well-being of the children. [Welf & I C §300.2](#); [Cal Rules of Ct, Standards of J Admin 5.40](#).

The NCJFCJ Greenbook recommends: “Child protection services should develop screening and assessment procedures, information systems, case monitoring protocols, and staff training to identify and respond to domestic violence and to promote family safety.” (Rec.18)

Although a number of problems are common to children from violent homes, the experience and effects of domestic violence are different for each child. The impact on a specific child depends on a variety of factors including

- the severity and nature of the violence;
- the coping strategies and skills of the child;
- the child’s age and gender;
- the amount of exposure and the degree to which the child was involved in the violence;
- the length of time since the most recent exposure;
- co-occurrence with other forms of violence (such as child abuse or community violence) and other stressors in the child’s life; and
- how the child understands the violence (22).

Protective factors that appear to increase a child’s resiliency in responding to domestic violence include

- social competence;
- intelligence;
- high self-esteem;
- outgoing temperament;
- strong sibling and peer relationships;
- a supportive relationship with an adult (often the abused parent);
- opportunities for healing and success; and
- the existence of assets in the community, including social and extended family supports and skilled service providers (23).

In crafting appropriate orders, judicial officers should give consideration to these moderating influences and to ways of structuring orders to provide the greatest possible level of protection and support to the child. This often involves providing safety and security to the abused parent who then is in a far better position to protect and support the child.

# Chapter 4

## INITIAL PETITION (DETENTION) HEARINGS

- I. [§4.1] Dependency Cases With Allegations of Domestic Violence
- II. [§4.2] Establishing Jurisdiction in Cases With Domestic Violence
- III. [§4.3] Pleading and Sustaining Language
- IV. [§4.4] Jurisdiction Under Welf & I C §300(a)
- V. [§4.5] Jurisdiction Under Welf & I C §300(b)
- VI. [§4.6] Jurisdiction Under Welf & I C §300(c)
- VII. [§4.7] Appointment of Counsel
- VIII. [§4.8] Agency Investigation of Allegations
- IX. [§4.9] Mutual Allegations
- X. [§4.10] Detention and Placement of Children

### I. [§4.1] DEPENDENCY CASES WITH ALLEGATIONS OF DOMESTIC VIOLENCE

Juvenile dependency petitions are not usually based solely on allegations of domestic violence between the parents; domestic violence is often one of several co-occurring factors that have led the agency to intervene in the family. Domestic violence may be the most significant issue in some cases and, in every case, allegations of domestic violence raise the question whether the child has suffered or is at substantial risk of suffering serious physical or emotional harm or neglect as a result of the parents' domestic violence. [Welf & I C §300](#).

The child welfare agency has the burden to make a prima facie showing at the initial hearing that the child comes within [Welf & I C §300](#), that continuation of the child in the parents' home is contrary to the welfare of the child, and that there is a need for detention under one of the criteria set forth in [Welf & I C §319\(b\)\(1\)–\(4\)](#). The court may rely upon the reports provided by the agency social worker, including copies of police reports, to make its decision. [Cal Rules of Ct 5.674\(b\)](#). In addition to making findings regarding detention of the child, the court must also determine whether the agency made reasonable efforts to prevent or eliminate the need for removal of the child from his/her home. [Welf & I C §319](#); [Cal Rules of Ct 5.678\(c\)](#). See [§6.2](#), Judicial Review of Agency's Reasonable Efforts; Chapter 7, Removal Decisions.

### II. [§4.2] ESTABLISHING JURISDICTION IN CASES WITH DOMESTIC VIOLENCE

A child exposed to domestic violence may come within the dependency court's jurisdiction under one or more subdivisions of [Welf & I C §300](#), depending on the facts of the individual case. See, e.g., *In re Robert A.* (1992) 4 CA4th 174, 179, 5 CR2d 438; *In re Jon N.* (1986) 179 CA3d 156, 161, 224 CR 319. While most dependency cases with

domestic violence that endangers children are filed under [Welf & I. C 300\(b\)](#), in appropriate cases they may also be filed under [Welf & I C §300\(a\)](#) or [§300\(c\)](#).

### III. [§4.3] PLEADING AND SUSTAINING LANGUAGE

In assessing the potential basis for jurisdiction at the initial hearing, the court must determine the form of harm to the child that serves as the foundation for the agency's allegations. Specifically, the judicial officer should consider the nature of the children's exposure to violence (*i.e.*, whether the children were directly harmed or within sight or sound of the abuse, the frequency of the children's exposure to the abuse, and how recently it occurred).

In an initial petition, the agency's allegations must contain a concise statement of facts to support the conclusion that the child fits within the definition of each of the sections and subdivisions under which the proceedings are being instituted. [Welf & I C §332\(f\)](#); *In re Nicholas B.* (2001) 88 CA4th 1126, 1134, 106 CR2d 465. Rather than having the petition simply state "the children have been exposed to domestic violence," the court should require and sustain explicit factual language that assesses each parent's responsibility for the abuse that placed the children at risk. There is no standard language for alleging conduct that constitutes domestic violence. Each count must be crafted on the specific facts of the case. As an example, the petition might state "on a specific date, the father slapped and punched the mother while she was holding the infant child."

The dependency court's focus must be the impact of the domestic violence on the children rather than the conduct of the parents. Nevertheless, it is important to clarify the respective responsibility of the parents for the court's intervention in the family in order to ensure that appropriate protections and services are provided to each parent and child (24).

### IV. [§4.4] JURISDICTION UNDER WELF & I C §300(A)

If domestic violence between the parents has resulted in the child having suffered serious physical harm or placed the child at substantial risk of such harm, jurisdiction may exist under [Welf & I C §300\(a\)](#).

In determining jurisdiction in cases in which domestic violence between the parents forms one of the bases for bringing the child abuse or neglect petition, the court must consider whether, pursuant to [Welf & I C §300\(a\)](#), the child has suffered or is at substantial risk of suffering serious physical harm. To meet the statutory standard, there must be a risk of harm inflicted nonaccidentally upon the child by the child's parent or guardian as a result of one parent's abuse of the other. [Welf & I C §300\(a\)](#).

In *In re Giovanni F.* (2010) 184 CA4th 594, 108 CR3d 885, the appellant argued that section 300(a) cannot, by its terms, support jurisdiction when a child is exposed to domestic violence. Reviewing the question *de novo*, the court concluded that

The purpose of section 300 "is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (§300.2). Although many cases based on exposure to domestic violence are filed under section 300, subdivision (b) (e.g., *In re Basilio T.* (1992) 4 CA4th 155, 168–169, 5 CR2d 450, superseded by statute on another point as noted in *In re Lucero L.* (2000) 22 Cal.4th

1227, 1239–1242, 96 CR2d 56, 998 P2d 1019; *In re Heather A.* (1996) 52 CA4th 183, 193–194, 60 CR2d 315), section 300, subdivision (a) may also apply.

*In re Giovanni F.*, *supra*, 184 CA4th at 598–599.

## V. [§4.5] JURISDICTION UNDER WELF & I C §300(B)

The most frequent basis for dependency court jurisdiction in cases with domestic violence is an allegation of the “failure or inability of a parent to adequately supervise or protect the child” from serious physical harm, as set forth in [Welf & I C §300\(b\)](#), due to the domestic violence. See, e.g., *In re Alysha S.* (1996) 51 CA4th 393, 396, 58 CR2d 494; *In re Jennifer R.* (1993) 14 CA4th 704, 706, 17 CR2d 759; *In re Basilio T.* (1992) 4 CA4th 155, 161, 5 CR2d 450; *In re E.B.* (2010) 184 CA4th 568, 109 CR3d 1; *In re Giovanni F.* (2010) 184 CA4th 594, 108 CR3d 85.

Jurisdiction pursuant to [Welf & I C §300\(b\)](#) may be appropriate in cases in which the child has suffered no direct physical harm but there is a pattern of domestic violence that has put the child at risk of harm. *In re Heather A.* (1996) 52 CA4th 183, 60 CR2d 315. The court in *In re Heather A.* sustained a petition based on the children’s father’s domestic violence against the stepmother. The court commented

Obviously the children were put in a position of physical danger from this violence, since, for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg, or by [the abused parent] falling against them . . . [D]omestic violence in the same household where children are living is neglect; it is a failure to protect [children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.

*In re Heather A.*, *supra*, 52 CA4th at 194. See also *In re Jon N.* (1986) 179 CA3d 156, 161, 224 CR 319.

The court in *In re E.B.*, *supra*, relied upon the court’s analysis of risk of harm in *In re Heather A.* In addition to finding that the father’s domestic violence had placed the children at risk, the court held that the mother remaining in an abusive relationship and her record of returning to the father, who physically and emotionally abused her and the children, supported the juvenile court’s finding that the mother’s conduct also endangered the children. *In re E.B.*, *supra*, 184 CA4th at 576. See also *In re S. O.* (2002) 103 CA4th 453, 461–462, 126 CR2d 553 (mother had permitted unsupervised visit with perpetrator of domestic violence).

A dependency petition pursuant to [Welf & I C §300\(b\)](#) must allege that the domestic violence was “perceived by or affected the child” or otherwise placed the child at substantial risk of harm. *In re Alysha S.*, *supra*, 51 CA4th at 398; *In re Heather A.*, *supra*. Depending upon the particular facts of the case, evidence of domestic violence in the home may not, by itself, be sufficient to sustain the petition. *In re Alysha S.*, *supra.*; *In re Daisy H.* (2011) 192 CA4th 713, 120 CR3d 709. *In re Daisy H.* involved allegations of domestic violence from more than two years before the filing of the dependency petition. There was no evidence that the children were physically exposed to the past violence between their parents nor of any ongoing violence between the parents who were separated at the time the petition was filed. The court referenced *In re Heather A.*, *supra*, and *In re Janet T.* (2001) 93 CA4th 377, 113 CR2d 163, in determining that “[p]hysical violence between a child’s parents may support the exercise of jurisdiction under

subdivision [Welf & I C §300] (b) but only if there is evidence that the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm.”

The court in *In re R.C.* (2012) 210 CA4th 930, 148 CR3d, 835 held there was sufficient evidence to support the allegation that the father engaged in domestic violence such that there was a substantial risk the children would suffer serious physical harm, even though the children were not physically harmed and two of them had not witnessed any violence. The court cited *Heather A.* and stated that courts have thoroughly explained the relationship between section 300(b) and domestic violence. The court distinguished the facts from those of cases cited by the father stating, “The present case involves materially more aggravated facts than in *J.N. and Daisy H.* This case does not involve a single act which endangers a child. Rather this case involves: two separate acts of domestic violence; repeated threats to kill the mother; a threat to take the children to Mexico; domestic violence in the presence of one of the children, R.C., being afraid of the father.”

Similarly, the court in *In re T.V.* (2013) 217 CA4th 126 upheld jurisdictional findings under section 300(b) where the child was not present during the domestic violence incident. Evidence of the parents’ lengthy history of domestic violence often requiring police intervention, the father’s several convictions for spousal abuse, and mother obtaining restraining orders against him was sufficient to show the domestic violence between the parents was ongoing and likely to continue, thereby placing the child at risk of harm.

The court in *In re John M.* (2013) 217 CA4th 410 also held that even though the child was not physically harmed, the parent’s history of domestic violence evidenced an ongoing pattern which presented a risk to the child’s physical and emotional health. Both parents hit each other; verbal altercations were frequent; and father engaged in reckless driving with mother in the car.

While it is rare for dependency petitions to be brought solely on the basis of domestic violence between the parents, domestic violence is often a significant factor in the parents’ failure or inability to adequately supervise or protect the child from risk of serious physical harm or illness.

Many abused parents engage in behaviors to protect themselves and their children despite remaining in abusive relationships, and abusive parents often attempt to undermine these protective actions.

The NCJFCJ Greenbook recommends that if the agency files a petition alleging the abused parent’s “failure to protect the children,” the court should require the agency to include appropriate allegations detailing the ways in which the abused parent failed to protect the children, and the reasons why. The court could require the agency to include this information in the report accompanying the petition. The Greenbook authors also suggest that judicial officers require the agency to include in the petition or accompanying report a discussion documenting any efforts the abused parent may have made to protect the children and identifying any person who may have prevented or impeded the abused parent from carrying out her/his parental duties (25).

## VI. [§4.6] JURISDICTION UNDER WELF & I C §300(C)

In some instances, domestic violence may be the cause of the child suffering or being at substantial risk of suffering serious emotional damage as described in [Welf & I C §300\(c\)](#). Expert evidence will usually be needed to prove the nexus between the alleged acts of domestic violence and the serious emotional harm suffered by the child (see *In re Brison C.* (2000) 81 CA4th 1373, 97 CR2d 746), but in particular cases, jurisdiction pursuant to [Welf & I C §300\(c\)](#) may be appropriate.

## VII. [§4.7] APPOINTMENT OF COUNSEL

Attorneys for the children should be appointed unless the court finds that the child would not benefit from the appointment of counsel ([Welf & I C §317\(c\)](#); [Cal Rules of Ct 5.534\(h\)\(1\)\(A\)](#), [5.660\(b\)](#)). Counsel should be appointed in a timely manner and provided with an opportunity to interview their clients (if the children are of an appropriate age) so they can be prepared to represent the children's interests. [Welf & I C §317\(e\)](#), (f). The children's attorneys have an affirmative duty to conduct whatever independent investigation is reasonably necessary to ascertain the facts, including the impact of parental domestic violence, in addition to the agency's investigation of the case. [Welf & I C §317\(e\)](#).

Similarly, the parents' attorneys should be appointed and prepared to advocate on behalf of each parent's interests. [Welf & I C §317\(b\)](#); [Cal Rules of Ct 5.534\(h\)\(1\)\(B\)](#). Separate counsel should be appointed for each parent, given the conflicts of interest that are likely to occur if the abusive parent and the abused parent share counsel.

TIP: “When counsel represents both parents, the judge should determine whether a conflict between the parents exists and should warn the parents about the dangers of dual representation. Some judges always appoint separate counsel because there is so often a potential for conflict.” California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* (Cal CJER).

As with judicial officers, all attorneys in dependency cases, including attorneys for the child welfare agency, court-appointed counsel, and counsel who volunteer their services, are required to participate in domestic violence training if training is available through existing programs at no cost to the county. [Welf & I C §218.5](#). Attorneys who represent parties in dependency proceedings must complete a minimum of eight hours of training or education in the area of juvenile dependency every three years, and the training and education must include information on domestic violence as well as child development, child abuse and neglect, substance abuse, family reunification and preservation, and reasonable efforts. [Cal Rules of Ct 5.660\(d\)\(3\)](#).

### VIII. [§4.8] AGENCY INVESTIGATION OF ALLEGATIONS

In cases involving domestic violence, judicial officers must rely to a great extent on the evidence produced as a result of the agency's investigation and identification of possible domestic violence. Thus, the court has an interest in ensuring that the agency conducts a thorough and accurate investigation of every allegation of domestic violence.

In investigating any allegations of domestic violence, and in undertaking an examination of factors that may indicate domestic violence even where there are no allegations, the agency should attempt to access and review

- medical and hospital records resulting from domestic violence (the agency must obtain a signed release from the abused parent in order to access these records); and
- law enforcement records, including incidents where law enforcement responded to the family's home.

Agency staff should include police reports documenting domestic violence, incident/injury reports, and medical reports as attachments to the jurisdictional report for the court's consideration. The absence of such reports is not definitive on the issue of whether domestic violence has occurred, however, as such incidents often do not lead to police intervention or medical assistance.

The agency social worker should also speak with neighbors, relatives, friends, and other collateral contacts to determine whether other evidence of domestic violence exists. Observation of the children's behavior can also provide important information that can assist the court in making a factual determination.

### IX. [§4.9] MUTUAL ALLEGATIONS

It is not unusual for a parent who has engaged in domestic violence to deny the abuse or falsely allege mutual abuse. Some abused parents do strike back physically or verbally against the aggressor in self-defense (26). If there are mutual allegations of abuse, the judicial officer should not automatically assume both parents are mutual combatants. Generally, the behaviors and attitudes of one parent will have been used to

intimidate, control, or isolate the other, and that person is viewed as the “dominant aggressor” (27). Research shows that men abuse women at far higher rates than women abuse men (28), and that women represent a minority of perpetrators of serious violence against their male partners (29).

TIP: In family court, under the [Domestic Violence Prevention Act](#), the court is prohibited from issuing mutual protective orders unless both parties personally appear and present written evidence of abuse or domestic violence, and the court makes detailed findings of fact that both parties acted primarily as aggressors and that neither party acted primarily in self-defense. [Fam C §6305](#). See [§12.9](#), Permissible Orders.

The agency’s investigation should be sufficiently thorough to assist the court in determining whether there has been mutual abuse or whether one parent is the dominant aggressor.

## X. [§4.10](#) DETENTION AND PLACEMENT OF CHILDREN

Once the court has determined that the abusive parent is the dominant aggressor, the court must then try to determine whether there are services and orders, including a restraining order against the abusive parent, that will enable the children to safely remain in the home.

In dependency cases with allegations of domestic violence, the agency will make recommendations regarding detention and placement of the children. [Welf & I C §319\(b\)](#); [Cal Rules of Ct 5.676\(b\)](#), [5.678\(a\)](#). Those recommendations should be supported by the agency’s detention report discussing the relevant facts. [Welf & I C §319\(b\)](#).

The agency should submit a report addressing whether the children can safely remain or return home to both parents, or whether removal from either parent or both parents is necessary in order to protect the children. The final determination regarding the children’s detention, services, and visitation with each of the parents, as appropriate, remains the responsibility of the judicial officer. [Welf & I C §§245.5, 319\(e\)](#). The court should also inquire into the agency’s attempts to enhance the children’s and abused parent’s safety. See Chapter 6, Agency’s Reasonable Efforts to Prevent Removal, and [§7.6](#), Safe Visitation.

Generally, the court should try to keep the children in the care of their abused parent whenever possible. See [§7.5](#), Removal (Temporary Detention) From the Abused Parent. If there are other allegations of neglect or abuse of the children against the abused parent, in addition to the domestic violence issue, the court may also decide that the children cannot safely remain with that parent.

# Chapter 5

## SAFETY AND CONFIDENTIALITY

### CONSIDERATIONS FOR THE COURT

- I. [\[§5.1\]](#) Addressing Safety Issues in Dependency Cases With Domestic Violence
- II. [\[§5.2\]](#) Safety in the Courtroom
- III. [\[§5.3\]](#) Confidentiality in Agency and Other Reports
- IV. [\[§5.4\]](#) Confidentiality of Shelters in the Court Record
- V. [\[§5.5\]](#) Danger Assessments

#### I. [\[§5.1\]](#) ADDRESSING SAFETY ISSUES IN DEPENDENCY CASES WITH DOMESTIC VIOLENCE

Although there is a significant correlation between child abuse and neglect and domestic violence, when the agency intervenes to protect a child, it may not always be immediately apparent to the social worker that domestic violence is an issue in the family. Even when domestic violence is identified, the county may not include domestic violence as one of the bases for the dependency petition. At every stage of a dependency case, the court must be vigilant to recognize and address domestic violence within a family in order to ensure safety in and outside the courthouse for the child, the family, agency and court personnel, witnesses, service providers, and the public.

Dependency cases that include domestic violence issues present courts with logistical and other safety-related challenges. Pursuant to [Cal Rules of Ct 10.172](#), all presiding judges are required to establish a comprehensive court security plan. Presiding judges should work with representatives of court security to ensure there is a protocol for handling cases in which there are allegations of domestic violence or other factors that may lead to a high level of emotionality and potential risk of harm to the parties, court staff, witnesses, and others in the courthouse.

Judicial officers should also establish and ensure that court mediators follow local protocols for cases with domestic violence issues. See Chapter 8, Dependency Court Mediation. The protocols should include specialized procedures to enhance the safety of the children, the abused parent, and other family members throughout the course of the mediation and in any settlement. [Cal Rules of Ct 5.518\(b\)\(3\)\(A\), \(B\)](#).

When a case involves domestic violence, the court's focus must include maintaining safety, addressing confidentiality issues, and ordering appropriate protections and services for the children and their parents.

#### II. [\[§5.2\]](#) SAFETY IN THE COURTROOM

Parties in cases involving domestic violence can be especially volatile. The court, the attorneys, and child welfare representatives should make bailiffs aware of domestic violence matters to ensure safety. Protections should be put in place to keep the parents

separated. Hearings should be structured to minimize the opportunities for the abusive parent to intimidate the abused parent or the children.

TIP: Many abused parents and their children can be easily intimidated by subtle looks, gestures, and words from the abusive parent that might be overlooked or appear benign to others. Where practical, the abused parent and the children should be directed to wait in a safe area so the abusive parent has less opportunity to seek them out while waiting for the case to be heard.

The court should attempt to hear these matters as quickly as possible to keep the possibility of contact between the parents to a minimum.

Judicial officers should arrange their courtrooms to ensure that the parents are not required to sit near each other, and that there is sufficient space between them at the counsel table. When both parents require the assistance of an interpreter, the court should try to obtain individual interpreters for each party to minimize physical proximity and the opportunity for intimidation. It is important for court interpreters, bailiffs, and other court personnel to receive domestic violence training to help ensure safety in the courtroom and the courthouse.

The NCJFCJ Greenbook recommends that “[t]he juvenile court should ensure that all participants in the court system are trained in the dynamics of domestic violence, the impact of domestic violence on adults and children, and the most effective and culturally responsive interventions in these cases, including safety planning.” (Rec.47)

Comprehensive security plans should also address safety considerations outside the courthouse, such as in court parking lots, since leaving the courthouse provides the opportunity for dangerous interactions. If a violent incident occurs in or outside the courtroom, the incident should be documented, and the presiding judge and sheriff should review the court security plan to determine whether additional safety measures are needed to address risks and prevent similar problems in the future.

### III. [§5.3] CONFIDENTIALITY IN AGENCY AND OTHER REPORTS

The court should address confidentiality concerns whenever needed for the protection of the abused parent and children. If the child welfare agency is filing a petition and knows that one of the parents is a victim of domestic violence and is currently living separately from the abusive parent, the agency is mandated to keep the address of that parent confidential. [Welf & I C §§332\(e\), 302\(b\)](#).

The court is required to provide parties to a dependency action with access to the court file that typically includes the addresses of both parents. [Welf & I C §827\(a\)\(1\)\(D\)](#). Together with the agency, however, the court should make every effort to ensure the abused parent’s address (including information that could be used to identify the area where the abused parent lives) does not appear in the reports or other documents in the court file.

TIP: Judicial officers should ensure that there is a system in place for maintaining the abused parent's address in a confidential portion of the court file, and that court clerks are well-trained to prevent release of the confidential portion of the file for copying or inspection pursuant to [Welf & I C §827](#).

One way for an abused parent to ensure her/his address is confidential is to sign up for the California Safe At Home Confidential Address Program that can be used to provide parents who are not residing in a shelter with a permanent, nonresidential legal address. [Govt C §§6205 et seq.](#) Child welfare workers, domestic violence agency staff, and other service providers can assist abused parents with applying for the program and maintaining confidentiality.

TIP: [Safe at Home](#) is a confidential address program administered by the California Secretary of State's Office. [Safe at Home](#) program participants can use a free post office box instead of their home address to help them maintain their privacy when receiving first-class mail, opening a bank account, completing a confidential name change, filling out government documents, registering to vote, getting a driver's license, enrolling a child in school, or other actions that require an address. <http://www.casafeathome.org/>.

Judges should not assume that every abused parent who applies to the Safe at Home program is immediately enrolled; there are various program requirements parents must meet, and there can be delays in issuing program ID cards to enrolled parents.

The court may keep the child's placement address confidential to protect the safety of the child. This may be particularly important when making visitation orders; the court is prohibited from making visitation orders that jeopardize the safety of the child. [Welf & I C §362.1\(a\)\(1\)\(B\)](#). The agency and the court must be cautious about revealing addresses of the children's schools, doctors, therapists, and other service providers so as not to provide the abusive parent with information that could enable harassment or more serious actions against the abused parent and the children.

#### IV. [§5.4] CONFIDENTIALITY OF SHELTERS IN THE COURT RECORD

In cases in which the abused parent resides in a domestic violence shelter for protection and safety (with or without the children), the court has particular responsibilities regarding confidentiality. [Welfare and Institutions Code §18301](#) requires the location of a domestic violence shelter to remain confidential and prohibits the disclosure of any information pertaining to the location or identity of any shelter resident, employee, or volunteer. Given this mandate, the court must ensure that the name and address of the domestic violence shelter is kept strictly confidential on all documents and court reports and not disclosed in open court. The shelter's street address must be kept in a confidential portion of the court file, using a system that ensures the information is not released for copying or inspection pursuant to [Welf & I C §827](#). This practice is essential for the safety of the abused parent and children as well as shelter staff.

**TIP:** Domestic violence shelters often use post office boxes for their nonconfidential addresses, and that same address can be used for the abused parent while s/he is residing in the shelter.

Despite the confidentiality requirements for shelters, sometimes a shelter's name and address is known to the local child welfare agency or the children's and abused parent's attorneys. In these situations, the court still has responsibility for ensuring that the shelter's identifying information remains confidential from all other parties.

**TIP:** It is helpful for the front of the court's file to reflect the court's order of confidentiality so the order is clearly visible to all court personnel handling the file.

Some shelters' concerns about confidentiality lead them to be reluctant to allow agency social workers to visit the facility for any reason, including for an assessment to determine whether to release the children to the parent staying at the shelter. In recognizing these legitimate confidentiality concerns, both the court and agency can work with local shelters to address safety issues. See [Cal Rules of Ct, Standards of J Admin 5.40\(e\)](#).

When staff or volunteers from a shelter or other domestic violence program appear in court as a support person for the abused parent, they should not be required to identify themselves in the courtroom other than as advocates. Specifically, they should not be required to state their full name, the name of the shelter they are affiliated with, or the address of the shelter. Revealing such information in open court can be problematic for many reasons. First, it may necessitate the relocation of the abused parent and children to another shelter for their safety. It may violate the prohibition on releasing information about the location of the shelter and may place the advocate at risk of personal harm or harassment by the abusive parent. See [Welf & IC §18301](#).

## V. [§5.5] DANGER ASSESSMENTS

When there is a high level of danger to the abused parent from the abusive parent, their children are also at increased risk of harm (30). Both the agency and the court have responsibility for assessing the level of danger for the children. There are common factors that indicate increased danger for the abused parent, although these are not present in every case with risk of serious harm. Some factors to note about the abusive parent's behavior that indicate increased danger and potentially lethal situations include

- recent escalation of violence, including choking the abused parent;
- threatening homicide or suicide;
- accessing and using weapons;
- forcing sexual relations;
- beating the abused parent when she is pregnant;
- threatening to harm the children;
- engaging in substance abuse;
- obsessive jealousy and monitoring behaviors;
- extreme levels of control over daily activities; and

- current instability such as unemployment (31).

The safety risk for abused parents and their children often increases when they initiate separation from the abusive parents (32). Child protection interventions can also increase danger to abused parents. Abusive parents frequently threaten that greater harm will come to the abused parent and their children if the domestic violence is reported to authorities, and as a result, a real risk exists that the violence will increase when the dependency system intervenes in a family. The safety of abused parents and their children can be compromised if the dependency system intervenes in a family and fails to address the domestic violence specifically and appropriately (33).

# Chapter 6

## AGENCY'S REASONABLE EFFORTS TO PREVENT REMOVAL

- I. [\[§6.1\]](#) Reasonable Efforts in Dependency Cases With Domestic Violence
- II. [\[§6.2\]](#) Judicial Review of Agency's Reasonable Efforts
- III. [\[§6.3\]](#) Strategies to Promote Child Safety
- IV. [\[§6.4\]](#) Exclusion of the Abusive Parent
- V. [\[§6.5\]](#) Agency Actions: Examples of Reasonable Efforts

### I. [\[§6.1\]](#) REASONABLE EFFORTS IN DEPENDENCY CASES WITH DOMESTIC VIOLENCE

This portion of the Guide is designed to aid judges in making the reasonable efforts findings required by federal and state law in dependency cases involving domestic violence, with a focus on strategies to promote child safety and provide families with necessary protections and services.

Under federal law, judicial officers must make determinations regarding the agency's "reasonable efforts" to prevent removal of children from their parents. Federal law also require judges to make separate determinations regarding the agency's efforts to achieve permanency for the children, whether the permanency plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement. [45 CFR §1356.21\(b\)](#). California law requires that a reasonable efforts determination be made at every hearing, from the initial removal of the children through termination of parent rights. [Welf & IC §§306, 319, 361, 366.21\(e\), \(f\), 366.22\(a\)](#); [Cal Rules of Ct 5.678\(c\)](#).

[California Rules of Court, Standards of J Admin 5.40\(e\)\(8\)](#) , sets forth the "unique role of a juvenile court judge," and encourages juvenile court judges to:

Evaluate the criteria established by child protection agencies for initial removal and reunification decisions and communicate the court's expectations of what constitutes "reasonable efforts" to prevent removal or hasten return of the child.

The NCJFCJ Greenbook recommends that "[j]udges should use their judicial powers, including utilizing the 'reasonable efforts' requirement of state and federal law, to see that social services provide adequate efforts to ensure safety for child and adult victims of domestic violence." (Rec.56)

Judicial officers may consider a number of factors when making reasonable efforts determinations: the adequacy of the case plan and services provided; the timeliness of service provision; access to visitation; whether efforts were made in good faith; the parent's response to the efforts; and resource limitations (34). Generally, courts will not require agencies to make every possible effort; "the standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services

were reasonable under the circumstances.” *In re Misako R.* (1991) 2 CA4th 538, 547, 3 CR2d 217 (35).

## II. [§6.2] JUDICIAL REVIEW OF AGENCY'S REASONABLE EFFORTS

The court has responsibility for making an initial determination to assess whether reasonable efforts have been made or could be put in place by the agency to prevent removal of the child(ren) from one or both parents, and whether there are available services that would prevent the need for further detention of the child. [Welf & I C §§306\(b\), 319\(d\)\(1\)](#).

**TIP:** It is critical for the court to make the requisite findings when such findings are supported by the evidence. A failure to make the required federal findings regarding the agency's reasonable efforts at this stage of the proceedings, especially where a child is detained, may result in a loss of federal matching funds to reimburse the cost of foster care.

To determine whether an agency's efforts to prevent removal have been reasonable, judges must first understand the family's problems that the agency should be trying to address. It is common for domestic violence to co-occur with substance abuse and mental health issues, and if these are untreated, it may be impossible for parents to comply with a case plan focused on the violence. At the same time, judges should ensure that the agency's focus on mental health or substance abuse issues does not result in a failure to recognize and address domestic violence. Making reasonable efforts requires addressing all of the family's problems that compromise the child's safety, and addressing those problems in ways that keeps abused parents safe while they work on other issues (36).

The court should review the social worker's report and other evidence of the actions the agency has taken to protect the children and to provide necessary, timely services (particularly those addressing the domestic violence) to enable the children to remain in the home with one, or possibly both, of their parents. [Welf & I C §319\(d\)\(1\), \(2\)](#); [Cal Rules of Ct 5.678\(c\)](#).

The judicial officer should initially confirm the agency's rationale for removing or seeking removal of the child. In a case involving domestic violence, efforts to prevent the need for removal may vary depending on whether (a) the child was being physically or emotionally abused by the person who was perpetrating domestic violence against the abused parent; (b) the child was being physically or emotionally abused or neglected by the abused parent; or (c) the child was exposed to domestic violence in the home (37).

*Note:* There has been controversy over courts sustaining an allegation of neglect against an abused parent when the sole basis for detaining the child is that the abused parent has been assaulted in the presence of the child. See *Nicholson v Williams* (EDNY 2002) 203 F Supp 2d 153, and discussion in [§7.5](#), Removal From the Abused Parent.

Once the court has determined the manner in which the family came to the agency's attention and how it was determined that domestic violence was an issue for the family, the court should confirm what type of injury or risk of injury to the child (physical, emotional) is alleged.

The court will then review how the agency sought to address the domestic violence before seeking removal (or why the agency assessed that immediate removal was

warranted). The agency's reasonable efforts should include helping the abused parent with safety strategies such as engaging in safety planning, locating safe housing, and obtaining a restraining order, if appropriate, to keep the parent and children safe and together (38). See §6.3, Strategies to Promote Child Safety, §9.3, Services for Abused Parents, and Chapter 12, Juvenile Court Restraining Orders.

Pursuant to [Welf & I C §319\(d\)\(1\)](#), “[s]ervices to be considered for purposes of making the reasonable efforts determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, . . . parenting training, transportation, and any other [authorized] child welfare services . . . .”

The court should require the agency to explain why those alternative services and strategies were not sufficient to prevent removal. Judges must be willing to make a “no reasonable efforts” finding when such findings are warranted (39) even though there may be a financial cost to the agency. The court's finding that the agency failed to make reasonable efforts to prevent removal may lead to a complete loss of federal funds or, if the finding is made at a review or disposition hearing, then a loss of federal funds for the time period during which the judge determines no reasonable efforts were made.

If domestic violence was not the reason that the case originally came to the attention of the child protection agency, the court should ask whether the agency timely provided services to address the domestic violence when it learned that domestic violence was an issue (40).

If the child has already been removed, the court should ask what protections would be needed to allow the child to return home immediately and safely, and what services would be needed to support the child's return.

Courts have sometimes been reluctant to find that reasonable efforts have not been made in cases involving domestic violence, but judges should not simply rubber stamp agency efforts. Judges can help to ensure that agencies prevent unnecessary removals and facilitate reunification by requiring agencies to prove that they have made reasonable efforts, including providing domestic violence services to families as soon as the issue is identified (41). Judges are charged with ensuring not only that the child welfare agency has made some affirmative effort to prevent removal or reunify the family, but that those efforts are appropriate, timely, and tied to the problems that initially brought the family to the attention of the child welfare system or subsequently became apparent (42).

### **III. [§6.3] STRATEGIES TO PROMOTE CHILD SAFETY**

In order to create safety for a child, the court must address both the maltreatment of the child and the domestic violence in the family. The well-being of children exposed to domestic violence in their families is often promoted by the court adopting an approach that supports the safety and self-efficacy of the abused parent, while requiring both parents to address the domestic violence issues (43). For services for abused and abusive parents, see [§§9.3, 9.5](#).

The NCJFCJ Greenbook recommends:

Child protection workers should develop service plans and referrals that focus on the safety, stability, and well-being of all victims of family violence and that hold domestic violence perpetrators accountable. (Principle X)

Agency policy must state clearly the criteria under which children can remain safely with non-abusing parents experiencing domestic violence; the assessment required to determine safety; and the safety planning, services, support, and monitoring that will be required in these cases. (Rec.19)

When domestic violence has been substantiated, the safety of the children and the abused parent depend on having a realistic and comprehensive safety plan. Safety plans can be created by the abused parent with the help of a community-based domestic violence service provider, an agency social worker, a dependency mediator (See [Cal Rules of Ct 5.518\(b\)\(3\), \(c\)\(2\)\(A\)](#)), as well as the parent's attorney. Sample safety plans can be found in Appendix B. Assisting abused parents in their efforts to develop and maintain predictable and safe life routines—insofar as is possible—is consistent with effective interventions with high-risk children and families (44).

The court has ongoing responsibility for oversight of the agency's reasonable efforts. In reviewing a safety plan, the court should consider what services and protections the agency could put in place to assist the abused parent and the children in establishing a safe environment. To aid the family in securing safe housing, the agency may refer them to a domestic violence shelter or request the court to issue a restraining order excluding the abusive parent from the family home. [Welf & I C §§213.5 and 304](#). See [§6.4](#), Exclusion of the Abusive Parent, and Chapter 12, Juvenile Court Restraining Orders. Other protections and services could include

- counseling;
- confidential placement; and
- a specific supervised visitation order.

The court should determine the steps taken by the agency to assess the likelihood of future domestic violence including whether agency staff consulted with domestic violence service providers, or with a probation officer, parole officer, or treatment provider involved with the abusive parent (45). See [§5.5](#), Danger Assessments (Lethality). The more thorough the agency's and the court's understanding of the risk of harm to the abused parent and the children, the more realistic and effective the safety plan can be. After reviewing the agency's plan, the court can determine the appropriate combination of protections and services to include in its order.

#### **IV. [\[§6.4\]](#) EXCLUSION OF THE ABUSIVE PARENT**

The court should review how the agency has dealt with the abusive parent, and whether the agency holds that parent accountable for the domestic violence. The court should determine whether the agency sought to remove the abusive parent from the home, either through a voluntary agreement or by requesting the court to issue a restraining order with an exclusion provision. See Chapter 12, Juvenile Court Restraining Orders.

In making the determination to temporarily detain a child at an initial hearing, judicial officers should consider the guidance given later in the Welfare & Institutions Code regarding the topic of removal of the children from the custody of their parents. [Welfare & Institutions Code §361\(c\)\(1\)](#) requires the court to consider, as a reasonable means to protect the children, the option of excluding an abusive parent from the home.

Exclusion of the abusive parent can be accomplished either by agreement or through the use of a restraining order that includes an exclusion order. [Welf & I C §213.5](#); see Chapter 12, Juvenile Court Restraining Orders. A restraining order alone, without the added protections of supervision and services, is rarely a complete remedy for families experiencing domestic violence. However, a restraining order with an exclusion order is often an appropriate initial tool for protecting the children and allowing them to remain in the care of the abused parent while both the children and the parents are receiving services. [Welf & I C §319\(d\)\(1\)](#).

The court must also consider, as a reasonable means to protect the children, allowing the abused parent to retain physical custody so long as s/he presents a plan acceptable to the court demonstrating the ability to protect the children from future harm. [Welf & I C §361\(c\)\(1\)](#); see also *In re Basilio T.* (1992) 4 CA4th 155, 171–172, 5 CR2d 450, in which the appellate court overturned a dispositional order removing the children from the parents' custody due to domestic violence stating, “the trial court failed to consider less drastic measures than removal from parental custody . . . there were less drastic alternatives to removal. . . .” Such a plan could include the abused parent residing in a domestic violence shelter with the children. In some circumstances, residing temporarily in a shelter can be a less dangerous and preferable alternative to the parent obtaining a restraining/exclusion order and remaining in the family home.

## V. [§6.5] AGENCY ACTIONS: EXAMPLES OF REASONABLE EFFORTS

Reasonable efforts by the agency to prevent removal should include providing the abused parent with the most basic and effective protections.

Reasonable efforts that address safety include

- assisting in the creation of a safety plan for the abused parent and the children;
- consulting with a local domestic violence agency about providing advocacy and services, and linking the abused parent and the children with that agency;
- assisting the abused parent in seeking a restraining order for her/himself and the children;
- assisting the abused parent and the children in securing temporary, confidential shelter or other housing assistance; and
- requiring supervised visitation or other restricted visitation for the abusive parent, and providing access to visitation center services.

In focusing on the abusive parent, reasonable efforts to address the domestic violence include

- requiring batterers' intervention program counseling; and
- ensuring appropriate probation/parole contacts.

The court may require the agency to request frequent and detailed progress reports from the batterers' intervention program. The court may also require the agency to assist

the parents in accessing other services as part of the agency's reasonable efforts, depending upon the availability of such services.

Additional services may include

- arranging for domestic violence counseling for the parents and the children;
- providing parenting classes that incorporate information on the impact of domestic violence on the children;
- assistance in accessing a crisis nursery or other child care services;
- providing transportation assistance;
- assistance in accessing cash payment or noncash services to meet basic needs;
- providing referrals to legal assistance on related matters;
- providing interpreters to assist with accessing services and protections;
- providing substance abuse treatment;
- providing mental health services for the parents, and/or the children; and
- offering housing and employment services (46).

The key is for the agency to make individualized assessments and provide case management and other services tailored to the needs of each family member, and for judicial officers to ensure that agencies are adequately performing this mandatory function. To be effective, services must be culturally competent, linguistically appropriate, and when dealing with parents from immigrant communities, sensitive to possible immigration-related concerns (47). The court's review of the agency's efforts should take these factors into consideration. If the agency has failed to do so, the court has the responsibility to find that "reasonable efforts have not been made," and to make specific orders requiring the agency to undertake the necessary assessment and provision of services.

# Chapter 7

## REMOVAL DECISIONS

- I. [\[§7.1\]](#) Requirements for Removal Decisions
- II. [\[§7.2\]](#) How Domestic Violence May Affect Parenting by the Abusive Parent
- III. [\[§7.3\]](#) Removal (Temporary Detention) From the Abusive Parent
- IV. [\[§7.4\]](#) How Domestic Violence May Affect Parenting by the Abused Parent
- V. [\[§7.5\]](#) Removal (Temporary Detention) From the Abused Parent
- VI. [\[§7.6\]](#) Safe Visitation

### I. [\[§7.1\]](#) REQUIREMENTS FOR REMOVAL DECISIONS

Agency staff must provide judicial officers with sufficient detail of the history of domestic violence and the agency’s assessment of current danger to the children for the court to make appropriate findings and orders. The parents’ and children’s attorneys can also provide useful information on this issue.

At the initial (detention) hearing, if the agency recommends that the child be removed from the parents’ home, there must also be a showing that continuation in the home is contrary to the child’s welfare, and there is a need for detention under one of the criteria set forth in [Welf & I C §319\(b\)\(1\)–\(4\)](#). The crucial factor in most cases involving domestic violence is [Welf & I C §319\(b\)\(1\)](#) (“[t]here is a substantial danger of the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child’s physical or emotional health may be protected without removing the child from the parent’s or guardian’s physical custody”).

The court must examine the child’s parents, guardians, or others with pertinent knowledge and hear any relevant evidence that the child and the parents would like to present. The court must also receive evidence from the agency social worker on any necessity for initial removal and continued detention. [Welf & I C §319\(a\), \(e\)](#); see [Cal Rules of Ct 5.674\(b\)](#).

#### *Implications for Judges*

Judges should be aware of how the abused parent and the abusive parent are likely to present themselves to social workers, court staff, and to judges themselves. On first glance, the perpetrator may appear to be the better parent—charming, cooperative, and in control of the children. The abused parent, on the other hand, may seem stressed, depleted, and an inadequate parent due, at least in part, to the techniques used by the abusive parent to undermine the abused parent’s confidence and parenting (48).

Judges should ask about the parenting skills of each parent and ensure that if parenting classes are part of the service plan, those classes address the unique issues faced by the abused and abusive parents. Abused parents’ parenting skills should be reviewed not only at the initial hearing, when their safety may still be compromised, but also when they have had time to establish safer, more stable environments for themselves

and their children. Any physical abuse perpetrated by either parent should not be ignored, but judges should be cognizant of the research suggesting that physical abuse by the abused parent decreases markedly when safety is established (49).

In making determinations regarding removal of the children from the parent who has perpetrated the domestic violence, or from the abused parent, it can be helpful to consider how domestic violence may affect each parent's ability to parent.

## II. [§7.2] HOW DOMESTIC VIOLENCE MAY AFFECT PARENTING BY THE ABUSIVE PARENT

Abusive parents typically exhibit a number of characteristics in their approach to parenting. They “tend to be rigid, authoritarian parents,” expecting to be obeyed without question (50). They have a limited tolerance for criticism and are likely to engage in verbally abusive child rearing (51). They are often underinvolved with their children, lacking basic knowledge about their children's daily lives and developmental abilities (52). Abusive parents tend to be self-centered and manipulative, focused on their own needs rather than those of their children (53). Where severe domestic violence exists, a child is more likely to be neglected (54). Multiple studies have found elevated rates of child physical abuse by domestic violence offenders (55), although not all parents who perpetrate domestic violence are equally dangerous to their children (56).

Some parents use the children in their efforts to abuse the other parent (57) and often overtly and covertly undermine the abused parent's authority with their children, making it more difficult for the abused parent to effectively parent the children. Abusive parents can impact children's bonds with the abused parent in a number of ways, including directly interfering with the abused parents' efforts to provide emotional or physical care for a child in need (58).

The abusive parent's use of physical violence and/or demeaning behavior indicates to the children that the abused parent need not be treated with respect and that using physical violence against that parent is acceptable (59). Children who are afraid to express their fear and anger at the abusive parent may turn it against the abused parent, further damaging their relationship (60). Abusive parents may also seek to consolidate their power by creating division within the family by scapegoating and encouraging others to target one of the children (61).

Paradoxically, abusive parents tend to perform well when being observed—for example, in a supervised visitation setting (62). However, most abusive parents who are attempting to stop their controlling and violent behavior lack an understanding of how to improve their parenting skills and begin the process of rebuilding their relationships with the children. These parents can benefit from batterers' intervention services that include a parenting component (63). See §9.5, Services for Abusive Parents.

## III. [§7.3] REMOVAL (TEMPORARY DETENTION) FROM THE ABUSIVE PARENT

When making the determination about whether to temporarily detain children from the custody of an abusive parent, the court should consider any physical abuse the parent has directed at the child, and also assess whether his/her parenting style is emotionally abusive to the child as the basis for removal under [Welf & I C §300\(b\) or \(c\)](#).

The court should also review the abusive parent's use of violence against the abused parent. The court must consider the risk posed to the children of being physically injured during the course of a domestic violence incident, as well as the likelihood of the children suffering emotional harm from seeing or hearing the domestic violence incidents, and dealing with the aftermath of those incidents.

The domestic violence-related information the court may want to consider in making the decision about whether to remove the children from the abusive parent includes

- the reported length of domestic violence history between these parents, the severity of the abuse, and whether the abuse has increased in severity or frequency;
- whether this appears to be the first time the abusive parent has been abusive to any partner;
- whether the abusive parent has avoided arrest for domestic violence;
- the degree to which the children have been exposed to domestic violence;
- whether the children are manifesting detrimental effects of living in a home with domestic violence;
- whether the abusive parent has threatened to harm or abduct the children;
- whether the abusive parent has physically or emotionally abused the children and, if so, the circumstances of the abuse;
- whether the abusive parent has a substance abuse problem or mental health issues;
- whether there are guns or other weapons in the home or otherwise accessible; and
- whether services have been previously offered to the family, the nature of the services offered, and whether the abusive parent was willing to participate in those services (64).

**TIP:** In contemplating the abusive parent's willingness to participate in services, the court may want to consider factors that facilitate or discourage participation, including access to resources, cultural factors, and financial factors.

The agency should recommend, and the court should order, batterer's intervention program requirements for the abusive parent and appropriate services that could support visitation and, ultimately, possible reunification with the abusive parent. [Welf & I C §319\(d\)](#). See [§9.5](#), Services for Abusive Parents.

#### **IV. [§7.4] HOW DOMESTIC VIOLENCE MAY AFFECT PARENTING BY THE ABUSED PARENT**

Not surprisingly, abused parents tend to experience greater levels of stress than other parents. Fortunately, the stress of domestic violence does not always negatively affect their parenting skills (65) although it can deprive abused parents of the physical and emotional energy needed to parent (66). While child welfare agency staff and dependency judicial officers may reasonably have concerns about the ability of an abused parent to adequately protect and parent the children, research shows that many abused parents display effective and nurturing parenting even while being battered (67), and many attempt to parent in ways that compensate for the violence (68).

There is some data suggesting that abused parents may be more likely to physically abuse their children than parents who do not experience domestic violence (69). There is also evidence that some abused parents engage in harsh physical discipline as a protective measure to counter the behavior of the abusive parent against both the child and the abused parent (70). One study found that abused parents are more aggressive with their children while they are in the violent relationship, but analysis of follow-up data revealed that within six months of leaving the violent relationship, their levels of aggression toward the children had returned to normal (71). Other studies confirm that the likelihood of the abused parent physically abusing the children *decreases* when both the parent and the children are safe from domestic violence (72).

Judicial officers may have particular concern about the parenting provided by an abused parent who chooses to remain in or return to an abusive relationship, though these parents may be able to provide protection to the child. Abused parents who are struggling with the effects of domestic violence generally benefit from protections that provide security for themselves and their children, and from services that enhance their self-confidence and promote effective parenting practices. See §9.3, Services for Abused Parents.

## V. [§7.5] REMOVAL (TEMPORARY DETENTION) FROM THE ABUSED PARENT

The NCJFCJ Greenbook recommends that “[t]he juvenile court should prioritize removing any abuser before removing a child from a battered mother.” (Rec.60)

The court’s responsibility for the safety of the child makes it imperative to determine whether or not the abused parent has the willingness and ability to protect the children if appropriate protections and supportive services are provided. It is generally regarded as not in the best interests of the children to detain them from the custody of the parent who is a victim of domestic violence and not a participant or perpetrator; those actions can be viewed as further victimizing and penalizing the abused parent and the children (73).

Removal poses particular risks for children from homes with domestic violence. *Nicholson v Williams* (EDNY 2002) 203 F Supp 2d 153, a federal lawsuit, challenged the child welfare agency’s policy of pursuing dependency cases against abused parents who “engaged in” domestic violence (by being abused). Experts testified that separation from an abused parent can provoke fear and anxiety in children, diminishing a child’s sense of stability and self, and how disruption of the parent/child bond can be even more damaging for children from violent homes (74). “Children exposed to domestic violence are often anxious about their battered parent’s well-being, afraid to leave the parent for even short periods of time lest something happen to that parent. Removal from the parent greatly increases that separation anxiety . . . and may be experienced by the child as a ‘traumatic act of punishment’ ”(75).

Removal may also mean entering a foster care system where abuse and neglect can occur and where very few foster parents are screened for domestic violence, exposing the child to further trauma without the protection of the parent/child bond (76).

Welfare and Institutions Code §361 is clear that removal from the abused parent is appropriate only in cases where there is *no other way to protect the child*. Welf & I C

§361. Agencies can provide a variety of services to the abused parent to avoid the necessity of placing children in out-of-home care (77). See Chapter 6, Agency's Reasonable Efforts to Prevent Removal; see §9.3, Services for Abused Parents. The court in *In re Jon N.* (1986) 179 CA3d 156, 161, 224 CR 319, found no abuse of discretion by the trial court in placing the child with the abused parent who was "described in the reports as a good parent when the father is absent, nor in concealing her residence, permitting her to move, and arranging for visitation under controlled conditions."

Removal of the children from the abused parent may be appropriate only when the agency has provided all available protections and services in a meaningful manner, but the parent continues to demonstrate s/he is unable or unwilling to use the services and protections to ensure the child's safety. *Welf & IC §361*.

If the child is initially removed from the abused parent due to safety concerns, the court must order the child returned to that parent if placement with the parent becomes a feasible option by virtue of the parent receiving appropriate services and protections. *Welf & IC §319(d)(2)*; see *Cal Rules of Ct 5.678(c)(2)*.

In sustaining dependency jurisdiction in the case of *In re E.B.* (2010) 184 CA4th 568, 109 CR3d 1, the court found that, "Mother's remaining in the abusive relationship, and her record of returning to Father despite being abused by him, support the juvenile court's finding that her conduct in the domestic altercations endangered the children." 184 CA4th at 576 (the domestic violence was not the only issue leading the court to sustain dependency jurisdiction in this case). It is noteworthy that the Court also affirmed the lower court's determination to remove the children from the abusive parent's custody and *to allow them to remain in the custody of the mother*. 184 CA4th at 577.

The information the court may want to consider in making the removal decision (in addition to the factors enumerated above for removal from the abusive parent), includes

- whether the abused parent has previously left and then returned to the abusive parent and the reason for the return;
- whether this is the first time the abused parent has been victimized in a relationship;
- whether the abused parent left the abusive situation before coming to court;
- whether the abused parent is currently in a shelter or safe place;
- whether relatives or friends are a viable resource to keep the abused parent and children safe so they can remain a unit; and
- whether the abused parent is currently willing to participate in services.

**TIP:** In contemplating the abused parent's willingness to participate in services, the court may want to consider factors that facilitate or discourage participation, including safety, access to resources, cultural factors, and economic factors such as lack of affordable housing.

In some cases, the combination of problems experienced by the family is so serious that the safety of the children is significantly at risk. If the court determines that the children must be removed from the abused parent, the focus of the agency's efforts will turn to providing domestic violence counseling and other support services for the parents and the children that specifically address safety risk factors and will enable reunification.

## VI. [§7.6] SAFE VISITATION

In issuing an order detaining a child, the court must consider whether visitation with the child's parents and other persons, including siblings, would be beneficial or detrimental. The court must provide for some form of visitation between each of the parents and the child (Welf & I C §362.1(a)(1)(A); Cal Rules of Ct 5.670(g)) except in cases where any form of visitation could result in harm to the child. Welf & I C §362.1(a)(1)(B); *In re Daniel C.H.* (1990) 220 CA3d 814, 838–839, 269 CR 624.

Visitation is essential for maintaining each parent's ties with their child and for providing the agency and the court with information relevant to deciding if and when to return a child to the custody of one or both of the parents. Welf & I C §362.1(a). Visitation must be as frequent as possible, consistent with the well-being of the child (Welf & I C §362.1(a)(1)(A)), but the court must not issue any visitation order that jeopardizes the safety of the child. Welf & I C §362.1(a)(1)(B).

The dynamics of domestic violence present additional challenges in arranging safe visitation that the court must take into account when overseeing the agency's visitation arrangements (78). Abusive parents may use visitation opportunities to act on threats of harm or abduction (79). The safety of abused parents and their children can be compromised if the dependency system intervenes in a family and fails to address the domestic violence specifically and appropriately, including safely structuring visitation (80).

The NCJFCJ Greenbook recommends that “[t]he juvenile court should require that safe visitation and visitation exchange locations be utilized so that supervised visits and exchanges will be safe for the child and for the battered woman.” (Rec.65)

In the most serious cases, the court can deny visitation to a parent if it finds that visitation would be detrimental to the child. *In re Mark L.* (2001) 94 CA4th 573, 580, 114 CR2d 499; *In re David D.* (1994) 28 CA4th 941, 33 CR2d 861. (There is a split of authority as to whether that detriment must be proven by clear and convincing evidence or only by a preponderance of the evidence.) See, e.g., *In re Dylan T.* (1998) 65 CA4th 765, 76 CR2d 684; *In re Manolito L.* (2001) 90 CA4th 753, 760, 109 CR2d 282. The court can order visitation to be curtailed until the parent is rehabilitated. See *In re Cheryl H.* (1984) 153 CA3d 1098, 1133, 200 CR 789. To protect the safety of the child and the abused parent, the court may also keep the child's address confidential. Welf & I C §362.1(a)(1)(B).

The judicial officer has responsibility for determining each parent's right to visitation, the length and frequency of visitation, and whether visitation should be supervised (81). The court cannot delegate unlimited discretion to agency social workers (or others, such as therapists) to determine whether visitation should occur and under what circumstances. *In re Donovan J.* (1997) 58 CA4th 1474, 1476–1478, 68 CR2d 714 (granting therapist sole discretion to determine if visitation should occur was unlawful delegation of authority). In an appropriate case, however, the details of implementing the court's visitation order may be delegated to the agency. See *In re Moriah T.* (1994) 23 CA4th 1367, 1374, 28 CR2d 705.

In making visitation orders, the court should take into account possible detriment to the children as it considers

- any existing orders for no contact or restricting visits;

- the severity and length of abuse of the parent;
- the degree to which the children have been exposed to, or suffered the aftermath of, the domestic violence;
- any previous injury to the children during a domestic violence incident;
- any previous physical or emotional abuse of the children;
- any threats by the abusive parent to harm or abduct the children;
- the abusive parent's use of the children in power and control tactics;
- the wishes of the children; and
- the safety concerns of the abused parent.

The court should take all of these factors into consideration and include appropriate protections to ensure the children's safety (82).

If the children are not currently living with either parent, the court should order separate visitation so as to minimize the risk of the children being exposed to any further domestic violence and to maximize the abused parent's safety. As part of the visitation order, the court should also include a provision prohibiting the parents from communicating with the child about the dependency case or making negative or disparaging remarks about the other parent (83).

If the abused parent has demonstrated the ability to protect the children, the court should ensure that the agency has set up appropriate protections, including restraining orders, to support the abused parent in maintaining safety for the children during unsupervised visitation (84). The court should ensure that the abusive parent's visits, if supervised, are being supervised by someone other than the abused parent or a nonneutral family member or friend. The court should approve visitation plans that eliminate or minimize physical, telephonic, and electronic contact between the parents.

Visitation decisions can become more complicated if the criminal court has issued a criminal protective order against the abusive parent and has included a "no contact" order that includes the child(ren). Because criminal protective orders take precedence in enforcement over juvenile restraining orders (see §12.14, Juvenile, Criminal, and Family Court Restraining Orders—Enforcement Precedence), the juvenile court must communicate and coordinate with the criminal court in order to determine whether visitation can be ordered and, if so, the necessary restrictions.

# Chapter 8

## DEPENDENCY COURT MEDIATION

### I. [§8.1] Juvenile Court Domestic Violence Mediation Protocols

### II. [§8.2] Mediation Protocol Requirements

### III. [§8.3] Mediation Protocol Protections

## I. [§8.1] JUVENILE COURT DOMESTIC VIOLENCE MEDIATION PROTOCOLS

Juvenile courts in nearly 20 counties use mediation to address a variety of issues, including visitation. Juvenile courts are required to establish local protocols for mediation in cases in which domestic violence has, or allegedly has, occurred. [Cal Rules of Ct 5.518\(d\)\(4\)](#). The protocol must include specialized procedures designed to protect abused parents from intimidation by their abusive partners and must encourage the incorporation of appropriate safety and treatment interventions in any settlement.

[California Rules of Court 5.518](#) sets forth mandatory standards of practice and administration for dependency court mediation. These are intended to ensure fairness, accountability, and a high quality of service to children and families, and to improve the safety, confidentiality, and consistency of the mediation process. [Cal Rules of Ct 5.518](#). Mediators must attempt to assist the participants in reaching a settlement of the issues consistent with preserving the safety and best interests of the children, first and foremost, as well as the safety of all family members and participants. [California Rules of Court 5.518\(b\)\(3\)](#) defines “safety of family members” as “the physical, psychological, and emotional well-being of all family members with consideration of the following: (A) The role of domestic violence in creating a perceived or actual threat for the victim; and (B) The ongoing need of family members to feel safe from physical, emotional, and psychological abuse.”

## II. [§8.2] MEDIATION PROTOCOL REQUIREMENTS

Under [Cal Rules of Ct 5.518](#), the local court mediation protocol must include

- an intake process that screens for and informs the mediator about any restraining orders, domestic violence, or safety-related issues;
- a differential domestic violence assessment ([Cal Rules of Ct 5.518\(b\)\(4\)](#)); and
- a mediation structure that protects the safety of the abused parent while ensuring full and noncoerced participation.

See Appendix C for sample juvenile court domestic violence mediation protocols.

The mediator uses the differential domestic violence assessment to determine the nature of any domestic violence issues in the family. This assessment enables the mediator to conduct the mediation in ways that protect an abused parent from intimidation and correct for power imbalances created by past violence and the fear of prospective violence. [Cal Rules of Ct 5.518\(b\)\(4\)](#). Mediators must discourage participants from blaming the abused parent for the domestic violence and denying or

minimizing allegations of violence against any family member. [Cal Rules of Ct 5.518\(c\)\(2\)\(B\)](#).

The protocols must include specialized procedures designed to protect an abused parent from intimidation by the abusive parent as well as address all family violence issues by encouraging the incorporation of appropriate safety and treatment interventions in any settlement. [Cal Rules of Ct 5.518\(d\)\(4\)](#). The protocol must require a differential domestic violence assessment to be performed to (1) assess the ability of the abused parent to fully and safely participate and to reach a noncoerced settlement; (2) clarify the history and dynamics of the domestic violence to determine the most appropriate manner in which the mediation can proceed; and (3) assist the parties, attorneys, and other participants in formulating an agreement following a discussion of appropriate safeguards for the safety of the children and family members. [Cal Rules of Ct 5.518\(d\)\(4\)\(B\)](#).

### III. [§8.3] MEDIATION PROTOCOL PROTECTIONS

To protect the abused parent from intimidation, the mediation protocol must allow that parent to attend the mediation session separately without the abusive parent being present. [Cal Rules of Ct 5.518\(d\)\(4\)\(C\)\(i\)](#).

TIP: Many protocols permit the abused parent to participate in the mediation process via telephone in order to ensure safety and maximize the possibility of reaching a noncoerced settlement.

The protocol must also allow for the abused parent to have a support person present during the mediation process, whether the mediation is conducted jointly or separately. [Cal Rules of Ct 5.518\(d\)\(4\)\(C\)\(ii\)](#). A support person may not actively participate in the mediation other than to be present as a source of emotional support unless invited or ordered by the court to participate in some other manner under the protocols developed by the court. [Cal Rules of Ct 5.518\(d\)\(2\)\(E\)](#).

Dependency court mediation programs must also have protocols regarding the inclusion of children in mediation. The protocol must include the child's right to be accompanied by his or her attorney and other support person and the right to leave the mediation session if his or her emotional or physical well-being is threatened. [Cal Rules of Ct 5.518\(d\)\(6\)\(F\)](#), [\(G\)](#). It is good policy to include an option allowing the child to participate in mediation separately from the abusive parent, in the same manner as the abused parent has a right to mediate separately pursuant to [Cal Rules of Ct 5.518\(d\)\(4\)\(C\)\(i\)](#).

# Chapter 9

## DISPOSITIONAL HEARING

- I. [§9.1] Court Considerations in Dependency Cases With Domestic Violence
- II. [§9.2] Services for Children
- III. [§9.3] Services for Abused Parents
- IV. [§9.4] Conjoint Counseling Between Parents
- V. [§9.5] Services for Abusive Parents
- VI. [§9.6] Placement at Disposition

### I. [§9.1] COURT CONSIDERATIONS IN DEPENDENCY CASES WITH DOMESTIC VIOLENCE

If the judge makes a jurisdictional finding by a preponderance of the evidence that a child comes within [Welf & I C §300](#), the court then conducts a dispositional hearing, with the child welfare agency bearing the burden of proof. [Welf & I C §358](#). At the dispositional hearing, the judge must decide whether to declare the child a dependent of the court. [Welf & I C §360\(d\)](#). “The judge must exercise the full authority of the court in order to ensure that the child and other family members are protected and appropriate services are provided to all family members” (85). However, the court should take jurisdiction only when it is proven that the child suffered significant physical or emotional harm (86).

If the child is declared a dependent, the judge then considers whether the child may remain with one or both of the parents or whether the child must be removed from the parents pursuant to [Welf & I C §361\(a\)–\(c\)](#). See [§9.6](#), Placement at Disposition. The child must remain with the nonabusive parent unless the agency can prove by clear and convincing evidence that even with the provision of services there is no reasonable means by which the child can be protected without removal from the home (87). See Chapter 6, Agency’s Reasonable Efforts to Prevent Removal.

Even in cases where the parents’ domestic violence has not been included as an allegation in the petition, the judge’s recognition that domestic violence is an issue for the family is an integral consideration when formulating the case plan and issuing orders. If the court has not previously issued a restraining order, the judge may want to consider whether taking action to protect the child by issuing a restraining order pursuant to [Welf & I C §§213.5 and 304](#) may be appropriate. A juvenile court restraining order can be an effective tool whether or not any other legal proceeding has been brought against the parent who committed domestic violence. See *In re Sylvia R.* (1997) 55 CA4th 559, 562–563, 64 CR2d 93. If the court has previously issued a restraining order, the judge may wish to consider modifying or terminating the restraining order, if appropriate. See Chapter 12, Juvenile Court Restraining Orders.

At every stage of the proceedings, including the dispositional hearing, when a child is endangered because of an abusive parent’s violence against the abused parent, the judge should consider removing the abusive parent before ordering the more traumatic intervention of removing the child. Family preservation does not necessarily mean

keeping the entire family intact. In cases with domestic violence, it is often possible to preserve part of the family by removing the abusive parent and keeping the child with the abused parent (88).

At the dispositional hearing, the court is mandated to review and approve the child welfare services case plan, which must describe the services that will be provided to each of the parents and the children and is a vehicle through which the court can assess the agency's efforts (89). In determining the reasonableness of the agency's efforts, judges will review the court report and case plan to assess whether the agency has provided appropriate referrals and supports to enable the parents to comply with the case plan, and whether those services are

- available;
- accessible;
- provided by those with knowledge in the field;
- tied to an identified need;
- safe;
- useful to the family; and
- culturally and linguistically appropriate (90).

The judge must also make appropriate visitation orders for the children to visit with their parents (91). See §7.6, Safe Visitation.

## II. [§9.2] SERVICES FOR CHILDREN

Emerging knowledge of child development makes a strong case for targeting supports, services, and specialized early interventions to young children and families experiencing domestic violence, including services to help repair damaged parent-child relationships and promote positive parenting.

Children often need help to deal with the trauma of being exposed to domestic violence. For children who are already showing signs of the impact of domestic violence, ordering participation in a program specifically designed to address those issues may be appropriate. A review of findings from 15 projects that focused on children experiencing domestic violence suggested that participating in group therapy or in mother-child counseling interventions resulted in improvements for children, including reduced aggression, decreased anxious and depressive behaviors, and improved social relationships with peers (92).

It is appropriate for the court to also order individual counseling for the child as part of the case plan. Even very young children can benefit from interventions such as play therapy and art therapy. This type of therapeutic intervention can be one of the most effective methods to help the child recover from the negative effects of domestic violence.

## III. [§9.3] SERVICES FOR ABUSED PARENTS

The agency's service plan should address the steps the abused parent needs to take to maintain or regain custody of the child. In addition to a restraining order and other protections, the agency's plan should include appropriate services such as access to

counseling and a domestic violence support group, safety planning, safe housing, job training, parenting classes, referrals to specialized services (such as help for immigrant women), and safe visitation exchange planning (93).

Abused parents do not need “treatment” for being a victim of domestic violence. However, these parents may benefit from education or support groups, and from parenting groups that address the effect of domestic violence on parenting and the impact of exposure to domestic violence on children (94). A careful discussion with the abused parent about what relevant services are available can be an important component of an effective and safe case plan. The abused parent likely will benefit from services aimed at mitigating other risk factors such as substance abuse, mental health issues, economic dependence, or the parent’s own history of abuse or neglect as a child (95).

#### *Counseling and mental health services*

Abused parents with mental health issues, particularly those with serious mental illness, are victimized by partners at very high rates. Depression and posttraumatic stress disorder (PTSD) are prevalent; domestic violence is a risk factor for suicide as well. Many abused parents who suffer from mental illnesses, particularly depression, often find their symptoms resolve when their safety and social supports increase (96).

**TIP:** Abused parents may qualify as victims of crime for purposes of the California Victim Compensation Program. The program helps pay for expenses related to a crime such as medical and dental treatment, income loss, home security, relocation, and many other expenses including inpatient and outpatient mental health services. The abused parent may qualify for up to \$10,000 of mental health services (up to 40 sessions of outpatient treatment) as the domestic violence victim, and the children may also qualify for up to \$5,000 or \$10,000 of mental health services as “derivative victims.” Govt C §13957(a). The court can encourage agency social workers and domestic violence advocates to assist the abused parent and children in applying for Victim Compensation Program benefits.

The abused parent may benefit from individual counseling to work on issues of rebuilding self-esteem and creating a support network, employability, and education. The agency plan, as ordered by the court, should not require abused parents to attend an anger management program or batterers’ intervention program unless there is independent evidence that the abused parent’s own actions support such a recommendation. Verbal or physical defensive actions used by an abused parent to fend off or deflect domestic violence do not constitute evidence of an anger problem or a propensity to commit domestic violence. See §4.9, Mutual Allegations.

An abused parent may have preexisting mental health issues that need to be addressed in psychotherapy or through a psychiatric evaluation, particularly if the condition might cause the abused parent to place her/himself or the children at risk. If individual therapy is recommended, the therapist should be trained in the dynamics of domestic violence (98).

#### *Family therapy*

Because abusive parents often undermine the relationship between the abused parent and the children (and among the children themselves), it may be appropriate for the judge to order family therapy for the abused parent and the children (especially teens). Research on the effects of domestic violence on children indicates that the closer the relationship

between the abused parent and the child, the less likely it is that the child will suffer serious long-term negative effects from exposure to domestic violence. It is well-established empirically that the quality of the relationship between parents is *directly* linked both to the quality of the parent-child relationship and to children's outcomes (98).

TIP: Given the dynamics of domestic violence, family therapy that includes the abusive parent should not be ordered until that parent has participated in a batterers intervention program and demonstrated insight into his/her abusive behavior. See §9.4, Conjoint Counseling, below.

#### *Substance abuse services*

A significant number of parents involved with the dependency system have problems with substance abuse, including many who also are contending with domestic violence. The reasons underlying a parent's substance abuse may vary dramatically. Substance abuse can significantly affect parenting. In determining necessary services and whether reasonable efforts have been made, the judge must ensure that when substance abuse is an issue, treatment is provided to enable parents to address this problem that can significantly affect parenting.

Women who abuse substances are more likely to become victims of violence; abused parents are more likely to receive prescriptions for and become dependent on controlled substances (99). Some abusive parents encourage the abused parent to begin using substances, and they regulate access to alcohol and drugs in order to exercise further control (100). Substance abuse can make it particularly difficult for an abused parent to shield the children from the abusive parent's violence

For some abused parents, though certainly not all, substance abuse can be one way they respond to having been traumatized and can be understood as a form of self-medication (101). Since substance abuse by a parent is always of concern in dependency cases, it is important for judicial officers and agency staff to understand what may be the basis for an abused parent's substance abuse and to ensure that appropriate treatment is provided. At the same time, judges should be aware that abusive parents often make untrue allegations about their partners' substance abuse in order to maintain power and control. The court should carefully consider whether to require the abused parent to participate in substance abuse treatment if the *only* evidence of substance abuse comes from allegations made by the abusive parent. See *In re Sergio C.* (1999) 70 CA4th 957, 83 CR2d 51.

If the abused parent is actively abusing drugs or alcohol, a substance abuse program may be an appropriate intervention; if the abused parent needs to detoxify, an inpatient substance abuse program may be needed.

TIP: Every effort should be made to refer the abused parent to a treatment provider with expertise in both domestic violence dynamics and substance abuse. Unfortunately, most substance abuse programs are not designed to maintain an abused parent's safety from the abusive parent, while most domestic violence shelters are not equipped to house substance-abusing parents. This gap in services for the abused parent who is also a substance abuser poses a dilemma in safety planning and appropriate service delivery for the agency and the court.

In reviewing services for the abused parent, it is helpful for judges to understand how domestic violence interacts with substance abuse and mental illness, to understand how treatment may affect the potential for violence in the family, to consider the connection between safety and the ability to engage in treatment, and to ensure the agency has crafted service plans accordingly.

#### **IV. [§9.4] CONJOINT COUNSELING BETWEEN PARENTS**

While the goal of dependency proceedings is reunification of the child with the parents, it is not always possible or desirable for parents to reunite with each other in families where domestic violence is an issue. There should be careful consideration of the types of services appropriate for a particular family before the court orders services to promote the parents reuniting with each other.

It is generally not appropriate for the court to order conjoint counseling or couples therapy at the outset of a dependency case involving domestic violence—not only is the balance of power uneven between these parents, but conjoint counseling could result in a physically dangerous environment for the abused parent (102). If the judge orders the same class or treatment program for both parents, the order should require the parents to attend separate sessions so as to maintain the safety of the abused parent.

There may be circumstances where it is appropriate for the parents to participate in conjoint counseling or other conjoint services, but typically these occur only when

- each of the parents has made progress in group and individual therapy,
- treating therapists who are experts on domestic violence agree that it is safe to work on issues with both parties, and
- both parties intend to reunite or to stay together as a couple.

#### **V. [§9.5] SERVICES FOR ABUSIVE PARENTS**

When the court sustains allegations of domestic violence, the agency's service plan should require the abusive parent to participate in appropriate interventions to address that issue as one of the steps the parent takes to maintain or regain custody of the child. An important element is participation in a certified batterers' intervention program. In addition to participation in a batterers' intervention program, services for the abusive parent may include

- visitation center services;
- substance abuse services;
- mental health services;
- parenting classes incorporating information on the impact of domestic violence on the children;
- probation/parole contacts;
- translator/interpreter services;
- housing services; and
- employment services.

### *Batterers' Intervention Programs*

Appropriate services for abusive parents involved with the dependency system generally should include a full 52-week certified batterers' intervention program (BIP). This program is mandated in the criminal system if the abusive parent is convicted of a misdemeanor or felony offense involving domestic violence and is placed on probation. [Pen C §1203.097\(a\)\(6\)](#). In addition, when a family court issues a domestic violence restraining order after a noticed hearing and includes an order for a respondent to attend a batterers' intervention program, the only type of authorized program is a BIP certified by the probation department. [Fam C §6343](#). Although participation in a BIP is not mandated by the Welfare & Institutions Code, it is consistent, appropriate, and recommended for juvenile dependency judges to order this intervention when the court sustains an allegation that one of the parents has perpetrated domestic violence against his/her partner (103).

The NCJFCJ Greenbook recommends that “[j]uvenile courts should know what batterer intervention services are available in the community and the quality of those services and should be able to track the progress of any parent who is ordered to participate in those services.” (Rec.62)

Evaluations of the efficacy of batterers' intervention programs are still relatively new and diverse in their approaches. Research on the effectiveness of BIPs has led to a range of results with some studies finding substantial reductions in violent behavior by program completers (104) to others that found little or no effect for other BIP participants (105). It appears that the beneficial impact can be significant for some abusive parents and their families involved in the dependency system. One recent evaluation of BIPs in California found that among offenders who successfully completed the 52-week BIP, attitudes and beliefs showed small, positive changes along a number of dimensions, including taking greater personal responsibility, understanding the effect of abuse on others, and managing their anger (106). The statutory scheme requires the juvenile court to order services to help families to address the issues that led to their involvement with the dependency system, and judges realize that there are few services other than BIPs to assist perpetrators in understanding the dynamics of domestic violence and in working to reduce or stop their abuse.

The curriculum for certified batterers' intervention programs is governed by [Pen C §1203.097](#) and must be approved and overseen by the county probation department. [Pen C §1203.097\(c\)\(5\)](#). Batterers' intervention programs are peer groups of people who have perpetrated domestic violence, facilitated by individuals who are deemed to be expert at conducting such groups. [Pen C §1203.098](#). Expert facilitation requires the ability to hold members of the group accountable for their actions and words. The probation department publishes a list of approved batterers' intervention programs annually. [Pen C §1203.097\(c\)\(5\)](#). These approved programs are the ones the agency and the dependency court should use when ordering intervention for an abusive parent, just as family courts may require the restrained party in a DVPA action to participate in a batterers' program approved by the probation department. See [Fam C §6343\(a\)](#).

Judicial officers will recognize that the 52-week certified batterers' intervention program (BIP) may encroach upon dependency reunification time frames in some cases. Nevertheless, it is often appropriate for the court to order the abusive parent to attend a

BIP for the full 52 weeks. While there is research supporting involvement in shorter, more intensive batterers' intervention programs (107), within the current structure of BIPs it appears that abusive parents often benefit from required participation in the full program. Any parent making progress in the case plan is not strictly limited to six or twelve months of services but may have Family Reunification services ordered for 18 months, and in some cases for up to 24 months. [Welf & I C §§361.5\(a\)\(3\), 366.22\(b\), 366.25](#). Rather than forgo having an abusive parent complete an approved BIP due to its length, the judge and agency social worker should take steps to diligently monitor the abusive parent's progress in addressing the domestic violence, both in the BIP as well as during visits.

The court should place appropriate limitations on contact with the abused parent and on visitation with the children during the period an abusive parent is enrolled in a BIP to assure the children's safety. However, it may be appropriate to allow reunification before the full 52 weeks of an abusive parent's participation in a BIP have elapsed. The court's oversight role ensures that the judge has the ability to maintain jurisdiction over the abusive parent and the responsibility to monitor compliance with the BIP and the service plan even after the court has permitted reunification. [Welf & I C §364\(a\), \(d\)](#).

TIP: As part of the curriculum for batterers' intervention programs, [Pen C §1203.097\(c\)\(1\)\(F\)](#) requires educational programming that examines, among other critical elements, the effects of abuse on children. Juvenile courts in some counties have encouraged local batterers' intervention programs to incorporate "parenting without violence" components into this portion of the curriculum.

#### *Anger management programs*

Anger management programs are generally considered to be an *inappropriate* treatment modality for parents who perpetrate domestic violence. Anger management programs and BIPs are distinct programs with differing curricula and emphasis to address different problems. It is important to distinguish these two forms of intervention because the traditional cognitive approaches used in anger management counseling do not address the essential issues that underlie domestic violence (108).

Agencies and courts should avoid referring perpetrators to anger management programs that do not address underlying belief systems and attitudes that contribute to domestic violence (109). Anger management classes often are not appropriate because they do not focus on the overarching patterns of behavior common in abusive relationships (110). Anger management programs are not designed to address violence toward intimate partners, which has markedly different dynamics from violence that takes place in other contexts. Moreover, anger management programs typically do not address parenting issues, do not contact victims, and do not address the batterer's surrounding pattern of verbal, psychological, economic, and sexual abuse (111).

#### *Mental health services*

Although domestic violence cannot be justified as the product of mental illness, significant numbers of abusive parents report experiencing mental health problems that may include angry outbursts, anxiety, mood swings, and serious depression. In one long-term, multisite study of men in batterers' intervention programs, almost one-third of the men reported two or more mental health problems; researchers estimated that as many as 20 percent may have had major mental disorders (112).

It may be appropriate for the court to order an abusive parent to receive individual counseling in addition to, and not in lieu of, a batterers' intervention program (113). The abusive parent may have preexisting mental health issues that need to be addressed in psychotherapy or through a psychiatric evaluation. A mental health condition that could cause the abusive parent to place him/herself or the children at risk may require therapeutic intervention (114).

Psychotherapy and psychotropic medication by themselves, however, are usually not sufficient interventions for domestic violence. If the court orders individual counseling, it should also order the agency to provide the individual therapist with all relevant court reports and petitions that include information on the abusive parent's domestic violence history as well as other issues. It is important for the individual therapist to maintain collateral contact with the batterers' intervention program counselor so as not to work at cross-purposes.

#### *Substance abuse services*

Substance abuse is often a factor in abusive incidents. Studies estimate that one-quarter to one-half of perpetrators are substance abusers (115). Substance abuse does not cause domestic violence, but serious substance abuse problems may increase the severity or frequency of the abuse, and in appropriate cases judges should order substance abuse assessment and treatment (116).

Participation in a substance abuse program should not be ordered in lieu of a 52-week certified BIP, but if the abusive parent is actively using drugs, the BIP may require him/her to be clean and sober for a certain amount of time before entering the program. In cases where domestic violence and substance abuse co-occur, the social services agency should provide referrals for both programs, and the programs can assess the appropriate timing to begin participation in each one. Domestic violence meetings or "counseling" that are included in some substance abuse programs are not officially recognized by the Department of Probation, and so do not satisfy the certified BIP requirements. [Pen C §1203.097](#).

The agency may recommend other types of supportive services for the abusive parent to enable the parent to make progress toward visitation and/or reunification with the children, including parenting classes and job training (117). See Chapter 6, Agency's Reasonable Efforts to Prevent Removal.

## **VI. [§9.6] PLACEMENT AT DISPOSITION**

When the court is determining placement of the children at disposition, the judge should first consider whether the children can be maintained with or returned to the abused parent. If allegations other than those involving domestic violence have been sustained, the court will have to review the entire case to make an appropriate choice regarding placement. However, if the only sustained allegations involve one parent perpetrating domestic violence against the other, the judge needs to determine, as at the initial hearing, whether the children can be safely maintained in the abused parent's home. [Welf & I C §361\(c\)](#). As noted above, the child must remain with the parent(s) unless the agency can prove by clear and convincing evidence that even with the provision of services there is no reasonable means by which the child can be protected without removal from the home (118). See Chapter 6, Agency's Reasonable Efforts to Prevent Removal.

If the court originally removed the children from the abused parent, the judge must consider whether services and/or a safety plan have been put in place during the time from the initial hearing to the dispositional hearing that would allow the children to safely return home. If the court makes the decision that the children can be safely maintained with the abused parent, the judge should consider the issue of whether that parent has a safe place to reside with the children. The judge should review whether the abusive parent moved out of the family home, or whether the abused parent is residing in a safe residence without the abusive parent, such as a relative's home or a shelter. Possible solutions include the use of a restraining order with an order excluding the abusive parent from the home. See §6.4, Exclusion of the Abusive Parent, and Chapter 12, Juvenile Court Restraining Orders. The court should determine whether services are now in place to assist the abused parent in protecting her/himself as well as the children. [Welf & I C §§362\(b\), \(c\), 16506](#). See Chapter 6, Agency's Reasonable Efforts to Prevent Removal; Chapter 7, Removal Decisions; and §9.3, Services for Abused Parents.

In cases in which an abused parent refuses services or decides to stay in a relationship with a partner who poses a serious risk to the abused parent and to the children, it may be necessary for the court to remove the child from parental care. Understanding the dynamics of domestic violence, the complex nature of terminating a violent relationship, and the barriers and risks faced by abused parents when they consider or attempt to leave will help to inform the judge's decision about whether it is safe for the children to remain in the abused parent's custody (119). It is important for judges to recognize that an abused parent's options may be limited: s/he may not be employed outside the home, may lack access to cash and housing, and may have been intentionally isolated from friends and family by the abusive parent. Abused parents comply with and resist the abusive parent's demands in a variety of ways that are usually designed to protect themselves and their children (120). See §7.4, How Domestic Violence May Affect Parenting by the Abused Parent.

Initiation of separation from the abusive parent is often the most dangerous time for abused parents because their efforts to separate directly challenge the abusive parent's dominance and control (121). Abused parents may fear that their partners will follow through on threats of serious harm to them and the children if they leave. These are factors the court should consider in ordering protections for the abused parent and in making a decision regarding placement of the children at disposition.

If the children cannot be safely maintained in the home of the abused parent, the judge must ensure the children are placed in a safe and secure home. Safety considerations may require keeping the placement confidential. [Welf & I C §362.1\(a\)\(1\)\(B\)](#). If the children are placed with a relative, the court must make certain the relatives are capable of protecting the children and willing to adhere to visitation orders that include restrictions. The court can issue restraining orders against the abusive parent to protect the caregivers and/or the children, if necessary. [Welf & I C §§213.5\(a\), 304; Cal Rules of Ct 5.630\(e\)](#). See §7.6, Safe Visitation, and Chapter 12, Juvenile Court Restraining Orders. The judge should craft a visitation schedule that is designed to ensure that the children, the abused parent, and the relative caregiver are safe during visits and visitation exchanges.

# Chapter 10

## REVIEW HEARINGS—REUNIFICATION CONSIDERATIONS

- I. [\[§10.1\]](#) Reunification Considerations
- II. [\[§10.2\]](#) Reunification With the Abusive Parent
- III. [\[§10.3\]](#) Reunification With the Abused Parent
- IV. [\[§10.4\]](#) Permanency Plan Without Reunification

### I. [\[§10.1\]](#) REUNIFICATION CONSIDERATIONS

At each review hearing (so long as the permanency plan calls for reunification), the court will examine the agency’s efforts to reunify the family and make a reasonable efforts determination. This includes an examination of the adequacy of the case plan in light of any changes in family structure, completion of services, and newly discovered needs of the family. If the child has been placed in out-of-home care, the judge should remind the parties, attorneys, and agency of the time frames that require the agency to seek termination of the parent’s rights. The agency will need to provide the court with an assessment as to whether the family’s service plans can be completed in that time frame, recognizing that abused parents face many barriers in attempting to achieve safety and stability for themselves and their children (122).

### II. [\[§10.2\]](#) REUNIFICATION WITH THE ABUSIVE PARENT

Judicial officers should take a number of factors into consideration when deciding whether to allow an abusive parent to return to the family home. The court should assess whether the abusive parent has made progress in the batterers’ intervention program. This review must go beyond simply confirming the parent’s attendance in the program. The agency should provide the court with useful input from both the BIP facilitators and individual counselors about the abusive parent’s progress.

Most letters to the court from batterers’ intervention programs include limited information; usually, the only information provided is the number of sessions paid for and completed. Any additional information provided by the group’s facilitators is often minimal. Under the Standards of Judicial Administration’s outreach duties, judicial officers may assist the agency to obtain the BIP’s cooperation in providing necessary information. [Cal Rules of Ct, Standards of J Admin 5.40\(e\)](#) (under “[u]nique role of a juvenile court judge, [j]udges of the juvenile court . . . are encouraged to: . . . (2) Investigate and determine the availability of specific prevention, intervention, and treatment services in the community for at-risk children and their families. (3) Exercise their authority by statute or rule to review, order, and enforce the delivery of specific services and treatment for at-risk children and their families. . . .”). Courts may request that the BIP use Judicial Council form CR-168 (“Batterer Intervention Program Progress Report”).

More detailed information provided by the BIP and the abusive parent’s individual counselor will enable the agency to assess and make recommendations regarding custody of the children and return of the abusive parent to the family home. The court should

review those recommendations and may also choose to obtain information directly from the abusive parent about participation in the BIP. The crucial determination is whether the parent has gained sufficient insight and skills to refrain from reengaging in domestic violence.

The court may want to consider whether the abusive parent has taken most or all of the steps domestic violence experts view as essential for genuine change and safety. The steps the abusive parent should take include

- making full disclosure of his/her history of abuse (rather than minimizing it);
- recognizing that abusive behavior is unacceptable;
- recognizing that abusive behavior is a choice;
- articulating the abused parent's and child's experience of the violence;
- showing empathy for the effects of his/her abuse on the abused parent and children;
- identifying his/her pattern of control and entitlement;
- replacing abuse with respectful behaviors and attitudes;
- making amends to the abused parent and child in a meaningful way; and
- accepting the consequences of his/her actions (123).

If insufficient information is provided initially, the court should require the agency to seek out and provide additional information to enable the court to make an appropriate decision. When making assessments regarding reunification decisions, judges should recognize that abusive parents are often able to present a more appropriate "face" to the outside world and appear more "together" than the abused parent, and understand the factors that may lead to this discrepancy in appearance (124).

### III. [§10.3] REUNIFICATION WITH THE ABUSED PARENT

The court should also ensure that the agency has provided detailed information and assessments regarding the abused parent for the court's review that include the following:

- Progress relative to the initial safety assessment and subsequent case plans;
- Understanding of the effects of the domestic violence on the children, and whether s/he has the resources to better protect the children currently and in the future;
- Understanding of power and control issues, and whether s/he has rebuilt her/his self-esteem and developed a support system;
- Employment status;
- Attendance at support group meetings; and
- Ability to take care of herself/himself, financially and otherwise, which can lead to a shift in power in the relationship (125).

The court may also directly inquire into any of these issues.

If the parents want to reunite, the court should review the proposed reasons and the agency's assessment of those reasons. The court may well have concerns about reunifying the children with both parents if it appears that the abused parent is reuniting

with her abusive partner because s/he feels pressured or threatened to do so, or because s/he lacks financial stability or independence. In evaluating the family's progress or decision to reunite, judicial officers should confirm that the agency has provided the abused parent with all of the services that will enable her/him to make an informed decision out of a position of strength rather than out of fear or by necessity (126).

#### **IV. [§10.4] PERMANENCY PLAN WITHOUT REUNIFICATION**

If the child is not going to be reunified with his/her parent(s), and the agency is no longer providing services to the parents, there may well be a need for the child to continue to receive services addressing problems the child may experience as a result of exposure to the domestic violence; the child's caregivers should be committed to continuing the child's participation in such services.

Whenever the permanency plan involves guardianship or adoption, the court should ensure that the agency has found a safe placement for the child. In addition to a criminal background check, agencies should search protective order registries and local court records to determine whether anyone in the guardian's or adoptive family has been a party to a protective order and should screen for the presence of domestic violence in the home, preferably before the child is initially placed with the family, but at a minimum, before any permanent order regarding the child is entered (127).

# Chapter 11

## TERMINATION OF JURISDICTION

### I. [§11.1] Family Court Exit Orders—Custody Decisions

### II. [§11.2] Family Court Exit Orders—Visitation

#### I. [§11.1] FAMILY COURT EXIT ORDERS—CUSTODY DECISIONS

If the court has placed custody of the child with the abused parent, and the parents are not reuniting, the court may consider terminating jurisdiction over the child and issuing a protective order and custody order pursuant to [Welf & I C §362.4](#), also called an “exit order.” The statute provides that at any time the court terminates its dependency jurisdiction prior to the child reaching age 18, and there is a proceeding pending for dissolution or nullity of marriage, for legal separation of the child’s parents or for establishment of paternity, or where an order has been made with regard to the custody of the child, the court on its own motion may issue a protective order as provided for in [Welf & I C §213.5](#) or [Fam C §6218](#). The order may enjoin abusive behavior ([Fam C §§6320, 6321, 6322](#); [Welf & I C §213.5\(a\)](#)), may exclude the restrained person from a dwelling, and may enjoin other behavior the court deems necessary.

The juvenile court can issue child custody and visitation orders in addition to the protective order. [Welf & I C §362.4](#); [Cal Rules of Ct 5.700](#). If the court orders custody to a parent and terminates jurisdiction, the court may order visitation for the other parent. The court may also issue orders to either parent enjoining any action specified in [Fam C §2045](#), which includes a protective order as defined in [Fam C §6218](#). [Cal Rules of Ct 5.700\(a\)](#). The court may order the same procedures to be followed if it orders custody to a parent but does not terminate jurisdiction. [Cal Rules of Ct 5.700\(b\)](#).

If there are pending family court proceedings, the juvenile court order must be filed in the pending action and becomes a part of that case. [Welf & I C §362.4](#); [Cal Rules of Ct 5.700\(a\)\(1\)](#). If there is no pending action or existing custody order, the exit order can also be used as the sole basis for creating a new file in the family court of the county in which the custodial parent resides. [Welf & I C §362.4](#); [Cal Rules of Ct 5.700\(a\)\(1\)](#).

The custody/visitation order must be prepared on form JV-200, “Custody Order—Juvenile—Final Judgment.” The court may direct the parent, parent’s attorney, county counsel, or the clerk to prepare the order for the court’s signature and transmit the order to the family court within 10 calendar days after the order is signed. A family court file must then be opened and assigned a case number without any filing fees. After the juvenile court custody order is filed, the family court must send a copy of the endorsed, filed copy of the order showing the case number to the juvenile court for inclusion in the child’s file, and to the parents. [Welf & I C §362.4](#); [Cal Rules of Ct 5.700\(a\)\(2\)–\(4\)](#).

When the juvenile court terminates jurisdiction over the child with a family law exit order, the court should ensure that the order (JV-200) reflects the existence of any protective order issued pursuant to [Welf & I C §§213.5 or 362.4](#). A copy of the restraining order should be attached to form JV-200.

TIP: It is important that new family court files created by a juvenile court exit order be “flagged” or identified in some systemic manner. It is not uncommon for family court judicial officers to be unaware that there has previously been a juvenile dependency case. Identifying the file allows the family court judge to examine it for the juvenile court exit orders and review the custody or visitation orders currently in effect. Juvenile court judges can take a leadership role in ensuring that there is clear and consistent communication between family court and juvenile court judicial officers regarding transferred cases.

### *Joint custody*

The court is required to consider the impact of domestic violence in issuing physical and legal custody orders. In determining whether to award sole or joint custody, the court must assess the evidence and evaluate the progress and status of the parents at the time of the hearing. [Welf & I C §§364, 213.5\(k\)](#); [Fam C §6323](#).

Although joint legal custody may be appropriate in many cases because it may enable both parents to participate in making decisions about their children’s lives, such an order may be detrimental to children in cases involving domestic violence. Joint legal custody may empower the abusive parent and victimize the children. The abusive parent may use issues such as counseling, schooling, and/or medical treatment as a tool to dominate and interfere with the decisions of the abused parent rather than in a good faith effort to make joint decisions in the children’s best interests. Such interference can directly affect the child’s well-being and perpetuate the problems associated with domestic violence that existed before the court’s involvement.

Dependency case law recognizes that joint custody is often not in the best interests of the child. See *In re Jennifer R.* (1993) 14 CA4th 704, 712, 17 CR2d 759, holding that the presumption that joint custody is in the best interest of the child when parents agree to it does not apply in juvenile court. The Family Code also acknowledges the likely negative impact of joint custody on a child who has been exposed to domestic violence. It provides a rebuttable presumption against an award of sole or joint physical or legal custody to a parent who has been found to have perpetrated domestic violence. [Fam C §3044\(a\)](#). The presumption holds that awarding custody to a person who has perpetrated domestic violence against the other parent (or against the child or the child’s siblings) within the last five years is detrimental to the best interest of the child. [Fam C §3044\(a\)](#). The presumption may only be rebutted by a preponderance of the evidence. Specific factors must be considered in determining whether the presumption has been overcome, including whether the abusive parent ([Fam C §3044\(b\)](#))

- has made progress in a batterers’ treatment program;
- has completed a parenting class;
- is on probation or parole;
- is restrained by a protective order and has complied with its terms; and
- has committed any further acts of domestic violence.

A juvenile court may order that its records and reports be made available to a family court when dependency jurisdiction is terminated under [Welf & I C §362.4](#). *In re Michael B.* (1992) 8 CA4th 1698, 1704, 11 CR2d 290. Family court personnel may also have access to juvenile court records under [Welf & I C §827](#). As a result, the family court

judicial officer may have the necessary information if a request for modification is filed. In cases with domestic violence issues, it is important for juvenile court judges to include appropriate protections when issuing exit orders.

Any dependency court order made at the time the court terminates jurisdiction under [Welf & I C §362.4](#)—whether a protective order, a custody order, or visitation order—is a final judgment that remains in effect even after dependency jurisdiction has ended until the juvenile court order is modified or terminated by a subsequent superior court order. [Welf & I C §§302\(d\), 362.4](#); [Cal Rules of Ct 5.630\(i\)](#). For this reason, the juvenile court should hear evidence before issuing an exit order. *In re Michael W.* (1997) 54 C4th 190, 194–196, 62 CR2d 531 (holding that the noncustodial parent is entitled to an evidentiary hearing before a dependency court makes its custody and visitation orders, terminates jurisdiction, and transfers the case to the family court).

In issuing exit orders, juvenile court judges may consider suggesting criteria that must be met before the custody, visitation, or protective orders are changed by the family court. For the family court to modify or terminate a juvenile court exit order, the court must find that there has been a significant change of circumstances from the time the juvenile court issued the order, and that modification of the order is in the child's best interests. [Welf & I C §302\(d\)](#).

## II. [§11.2] FAMILY COURT EXIT ORDERS—VISITATION

Pursuant to [Welf & I C §362.1\(a\)\(1\)\(B\)](#), no visitation order shall jeopardize the safety of the child. Absent a finding that any form of visitation is detrimental to the child, the court's order should continue supervised visitation if the children are safe with the abused parent and the court is terminating the case, but the abusive parent has not made progress in the batterers' intervention program. If the abusive parent has made significant progress, the court might consider a more typical family law order with unsupervised visitation, but even then the court should take great care in assessing whether the child will be safe at an unsupervised visit.

In crafting the visitation order, the court should address the safety needs of the abused parent and children during visits and consider

- designating a safe place for visits;
- using professional supervised visitation providers;
- identifying a safe supervisor for visits if the court is ordering supervised visits without ordering use of professional supervised visitation providers;
- designating a safe place for the exchange of the children (a location where parties would have no need for contact with each other);
- designating how the children will get to visitations; and
- other terms and conditions, such as requiring the abusive parent to continue participation in a batterers' intervention program, substance abuse program, or other counseling (126).

In determining whether the visitation exchange can be accomplished safely, the court can order the child's address to be kept confidential. [Welf & I C §362.1\(a\)](#).

On termination of jurisdiction, the court may impose a variety of terms and conditions, including making an open-ended counseling order as a condition of visitation. [Welf & I C §362.4](#); *In re Chantal S.* (1996) 13 C4th 196, 203–204, 51 CR2d 866.

In *In re Chantal*, the Supreme Court held that [Welf & I C §362.4](#) implicitly allows conditions on custody and visitation when the court issues orders at the termination of a dependency proceeding. Quoting the Court of Appeal decision, the Court stated: “[It is] inconceivable that the statute, which authorizes a court to make orders touching upon custody and visitation, would not also inherently authorize collateral orders reasonably and necessarily related to custody and visitation. . . .” *In re Chantal S., supra*. Based on the *Chantal* holding, and pursuant to [Welf & I C §§362.4 and 362\(c\)](#), juvenile court judicial officers have placed conditions on visitation that include participation in batterers’ intervention programs, substance abuse treatment, parent and child counseling, and other requirements reasonably related to the protection of the child.

The visitation order should be specific and provide the time, date, place, and manner of transfer to limit the child’s exposure to conflict and domestic violence, and to ensure the safety of all family members. If there is a protective order in place, the court should make the visitation order consistent with that order. [Welf & I C §362.1\(a\)\(1\)\(B\)](#).

The visitation order should state the name of the person or entity that will function as the visitation supervisor.

**TIP:** It is generally not safe or appropriate for the abused parent to be the visitation supervisor given the dynamics of domestic violence. Extended family members often grow tired of the task of supervising visitation and may refuse to continue performing it, creating a dangerous void. If the court orders a professional supervisor, the court should indicate which party is responsible for paying the cost of supervised visitation. The visitation order should provide the abused parent with authority to approve or disapprove a particular supervisor, detail the procedure for selecting a new supervisor, and the ways the parents communicate information regarding visitation.

Whether or not the abusive parent’s visitation is supervised, the court should order that exchanges of the children take place at locations where the abusive parent and the abused parent do not need to have any contact, for example, at child care or school, at a neutral third party’s home, a social worker’s office, or some other safe location. If no other appropriate exchange location is available, the court may consider ordering parents to conduct visitation exchanges in the lobby of the local police department.

The court may also order the parents to attend mediation to attempt to develop a mutually agreeable visitation schedule or a parenting plan, but the court should ensure provisions are in place for separate sessions since a balanced discussion may not be easily accomplished when there is a history of violence or intimidation. See Chapter 8, Dependency Court Mediation.

#### *Addendum to Custody/Visitation Orders*

When the Los Angeles County juvenile court issues a family court exit order with supervised visitation, the judicial officer executes a local form, Addendum to Custody Order—Juvenile (Form JV 200/JV205), “Reasons for No or Supervised Visitation” (see Appendix D). This Addendum informs the family court of the orders made in the dependency court and can be used to advise the family court whether the abusive parent

has complied with those orders and/or made progress in the batterers' intervention program. The dependency court judicial officer alerts the family court about the domestic violence issues in the case that may have an impact on subsequent custody and visitation determinations. In addition, the Addendum provides the family court with a baseline for determining whether there has been a change of circumstances upon which to modify the family law order. [Welf & I C §302\(d\)](#).

# Chapter 12

## JUVENILE COURT RESTRAINING ORDERS

### I. [§12.1] Protective Orders Pursuant to the Welfare and Institutions Code

#### A. Temporary Restraining Order

1. [§12.2] Availability
2. [§12.3] Provisions
3. [§12.4] Notice Requirements
4. [§12.5] Records Search Prior to Hearing
5. [§12.6] Duration and Service
6. [§12.7] Notifying Law Enforcement—Entry Into California Restraining and Protective Order System (CARPOS)

#### B. Order After Hearing

1. [§12.8] Hearing Procedure
2. [§12.9] Permissible Orders
3. [§12.10] Service
4. [§12.11] Duration and Modification

#### C. General Provisions

1. [§12.12] Firearms Restrictions
2. [§12.13] Enforcement of Juvenile Court Protective Orders
3. [§12.14] Juvenile, Criminal, and Family Court Restraining Orders—Enforcement Precedence
4. [§12.15] Availability of Juvenile Court Protective Order for Agency Social Worker

### I. [§12.1] PROTECTIVE ORDERS PURSUANT TO THE WELFARE AND INSTITUTIONS CODE

This chapter discusses juvenile court protective orders that may be issued in dependency cases and examines their interaction with restraining orders issued by other courts, including emergency protective orders, criminal court restraining orders, and family court protective orders.

An important legal tool for addressing domestic violence in dependency cases is a protective order issued pursuant to [Welf & I C §§213.5, 304](#). The juvenile court has authority to issue both Temporary Restraining Orders (with or without notice) and Orders After Hearing. [Welf & I C §§213.5\(a\), \(d\), 304](#). The juvenile court may issue restraining orders after a petition has been filed to declare a child a dependent of the juvenile court ([Welf & I C §213.5](#); [Cal Rules of Ct 5.620, 5.630\(a\)](#)), throughout the pendency of the dependency proceedings, and when the juvenile court terminates its jurisdiction over the dependent child. [Welf & I C §§213.5, 304, 362.4](#); [Cal Rules of Ct 5.620, 5.630\(a\)](#).

Restraining orders are designed to provide protection for the child who is the subject of the dependency action and other children in the household. [Welf & I C §§213.5\(a\), 304](#). Juvenile court restraining orders are also available to protect a parent, legal guardian, current caregiver of the child, whether or not the child resides with that person, social workers, and Court-Appointed Special Advocates (CASAs). [Welf & I C §§213.5, 304](#). If a parent whose child is the subject of a dependency action needs a restraining

order for her/his own protection, the parent can apply to the juvenile court for such an order in the dependency case rather than being required to initiate a separate action in family court to obtain a protective order. [Welf & I C §213.5\(a\)](#).

The juvenile court can issue a restraining order *on its own motion* to protect the child, or to protect a parent, legal guardian, or current caregiver of the child. [Welf & I C §304](#); [Cal Rules of Ct 5.630\(b\)](#).

## A. TEMPORARY RESTRAINING ORDER (EX PARTE ORDER)

### 1. [§12.2] Availability

After a petition has been filed to declare a child a dependent of juvenile court, the court may issue an ex parte restraining order. [Welf & I C §213.5](#). A parent or other party to a dependency court action may apply for a restraining order orally at any scheduled hearing in the child's case, or by written application. [Welf & I C §§213.5\(a\), 304](#); [Cal Rules of Ct 5.630\(b\)](#). The written application must be on Judicial Council forms. Form JV-245, "Application and Affidavit for Restraining Order—Juvenile"; [Cal Rules of Ct 5.630\(b\)](#). The temporary restraining order should be issued on Judicial Council form JV-250, "Notice of Hearing and Temporary Restraining Order—Juvenile," and if the restraining order is related to domestic violence, the Judicial Council form must be approved by the Department of Justice pursuant to [Fam C §6380\(i\)](#). [Welf & I C §213.5\(i\)](#). However, the fact that an order was not issued on Judicial Council forms does not, in and of itself, make the order unenforceable. [Welf & I C §213.5\(i\)](#).

Three sections of the Welfare and Institutions Code govern the availability of juvenile court restraining orders in dependency proceedings. [Welf & I C §§213.5, 304, 362.4](#). Two of those sections, [Welf & I C §§304 and 362.4](#), reference [Fam C §6218](#) that describes DVPA protective orders and incorporates other sections of the Family Code related to restraining orders. [Fam C §§6320, 6321, 6322](#). The Domestic Violence Prevention Act (DVPA) ([Fam C §§6200 et seq](#)) provides guidance regarding juvenile court restraining orders for issues that may not be directly addressed by Welfare & Institutions Code provisions.

Additionally, [Welf & I C §213.5](#) makes the linkage between domestic violence as addressed in the Welfare and Institutions Code and in the Family Code even more explicit by providing the juvenile court with exclusive jurisdiction to issue ex parte protective orders "upon application . . . if related to domestic violence, in the manner provided by [Section 6300 of the Family Code](#) . . . ."

Section 6300 states

An order may be issued under this part, with or without notice, to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit or, if necessary, an affidavit and any additional information provided to the court pursuant to Section 6306, shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.

By referencing [Fam C §6300](#), [Welf & I C §213.5](#) provides that in cases involving domestic violence, dependency courts have authority to issue protective orders without notice based on "reasonable proof of a past act or acts of abuse."

[Welfare and Institutions Code §213.5](#) also references [CCP §527](#). That section addresses civil harassment temporary restraining orders and provides guidance regarding

the issuance of protective orders in dependency cases. See §12.4, Notice Requirements, and Appendix E, Juvenile Restraining Orders Cheat Sheet.

## 2. [§12.3] Provisions

### *Prohibit abusive behavior against the child*

The juvenile court's ex parte order may

(1) enjoin 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 [Pen C §653m](#), 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 who is the subject of the dependency action or any other child in the household;

(2) exclude any person from the dwelling of the parent or other person who has care, custody, and control of the child, regardless of which party holds legal or equitable title or is the lessee of the residence; and, in order to effectuate the restraining orders made under the first two provisions,

(3) enjoin any person from behavior the court determines is necessary in order to effectuate the restraining order, including contacting, threatening, or otherwise disturbing the peace of the child. [Welf & I C §213.5\(a\)](#).

### *Prohibit abusive behavior against others*

The juvenile court's ex parte order may also enjoin *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 [Pen C §635m](#), 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 caregiver of the child *regardless of whether the child resides with that person*. [Welf & I C §213.5\(a\)](#); In addition, the party enjoined by a juvenile court protective order is prohibited from taking any action to obtain the address or location of a protected party or their family members, caregiver, or guardian unless there is good cause for the court not to make that order. [Welf & I C §213.7\(a\)](#).

[Welfare and Institutions Code §213.5](#) also authorizes the juvenile court to 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 [Pen C §635m](#), 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 [CCP §527](#).

*Note:* In *In re Brittany K.* (2005) 127 CA4th 1497, 26 CR3d 487, a restraining order was issued to enjoin a grandmother from stalking her grandchildren who were in a foster home. Although this case does not involve a restraining order against an abusive parent who has perpetrated domestic violence, it is relevant for its analysis of the term “stalking” in [Welf & I C §213.5](#), a behavior that is common in cases involving domestic violence.

On appeal, the grandmother argued that [Welf & I C §213.5\(a\)](#) was unconstitutionally vague, unreasonable and arbitrary because “it provides no guidelines whatsoever for deciding what ‘stalking’ means.” The court found that because a reasonable and practical construction could be given to the term “stalking” as used in [Welf & I C §213.5\(a\)](#), derived from applicable statutory references and common usage, the statute is not unconstitutionally vague. The court found that the grandmother’s “knowing and willful” course of conduct, specifically directed at the children and their foster parents, seriously alarmed, annoyed, tormented, and even terrorized them, and served no legitimate purpose, and concluded there was sufficient evidence of “stalking” and no abuse of discretion by the juvenile court in imposing a restraining order. 127 CA4th at 1511–1513.

In *In re Cassandra B.* (2004) 125 CA4th 199, 22 CR3d 686, the court issued a restraining order against a parent to protect the child. The parent appealed, contending that the order was not supported by substantial evidence, and that the court acted in excess of its jurisdiction in issuing it. While this case does not involve a restraining order against a parent who has perpetrated domestic violence, it is relevant for its analysis of the term “molesting” in [Welf & I C §213.5](#), a behavior that is common in cases involving domestic violence. The appellate court rejected the assertion that evidence of violent behavior or threats of violence must be present to impose a restraining order under the plain meaning of [Welf & I C §213.5\(a\)](#), and found “ample evidence” that the parent’s behavior met the many common definitions of “molesting” (*i.e.*, to trouble, disturb, annoy, or vex).

The standard of proof for juvenile court restraining orders was addressed in *In re B.S.* (2009) 172 CA4th 183, 90 CR3d 810. There, the court reviewed the language of [Welf & I C §213.5](#) and concluded that “evidence that the restrained person has previously molested, attacked, struck, sexually assaulted, stalked, or battered the child is certainly sufficient.” The court noted, however, that the statute does not state that such evidence is necessary, and analogized to [Fam C §6340\(a\)](#) which permits the issuance of a protective order under the [Domestic Violence Prevention Act](#) in the first instance, if “failure to make [the order] may jeopardize the safety of the petitioner. . . .” The court in *In re B.S.* held that, based on the evidence, the juvenile court could reasonably find that failure to issue a protective order might jeopardize the child’s physical safety and concluded that there was sufficient evidence to support the issuance of a restraining order.

The [Welf & I C §213.5](#) reference to [Fam C §6300](#) provides that the standard of proof for a juvenile court restraining order is the standard of proof for protective orders issued under the DVPA, with or without notice, which is “reasonable proof of a past act or acts of abuse.” [Fam C §6300](#).

*Exclude from a dwelling*

The dwelling exclusion can be included regardless of which parent holds legal or equitable title or is the lessee of the residence. [Welf & I C §213.5\(e\)](#). For the juvenile court to exclude someone from his/her own residence, the court must find:

- (1) 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.
- (2) That the party to be excluded has assaulted or threatened 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.
- (3) That physical or emotional harm would 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. [Welf & I C §213.5\(e\)](#).

TIP: In juvenile court in Los Angeles County, these three findings are generally included on the Restraining Order—Juvenile (form JV-255) under “Findings.”

There is no need to include other “findings” under this section. An explanation of the alleged conduct that serves as a basis for these required findings generally should be included in the application for the restraining order (if there is a written application), and not the order itself.

TIP: A juvenile court restraining order is a public document and therefore it is important to have reports, declarations, etc., in support of the order attached to the application for the restraining order and not attached to or included as a part of the order itself.

TIP: If the court makes an order requiring the restrained person to move from the residence, it may be appropriate for the court to consider whether the protected person can afford to continue paying the rent or mortgage on the property.

*Other protective provisions*

The court may enjoin any person from coming within a specified distance of the protected person; this can include their home, worksite, school, daycare, or any other location, and when they are in their automobile. [Welf & I C §§213.5\(a\), 304](#); Judicial Council forms JV-245, JV-250, and JV-255. The court can issue the restraining order without including the addresses of the protected parties. The court is required, pursuant to [Welf & I C §213.7\(a\)](#), to prohibit the restrained party from taking action to obtain the addresses or locations of a protected party or of that person’s family members, caregivers, or guardian, unless there is good cause for the court not to make that order. [Welf & I C §213.7\(a\)](#).

TIP: There is no requirement to list addresses of the protected party and the children on the restraining order, and it is generally safer not to include the addresses on the order. Law enforcement has address information available via the confidential California Law Enforcement Telecommunications System (CLETS) information form (CLETS-001). See [Cal Rules of Ct 1.51](#); Appendix F, Confidential CLETS Information Form.

The juvenile court has authority to terminate all contact between the restrained party and the protected party, or can limit the abusive parent to brief and peaceful contact as required to facilitate court-ordered visitation with the children. [Welf & I C §213.5\(l\)](#); [Fam C §6323\(c\)](#), (d). If the court allows visitation between the restrained person and any child listed on the protective order, the juvenile court order form providing for visitation (JV-205) must be completed and attached to the restraining order.

### 3. [\[§12.4\]](#) Notice Requirements

The court may issue a temporary restraining order (TRO) after notice and hearing ([Welf & I C §213.5\(d\)\(1\)](#)) or ex parte.

The notice requirement differs depending on the person who is protected and whether the order relates to domestic violence.

Orders related to domestic violence may be issued with or without notice, as specified in [Fam C §6300](#), to protect the child or any other child in the household, to exclude any person from the dwelling of the person who has care, custody, and control of the child, or to protect any parent, legal guardian, or current caretaker of the child, regardless of whether the child resides with that person or, in a delinquency case, to enjoin the child from contact with specified persons. [Welf & I C §213.5\(a\)](#), (b).

Orders not related to domestic violence to protect the people listed above, and orders to protect the child's court-appointed special advocate, current or former social worker (in a dependency case), or current or former probation officer (in a delinquency case) may not be issued without notice to the opposing party unless the following two conditions are met ([Welf & I C §213.5\(a\)](#), (b); [CCP §527\(c\)](#)):

- (1) It appears from facts shown by affidavit or by the verified complaint that great or irreparable injury will result to the applicant before the matter can be heard; and
- (2) The applicant or the applicant's attorney certifies one of the following to the court under oath:
  - (A) That within a reasonable time prior to the application the applicant informed the opposing party or the opposing party's attorney of the time and place where the application would be made;
  - (B) That the applicant or the applicant's attorney, despite a good faith attempt, was unable to inform the opposing party and the opposing party's attorney, specifying the efforts made to contact them; or
  - (C) That for specified reasons, the applicant should not be required to inform the opposing party or the opposing party's attorney.

The court must consider all documents submitted with the application and may review the contents of the juvenile court file regarding the child. [Cal Rules of Ct 5.630\(d\)](#).

#### 4. **[§12.5] Records Search Prior to Hearing**

Before a hearing on the issuance or denial of a juvenile court restraining order, a records search must be conducted as described in [Fam C §6306\(a\)](#), [Welf & I C §213.5\(j\)](#); [Cal Rules of Ct 5.630\(j\)\(1\)–\(3\)](#). The court must consider the following information obtained pursuant to a records search:

- Any conviction for a violent or serious felony ([Pen C §§667.5, 1192.7](#));
- Any misdemeanor conviction involving domestic violence, weapons, or other violence;
- Any outstanding warrant ([Welf & I C §213.5\(j\)\(2\)](#));
- Parole or probation status ([Welf & I C §213.5\(j\)\(2\)](#));
- Any prior restraining order; and
- Any violation of a prior restraining order.

If the results of the search indicate that an outstanding warrant exists, the court is required to order the clerk of the court to immediately notify appropriate law enforcement officials of any information obtained through the search that the court determines is appropriate, and those officials must take all actions necessary to execute any outstanding warrants or take any other appropriate actions. [Welf & I C §213.5\(j\)\(3\)\(A\)](#).

If the results of the search indicate that the restrained party is currently on parole or probation, the court is required to order the clerk of the court to immediately notify the appropriate parole or probation officer of any information obtained through the search that the court determines is appropriate. The parole or probation officer must take all actions necessary to revoke any parole or probation, or any other appropriate actions. [Welf & I C §213.5\(j\)\(3\)\(B\)](#).

All records and databases readily available and reasonably available to the court must be searched, including but not limited to (1) the Violent Crime Information Network (VCIN), (2) the Supervised Release file, (3) state summary criminal history maintained by the Department of Justice, (4) the FBI nationwide database, and (5) locally maintained criminal history records or databases. [Fam C §6306\(a\)](#).

*Note:* The search under [Fam C §6306\(a\)](#) is only applicable in those counties identified by the Judicial Council as having resources currently available, or as soon as funds are appropriated. [Cal Rules of Ct 5.630\(j\)\(3\)](#); see [Stats 2001, ch 572 \(SB 66\)](#), §7, as to implementation of [Fam C §§6306 et seq.](#)

#### 5. **[§12.6] Duration and Service**

A temporary restraining order (TRO) granted without notice is good for 21 days from the date of issuance (or 25 days with good cause). [Welf & I C §213.5\(c\)](#).

The TRO must be issued on Judicial Council juvenile court form, JV-250, and the expiration date must be stated on the face of the order. [Welf & I C §213.5\(f\)](#); [Cal Rules of Ct 5.630\(d\)\(2\), \(f\)\(2\)](#). A failure to issue a juvenile court protective order on the

Judicial Council forms does not, in and of itself, make the order unenforceable. [Welf & I C §213.5\(i\)](#).

Once the TRO is issued, it must be personally served by someone age 18 or over who is not a party to the action. [CCP §414.10](#). The court on its own motion or that of the petitioner may shorten the time for service on the restrained party. [Welf & I C §213.5\(c\)](#). If the restrained person was present at the issuance of the TRO and ordered to return to court, no further notice is necessary. The court's notation that the restrained party was present (by checking the appropriate box on the restraining order form), will qualify as "serving" the temporary restraining order.

If the protected person is not able to have the restrained person served or served timely, the court, on its own motion or that of the protected party, can reissue the temporary restraining order so that notice can be properly served. [Welf & I C §213.5\(c\)](#); [Cal Rules of Ct 5.630\(e\)](#). The reissued order must state on its face the date of expiration of the order, and Judicial Council Juvenile Court form JV-251, "Application and Order for Reissuance of Order to Show Cause," must be used. [Cal Rules of Ct 5.630\(e\)\(2\), \(3\)](#). There is no statutory limit to the number of times a temporary restraining order can be reissued.

#### **6. [§12.7] Notifying Law Enforcement—Entry Into California Restraining and Protective Order System (CARPOS)**

In order for the restraining order to provide protection, law enforcement must be aware of the order so that, when necessary, it can be enforced. Welfare and Institutions Code [§213.5\(g\)](#) mandates that all data with respect to a juvenile court protective order, or extension, modification, or termination of an order granted pursuant to [Welf & I C §213.5\(a\), \(b\), \(c\), or \(d\)](#), shall be transmitted by the court or its designee, within one business day, to law enforcement personnel by either 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), or with the approval of the Department of Justice, entering the order into CLETS directly. See [Cal Rules of Ct 1.51](#); Appendix F.

Mailing a copy of the restraining order to each local law enforcement agency that has jurisdiction over the residence of the person caring for the child and over "other locations where the court determines that acts of domestic violence or abuse against the child or children are likely to occur" is no longer required.

The order is entered into the electronic California Restraining and Protective Order System (CARPOS) through use of the California Law Enforcement Telecommunications System (CLETS). [Welf & I C §213.5\(g\)](#). CARPOS is one of nine databases that provide information for the CLETS system. All restraining orders issued pursuant to [Welf & I C §213.5](#) must be transmitted to the Department of Justice via CARPOS/CLETS.

Effective January 1, 2011, [Cal Rules of Ct 1.51](#) establishes new requirements regarding the use and handling of the Confidential CLETS Information form. See Appendix F. [California Rules of Ct 1.51\(a\) and 5.630\(b\)](#) require a person requesting a protective order under [Welf & I C §213.5](#) to submit a completed Confidential CLETS Information Form (form CLETS-001) with the request. Access to the information on the form is limited to authorized court personnel, law enforcement, and other personnel authorized by the California Department of Justice, and the form must not be included in the court file. [Cal Rules of Ct 1.51\(c\)](#). The person requesting a protective order or their

attorney may submit an amended Confidential CLETS Information form as a matter of right to provide updated or more complete and accurate information. [Cal Rules of Ct 1.51\(d\)](#). If the court issues a temporary restraining order or order after hearing, the court must either transmit the form to a law enforcement agency for entry into CLETS and not retain any copy, or enter the information on the form into CLETS itself and promptly destroy the form or delete the form from its records. The form must also be destroyed or deleted if the court does not enter an order. Until the court has transmitted, destroyed, or deleted the form, it must be retained in a secure manner that prevents access to the information on the form except for authorized personnel. [Cal Rules of Ct 1.51\(e\)](#).

Each court should develop its own set of procedures for ensuring that restraining orders are entered into the CARPOS system. When law enforcement is called to respond to a restraining order violation, CARPOS enables law enforcement officers to easily access the names of the protected and restrained parties, to determine whether a restraining order is in effect, and to access the terms and conditions of the restraining order.

TIP: Law enforcement officers can access the CARPOS system to view, and therefore enforce, a temporary or permanent restraining order that has been served even if the protected person does not have a copy of the order with her/him at the time. After viewing the order in CARPOS, law enforcement personnel can verbally notify and serve the restrained person if the restraining order has not yet been served.

## B. ORDER AFTER HEARING

### 1. [§12.8] Hearing Procedure

The juvenile court may, “upon notice and a hearing,” issue an Order After Hearing (OAH) that includes any of the restraining orders set forth in [Welf & IC §213.5](#). [Welf & IC §213.5\(d\)\(1\)](#). Once the court has confirmed that the hearing was properly noticed, the hearing provides the parties with an opportunity to present evidence and the court to determine whether an Order After Hearing restraining order (sometimes referred to as a “permanent” order) should be issued. The evidence for the court to consider should include the application for the protective order and any attachments, additional declarations or documentary evidence, the contents of the juvenile court file, testimony, or any combination of these. [Cal Rules of Ct 5.630\(f\)\(1\)](#).

A juvenile court restraining order hearing may be held simultaneously with any other regularly scheduled hearings to declare a child a dependent of the juvenile court or subsequent hearings regarding the dependent child. [Welf & IC §213.5\(a\)](#).

As noted in the section on temporary restraining orders, and pursuant to [Welf & IC §213.5\(j\)](#) and [Cal Rules of Ct 5.630\(j\)\(1\)–\(3\)](#), the court must ensure a search has been conducted before the hearing to determine if the respondent

- has a prior conviction for a violent or serious felony ([Pen C §§667.5, 1192.7](#));
- has any prior misdemeanor conviction involving domestic violence, weapons, or other violence;
- has any outstanding warrants ([Welf & IC §213.5\(j\)\(3\)\(A\)](#));
- is currently on probation or parole ([Welf & IC §213.5\(j\)\(3\)\(B\)](#)); or

- has a prior restraining order or violation of a prior restraining order.

If the court's search finds an outstanding warrant, the court must immediately notify the appropriate law enforcement agency of the terms of any protective order or other information found during the search that the court considers appropriate. Law enforcement must take all actions necessary to execute any outstanding warrants against the restrained party. [Welf & I C §213.5\(j\)\(3\)\(A\)](#).

If the court's search finds that the restrained person is on probation or parole, the court must immediately notify the appropriate probation or parole officer of the terms of any protective order or other information found during the search, and the officer must take all necessary action to revoke the restrained party's probation or parole. [Welf & I C §213.5\(j\)\(3\)\(B\)](#).

The search must be conducted of all records and databases readily available and reasonably accessible to the court. [Fam C §6306\(a\)](#); see [§12.5](#), Records Search Prior to Hearing.

*Note:* The search under [Fam C §6306\(a\)](#) is only applicable in those counties identified by the Judicial Council as having resources currently available, or as soon as funds are appropriated. [Cal Rules of Ct 5.630\(j\)\(3\)](#); see [Stats 2001, ch 572 \(SB 66\)](#), §7, as to implementation of [Fam C §§6306 et seq.](#)

## 2. [§12.9] Permissible Orders

### *Prohibition of abusive behavior and exclusion from a dwelling*

Following the hearing, the juvenile court may issue any of the orders authorized in [Welf & I C §213.5\(a\)–\(c\)](#), including prohibiting the restrained party from abusive and threatening behavior against a parent, legal guardian, or current caregiver of the child, as well as enjoining any person from such behavior toward the child or other children in the household. The Order After Hearing may include provisions to exclude the restrained party from the family home and to require him/her to stay a certain distance away from the protected persons, including at their home, worksite, school, daycare, or any other location, and when they are in their automobile. [Welf & I C §213.5\(a\)](#); see [§12.3](#), Temporary Restraining Order Provisions.

### *Custody and visitation orders*

Pursuant to [Welf & I C §213.5\(k\)](#), juvenile court protective orders may include custody and visitation orders, and those orders must adhere to the requirements set forth in [Fam C §6323\(c\) and \(d\)](#). The court must determine whether it would be in the best interest of the child to have custody or visitation supervised, suspended, or denied. [Fam C §6323\(d\)](#). If custody or visitation is ordered, the court's order must specify time, day, place, and manner of transfer of the child between the parties. When the court determines a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order must be designed to prevent disclosure of the location of the shelter or other confidential location. [Fam C §6323\(c\)](#).

### *Mutual restraining orders*

Although the Welfare and Institutions Code does not address the issue of mutual restraining orders, the DVPA prohibits the issuance of mutual restraining orders enjoining the parties in family court actions from specific acts of abuse. [Fam C §§6305, 6320\(a\)](#). A mutual restraining order can be issued only if (1) both parties personally

appear, (2) each party presents written evidence of abuse or domestic violence, *and* (3) the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense. [Fam C §6305](#). If the court makes these findings, procedurally, the court will be required to issue two separate restraining orders.

### 3. [§12.10] Service

If the restrained person was present at the hearing, no further notice is necessary. The court is required to issue the Order After Hearing (OAH) on Judicial Council form JV-255 that must include the expiration date on the face of the order. [Welf & I C §213.5\(f\)](#). The court should confirm that the OAH indicates that the restrained party was present.

TIP: If the restrained party is present at the hearing, it is good practice to ensure that the OAH is served on that party before the restrained person leaves the courthouse.

The OAH may be served by someone age 18 or over who is not a party to the action. [CCP §414.10](#). If the restrained person was not present at the restraining order hearing, in some counties the protected person can contact the sheriff's office, and the sheriff's department will make arrangements to try to serve the restrained person.

The OAH may be served on the restrained person by first-class mail sent to the most current address known to the court if (1) the restrained person was present at the temporary restraining order hearing, or (2) was personally served with the temporary restraining order and notice of hearing but did not appear at the hearing either in person or by counsel, and the terms and conditions of the restraining order are identical to those of the prior restraining order, except for the expiration date. [Welf & I C §213.6\(a\)](#).

All data with respect to a juvenile court protective order, or extension, modification, or termination of an order granted pursuant to [Welf & I C §213.5](#) must be transmitted by the court or its designee, within one business day, to law enforcement personnel by either 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), or with the approval of the Department of Justice, entering the order into CLETS directly. [Welf & I C §213.5\(g\)](#); [Cal Rules of Ct 1.51](#). See [§12.7](#), Notifying Law Enforcement—Entry Into California Restraining and Protective Order System (CARPOS); Appendix F, Confidential CLETS Information Form.

Once an OAH restraining order is issued, it is a valid order; when it is filed with proof of mail service, it becomes an immediately enforceable order. The court should ensure that a copy of the restraining order is attached to the proof of service and that both documents are entered into CARPOS. [Welf & I C §213.5\(g\)](#); see [§12.7](#), Notifying Law Enforcement—Entry Into California Restraining and Protective Order System (CARPOS).

### 4. [§12.11] Duration and Modification

#### *Duration*

The Order After Hearing (OAH) protective order remains in effect for a period of time determined by the court, but in any case not more than three years. [Welf & I C §213.5\(d\)\(1\)](#). The court has authority to terminate the restraining order prior to the expiration date listed on its face. [Cal Rules of Ct 5.630\(k\)\(1\)](#). At the end of the term of

the order, the court can extend the order based on mutual consent of the parties to the restraining order, or by order of the court on the motion of any party to the restraining order. [Welf & I C §213.5\(d\)\(1\)](#); [Cal Rules of Ct 5.630\(k\)](#).

A restraining order issued pursuant to [Welf & I C §§213.5\(a\) and 304](#) during the course of a dependency proceeding remains in effect until its expiration date even though the restraining order may extend beyond the date the court terminates jurisdiction over the dependent child. [Welf & I C §213.5\(d\)\(1\)](#); [Cal Rules of Ct 5.630\(i\)](#). The judicial officer may also issue a protective order pursuant to [Welf & I C §362.4](#) as an element of a family court exit order, and that order continues in effect until modified or terminated by a subsequent family court order. See [§11.1](#), Family Court Exit Orders—Custody Decisions.

### *Modification*

A restraining order may be modified on the court's own motion or in the manner provided for in [Welf & I C §388](#) and [Cal Rules of Ct 5.560](#). The modification order must be made on Judicial Council form JV-257 (“Change to Restraining Order After Hearing”). A new *Restraining Order—Juvenile* (form JV-255) may be prepared in addition to form JV-257. [Cal Rules of Ct 5.630\(k\)](#).

TIP: The judicial officer may want to consider which party is asking for the modification and the reasons behind the request. There is no legal requirement for the court to inquire into, or refrain from inquiring into, the reasons for the modification or termination request. However, it is good practice to determine whether the request is due to intimidation by the abusive parent, and whether it is in the parties' or the children's best interests to modify, terminate, or extend the order.

If termination or modification of a protective order is sought before the order expires by a party other than the protected party, the protected party must be given notice pursuant to [CCP §1005](#) by personal service, or if the protected party is participating in California Safe At Home Confidential Address Program ([Govt C §§6205 et seq](#)), by service on the Secretary of State. If the protected party cannot be notified before the hearing for modification or termination, the juvenile court must deny the motion without prejudice or continue the hearing until the protected party can be properly noticed and may, upon a showing of good cause, specify another method for service 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. [Welf & I C §213.5\(d\)\(2\)](#).

If the court modifies, terminates, or extends a previously issued restraining order, the court must ensure that the modification is entered into CARPOS through CLETS. [Welf & I C §213.5\(g\)](#).

## **C. GENERAL PROVISIONS**

### **1. [\[§12.12\]](#) Firearms Restrictions**

#### *Relinquishment*

The statutory firearms restrictions that apply to protective orders issued pursuant to the Family Code also apply to juvenile court restraining orders addressing domestic violence pursuant to [Fam C §6389](#) ([Welf & I C §304](#) states that “[t]he juvenile court, on its own motion, may issue an order as provided for in Section 213.5, or as described in

Section 6218 of the Family Code).” Family Code §6389(a) states that “[a] person subject to a protective order, as defined in Section 6218, shall not own, possess, purchase, or receive a firearm while that protective order is in effect.” Thus, the restrained party in a dependency case, in which a TRO or OAH is granted, cannot own, possess, purchase, or receive any firearms during the term of the protective order. [Welf & I C §304](#); [Fam C §§6389\(a\), 6218](#).

If the restrained person is present at the hearing, the court must order relinquishment of all firearms in the person’s immediate possession and control, or subject to his/her possession or control, immediately upon the request of a law enforcement officer, or if no request is made, within 24 hours of being served with the order. [Fam C §6389\(c\)\(1\), \(2\)](#).

If the restrained person is not present at the hearing, then relinquishment of the firearms must occur within 48 hours after being served with the order. [Fam C §6389\(c\)](#). The forms that address firearm relinquishment, form DV-800/JV-252 (“Proof of Firearms Turned In, Sold, or Stored”) and form DV-800-INFO (“How Do I Turn in, Sell, or Store My Firearms?”) must be served on the restrained person when the temporary restraining order and/or OAH is served. [Cal Rules of Ct 5.630\(g\)](#).

TIP: It is good practice for the judicial officer to ask both the restrained person and/or the protected person(s) whether or not the restrained person possesses firearms. This assists the court in providing specific instructions regarding firearms relinquishment and in setting a date for the restrained person to return with or file DV-800/JV-252 (“Proof of Firearms Turned in, Sold, or Stored”).

To comply with the relinquishment order, the restrained person may either

- sell the firearm to, or store with, a licensed gun dealer, or
- surrender control of the firearm to local law enforcement ([Fam C §6389\(c\)\(1\), \(2\)](#)), which may charge a storage fee that does not exceed the actual cost of storage. [Fam C §6389\(e\)](#).

If the restrained person notifies the court that a particular firearm is not in his/her immediate possession, the court may limit the order to exclude that firearm if the judge is satisfied the restrained person is unable to gain access to that firearm while the protective order is in effect. [Fam C §6389\(d\)](#). The restrained person also cannot own, possess, or have any ammunition under his/her control. [Pen C §30305](#).

A search warrant may be issued when the property to be seized includes a firearm owned by, in the possession of, or under the custody or control of the restrained party. The person must have been lawfully served with the protective order and failed to relinquish the firearm as required by law. [Fam C §6389](#); [Pen C §1524\(a\)\(11\)](#).

The court does not have the power to disregard or modify the firearms prohibition; it automatically activates when a court imposes or renews a protective order. The only grant of discretion to the court is for employment and for peace officers, and even that discretion is sharply circumscribed. [Fam C §6389\(h\)](#). See *Ritchie v Konrad* (2004) 115 CA4th 1275, 10 CR3d 387.

If the restrained person declines to relinquish any firearms based on an assertion of the Fifth Amendment right against self-incrimination, the court may grant use immunity for the act of relinquishing the firearm. [Fam C §6389\(d\)](#).

### *Exemptions from firearm prohibitions*

**Employment:** The court may grant an exemption from the relinquishment order if the restrained person can show that (1) a particular firearm is necessary as a condition of continued employment, and (2) the current employer cannot reassign the respondent to a position that does not require a firearm. If the court grants the exemption, then the court must also order that the restrained person can have the firearm in his/her possession only during scheduled work hours and travel to and from work. [Fam C §6389\(h\)](#).

**Peace Officer:** If carrying a firearm is necessary as a condition of employment for a peace officer, and the officer's personal safety depends on carrying the firearm, then the court may allow the officer to carry a firearm on or off duty if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. [Fam C §6389\(h\)](#). The court may not make this finding until the officer has undergone a mandatory psychological evaluation as ordered by the court. The court may require the officer "to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence." [Fam C §6389\(h\)](#).

*Note:* The federal firearms statute, described below, does not include the exemptions contained in the California statute.

### *Expiration of relinquishment order*

The firearms must be returned to the restrained party within 5 days after expiration of the protective order unless the law enforcement agency determines that (1) the firearm has been stolen, (2) the restrained party is in a prohibited class for possession of firearms as defined in Chapter 2 (commencing with section [29800](#)) and Chapter 3 (commencing with [Section 29900](#) of Division 9 of Title 4 of Part 6 of the [Penal Code](#); [Welf & I C §§8100, 8103](#)), or (3) another restraining order has been issued against the person. [Fam C §6389\(g\)](#). If the restrained party is not permitted to have the firearm returned and is the legal owner, he or she is entitled to sell it to or store it with a licensed gun dealer. [Fam C §6389\(g\)](#).

### *Federal firearms law*

A restrained party may also be subject to federal firearms law. Under federal law, it is unlawful for a restrained person who is subject to a qualifying court order to transport, receive, or possess any firearm or ammunition in or affecting commerce. [18 USC §922\(g\)\(8\)](#).

A "qualifying court order" is an order prohibiting harassing, stalking, threatening, or engaging in conduct that would place an intimate partner or child of the partner or restrained party in reasonable fear of bodily injury and that

- was issued after notice and hearing, giving the restrained party an opportunity to participate;
- includes a finding that the restrained party presents a credible threat to the physical safety of the intimate partner or child; or
- by its terms explicitly prohibits the use, attempted use, or threatened use of physical harm that would reasonably be expected to cause bodily injury.

[18 USC §922\(g\)\(8\)\(A\)–\(C\)](#). Note that the definition of a "qualifying court order" limits the federal firearms restrictions to restraining orders protective of intimate partners and

children and does not include others protected under [Welf & I C §213.5](#), such as other children in the household, the current caregiver of the child, social workers, or CASAs.

Violation of this prohibition while the order remains in effect is a federal offense punishable by a fine and/or up to 10 years' imprisonment. [18 USC §924\(a\)\(2\)](#).

## 2. **[§12.13] Court Procedures: Firearm Relinquishment. Rule 5.495**

Cal Rules of Ct 5.495, effective July 1, 2014, provides a procedure for courts issuing family and juvenile law domestic violence restraining orders to determine whether a restrained person has complied with the court's order to relinquish any prohibited firearms the restrained person owns, possesses, or controls, as specified in Fam C §6389(c).

*Consider relevant information at a noticed hearing and make determination.* The court must consider relevant information, when presented at a noticed hearing, to determine whether the person subject to a family or juvenile law protective order has a prohibited firearm. The court may consider whether the restrained person filed a relinquishment, storage or sale receipt or if an exemption from the firearm prohibition was granted under Fam C §6389(h). The court may make its determination at the time a domestic violence protective order is issued or at a subsequent noticed hearing while the order remains in effect. If the court makes a determination that the restrained person has a prohibited firearm, the court must make a written record of the determination and provide a copy to any party who is present at the hearing and, upon request, to any party not present at the hearing.

*Discretionary review hearing.* The court, in its discretion, may defer consideration of the information to a subsequent review hearing. If so, the rule specifies the timing of that hearing, requires the protected person to provide notice of the hearing either in person or by mail to the restrained person if that person was not present when the court set the review hearing, specifies who must be present at the review hearing, and provides that a party may appear by telephone at the review hearing under Cal Rules of Ct 5.9.

*Remedies.* The court may consider a determination that the restrained person has a firearm in violation of Fam C §6389 in issuing an order to show cause for contempt or an order for money sanctions. The rule restates existing law on the safety and welfare of children and family members and recognizes the safety issues associated with the presence of prohibited firearms.

### 3. [§12.14] Enforcement of Juvenile Court Protective Orders

A restrained party's willful and knowing violation of a juvenile court protective order, whether a TRO or an OAH, is a misdemeanor punishable under the Penal Code (Pen C §273.65; Welf & I C §213.5(h)), and constitutes contempt of court that is also a misdemeanor. Pen C §166(a)(4). A restrained party can also be guilty of contempt for disobeying a lawful order under CCP §1209(a)(5). The restrained party is guilty of a misdemeanor if that person purchases or attempts to purchase or receive, own, or possess a firearm while knowing s/he is subject to the prohibitions in a TRO or OAH. Pen C §29825(a), (b). See §12.12, Firearms Restrictions.

### 4. [§12.15] Juvenile, Criminal, and Family Court Restraining Orders— Enforcement Precedence

It is common in cases involving domestic violence to find the same parties involved in concurrent legal actions in juvenile, criminal, and/or family court, and for each of the courts to issue appropriate protective orders. See Chapter 13, Protective Orders Issued by Various Courts. The existence of more than one protective order issued by various courts can create confusion for the courts and law enforcement in enforcing the orders, as well as for the parties.

The law provides for a sequence in enforcement of protective orders. Viewing this sequence from the perspective of a dependency action involving domestic violence, protective orders issued by a criminal court take precedence in enforcement over juvenile court restraining orders. Welf & I C §§213.5, 304. Restraining orders issued by the juvenile court take precedence in enforcement over all other civil restraining orders except for Emergency Protective Orders (EPO) that are more restrictive than the juvenile court restraining order (see below).

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following order: (See Pen Code §136.2, Fam Code §§6383(h)(2), 6405(b).)

An EPO takes precedence in enforcement over any other restraining or protective order, provided the EPO meets the following requirements (Pen C §136.2(c)(1); Fam C §6383(h)):

1. The EPO is issued to protect one or more individuals who are already protected persons under another restraining or protective order;
2. The EPO restrains the individual who is the restrained person in the other restraining or protective order; and
3. The provisions of the EPO are more restrictive in relation to the restrained person than the provisions of the other restraining or protective order.

Effective July 1, 2014, the enforcement priority of protective orders is as follows.

- If more than one protective order is issued, a more restrictive EPO takes precedence in enforcement, as stated above.
- If none of the orders issued is an EPO that has precedence in enforcement, and one of the orders issued is a no-contact order, as described in Fam C §6320, a peace officer shall enforce the no-contact order.

- If there are both civil and criminal orders regarding the same parties and neither an EPO that has precedence in enforcement nor a no-contact order has been issued, the peace officer shall enforce the criminal order issued last, subject to the provisions of subdivisions (h) and (i) of section 136.2 of the Penal Code. Pen C 136.2(c), (e); Fam C 6383(h).
- If there is more than one civil order regarding the same parties and there is neither an emergency protective order that has precedence in enforcement nor a no-contact order, the peace officer shall enforce the order that was issued last.

Fam C §6320 defines a no-contact order as one that enjoins a party from molesting; attacking; striking; stalking; threatening; sexually assaulting; battering; credibly impersonating, as described in section 528.5 of the Penal Code; falsely personating, as described in section 529 of the Penal Code; harassing; telephoning, including, but not limited to, making annoying telephone calls as described in section 653m of the Penal Code; destroying personal property; contacting, either directly or indirectly, by mail or otherwise; and coming within a specified distance of, or disturbing the peace of, the other party and, in the discretion of the court, on a showing of good cause, of other named family or household members.

In *In re B.S.* (2009) 172 CA4th 183, 90 CR3d 810, the court held that the rule of exclusive concurrent jurisdiction did not preclude the juvenile court from entering a restraining order against the abusive parent in a dependency proceeding, even though the criminal court had previously entered a restraining order against that same parent. The court based its decision on the fact that the remedies in the two proceedings were not the same (criminal punishment v. change of custody), that neither court had the power to bring all of the parties before it, and that the defendant/respondent would be able to comply with both orders. The court's decision found that the Legislature, the Judicial Council, and the Superior Court had provided, via a mandated protocol (see §13.5, Protocols for Coordination of Criminal Protective Orders and Juvenile/Family Custody Orders), that a juvenile court restraining order could coexist with a criminal court restraining order so long as the two orders do not conflict. The court held there was no conflict between the two restraining orders. 172 CA4th at 191–192.

In some cases, a juvenile court petition may be filed after a restraining order has already been granted by the family court pursuant to the Domestic Violence Prevention Act (DVPA). In those cases, the family court's protective order will have been issued on the DVPA judicial council forms (DV-100–DV-810). After the juvenile court dependency petition is filed, there may be reasons for the judicial officer to issue a juvenile court restraining order upon request of a party or on the court's own motion. When a temporary restraining order or Order After Hearing, modifying the DVPA protective order, is granted by the dependency court, it should be issued on JV-255 and reference the family court's DVPA restraining order case number. If a reissuance of the juvenile court restraining order is granted, the reissued order must state on its face the date of expiration of the order, and Judicial Council Juvenile Court form JV-251, "Application and Order for Reissuance of Temporary Restraining Order--Juvenile," must

be used and should again reference the family law case number for tracking purposes. [Welf & I C §213.5\(c\)](#); [Cal Rules of Ct 5.630\(g\)\(2\)](#). There is no statutory limit to the number of times a temporary restraining order can be reissued.

TIP: If criminal charges are also pending against a respondent in a juvenile court restraining order action, it is good practice for the juvenile court judge to advise the restrained party of his/her Fifth Amendment rights and continue the temporary order beyond the criminal court date.

#### 5. **[§12.16] Availability of Juvenile Court Protective Order for Agency Social Worker**

The juvenile court may enjoin any person from engaging in abusive or harassing behavior directed to the child's current or former social worker, or court-appointed special advocate, upon application in the manner provided by [CCP §527](#). [Welf & I C §213.5\(a\)](#). This allows social workers and CASAs to request civil harassment restraining orders under [CCP §527.6](#) and workplace violence restraining orders under [CCP §527.8](#) in juvenile dependency court actions. They can request such orders on form JV-245 ("Request for Restraining Order—Juvenile").

The protections available under [Welf & I C §213.5](#) were effective in 2012. They are much greater than those available under [Welf & I C §340.5](#). Under that section, a social worker assigned to provide child welfare services, family reunification services, or other services to a dependent child of the juvenile court may seek a restraining order against a parent or both parents of the child. [Welf & I C §340.5\(a\)](#). The juvenile court may, for good cause shown and after an ex parte hearing, issue a restraining order if there has been at least one threat of physical harm toward the social worker or any member of the social worker's family, and the person making the threat has the ability to carry it out. [Welf & I C §340.5\(b\)](#). The order is quite limited as the statute only authorizes the court to restrain the parents of the dependent child from threatening the social worker, or any member of the social worker's family, with physical harm. [Welf & I C §340.5\(a\)](#). A violation of this order constitutes contempt. [Welf & I C §340.5\(c\)](#).

In *In re Matthew F.* (2005), 132 CA4th 883, 33 CR3d 909, the court held that the juvenile court had jurisdiction in a dependency proceeding to issue a three-year restraining order against a parent to protect a social worker, despite the fact that the social worker was no longer assigned to provide services to the family when the order was issued. The court determined that the required showing under [Welf & I C §340.5](#) was causal, not temporal, and that the Legislature did not intend for the protection for the social worker to end when he or she was removed from case, as "it would make little sense to remove the social worker's protection just when it is needed most." 132 CA4th at 887. The court also concluded that the statute applies to all social workers who provide services to dependents of the court and could include a social worker who supervises a parent's visitation as well as supervisory personnel who provide services indirectly to the dependent child.

One appellate court has held that an injunction may issue under [CCP §527.8](#) in a dependency case protecting all employees and staff of the social services agency. *In re M.B.* (2011) 201 CA4th 1057, 134 CR3d 45. In *In re M.B.*, a party in a dependency proceeding repeatedly yelled and cursed at department of child and family services staff, made harassing phone calls to the department, and threatened employees of the

department. The Fourth District Court of Appeal found that an injunction issued by the trial court prohibiting the party from contacting any employee of the department was authorized under [CCP §527.8](#). 201 CA4th at 1062–1064. The court concluded that

The juvenile court is a special department of the superior court whose powers are limited to those granted by the Juvenile Court Law [citation] plus those incidental thereto. [Citations.] Under the Juvenile Court Law, the juvenile court is authorized to make orders pertaining to abused or neglected children who come within the court’s jurisdiction. [Citations.] *In re Ashley M.* (2003) 114 Cal.App.4th 1, 6-7, 7 CR3d 237, fn.omitted.) An order preventing a parent from harassing the social services agency and its employees is reasonably pertinent to the protection of the child. Admittedly, the agency could just file a petition for injunction in a different department of the superior court. However, the juvenile court is in a better position to fine tune the injunction to the legitimate needs of the parent and the agency, as well as the child. The parent is also better off, because if indigent, he or she has a right to a court-appointed lawyer. ([Welf. & Inst. Code § 317](#).) Thus, [Code of Civil Procedure section 527.8](#), at least as applied in this case, is not merely consistent with but affirmatively furthers the overall purposes of the dependency system.

*In re M.B.*, *supra*, 201 CA4th at 1063–1064.

TIP: Some judicial officers are concerned that hearing the social worker’s restraining order petition will necessarily have an impact on their view of the dependency case and affect their impartiality. Others see advantages in having the request heard by a judicial officer who is already familiar with the family and the issues. On balance, it appears to be good practice to have the social worker’s restraining order petition heard by a different juvenile court judicial officer than the one handling the dependency action, if possible.

# Chapter 13

## PROTECTIVE ORDERS ISSUED BY VARIOUS COURTS

- I. [§13.1](#) Emergency Protective Orders (EPOS)
- II. [§13.2](#) Criminal Protective Orders (CPOs)
- III. [§13.3](#) DVPA (Family Court) Temporary Restraining Orders
- IV. [§13.4](#) DVPA (Family Court) Orders After Hearing
- V. [§13.5](#) Protocols for Coordination of Criminal Protective Orders and Juvenile/Family Custody Orders

### I. [§13.1](#) EMERGENCY PROTECTIVE ORDERS (EPOS)

An Emergency Protective Order (EPO) is a protective order issued by a judicial officer in response to a specific request by a law enforcement officer, and only after the judicial officer has made the necessary findings. [Fam C §6251](#).

An emergency protective order may be issued only if the judicial officer finds both of the following: (a) That reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists, that a child is in immediate and present danger of abuse or abduction, or that an elder or dependent adult is in immediate and present danger of abuse as defined in [Welf & I C §15610.07](#); and (b) that an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, or abuse of an elder or dependent adult.

A judge may issue an ex parte EPO when a law enforcement officer asserts reasonable grounds to believe a person is in immediate and present danger of

- domestic violence based on the person’s allegation of recent abuse or threat of abuse. [Fam C §§6209–6211](#).
- stalking (unlike domestic violence, stalking does not require that the parties have a relationship, as defined in [Fam C §6211](#)).
- child abuse or abduction; or
- abuse of an elder or dependent adult. [Fam C §6250\(a\)](#); [Pen C §646.91](#).

The EPO is effective for five court days after its issuance, or for a maximum of seven calendar days. [Fam C §6256](#); [Pen C §646.91A\(a\)](#). Within that period of time, the protected party may apply for a temporary restraining order in family court, or in juvenile court if a juvenile court petition has already been filed. The EPO takes precedence in enforcement over any other restraining or protective order, including a Criminal Protective Order, so long as the EPO meets the following requirements: (1) the EPO is issued to protect the same party(ies); (2) the EPO restrains the same person; and (3) the provisions of the EPO are more restrictive in relation to the restrained person than the provisions of the other restraining or protective order. [Pen C §136.2\(e\)\(2\)\(A\)–\(C\)](#); [Fam C §6383\(h\)](#). See [§12.15](#), Juvenile, Criminal, and Family Court Restraining Orders—Enforcement Precedence.

An EPO is available 24 hours a days, 7 days a week ([Fam C §6241](#)), and is usually requested by law enforcement at the scene of a domestic violence incident, or at the police station following the incident. The law enforcement officer must contact the specific judicial officer who is on call for the purpose of granting or denying EPO requests. The procedures for contacting a judge, commissioner, or referee vary from county to county. The presiding judge in each county must designate one judicial officer to be available at all times, whether or not court is in session, to issue EPOs and authorize the law enforcement officer to write out the protective order. [Fam C §6241](#).

The fact that the protected person left home to avoid abuse has no bearing on the availability of an EPO. [Fam C §6254](#). Similarly, the fact that the respondent is in custody has no bearing on the availability of an EPO since the court will not know when the respondent may be released. The order is enforceable anywhere in California. [Fam C §6381\(a\)](#).

An EPO may include any or all of the following ([Fam C §§6218, 6252](#)):

- (1) Personal conduct restraints, residence exclusion, and stay away orders (including locations such as school, work, and daycare in addition to a residence);
- (2) Temporary care and control of a minor child of the parties;
- (3) Temporary care and control of an endangered child or other children in the household (including protections found in [Welf & I C §213.5](#)); and
- (4) Temporary care and control of a child in danger of abduction.

An EPO issued for stalking may include civil harassment protections and/or workplace violence protections. [CCP §§527.6, 527.8](#). An EPO can also include orders protective of elders and dependent adults.

The law enforcement officer must give a copy of the EPO to the protected party or, if the protected party is a child, to the parent or guardian. [Fam C §6271\(b\)](#); [Pen C §646.91\(h\)\(2\)](#). If the restrained party can be reasonably located, the law enforcement officer requesting the EPO must personally serve the order. [Fam C §6271\(a\)](#); [Pen C §646.91\(h\)\(1\)](#). The officer then has one business day to enter the proof of service information into the California Law Enforcement Telecommunications System (CLETS). [Fam C §6380\(d\)\(1\)](#). As soon as practicable, a copy of the EPO should be delivered to the issuing court. [Fam C §6271\(c\)](#); [Pen C §646.91\(h\)\(3\)](#). If the court issues a modification, termination, or extension of an EPO, it must be done on Judicial Council forms and immediately entered into CLETS. [Fam C §6380\(f\)](#).

The restrained party is prohibited from taking any action to obtain the address or location of a protected party or their family members, caregiver, or guardian unless there is good cause not to make that order. [Fam C §6252.5\(a\)](#); [Pen C §646.91A\(a\)](#). The respondent cannot own, possess, purchase, or receive any firearms during the term of the protective order. [Pen C §29825\(a\), \(b\)](#). The respondent cannot own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition. [Pen C §30305\(a\)\(1\)](#). The purchase or receipt of ammunition is also prohibited. [Fam C §6389\(a\)](#); [CCP §§527.6, 527.8](#); [Welf & I C §§213.5, 15657.03](#). Ammunition includes, but is not limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence. [Pen C §16150\(b\)](#).

An intentional and knowing violation of the EPO is a misdemeanor. [Pen C §273.6](#). If the restrained person willfully disobeys the EPO, then s/he is also guilty of contempt of court, a misdemeanor. [Pen C §166\(a\)\(4\)](#).

Once the EPO expires, the terms of any existing juvenile or family court restraining order continue in full force and effect.

## II. [§13.2] CRIMINAL PROTECTIVE ORDERS (CPOS)

When a person has been criminally charged with domestic violence, the criminal court will address the need for a criminal protective order (CPO). In every criminal domestic violence case, the court is required to consider issuing a protective order. [Pen C §136.2\(e\)\(1\)](#). A court with jurisdiction over a criminal matter may issue an order on its own motion or on application by the district attorney, a victim, or a witness when there is good cause to believe that harm, intimidation, or dissuasion of the victim or witness has occurred or is reasonably likely to occur. [Pen C §136.2\(a\), \(e\)](#). A motion for a CPO made be made at any point throughout the course of the criminal case, until the termination of the court's jurisdiction. [Pen C §136.2](#).

When a criminal protective order is issued, it takes precedence in enforcement, in its entirety, over any juvenile or family court protective order (other than a valid EPO). See [§12.15](#), Juvenile, Criminal, and Family Court Restraining Orders—Enforcement Precedence. The CPO remains in effect until the defendant is no longer subject to the criminal court's jurisdiction, unless after sentencing, the court issues an order under [Pen C §136.2\(i\)](#), in which case the order remains in effect until its stated expiration date, which is up to 10 years after issuance. [Pen C §136.2\(i\)](#).

A CPO may include any order issued under [Fam C §6320](#), which includes personal conduct restraints and stay away orders. [Pen C §136.2\(a\)\(1\)](#). In addition, a CPO may prohibit the defendant from having any communication whatsoever with any witness or victim, except through an attorney, and may require law enforcement to provide protection for a victim or witness or their immediate family members. [Pen C §136.2\(a\)\(4\), \(6\)](#). The defendant is prohibited from taking action to obtain the address of a protected party or their family members. CPOs also include firearms and ammunition restrictions.

If the defendant is convicted of a misdemeanor or felony crime of domestic violence as defined in [Pen C §13700](#), the sentencing court must consider issuing a no-contact restraining order valid for up to 10 years. [Pen C §136.2\(i\)](#). CPOs should always have specific termination dates to enable law enforcement to ascertain whether they are still in effect for purposes of enforcement.

Since a child may be a witness to the domestic violence, the criminal court can include a “no contact” order between the defendant and the children while allowing the juvenile or family court to modify those orders to allow visitation if it is in the best interests of the children.

Protective orders issued by the criminal court generally do not contain all necessary provisions regarding custody and visitation, and the protected party often is not informed if and when a CPO may be terminated. For those reasons, the juvenile court should always consider issuing a protective order even when a CPO is in effect. In *In re B.S.* (2009) 172 CA4th 183, 90 CR3d 810, the court held that the rule of exclusive concurrent jurisdiction did not preclude the juvenile court from entering a restraining order against

the abusive parent in a dependency proceeding, even though the criminal court had previously entered a restraining order against that same parent, so long as the two orders do not conflict. 172 CA4th at 191–192. See §12.15, Juvenile, Criminal, and Family Court Restraining Orders—Enforcement Precedence.

### III. [§13.3] DVPA (FAMILY COURT) TEMPORARY RESTRAINING ORDERS

Family court Temporary Restraining Orders (TROs) and Orders After Hearing (OAH) are the most common form of restraining orders issued throughout California. An abused parent often will need to seek a temporary restraining order in family court or, if a juvenile dependency petition has already been filed, in the juvenile court. In addition to the protocols that coordinate restraining orders between criminal and civil courts (see §13.5, Protocols for Coordination of Criminal Protective Orders and Juvenile/Family Custody Orders), family and juvenile courts should develop communication protocols to minimize the need for families to appear in multiple courts.

TIP: The protocol adopted by the courts in Los Angeles County permits the temporary restraining order to be issued by the family law court and then allows the matter to be transferred to the dependency court for a hearing and the issuance of the Order After Hearing.

The process to obtain a DVPA restraining order is initiated by the petitioner who must have a relationship with the respondent that falls into one of the following categories: spouse or former spouse; current or former domestic partner; cohabitant or former cohabitant; dating or engagement relationship (past or present); parties have a child in common; child of the party or subject to a paternity action; any other person related by blood or marriage in the second degree (*e.g.*, grandparent, grandchild, sibling, parent, in-law). [Fam C §§6211, 297.5\(a\), \(b\)](#).

The court may issue a restraining order if the petitioner's affidavit provides *reasonable proof* of a past act of abuse, threat of abuse, stalking, sexual assault, or other behavior that can be enjoined under [Fam C §6320\(d\)](#). [Fam C §§6203, 6300](#). An *ex parte* restraining order generally must be issued or denied on the same day that the application is submitted. [Fam C §§6326, 246](#). An order denying a petition for an *ex parte* order must include the reasons for denying the petition and the right to a noticed hearing within 21 days, or 25 days with good cause). [Fam C §6320.5\(a\), \(b\)](#).

Any or all of the following may be included in an *ex parte* order:

- (1) Personal conduct restraints and stay away orders ([Fam C §6320\(a\)](#));
- (2) Residence exclusion. [Fam C §6321\(a\), \(b\)](#). The court can only order this exclusion on a showing of all of the following:
  - a. The party staying in the dwelling has the right to possession of the premises under color of law;
  - b. The excluded party has assaulted or threatened to assault the petitioner or a minor child of the parties; and
  - c. Physical or emotional harm would result to the petitioner or to a minor child of the parties.
- (3) Restraints the court considers necessary to effectuate those orders ([Fam C §6322](#));

- (4) Prohibition of disclosure of address or other identifying information of petitioner, child, parent, guardian, or other caregiver of a child ([Fam C §6322.5](#)). An enjoined party is prohibited from taking any action to obtain the address or location of any protected person unless there is good cause not to make that order ([Fam C §6322.7](#)).
- (5) Temporary custody and visitation of a child. [Fam C §6323](#). The court must refrain from granting or modifying a custody order on an ex parte basis unless there has been a showing of immediate harm to the child or immediate risk that the child will be removed from California. The court can make this decision when determining what is in the best interests of the child and limit the child's exposure to potential domestic violence while ensuring the safety of the whole family.
- (6) Protection of specified animals ([Fam C §6320\(b\)](#));
- (7) Temporary use, possession, and control of real and/or personal property ([Fam C §6324](#)); and
- (8) Restraining married persons from transferring, concealing, or disposing of real or personal property, whether community, quasi-community, or separate property. [Fam C §§2045, 6325](#).

The court's orders regarding custody and visitation must be specific as to day, time, place, and manner of transfer of the child for custody or visitation, and must be designed to limit the child's potential exposure to domestic violence and ensure the safety of all family members. [Fam C §6323\(a\)\(2\)\(A\)](#). The court must consider whether supervised custody or visitation is warranted, or if custody or visitation should be suspended or denied. Any visitation or custody order issued by a family (or juvenile) court after a Criminal Protective Order (CPO) has been issued must refer to and acknowledge the precedence in enforcement of any appropriate CPO. [Pen C §136.2\(e\)\(3\)](#); see [§12.15](#), Juvenile, Criminal, and Family Court Restraining Orders—Enforcement Precedence.

The restrained person is also prohibited from owning, possessing, purchasing, or receiving firearms or ammunition during the term of the protective order. [Pen C §29825\(a\), \(b\)](#); [Fam C §6389\(a\), \(c\)\(1\), \(2\)](#). The temporary restraining order is valid until the date of the hearing which must be no later than 21 days (25 days with good cause). [Fam C §242\(a\)](#). The petitioner may file a request for a reissuance if the respondent could not be served within the required time. [Fam C §245](#).

If a law enforcement officer at the scene of a domestic violence incident determines that a DVPA protective order has been issued but not served, the officer must immediately notify the respondent of the terms of the order and enforce the order. [Fam C §6383\(e\)](#).

[California Rules of Ct 1.51\(a\)](#) requires a person requesting a protective order, as specified, to submit a completed Confidential CLETS Information Form (form CLETS-001) with the request. Access to the information on the form is limited to authorized court personnel, law enforcement, and other personnel authorized by the California Department of Justice, and the form must not be included in the court file. [Cal Rules of Ct 1.51\(c\)](#). If the court issues a temporary restraining order or order after hearing, the court must either transmit the form to a law enforcement agency for entry into CLETS and not retain any copy, or enter the information on the form into CLETS itself and promptly destroy the form or delete the form from its records. The form must also be destroyed or deleted if

the court does not enter an order. Until the court has transmitted, destroyed, or deleted the form, it must be retained in a secure manner that prevents access to the information on the form except for authorized personnel. [Cal Rules of Ct 1.51\(e\)](#).

#### IV. [§13.4] DVPA (FAMILY COURT) ORDERS AFTER HEARING

A DVPA Order After Hearing (OAH) can be granted after notice and the opportunity for both parties to have an evidentiary hearing. An OAH protective order can be granted whether or not there was a prior temporary restraining order. The DVPA prohibits the issuance of mutual restraining orders enjoining the parties in family court actions from specific acts of abuse described in [Fam C §6320](#) unless (1) both parties personally appear, (2) each party presents written evidence of abuse or domestic violence, *and* (3) the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense. [Fam C §6305](#). If the court makes these findings, procedurally, the court will be required to issue two separate restraining orders. See [§4.9](#), Mutual Allegations, and [§12.9](#), Permissible Orders.

Before a hearing on the protective order or when determining appropriate custody and visitation orders, the court is required to conduct a criminal background check on the restrained party, including any prior convictions for misdemeanors involving domestic violence, weapons, or other violence, and any outstanding warrants. [Fam C §6306\(a\), \(b\)\(1\), \(e\)](#).

*Note:* The search under [Fam C §6306\(a\)](#) is only applicable in those counties identified by the Judicial Council as having resources currently available, or as soon as funds are appropriated. [Cal Rules of Ct 5.630\(j\)\(3\)](#); see [Stats 2001, ch 572 \(SB 66\), §7](#), as to implementation of [Fam C §§6306 et seq.](#)

The court should also determine whether the restrained party is currently on probation or parole, and also search for other restraining and protective orders involving either party. [Fam C §6306\(f\)](#). To the extent possible, courts should access the California Restraining and Protective Order System (CARPOS), as well as the California Courts Protective Order Registry (CCPOR) to confirm and enhance the information obtained through other sources. (CCPOR is a database established by the Judicial Council that contains images of restraining and protective orders and is available to courts in an increasing number of counties in California.) The information obtained from the search can be considered by the judicial officer, both at the temporary restraining order stage and at the hearing on the protective order application. [Fam C §6306\(a\), \(b\)\(1\)](#); see [§12.5](#), Records Search Prior to Hearing.

Any information obtained as a result of the search is confidential; it is unlawful for the party seeking the protective order to willfully release it. [Fam C §6306\(c\)\(1\)](#). The criminal background information must be maintained separately from the public file; however, a court-appointed mediator or child custody evaluator may access the documents. [Fam C §6306\(d\)](#). After the court makes its ruling, however, the parties may request the information relied on by the court and may share the information with counsel, court personnel, and court-appointed mediators for the purpose of seeking judicial review of the court's order. [Fam C §6306\(c\)\(1\), \(3\)](#). The information can also be

shared with counsel, court personnel, and court-appointed mediators for purposes of juvenile court proceedings under [Welf & I C §213.5](#). [Fam C §6306\(c\)\(3\)](#).

The person seeking the protective order may have a support person accompany her/him to any proceeding to obtain a protective order. [Fam C §6303\(a\)](#). If the abused parent is not represented by an attorney, the support person may sit with the parent at the table that is generally reserved for the parties and their attorneys. [Fam C §6303\(b\), \(d\)](#). See Chapter. 5, Safety and Confidentiality Considerations for the Court. Support persons who are domestic violence advocates or from a shelter should not be asked to give their names or that of the shelter to protect the confidentiality and safety of the support person and the shelter's staff and residents. [Welf & I C §18301](#) prohibits the disclosure of any information pertaining to the location or identity of any shelter resident, employee, or volunteer. See [§5.4](#), Confidentiality of Shelters in the Court Record.

The court may include a wide range of provisions in the OAH. When determining the provisions to include, the court must consider whether failure to make any of these orders may jeopardize the safety of the petitioner and the children for whom the custody or visitation orders are sought. [Fam C §6340\(a\)](#). Among other provisions, the court may include orders for:

- (1) A residence exclusion. The court may issue a residence exclusion if the court finds that physical or emotional harm would result to the petitioner, to a person under the care, custody, and control of the petitioner, or to a minor child of the parties or petitioner ([Fam C §§6321, 6340\(b\)](#));
- (2) Child support ([Fam C §6341\(a\)](#));
- (3) Spousal support ([Fam C §6341\(c\)](#));
- (4) Restitution to the petitioner for lost earnings or out-of-pocket expenses including medical care and temporary housing incurred as a direct result of the abuse ([Fam C §6342\(3\)\(b\)](#));
- (5) Respondent's participation in a batterer's program, approved by the local probation department ([Fam C §6343\(a\)](#));
- (6) Custody and visitation;
- (7) Drug testing ([Fam C §3041.5\(a\)](#)); or
- (8) Parent and child counseling.

The court may require parents or any other party involved in the custody or visitation dispute and the minor child to participate in counseling for not more than one year if the court finds the dispute poses a substantial danger to the best interests of the child and counseling is in the best interests of the child. [Fam C §3190\(a\)](#). If counseling is ordered in a case where there is a history of abuse against the other parent or a child, and a protective order is in effect, the court may order the parties to participate in counseling separately. [Fam C §3190](#); see [§9.4](#), Conjoint Counseling Between Parents.

When determining what is in the best interests of the child regarding custody and visitation, the court must consider a number of factors, including the abuse committed by a parent. [Fam C §3011\(b\)](#). When the court makes a finding that a person seeking custody has perpetrated domestic violence within the previous 5 years against the other party seeking custody or against the child or the child's siblings, there is a rebuttable presumption against awarding sole or joint physical or legal custody to that party. [Fam C §3044](#). If a parent's absence or relocation from the family residence was due to actual or

threatened domestic violence by the other party, the parent's absence cannot be considered as a factor in determining custody or visitation. [Fam C §3046\(a\)\(2\)](#).

Any visitation or custody order issued by a family (or juvenile) court after a Criminal Protective Order (CPO) has been issued must refer to and acknowledge that enforcement of an appropriate CPO (or an Emergency Protective Order) takes precedence over a DVPA Order After Hearing. [Pen C §136.2\(e\)\(3\)](#); see [§12.15](#), Juvenile, Criminal, and Family Court Restraining Orders—Enforcement Precedence.

The residence exclusion, personal conduct restraints, and stay away orders in a DVPA OAH may be in effect up to 5 years from the date the order is issued. [Fam C §6345\(a\)](#). The other orders are in effect until further order of the court. [Fam C §6345\(b\)](#).

A party may request renewal of a DVPA Order for five years or permanently, without a showing of any further abuse since the issuance of the original order. [Fam C §6345\(a\)](#); see [Ritchie v Konrad \(2004\) 115 CA4th 1275, 10 CR3d 387](#). Failure to state an expiration date does not invalidate the Order After Hearing. If no expiration date is stated in the order, it will be deemed a three-year order. [Fam C §6345\(c\)](#). The Order After Hearing can be terminated or modified by a written stipulation or upon motion of a party. [Fam C §6345\(a\)](#). If an action is filed to terminate or modify a protective order before the expiration date by a party other than the protected party, the party who is protected by the order shall be given notice by personal service or, if he or she is participating in the Safe At Home program, by mail on the California Secretary of State. The Safe At Home program is a confidential mail service as described in Chapter 3.1, commencing with [section 6205](#), of Division 7 of Title 1 of the [Government Code](#). If the protected party cannot be notified before the hearing, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the protected party is properly noticed. On a showing of good cause, the court may 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 in court and does not challenge the sufficiency of the notice. [Fam C §6345\(d\)](#).

The restrained party is prohibited from taking any action to obtain the address or location of any protected person unless there is good cause for the court not to include that order. [Fam C §6322.7\(a\)](#). The restrained party also is prohibited from owning, possessing, purchasing, or receiving any firearms or ammunition during the term of the protective order. [Fam C §6389\(a\)](#). After issuing an OAH, the court must order the restrained party to relinquish all firearms in his/her possession and control immediately upon the request of a law enforcement officer or, if no request is made, within 24 hours of being served with the order. [Fam C §6389\(c\)\(1\), \(2\)](#).

The restrained party is guilty of a misdemeanor if s/he purchases or receives, attempts to purchase or receive, owns, or possesses a firearm while knowing that s/he is subject to the prohibitions in the ex parte order or order after hearing. [Pen C §29825\(a\), \(b\)](#). It is a misdemeanor for the restrained party to intentionally and knowingly violate the DVPA ex parte order or Order After Hearing ([Pen C §273.6](#)), and a contempt of court to violate a court order. [Pen C §166\(a\)\(4\)](#); [CCP §1209\(a\)\(5\)](#).

Each county must have a procedure for transmitting protective orders into CARPOS through CLETS. [Fam C §6380\(a\)](#). The data is transmitted by law enforcement or, with Department of Justice permission, court personnel. The court should ensure that these orders are immediately entered into CARPOS so that law enforcement agencies will have

access to the orders, maximizing enforcement. If the court issues a modification, termination, or extension of a protective order, it must be done on Judicial Council forms and immediately entered into CARPOS. [Fam C §6380\(f\)](#). See [§12.7](#), Notifying Law Enforcement—Entry Into California Restraining and Protective Order System (CARPOS).

A DVPA Order that does not specifically include the address for the petitioner's residence, workplace, school, child care location, or child's school is enforceable. [Fam C §6225](#). It is also valid and enforceable even if the petitioner invites or consents to contact with the respondent. The OAH can be modified only by another court order. [Pen C §13710\(b\)](#).

## V. [§13.5](#) PROTOCOLS FOR COORDINATION OF CRIMINAL PROTECTIVE ORDERS AND JUVENILE/FAMILY CUSTODY ORDERS

The problems that may arise from conflicting domestic violence and child custody/visitation orders, particularly between criminal courts and juvenile or family courts, are complex. Courts have developed various approaches to resolving these issues.

[California Rules of Court 5.450](#) mandates each local court to have a protocol that provides for the timely coordination of protective orders and child custody/visitation orders involving the same restrained person and the same protected person or witness, including criminal, family, juvenile, probate, and guardianship proceedings. [Pen C §136.2\(f\)](#); [Cal Rules of Ct 5.450](#). [Cal Rules of Ct 5.450](#) will be renumbered to [rule 5.445](#) effective January 1, 2013, without substantive change.

The goal of the protocol required by [Cal Rules of Ct 5.450](#) is to avoid conflicting orders without creating new barriers for individuals seeking or needing protection through the courts, and to protect the rights of all parties while enhancing the ability of law enforcement to appropriately enforce orders.

Rule 5.450 is intended to

- encourage courts to be aware of, and share information about, the existence and terms of criminal court protective orders and other courts' orders regarding child custody and visitation; and
- 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.

The court's paramount concern must be the safety of all parties.

Local protocols are vital as they can take into account local resources and technology and provide effective guidance on communication between the various courts in the same jurisdiction. The rule also encourages courts to establish regional communication systems with courts in neighboring counties regarding the existence of and terms of criminal court protective orders. See Appendix G for sample Court Communication Protocols.

The protocol must include, but is not limited to, the following requirements:

- Provide mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts ([Pen C §136.2\(f\)](#)); and

- Permit family or juvenile court orders to coexist with criminal court protective orders so long as any order permitting contact between the restrained party and his or her children does not violate a criminal court’s “no contact order” and ensures the safe exchange of the children. [Pen C §136.2\(f\)\(1\), \(2\)](#); [Cal Rules of Ct 5.450](#). The family or juvenile court order must also specify time, day, place, and manner of transfer of the child. [Pen C §136.2\(f\)](#); [Fam C §3100](#); [Welf & I C §213.5\(l\)](#).

TIP: Courts in Los Angeles and other counties have developed mechanisms that enable the juvenile court to request the criminal court to modify certain visitation orders if the criminal court’s CPO does not allow the juvenile or family courts to modify those orders. In Los Angeles county, pursuant to [Superior Court Local Rule 2.6](#), the family or juvenile court can make a request to the criminal court to modify visitation orders by submitting a Request to Modify Criminal Court Protective Order.

[California Rule of Court 5.450](#) regarding a protocol for coordination of restraining orders issued by various courts is consistent with the best practice recommendations outlined in NCJFCJ’s Greenbook (127):

Juvenile courts must collaborate with other courts that are dealing with family members and others involved in the case. Juvenile courts should coordinate with criminal courts to help ensure that perpetrators of violence are held accountable. Juvenile courts should coordinate with civil courts that can provide protection orders for the safety and well-being of family members. Juvenile courts also should coordinate with domestic relations and family courts to identify safe visitation, financial support, and custody arrangements that are in the best interests of the child and the victimized parent. (Rec.51)

## CONCLUSION

In dependency cases involving domestic violence, as in all dependency cases, the court's foremost responsibility is to ensure that children are safe. To do so, it is essential for judges to understand the dynamics of domestic violence and the ways in which it impacts children, the abused parent, and the abusive parent so as to accurately assess risk and implement safety precautions. Judicial officers are mandated to oversee the child welfare agency's actions and to require the agency to provide reasonable efforts to prevent removal or promote reunification at every step in the proceeding. In cases involving domestic violence, the court should consider issuing restraining orders and should ensure that the agency has met the reasonable efforts requirements by providing appropriate protections and services with the goal of achieving positive outcomes for children and their families.

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95. Bragg, *supra*, note 17 at p 50.
96. Bragg, *supra*, note 17 at p 50.
97. Goodmark, *supra*, note 1 at p 15, citing Warshaw, Carole and Barnes, Holly, *Domestic Violence, Mental Health & Trauma: Research Highlights*, Domestic Violence and Mental Health Policy Initiative (2003).
98. Bancroft & Silverman, *supra*, note 50 at pp 33–34.
99. Hitchens & Van Horn, *supra*, note 70 at p 36, citing Osnat Erel & Bonnie Burman, “Interrelatedness of Marital Relations and Parent-Child Relations, A Meta-Analytic Review.” *Psychol. Bull.* 118 (1995) 108.
100. Goodmark, *supra*, note 1 at p 14, citing Patricia A. Fassone, et al, U.S. Department of Health & Human Services, “Substance Abuse Treatment and Domestic Violence: Treatment Improvement Protocol. (TIP),” Series 25 (1997).
101. Goodmark, Leigh, “Substance Abuse and Domestic Violence in the Child Welfare Context: Where Do You Start?” *Child L. Prac.* 21 (2002) 101–102.
102. Bragg, *supra*, note 17 at p 44; Goodmark, *supra*, note 1 at p 14.
103. Schechter & Edelson [Greenbook], *supra*, note 10 at p 111.
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105. Gondolf, E., “Evaluating Batterer Counseling Programs: A Difficult Task Showing Some Effects and Implications.” *Aggression and Violent Behavior* 9 (2004) 605–631. This study, a longitudinal four-year follow-up evaluation in four cities, found that “the vast majority of men referred to batterer counseling appear to stop their assaultive behavior and reduce their abuse in general. The batterer programs, in our evaluation, appear to contribute to this

- outcome—there is a ‘program effect.’ Referral to the gender-based, cognitive–behavioral programs, moreover, seems to be appropriate for the majority of men.”
106. See, e.g., Feder, L. and Wilson, D., “A meta-analytic review of court-mandated batterer intervention programs: Can courts affect abusers’ behaviors?” *Journal of Experimental Criminology* 1 (2005) 239–262. See also Babcock, J. C. et al., “Does batterers’ treatment work? A metaanalytic review of domestic violence treatment outcome research.” *Clinical Psychology Review* 23 (2004) 1023–1053.
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  108. MacLeod, D., Pi, R., Smith, D. & Rose-Goodwin, L., *Batterer Intervention Systems in California: An Evaluation*. San Francisco, CA: Judicial Council of California, Administrative Office of the Courts, Office of Court Research (2009), p ii.
  109. Schechter & Edelson [Greenbook], *supra*, note 10 at p 67.
  110. Bragg, *supra*, at p. 51.
  111. Bancroft, Lundy, Silverman, Jay G., Ritchie, Daniel, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*. 2nd edition. Thousand Oaks, CA: Sage Publications, Inc. (2012), at pp. 229
  112. Bragg, *supra*, note 17 at p 51.
  113. Goodmark, *supra*, note 1 at p 15.
  114. Schechter & Edelson [Greenbook], *supra*, note 10 at p 110.
  115. Goodmark, *supra*, note 1 at pp 15–16.
  116. Goodmark, *supra*, note 1 at p 13, citing Patricia A. Fazzone, et al, *supra*, note 98.
  117. Bragg, *supra*, note 17 at p 51; Schechter & Edelson [Greenbook], *supra*, note 10 at p 110.
  118. Schechter & Edelson [Greenbook], *supra*, note 10 at p 110.
  119. Schechter & Edelson [Greenbook], *supra*, note 10 at p 109.
  120. Bragg, *supra*, note 17 at p 25; Davies, J., Lyon, E. & Monti-Catania, D., *Safety Planning with Battered Women: Complex Lives/Difficult Choices*. Thousand Oaks, CA: Sage Publications (1998).
  121. Bragg, *supra*, note 17 at p 28; Davies, *supra*, note 111.
  122. Bragg, *supra*, note 17 at p 46; Davies, *supra*, note 111.
  123. Goodmark, *supra*, note 1 at pp 28–29.
  124. Bancroft & Silverman, *supra*, note 64.
  125. Bragg, *supra*, note 17 at pp 27, 29.
  126. Davies, *supra*, note 111.
  127. Goodmark, *supra*, note 1 at p 29; Davies, *supra*, note 111.
  128. Goodmark, *supra*, note 1 at pp 30–31.
  129. Saunders, *supra*, note 85.
  130. Schechter & Edelson [Greenbook], *supra*, note 10 at p 103.

## Appendix A

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### DOMESTIC VIOLENCE: FORMS AND PATTERNS OF ABUSIVE BEHAVIOR

Domestic violence is purposeful and intentional behavior directed at achieving compliance from or control over the victim. There is great variation in the forms and patterns of abusive behavior in relationships with domestic violence. Domestic violence generally includes, but is not limited to, one or more of the following archetypical abusive behaviors:

**Physical abuse:** hitting, kicking, hair pulling, choking, strangling, pushing, punching, spitting on, burning, beating, scratching, biting, grabbing, shaking, shoving, restraining, throwing, twisting, slapping (with open or closed hand); use of weapons (*e.g.*, household objects, knives, guns) against the victim. Sometimes a seemingly less serious type of physical abuse, such as a shove, can result in a serious injury. The perpetrator may push the victim against a couch, a wall, down a flight of stairs, or out of a moving car, all of which could result in varying degrees of trauma.

**Threats and intimidation:** threats of violence or harm directed against the victim or others important to the victim including the children, friends and family members, neighbors, and pets. The perpetrator may also threaten suicide. Threats may be made with words (*e.g.*, “I’m going to kill you,” “No one is going to have you,” “Your mother is going to pay,” “I cannot live without you”) or with actions (*e.g.*, stalking, displaying weapons, hostage taking, suicide attempts). The perpetrator may use physical size to intimidate, yell and scream in the victim’s face, stand over the victim during a fight, or threaten to use weapons. The perpetrator may also threaten to report the victim to Child Protective Services, the welfare department, or immigration authorities.

**Stalking/Harassment:** following, stalking, and keeping victim under surveillance; embarrassing the victim in public; constantly checking up on the victim; and refusing to leave when asked.

**Destruction of property:** punching walls, destroying furniture, throwing things, breaking dishes, cutting up the victim’s clothing; destroying the victim’s computer; destroying photos or objects of significant sentimental value to the victim; destroying important documents such as green cards, social security cards, or driver’s licenses.

**Sexual abuse:** coerced sex by manipulation or threat, physically forced sex, or sexual assault accompanied by violence. Victims may be coerced or forced to perform a kind of sex they do not want (*e.g.*, sex with third parties, physically painful sex, sexual activity they find offensive, verbal degradation during sex, viewing sexually violent material) or at a time they do not want it (*e.g.*, when exhausted, when ill, in front of children, after a physical assault, when asleep). Some perpetrators attack their victims’ genitals; others refuse to have sex with the victim; others take sexually explicit photographs of the victim and post or threaten to post them publicly. Perpetrators may put the victim at risk for contracting HIV and other STDs, or refuse to allow the victim to use birth control resulting in unwanted pregnancies.

**Isolation:** controlling the victims’ time, activities, and contact with others through a combination of isolating and disinformation tactics. Some perpetrators use threats of assault to separate the victim from family or friends; others monitor phone calls and read her mail. The perpetrator may isolate the victim by being very possessive of the victim’s time and attention and interrupting social/support networks. The perpetrator may accuse the victim of sexual infidelity or of spending too much time with children, with extended family, at work, or with friends.

## Appendix A

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Perpetrators may lock the victim out of the house or control her/his movements by taking the car keys, or may force the victim to stop working. Perpetrators may use disinformation tactics to compound the isolation by distorting what is real through lying, providing contradictory information, or withholding information, and use the isolation to prevent discovery of the abuse and avoid being held responsible for it.

**Coercion:** making the victim feel guilty, pushing the victim into decisions, sulking, manipulating children and other family members, threatening harm if the victim does not comply, always insisting on being right, and making up impossible “rules” and punishing the victim for breaking them. Perpetrators may coerce victims into doing something illegal (*e.g.*, prostitution, theft) and then threaten to expose them, or may make false accusations against them.

**Psychological/emotional abuse:** making verbal attacks or humiliating remarks, which may be made in private or in front of family, friends, or strangers; constant criticism; name-calling; swearing; interrupting; and changing the subject. Emotional abuse may include mocking, not paying attention, not responding to or respecting the victim’s feelings and opinions, not taking the victim’s concerns seriously, forcing her to do degrading things, minimizing or denying the abuse, or blaming the victim for “causing” the abuse. Some perpetrators play “mind games” to undercut the victim’s sense of reality, and repeatedly claim that the victim is crazy and incompetent.

**Economic control:** controlling the victim’s access to all of the family resources, such as transportation, food, clothing, shelter, insurance, and money, no matter who is the primary provider. Victims may have to get “permission” to spend money on basic family needs. The perpetrator may refuse to pay bills, may destroy assets, ruin the victim’s credit, place the family in debt, not let the victim work, interfere with the victim’s job, or refuse to work and support the family.

**Self-destructive behavior:** abusing drugs or alcohol, threatening self-harm or suicide, and driving recklessly, often with the victim and/or the children in the car.

**Use of the children in the abuse:** directing abusive acts against the children or involving the children (*e.g.*, physical attacks against a child, sexual use of the children, forcing children to watch the abuse of the victim, engaging children in the abuse of the victim). A perpetrator may require the children to spy on the victim, threaten to take the children away in a custody dispute, kidnap or take the children hostage, or refuse to pay child support. The perpetrator’s visitations may be used as opportunities to monitor or control the victim, and to interrogate the children about the victim’s daily life.

Descriptions derived from: Anne L. Ganley, “Understanding Domestic Violence: Preparatory Reading for Trainers” in Anne L. Ganley & Susan Schechter, *Domestic Violence: A National Curriculum For Child Protective Services*, pp18–21.

See also Bragg, H. Lien, “Child Protection in Families Experiencing Domestic Violence” (2003), U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, Office on Child Abuse and Neglect, pp 17–18

## DOMESTIC VIOLENCE

### SAFETY TIPS FOR YOU AND YOUR FAMILY

IF YOU ARE IN DANGER,  
call **911**  
or your local police emergency number

To find out about help in your area, call:  
National Domestic Violence Hotline:  
1-800-799-SAFE  
1-800-787-3224 (TTY)

American Bar Association  
Commission on Domestic Violence  
&  
American Bar Association  
Tort & Insurance Practice Section

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Whether or not you feel able to leave an abuser, there are things you can do to make yourself and your family safer.

## IN AN EMERGENCY

If you are at home & you are being threatened or attacked:

- **Stay away from the kitchen** (the abuser can find weapons, like knives, there)
- **Stay away from bathrooms, closets or small spaces** where the abuser can trap you
- **Get to a room with a door** or window to escape
- **Get to a room with a phone** to call for help; lock the abuser outside if you can
- **Call 911** (or your local emergency number) **right away for help**; get the dispatcher's name
- Think about a neighbor or friend you can run to for help
- If a police officer comes, tell him/her what happened; **get his/her name & badge number**

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- **Get medical help** if you are hurt
- **Take pictures** of bruises or injuries
- **Call a domestic violence program or shelter** (some are listed here); ask them to help you make a safety plan

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To find out where to get help  
in your area,  
CALL the

**National Domestic Violence Hotline**  
**1-800-799-SAFE**  
**1-800-787-3224 (TTY)**

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## HOW TO PROTECT YOURSELF AT HOME

- Learn where to get help; **memorize emergency phone numbers**
- **Keep a phone** in a room you can lock from the inside; if you can, get a cellular phone that you keep with you at all times
- If the abuser has moved out, **change the locks on your door**; get locks on the windows

- **Plan an escape route** out of your home; teach it to your children
- Think about where you would go if you need to escape
- **Ask your neighbors** to call the police if they see the abuser at your house; make a signal for them to call the police, for example, if the phone rings twice, a shade is pulled down or a light is on
- **Pack a bag** with important things you'd need if you had to leave quickly; put it in a safe place, or give it to a friend or relative you trust
- Include **cash, car keys & important information** such as: court papers, passport or birth certificates, medical records & medicines, immigration papers
- **Get an unlisted phone number**
- **Block caller ID**
- **Use an answering machine**; screen the calls
- **Take a good self-defense course**

## HOW TO PROTECT YOURSELF OUTSIDE THE HOME

- **Change your regular travel habits**
- Try to **get rides with different people**
- **Shop and bank in a different place**
- **Cancel any bank accounts** or credit cards you shared; open new accounts at a different bank
- **Keep your court order and emergency numbers with you at all times**
- **Keep a cell phone & program it to 911** (or other emergency number)

## HOW TO MAKE YOUR CHILDREN SAFER

- **Teach them not to get in the middle of a fight**, even if they want to help
- **Teach them how to get to safety**, to call 911, to give your address & phone number to the police
- **Teach them who to call for help**
- **Tell them to stay out of the kitchen**
- **Give the principal at school or the daycare center a copy of your court order**; tell them not to release your children to anyone without talking to you first; use a password so they can be sure it is you on the phone; give them a photo of the abuser
- **Make sure the children know who to tell at school if they see the abuser**
- **Make sure that the school knows not to give your address or phone number to ANYONE**

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## HOW TO MAKE YOURSELF SAFER AT WORK

- Keep a copy of your court order at work
- Give a **picture of the abuser to security** and friends at work
- **Tell your supervisors** - see if they can make it harder for the abuser to find you
- Don't go to lunch alone
- Ask a **security guard** to walk you to your car or to the bus
- If the abuser calls you at work, **save voice mail** and save e-mail
- Your employer may be able to help you find community resources

## USING THE LAW TO HELP YOU

### Protection or Restraining Orders

- Ask your local domestic violence program who can help you get a civil protection order and who can help you with criminal prosecution
- Ask for help in finding a lawyer

### In most places, the judge can:

- **Order the abuser to stay away** from you or your children
- **Order the abuser to leave your home**
- **Give you temporary custody** of your children & **order the abuser to pay you temporary child support**
- **Order the police to come to your home** while the abuser picks up personal belongings
- **Give you possession of the car**, furniture and other belongings
- **Order the abuser to go to a batterers intervention program**
- **Order the abuser not to call you at work**
- **Order the abuser to give guns to the police**

### If you are worried about any of the following, make sure you:

- **Show the judge any pictures** of your injuries
- **Tell the judge that you do not feel safe** if the abuser comes to your home to pick up the children to visit with them
- **Ask the judge to order the abuser to pick up and return the children at the police station or some other safe place**
- Ask that any **visits the abuser is permitted are at very specific times** so the police will know by reading the court order if the abuser is there at the wrong time

- **Tell the judge if the abuser** has harmed or threatened the children; ask that visits be supervised; think about who could do that for you
- **Get a certified copy** of the court order
- **Keep the court order with you at all times**

## CRIMINAL PROCEEDINGS

- **Show** the prosecutor your **court orders**
- **Show** the prosecutor **medical records** about your injuries or **pictures** if you have them
- **Tell the prosecutor the name of anyone who is helping you (a victim advocate or a lawyer)**
- Tell the prosecutor about **any witnesses** to injuries or abuse
- **Ask the prosecutor to notify you ahead of time if the abuser is getting out of jail**

## BE SAFE AT THE COURTHOUSE

- **Sit as far away from the abuser** as you can; you don't have to look at or talk to the abuser; you don't have to talk to the abuser's family or friends if they are there
- **Bring a friend or relative** with you to wait until your case is heard
- **Tell a bailiff or sheriff that you are afraid** of the abuser and ask him/her to look out for you
- Make sure you **have your court order before you leave**
- Ask the judge or the sheriff to **keep the abuser there** for a while when court is over; leave quickly
- If you think the abuser is following you when you leave, call the police immediately
- **If you have to travel to another State for work or to get away from the abuser, take your protection order with you; it is valid everywhere**

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For additional information in your area, please contact:

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# Appendix B-2

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## Making a Safety Plan

Posted at: <http://www.courtinfo.ca.gov/selfhelp/protection/dv/safetyplan.htm>

### What is a Safety Plan?

A safety plan means things you can do to keep you and your children safe from domestic violence. You can get help to make a safety plan. Help is usually free or low cost and available in many languages. Click here for [help in your county](#) .

### Before and During an Attack

- When an attack starts, try to escape. If you feel you're in danger, leave your home and take your children, no matter what time it is. Go to the house of a friend or relative or a domestic violence shelter.
- Defend and protect yourself. Later, take photos of your injuries.
- Call for help. Scream as loud and as long as you can. You have nothing to be ashamed of - the abusive person does.
- Stay close to a door or window so you can get out if you need to.
- Stay away from the bathroom, kitchen, and weapons.
- Practice your escape. Know which doors, windows, elevator, or stairs would be best.
- Have a packed bag ready. Hide it in a place that you can get to quickly.
- Identify neighbors you can tell about the violence. Ask them to call the police if they hear signs of domestic violence coming from your home.
- Have a "code word" to use with your children, family, friends, and neighbors. Ask them to call the police when you say that word.
- Know where to go if you have to leave home, even if you don't think you'll have to.
- Trust your instincts. Do whatever you have to do to survive.

### Get Ready to Leave

- Open a savings account in your own name. Give the bank a safe address, like a post office box or your work address.
- Leave money, an extra set of keys, and copies of your important papers with someone you trust. You may need to leave home fast, and you'll need these things later.
- Think about who you could stay with and who can lend you money.
- Keep the phone number of the domestic violence shelter nearby. Keep some change or a calling card with you at all times so you can call if there's an emergency.
- Leaving is the most dangerous time. Thinking about your safety plan before you leave will help you when the time comes.
- If you have to leave your children, get them back as soon as possible. Get legal advice or call a domestic violence agency.

### Be Safe When You Live on Your Own

- Change the locks on your doors as soon as you can. Put locks on all your doors and windows.
- Ask your local phone company for an unlisted number. Sometimes this service is free.
- Teach your children how to be safe, for times when you're not with them.
- Make sure your children's school or daycare provider knows who is allowed to pick up your children.
- Tell your neighbors and landlord that your partner no longer lives with you. Ask them to call the police if they see your partner near your home.

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### Get a Protective Order

- Ask the court for a protective order and keep it with you at all times.
- Call the police if your partner breaks the protective order.
- Keep notes about any contacts, threats, messages, or letters your partner sends to you. If your partner leaves messages on your answering machine, save the messages.
- Think of how to stay safe in case the police don't get to you right away.
- Give copies of your protective order to everyone listed on the order and to family, friends, and neighbors who are willing to help you.

### Be Safe at Work and in Public

- Tell the security personnel where you work. Give them a photo of the person you need protection from.
- Decide who else to tell at work about your situation.
- Ask someone at work to screen your telephone calls.
- When you leave work, have someone walk with you to your car, bus, or train.
- Don't take the same route home every day.
- Think about what you'd do if the person you need protection from approaches while you're getting to or from work.

### Your Safety and Your Emotional Health

- If you're thinking about going back to a situation that could be abusive, talk with someone you trust about alternatives.
- Think positive thoughts about yourself.
- Read books, articles, and poems to help you feel stronger.
- Decide who you can call to get the support you need.
- Go to a support group. You'll get support and learn about yourself, domestic violence, and relationships.

### What to Take With You When You Leave

#### Try to keep some things in your purse or wallet:

- Driver's license or ID
- Social security card
- Welfare ID
- Passport or green card
- Money
- Checkbooks
- Credit cards
- ATM cards
- Bankbooks
- Bank account numbers
- House and car keys
- Address book

#### If you have the time, take these things, too:

- Medications
- Medical, life, and auto insurance papers
- Divorce papers or marriage license
- Court orders, restraining orders
- Birth certificates for you and your children
- Police reports or documentation of previous abuse
- Lease or rental agreement, house deed
- Medical and school records
- Jewelry or small objects you can sell
- Car registration and title (pink slip)
- Family photos
- Children's clothing and small toys
- Extra glasses or contact lenses

**Remember: These things are not as important as the lives of you and your children!**

*Adapted from chapter 2 of the Domestic Violence Information and Referral Handbook. Used with permission of the County of Santa Clara Probation Department.*

# Appendix C-1

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## Excerpt From Dependency Mediation Protocol & Dependency Mediation Domestic Violence Protocol Superior Court of California County of Santa Clara

### INTRODUCTION & BACKGROUND

The Santa Clara County Dependency Mediation Program will operate in a manner consistent with the recommendations of the National Council of Juvenile and Family Court Judges Family Violence Department as included in *Effective Intervention In Domestic Violence & Child Maltreatment Cases: Guidelines For Policy and Practice*, and any *Uniform Standards of Practice for Court-Connected Child Protection/Dependency Mediation* (proposed Standards of Judicial Administration, Sec. 24.6) which are adopted by the state of California. The training and experience requirements for Santa Clara County dependency mediators will meet or exceed the guidelines suggested in the aforementioned proposed standards.

§350 of the California Welfare and Institutions Code encourages each juvenile court to develop a dependency mediation program to provide a problem-solving forum for all interested persons to develop a plan in the best interests of the child, emphasizing family preservation and strengthening. The legislature has found that mediation of these matters assists the court in resolving conflict, and helps the court to intervene in a constructive manner in those cases where court intervention is necessary. The law provides that no mediation participant who is a mandated child abuse reporter, except the mediator, is exempted from the reporting requirement. Dependency mediators in Santa Clara County, however, are also licensed therapists are considered to be mandated child abuse reporters. §350 of the California Welfare and Institutions Code also provides that if mediation is requested by any person who the judge or referee deems to have a direct and legitimate interest in the particular case, or on the court's own motion, the matter may be set for confidential mediation to develop a plan in the best interests of the child, utilizing resources within the family first and within the community if required.

*Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines For Policy and Practice* - Recommendations from the National Council of Juvenile and Family Court Judges Family Violence Department defines mediation as:

a confidential process conducted by neutral third parties who have no authoritative decision-making power over the parties. The goal of mediation is to assist parties in reaching their own mutually acceptable settlement of the issues in dispute. Mediation in child maltreatment cases focuses on facilitating resolutions that serve to preserve the safety and best interest of children and the safety of all family members and should include a specialized protocol for handling domestic violence cases. Mediation in child protection cases has four basic interdependent stages: orientation, fact-finding and issue development, problem solving, and agreement/disagreement and closure. (p.124)

The National Council, in that publication, recommends that:

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...mediation and similar approaches, such as family group conferencing, should be used only in settings that develop protocols on its appropriate and safe use, conduct appropriate agency training, and regularly supervise staff about victim safety needs....(p.67)

...Concern has been expressed that mediation is a process which is unfair and unsuited for cases involving domestic violence in that, when battered women are asked to negotiate with their batterers, the balance of power weighs heavily against them, and the mediation process itself can actually be dangerous or result in inappropriate outcomes due to these factors....Mediation may be seen as an intrusive means of resolving family problems if cultural or religious values are not integrated well into the mediation process. Language barriers may compromise the effectiveness of mediation and place victims at risk if they are unable to communicate their concerns about safety or they do not understand the process fully....(p.101-102)

...However, where mediation is mandated or permitted, if it is conducted in accordance with the guidelines described in this section (see Recommendation 48 below), the process can effectively empower victims of violence and enhance their safety as well as the safety of their children and other family members. Judges have an obligation to oversee the provision of any mediation services to ensure that mediation is conducted consistent with these guidelines. (p.102)

## RECOMMENDATION 48.

In jurisdictions where mediation is mandated or permitted, the juvenile court should refer parties to mediation in child maltreatment cases involving allegations of domestic violence only when

a. Mediators are trained thoroughly in the dynamics of domestic and family violence, including child maltreatment, as well as trained in the dynamics of substance abuse, basic psychology and family systems theory, the developmental needs of children, the workings of the local child protection and juvenile court systems, local domestic violence services, and other local community resources;

b. The mediation program provides specialized procedures designed to protect victims of domestic violence from intimidation by alleged perpetrators and to correct power imbalances created by the violence with interventions, including the performance of differential assessments of the domestic violence issue, the offering of individual - as opposed to conjoint- sessions for the victim and alleged perpetrator so that they never have direct contact with each other, and permitting the victim to have an advocate in attendance throughout the process;

c. The mediation process also provides for the participation of victim and child advocates, the child protection agency, other interested family members and individuals, as well as all involved attorneys and GALs or CASAs, to reinforce further the balance of power and ensure that the rights of the participants are protected in the search for a resolution that focuses upon the safety and best interest of the child and the safety of all family members;

d. Mediators are vigilant when involved in discussions concerning the factual basis of the abuse of the child or victim-parent in order to prevent victim blaming and/or collusion with the batterer's denial, minimization, or discounting of the significance of the violence or abuse. (p.101)

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## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA LOCAL POLICY & PROCEDURES

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### Domestic Violence Protocol

Domestic violence is understood to be a behavior or set of primarily learned behaviors arising from multiple sources which may follow different patterns in different families, rather than a disease process or syndrome with a single underlying cause. Domestic violence occurs where one partner in an intimate relationship controls or attempts to control the other through force, intimidation, subjugation and/or the threat of violence.

For purposes of this section, domestic violence becomes an issue in the case when there is evidence or an allegation that (consistent with §6203 of the Family Code) one of the parties has 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 §6320 of the Family Code. Other behaviors consistent with §6320 include molesting, attacking, stalking, annoying telephone calls as described in Section 653m of the Penal Code, violating a protective order, or disturbing the peace of the other party.

Research discloses that domestic violence is frequently present in child abuse cases. **It is the responsibility of the Department of Family and Children's Services to ascertain whether adult to adult violence is an issue in any Dependency case and to inform the court if this issue is present in any case referred for mediation. It is then the responsibility of the dependency mediation program, once notified of the existence of the domestic violence issue in a given case, to insure that mediation is conducted in an appropriate manner as described below.**

Dependency Mediation in Santa Clara County will function consistent with the terms of Recommendation 48 of *Effective Intervention In Domestic Violence & Child Maltreatment Cases: Guidelines For Policy and Practice* by the National Council of Juvenile and Family Court Judges Family Violence Department (cited in the Introduction & Background section of this Protocol), and with any *Uniform Standards of Practice for Court-Connected Child Protection/Dependency Mediation (8-9-99 Draft)* which are ultimately adopted by the state of California.

This protocol holds that the issue of the violence itself will never be mediated (i.e. domestic violence including child and/or partner abuse is never justified), though conditions designed to preclude violence may be appropriate for discussion. Additionally, the cessation of violence shall not be predicated on the behavior of the victim of the violence.

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Additionally, it is recognized that psychological and/or physical intimidation may affect the balance of power between the parties. It may also affect the ability of a party to participate in her/his own best interest or in the best interest of the children in the court process. Measures included herein are designed to help rectify that imbalance of power during the course of mediation. The procedures for cases involving domestic violence referred to Dependency Mediation will be as follows:

1. At the time of the scheduling of the Dependency Mediation appointment, the Court forwards copies of any pertinent reports describing the D.V. and copies of any existing domestic violence protective orders to the Dependency Mediators in advance of the mediation appointment.
2. The dependency mediators will review the case related documentation prior to commencing the mediation. This document review will be the first step in addressing any domestic violence in a mediation case.
3. Assessing the ability of the victim parent to fully and safely participate and reach a non-coerced settlement in a particular case.
4. Clarifying the history and dynamics of the domestic violence issue in order to determine the most appropriate manner in which mediation should proceed consistent with the other provisions of this protocol;
  - a. Assisting the parties, family members and attorneys in formulating an agreement following a discussion of appropriate safeguards for the safety of children and family members.
  - b. The mediators will inform identified victims of domestic violence that it is the policy of the Dependency Mediation Program, consistent with the Family Court Services mediation policy in Family Court Cases, that they have the following options available to them:
    - c. It is the policy of Dependency Mediation that as a rule the parties involved in domestic violence shall be seen individually by the mediators unless in some rare cases it has been deemed safe and appropriate by the mediators to have conjoint interviews.
    - d. When the court has issued a protective order in cases involving domestic violence, a support person may be permitted to accompany a party protected by the order during mediation as deemed appropriate by the mediators.
    - e. It is the function of a support person to provide moral and emotional support only for an alleged victim of domestic violence. The person who alleges that she or he is a victim of domestic violence may select any individual to act as a support person. No certification, training, or other special qualification is required for an individual to act as a support person. The support person's role is to assist the person in feeling more confident that she/he will not be injured or threatened during a proceeding when the victim of domestic violence and the other party must be present in close proximity. Except when the support person is the individual's attorney, the support person shall not be present as a legal adviser and shall not give legal advice. The presence of the support person does not waive the confidentiality of the mediation. The mediator

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has the authority to exclude any support person from a mediation proceeding if the presence of a particular support person is disruptive to the process of the session.

f. Dependency mediators will be sensitive when involved in discussions concerning the factual basis of child abuse or neglect, or domestic violence, in order to avoid collusion with victim blaming, denial, minimization or discounting of alleged child abuse or violence against any family member.

g. It is appropriate for dependency mediators to facilitate the process in a manner which encourages the incorporation of appropriate safety and treatment interventions in any settlement.

The Juvenile Court building should be a safe and secure place for members of the community to discuss the most important issues related to their families. Persons present in and about the Courthouse are expected to conduct themselves in a civil and business like manner at all times. With this in mind, Juvenile Court has a Zero Tolerance policy with regard to any expression or threat of violence, disorderly conduct, verbal abuse, or observable intimidation in the Courthouse. Such behavior is always considered to be detrimental to the safety and best interest of children and families, will be dealt with accordingly, and will be recorded and/or reported to security personnel and/or the Court as appropriate.

Additional protective measures will be available at Juvenile Court to ensure the safety of clients in cases involving allegations of domestic violence. Juvenile Court security personnel may be requested to standby at the site of mediation or to escort clients to their vehicles upon completion of the session. Additionally, when, during the course of mediation, it appears that there is a clear and immediate danger to an individual or to society, the mediator may breach mediation confidentiality and take appropriate action aimed at protecting those in jeopardy.

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## **Mediator Training**

All dependency mediators and dependency mediation supervisors employed or utilized by Santa Clara County Family Court Services will meet the training requirements listed within the attached *Proposed Uniform Standards of Practice - Court-Connected Child Protection/Dependency Mediation - DRAFT 8-9-99* except that the requirement for domestic violence training are extended to include sixteen hours (16) of training in domestic violence to be completed prior performing dependency mediations. These 16 hours shall consist of four (4) hours of community resource networking intended to acquaint the mediator with domestic violence resources in the geographical communities where the families being mediated may reside, and twelve hours (12) of training in:

- The appropriate structuring of the dependency mediation process, including, but not limited to: maximizing safety for mediation participants; providing for separate sessions; the utilizations of support persons; the implementation of the Dependency Mediation and Dependency Mediation Domestic Violence Protocols;
- The relevant sections of local, state, and federal law or rules;

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- The range, availability, and applicability of domestic violence resources available to victims, including, but not limited to, battered women's shelters, specialized counseling, drug and alcohol counseling, parenting classes, and battered immigrant victims;
- The range, availability, and applicability of domestic violence intervention available to perpetrators, including, but not limited to, arrest, incarceration, probation, applicable Penal Code sections (including Penal Code section 1203.097, which describes certified treatment programs for batterers), drug and alcohol counseling, and parenting classes;
- The effects of exposure to domestic violence and psychological trauma on children; the relationship between child physical abuse, child sexual abuse, and domestic violence; the differential family dynamics related to parent-child attachments in families with domestic violence; intergenerational transmission of familial violence; and manifestations of post-traumatic stress disorders in children;
- The nature and extent of domestic violence, and the relationship of gender, class, race, culture, and sexual orientation to domestic violence;
- Current legal, psycho social, public policy, and mental health research related to the dynamics of family violence, the impact of victimization, the psychology of perpetration, and the dynamics of power and control in battering relationships;
- The assessment of family history based on the type, severity, and frequency of violence;
- The impact on parenting abilities of being a victim or perpetrator of domestic violence;
- The uses and limitations of psychological testing and psychiatric diagnosis in assessing parenting abilities in domestic violence cases;
- The influence of alcohol and drug use and abuse on the incidence of domestic violence;
- Understanding the dynamics of high-conflict relationships and abuser/victim relationships;
- The relevance of collateral information from probation departments, children's protective services, police incident reports, restraining order pleadings, medical records, schools and other relevant sources; and
- The various components of safe and enforceable case and child care plans that are designed to assure the health, safety, welfare, and best interest of the child, and safeguards for the parties.

Dependency mediators will also complete at least four (4) hours of update training each year after the year in which the initial 16 hour training is completed. These 4 hours will consist of instruction focused on, but not limited to, an update of changes or modifications in local court practices, case law, and state and federal legislation related to domestic violence, and an update of current social science research and theory, particularly in regard to the impact on children of exposure to domestic violence. This training may utilize domestic violence training programs conducted by nonprofit community organizations with an expertise in domestic violence issues. .

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### Excerpt From Juvenile Court Mediation Protocol Domestic Violence Protocol for Dependency Mediation Referrals Uniform Local Rules of Court Superior Court of California County of San Francisco

Effective: July 1, 1998

Revised: January 1, 2011

#### 12.46 Mediation Program.

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#### H. Cases Involving Allegations of Domestic Violence.

1. If a case set for mediation involves allegations of domestic violence, the mediators must conduct an assessment and make a determination as to the manner in which to conduct the mediation so as to assure:

- a. the physical safety of all parties; and
  - b. that the victim parent is not intimidated into settling the case;
2. See Appendix B for the complete Domestic Violence protocols related to dependency mediation.

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#### Appendix B

#### Dependency Mediation Program

#### San Francisco Unified Family Court

#### Domestic Violence Protocols for Dependency Mediation Referrals

#### A. Court Referrals to Mediation in Cases Involving Domestic Violence

1. Issues to be considered in making referrals
  - a. Extent of physical violence in the case;
  - b. How recently was the last known incident:
  - c. Can the mediation provide adequate protection for the alleged victim?
  - d. The alleged victims willingness to participate in mediation
2. Noting Domestic Violence on Referral Order

The judicial officer will make a note on the Mediation Referral Order if there are any current or past domestic violence issues, including a notation regarding any current restraining orders.

#### 3. Attendance of Support Person at Mediation

- a. The referring judicial officer will advise the alleged victim that he or she may bring a support person with them to the mediation.

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b. The referring judicial officer will explain that a support person's role is limited to a support role only and that person cannot actively participate in the mediation without the consent of all other parties.

c. The referring judicial officer will advise the parties that the mediations must meet with the alleged victim and perpetrator separately.

### **B. Dependency Mediation Program Domestic Violence Protocols**

#### 1. Case Development

a. Case development will include a thorough review of the Court field, specifically targeting any information relating to any domestic violence issues.

b. The mediator will talk with all attorneys and the child welfare worker in advance of the mediation about the extent and current status of any violence between the parties, including whether or not there are restraining orders currently in effect.

c. During case development the mediator will tell the alleged victim's attorney of his or her client's right to bring a support person to the mediation.

d. Based on the information gathered in the domestic violence assessment, the mediator will set up meeting times with the parents that precludes them from seeing each other at all, as is appropriate to the specific case.

#### 2. Mediation Process

The mediation process will be conducted in such a way as to protect the physical and emotional safety of all participants, as well as to promote an equal balance of power, as follows:

a. Victim parents may, at their option, bring support persons to the mediation, with the understanding that the support person is there to provide support only, and it NOT an active participant in the process (unless otherwise agreed to by all participants);

b. The mediators will initially meet separately with each parent in order to set up a safety plan. The plan will be used to determine:

1) whether or not the alleged victim would be better protected by continuing to meet separately with the mediator or by meeting with the alleged perpetrator during the Court of mediation;

2) how the alleged victim can protect her or himself outside the courthouse;

3) whether the alleged victim is interested in having a joint meeting that includes the perpetrator.

In making that determination the mediators will advise the alleged victim that she or he has an absolute right to decline a joint meeting with the alleged perpetrator.

c. Each parent's meeting with the mediator will be set up in such a way as to prevent the parents from seeing each other, as may be appropriate to the specific case;

d. The mediators will assist the alleged victim in creating a safety plan for appearing (or not appearing) in Court and for leaving the courthouse in a manner that best protects her or his safety;

e. The mediator will work with the parties to assist them in creating a settlement that promotes the physical and emotional safety of the involved parties and their children.

CHILD'S NAME:	CASE NUMBERS: JUVENILE: FAMILY:
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## REASONS FOR NO OR SUPERVISED VISITATION

Addendum to Custody Order – Juvenile (Form JV 200/JV 205)

**Re: Custody Order Juvenile – Final Judgment filed on \_\_\_\_\_**

1.  No  Supervised visitation is ordered for: \_\_\_\_\_  
with the  mother  father: (child[ren]'s name[s] here)

Has not *completed* the following court-ordered programs:

Has not *made substantial progress* regarding the following court-ordered programs:

SEX ABUSE TREATMENT FOR PERPETRATORS

DRUG ABUSE TREATMENT PROGRAM WITH RANDOM TESTING

ALCOHOL ABUSE TREATMENT PROGRAM WITH RANDOM TESTING

BATTERERS INTERVENTION PROGRAM

DOMESTIC VIOLENCE SUPPORT GROUP

ANGER MANAGEMENT TRAINING

PARENTING CLASSES

INDIVIDUAL COUNSELING TO ADDRESS: \_\_\_\_\_

OTHER: \_\_\_\_\_

2.  Court denied reunification services to the  mother  father because of:

SEVERE SEXUAL ABUSE

SEVERE PHYSICAL ABUSE

WHEREABOUTS UNKNOWN

PARENT INCARCERATED

CHILD SAFE WITH OTHER PARENT AND THEREFORE CASE CLOSED WITH EXIT ORDER, HOWEVER, IF COURT HAD ORDERED SERVICES, THE COURT WOULD HAVE ORDERED THE SERVICES CHECKED IN SECTION 1.

OTHER: \_\_\_\_\_

Mere completion of a program **may** be a changed circumstance, but does not constitute grounds for modification, unless the Court also determines that the parent has made substantive progress addressing the problem and such modification would be in the best interests of the child(ren). The Court should obtain written documentation as proof of any completion before entertaining modification requests regarding this Order.

## REASONS FOR NO OR SUPERVISED VISITATION



	Dependency	Delinquency
<b>Proof</b>	<p><b>TRO:</b> 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, &amp; great or irreparable harm would result to petitioner (WIC §213.5(a) &amp; (b); FC §6300; CCP §527.6(d) &amp; §527.8 (e))</p> <p><b>OAH:</b> If related to domestic violence, preponderance of evidence (Evid. Code §115). If not related to DV, clear &amp; convincing evidence (CCP §527.6(i) &amp; §527.8(j))</p>	
<b>When Can R.O. Petition Be Filed</b>	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))
<b>How Can R.O. Petition Be Made</b>	<ul style="list-style-type: none"> <li>Orally at any scheduled hearing (CRC 5.630(b)), or</li> <li>Written application must be submitted on form JV-245 (CRC 5.630(b)) or</li> <li>On court's own motion (WIC §304; CRC 5.630(b))</li> </ul>	
<b>Who Can Petition</b>	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	
<b>Who Can Be Protected</b>	<ul style="list-style-type: none"> <li>Dependent or child subject to §300 petition</li> <li>Other children in household</li> <li>Parent, legal guardian or current caregiver of child, whether or not child resides with parent, legal guardian or current caregiver</li> <li>Current or former social worker</li> <li>Current or former court appointed special advocate (WIC §213.5(a); CRC 5.630(c) &amp; (d))</li> </ul>	<ul style="list-style-type: none"> <li>Ward or child subject to §601/602 petition</li> <li>Other children in household</li> <li>Parent, legal guardian or current caregiver of child, whether or not child resides with parent, legal guardian or current caregiver</li> <li>Current or former probation officer</li> <li>Current or former court appointed special advocate</li> </ul> <p><i>If restrained party is ward or subject to §601/602 petition:</i></p> <ul style="list-style-type: none"> <li>Any person court finds to be at risk from conduct of child</li> <li>Any person with whom association with child would be detrimental to child (WIC §213.5(b); CRC 5.630(c) &amp; (d))</li> </ul>
<b>Who Can Be Restrained</b>	<ul style="list-style-type: none"> <li>Any person</li> </ul>	<ul style="list-style-type: none"> <li>Any person</li> <li>Ward or child subject to § 601/602 petition</li> </ul>
<b>Hearings</b>	<ul style="list-style-type: none"> <li>Application may be heard simultaneously with any scheduled hearing (WIC §213.5(c) &amp; CRC 5.630(h)(1))</li> <li>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))</li> <li>Order must be prepared on Restraining Order – Juvenile (JV-250) (CRC 5.620(b), 5.625(a), 5.630(h)(3))</li> </ul>	
<b>Orders / Enjoined Actions</b>	<ul style="list-style-type: none"> <li>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))</li> <li>Enjoin any person from behavior as necessary to effectuate court's orders (CRC 5.630(3)(3))</li> <li>Exclude any person from dwelling of person who has care, custody, control of child (WIC §213.5(a), (b) &amp; (e))</li> <li>Do not take any action to get address/location of protected person or family members/caregivers/guardians</li> <li>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)</li> </ul> <p>• 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))</p>	
<b>Requirements for Residence Exclusion Order</b>	<p>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:</p> <ul style="list-style-type: none"> <li>Party who will stay in dwelling has right under color of law to possession of premises; and</li> <li>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</li> <li>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.</li> </ul> <p>(WIC §213.5(e); CRC 5.630(e)(2))</p>	
<b>Duration</b>	<p><b>Ex Parte TRO:</b> 21 days; 25 days if good cause (WIC §213.5(c); CRC 5.630(g))</p> <p><b>Re-issuance:</b> in effect until the date set for the hearing (WIC §213.5(c); CRC 5.630(g))</p> <p><b>Order After Hearing:</b> no more than 3 years (WIC §213.5(d); CRC 5.630(h))</p>	
<b>Conflicting Orders</b>	Only criminal court may issue order contrary to juvenile court's restraining order (CRC 5.630(l)). If conflicting juvenile and criminal orders, law enforcement must enforce criminal order, even if it is older than juvenile order (Penal Code §136.2(h)). Any non-conflicting terms of juvenile custody or visitation order remain in effect. Emergency protective order (form EPO-001) that is more restrictive takes precedence over all other restraining orders (Penal Code §136.2).	
<b>Violation</b>	Willful and knowing violation is misdemeanor, punishable under Penal Code §273.65 (WIC 213.5(h); CRC 5.630(k))	
<b>Notice</b>	<p><b>TRO:</b> may be granted ex parte (CCP § 527(c); CRC 5.630(f))</p> <p><b>Hearing:</b> personal service sooner of: within 5 days of TRO being granted or 2 days before hearing (CCP § 527(d)(2))</p>	
<b>Termination &amp; Renewal</b>	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))	
<b>Continuance</b>	Per CCP § 527(d)(4), restrained party entitled to one continuance.	



**CLETS-001**

**California Law Enforcement Telecommunications System (CLETS)  
Information Form**

- This form is submitted with the initial filing (*date*): \_\_\_\_\_
- This is an amended form (*date*): \_\_\_\_\_

**Important: This form MUST NOT become part of the public court file. It is confidential and private.**

Fill out as much of this form as you can and give it to the court clerk. If the court issues a restraining order, this form will provide law enforcement with information that will help them enforce it. If any of this information changes, fill out a new (amended) form.

**Case Number** (*if you know it*): \_\_\_\_\_

**1 Person to Be Protected** (*Name*): \_\_\_\_\_

Sex:  M  F Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Race: \_\_\_\_\_

Hair Color: \_\_\_\_\_ Eye Color: \_\_\_\_\_ Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Mailing Address (*listed on restraining order*): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Telephone (*optional*): \_\_\_\_\_

Vehicle (*Type, Model, Year*): \_\_\_\_\_ (*License Number and State*): \_\_\_\_\_

**2 Person to Be Restrained** (*Name*): \_\_\_\_\_

Sex:  M  F Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Race: \_\_\_\_\_

Hair Color: \_\_\_\_\_ Eye Color: \_\_\_\_\_ Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Residence Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Telephone: \_\_\_\_\_

Business Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Telephone: \_\_\_\_\_

Employer: \_\_\_\_\_

Occupation/Title: \_\_\_\_\_ Work Hours: \_\_\_\_\_

Driver's License Number and State: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Vehicle (*Type, Model, Year*): \_\_\_\_\_ (*License Number and State*): \_\_\_\_\_

Describe any marks, scars, or tattoos: \_\_\_\_\_

Other names used by the restrained person: \_\_\_\_\_

**3 Guns or Firearms** Describe any guns or firearms that you believe the person in **2** owns or has access to (*Number, types, and locations*):

\_\_\_\_\_

\_\_\_\_\_

**4 Other People to Be Protected**

<u>Name</u>	<u>Date of Birth</u>	<u>Sex</u>	<u>Race</u>	<u>Relation to Person in 1</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

- Additional persons to be protected are listed on Attachment 4.

**This is not a Court Order—Do not place in court file.**



# Appendix G-1

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## **Court Communication Protocol for Domestic Violence and Child Custody Orders Superior Court of California County of San Francisco Uniform Local Rules of Court**

*This local rule is adopted in compliance with California Rule of Court 5.500 requiring a court communication protocol for domestic violence and child custody orders.*

### **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 section 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;

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- 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

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- f. SafeStart
- g. Family Law Facilitator (when there are child support issues).

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 Department of Human Services 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 Department of Human Services 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.*



## Appendix G-2

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# Court Communication Regarding Restraining Orders Superior Court of California County of Santa Clara Local Juvenile Rules of Court

## JUVENILE RULE 3 RELATIONSHIPS AMONG DIFFERENT DIVISIONS OF THE SUPERIOR COURTS

### C. COURT COMMUNICATION REGARDING RESTRAINING ORDERS

#### (1) PROCEDURE IN JUVENILE COURT

a. Subject to available resources, the Family, Juvenile, and Probate Courts shall examine appropriate available databases for existing restraining or protective orders involving the same restrained and protected parties before issuing permanent CLETS Civil Restraining Orders. In the event that this information is not available to the judicial officer, inquiry shall be made of the parties before issuing permanent CLETS Civil Restraining Orders.

b. Any order of the Family, Juvenile, or Probate Court that permits contact between a defendant/restrained person subject to either CLETS Civil Restraining Orders or Criminal Protective Orders and his or her children, shall contain specific language setting forth the time, day, place, and manner of the transfer of the children, including the safe exchange of the children, in accordance with Section 3100 of the Family Code. Such an order shall not contain language that conflicts with a Criminal Protective Order. Safety of all parties shall be the Court's paramount concern. The Court or a Court-related agency may recommend safe and specific contact with the children and direct the defendant/restrained person and/or the victim/protected person to the process for modification of protective orders.

#### (2) MODIFICATION OF CRIMINAL PROTECTIVE ORDERS

a. Any Court responsible for issuing custody or visitation orders involving minor children of a defendant/restrained person subject to a Criminal Protective Order may modify the Criminal Protective Order if all of the following circumstances are satisfied:  
(Eff. 1/01/06)

i. Both the defendant/restrained person and the victim/protected person are subject to the jurisdiction of the Family, Juvenile, or Probate Court, and both parties are present before the Court.

ii. The defendant/restrained person is on probation (formal or Court) for a domestic violence offense in Santa Clara County or is currently charged with a domestic violence related offense in Santa Clara County and a Criminal Protective Order has issued.  
(Eff. 1/01/06)

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iii. The Family, Juvenile, or Probate Court identifies a Criminal Protective Order issued against the defendant, which is inconsistent with a proposed Family, Juvenile, or Probate Court Order, such that the Family, Juvenile, or Probate Order is/will be more restrictive than the Criminal Protective Order or there is a proposed custody or visitation order which requires recognition in the Criminal Protective Order (Boxes 12 or 13 or both on the Criminal Protective Order form).

(Eff. 1/01/07)

iv. The defendant signs an appropriate waiver of rights form or enters a waiver of rights on the record.

v. Both the victim/protected person and the defendant/ restrained person agree that the Criminal Protective Order may be modified to a more restrictive order or to add Box 12 or 13 or both to the Criminal Protective Order.

(Eff. 1/01/07)

b. The Family, Juvenile, or Probate Court may not modify existing Criminal Protective Orders to be less restrictive. Only if children are not listed as protected persons, a modification of the Criminal Protective Order to check Box 12 or 13 or both shall not be considered less restrictive.

(Eff. 1/01/07)

c. The Family, Juvenile, or Probate Court may on its own motion or at the request of a defendant, protected person or other interested party, calendar a hearing before the Criminal Court on the issue of whether a Criminal Protective Order should be modified. The Family, Juvenile, or Probate Court shall provide the Criminal Court with copies of existing or proposed Orders relating to the matter. Notice of the hearing will be provided to all counsel and parties.

(Eff. 1/01/07)

National Council of Juvenile and Family Court Judges, "Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice" (excerpt from "Greenbook": Chapter 5, Principles and Recommendations). Reprinted with permission.

## Appendix H

# CHAPTER 5: COURTS Principles and Recommendations

### A. INTRODUCTION

### B. JUVENILE COURT SYSTEMS

#### (1) Foundational Changes

### **PRINCIPLE XIV.**

Judges and other members of court systems should participate fully in national and local efforts to improve juvenile courts. Such efforts include participation in the national court improvement initiative, collaborating with national organizations such as the National Council of Juvenile and Family Court Judges (National Council) and the American Bar Association (ABA) and outstanding individual jurisdictions across the country.

#### **RECOMMENDATION 44.**

Juvenile courts must have sufficient judicial and staff resources to allow appropriate time and attention for each case.

#### **RECOMMENDATION 45.**

Juvenile courts must treat each case with the highest priority, ensuring that safe placements and services are identified immediately and that safety-enhancing orders are made for children and other family members.

#### **RECOMMENDATION 46.**

Judges and court systems should adopt recognized best practices in administering the juvenile court.

#### **RECOMMENDATION 47.**

The juvenile court should ensure that all participants in the court system are trained in the dynamics of domestic violence, the impact of domestic violence on adults and children, and the most effective and culturally responsive interventions in these cases, including safety planning.

#### **RECOMMENDATION 48.**

In jurisdictions where mediation is mandated or permitted, the juvenile court should refer parties to mediation in child maltreatment cases involving allegations of domestic violence only when

- a. mediators are trained thoroughly in the dynamics of domestic and family violence, including child maltreatment, as well as trained in the dynamics of substance abuse, basic psychology and family systems theory, the developmental needs of children, the workings of the local child protection and juvenile court systems, local domestic violence services, and other local community resources;
- b. the mediation program provides specialized procedures designed to protect victims of domestic violence from intimidation by alleged perpetrators and to correct power imbalances created by the violence with interventions, including the performance of differential assessments of the domestic violence issue, the offering of individual—as opposed to conjoint—sessions for the victim and alleged perpetrator so that they never have direct contact with each other, and permitting the victim to have an advocate in attendance throughout the process;

# Appendix H

- c. the mediation process also provides for the participation of victim and child advocates, the child protection agency, other interested family members and individuals, as well as all involved attorneys and GALs or CASAs, to reinforce further the balance of power and ensure that the rights of the participants are protected in the search for a resolution that focuses upon the safety and best interest of the child and the safety of all family members;
- d. mediators are vigilant when involved in discussions concerning the factual basis of the abuse of the child or victim-parent in order to prevent victim blaming and/or collusion with the batterer's denial, minimization, or discounting of the significance of the violence or abuse.

## **RECOMMENDATION 49.**

Any proposed caretakers for the child, including the non-custodial parent, any relative or kin, or foster parent, should be assessed for child maltreatment, criminal history, domestic violence, substance abuse, and their willingness to work with the court, social service agencies, and the battered woman concerning the needs of the children.

## **RECOMMENDATION 50.**

Courts should consider the victimization of the parent as a factor in determining whether exceptional circumstances exist to allow extension of the reunification time limits. However, no such extension of time should be permitted if it is contrary to the best interests of the child.

## **RECOMMENDATION 51.**

Juvenile courts must collaborate with other courts that are dealing with family members and others involved in the case. Juvenile courts should coordinate with criminal courts to help ensure that perpetrators of violence are held accountable. Juvenile courts should coordinate with civil courts that can provide protection orders for the safety and well-being of family members. Juvenile courts also should coordinate with domestic relations and family courts to identify safe visitation, financial support, and custody arrangements that are in the best interests of the child and the victimized parent.

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## **RECOMMENDATION 52.**

When courts and agencies exchange information concerning family members, the safety and privacy concerns of all parties must be balanced carefully with the need for access to such potentially harmful information.

### **PRINCIPLE XV.**

The person who is responsible for the operation of the juvenile court is the judge. All participants in the juvenile court look to the judge for leadership in reaching the goals and mandates of the juvenile court law. The judge must accept leadership responsibility for ensuring that the goals of the juvenile court law are realized.

#### *(2) Taking Leadership*

## **RECOMMENDATION 53.**

The juvenile court should take a leadership role within the court system and with court-serving agencies to ensure cooperation among all parts of the juvenile court system, identify needed resources to serve families experiencing domestic violence, and develop strategies to obtain these resources.

## **RECOMMENDATION 54.**

Judges should collaborate with state and local child protection service administrators and domestic violence program directors to determine what resources must be made available in the community to meet the needs of victims and perpetrators of domestic violence.

## **RECOMMENDATION 55.**

Juvenile courts should have specific powers to enable them to ensure the safety of all family members.

## **RECOMMENDATION 56.**

Judges should use their judicial powers, including utilizing the “reasonable efforts” requirement of state and federal law, to see that social services provide adequate efforts to ensure safety for child and adult victims of domestic violence.

## **RECOMMENDATION 57.**

Where there is domestic violence in child protection cases, judges should make orders which

- a. keep the child and parent victim safe;
- b. keep the non-abusive parent and child together whenever possible;
- c. hold the perpetrator accountable;
- d. identify the service needs of all family members, including all forms of assistance and help for the child; safety, support, and economic stability for the victim; and rehabilitation and accountability for the perpetrator;
- e. create clear, detailed visitation guidelines which focus upon safe exchanges and safe environments for visits.

### **PRINCIPLE XVI.**

All members of the juvenile court system must adopt best practices for the management of cases involving child maltreatment and domestic violence.

#### *(3) Improving Court Practice*

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## **RECOMMENDATION 58.**

The petitioner in child protection proceedings should allege in petitions or pleadings any domestic violence that has caused harm to a child.

## **RECOMMENDATION 59.**

Juvenile court jurisdiction should be established on the sole basis that the children have witnessed domestic violence only if the evidence demonstrates that they suffered significant emotional harm from that witnessing and that the caretaking or non-abusing parent is unable to protect them from that emotional abuse even with the assistance of social and child protection services.

## **RECOMMENDATION 60.**

The juvenile court should prioritize removing any abuser before removing a child from a battered mother.

## **RECOMMENDATION 61.**

The juvenile court should work with child welfare and social service agencies to ensure that separate service plans for the perpetrator and the victim of domestic violence are developed.

## **RECOMMENDATION 62.**

Juvenile courts should know what batterer intervention services are available in the community and the quality of those services and should be able to track the progress of any parent who is ordered to participate in those services.

## **RECOMMENDATION 63.**

The juvenile court should work with child protection and other social service providers to identify extended family members and resources as early as possible in domestic violence cases.

## **RECOMMENDATION 64.**

Generally judges should not order couples counseling when domestic violence has occurred.

## **RECOMMENDATION 65.**

The juvenile court should require that safe visitation and visitation exchange locations be utilized so that supervised visits and exchanges will be safe for the child and for the battered woman.

## **RECOMMENDATION 66.**

Judges should appoint separate attorneys for each parent in dependency cases involving domestic violence. In compliance with the requirements of the Child Abuse Prevention and Treatment Act (CAPTA), a GAL or attorney should be appointed for the child as well. The court should set standards for competent, well-trained attorneys.

## **RECOMMENDATION 67.**

The juvenile court should encourage the utilization of a domestic violence advocate for the battered mother in all dependency cases involving allegations of domestic violence and encourage the input of advocates in development of service plans.

