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(Petition for Dissolution)

A Guide **for Persons** **Applying for** **Domestic Violence** **Protection Orders**

A message for you:

“The State of California is taking strong measures to oppose all forms of domestic violence. Our courts can, and do, issue orders to deal with this matter. This brochure and the video that goes with it describe how restraining orders can protect you, your children, or other household or family members from domestic violence. Our goal is to explain how restraining orders fit into a larger, long-term plan to make you safe. I urge you to use this information to make whatever decisions you feel are in your best interests.”

Ronald M. George
Chief Justice of California

The court can help protect you from acts of domestic violence. This brochure gives² general information about what a restraining order is and how it can help, then walks you through six steps that explain how to get one.

The court process for getting a restraining order can be complicated, so it is important that you read this brochure carefully before you get started. There is also a video that goes with this brochure. It is called *A Petitioner’s Guide to Domestic Violence Restraining Orders*. You should get a copy of the *Domestic Violence Restraining Orders Instruction Booklet*, Form DV-150 from the court clerk for detailed information about how to fill out each line of your court forms. You can also get information about how to fill out and file the forms you need from lawyers, books, or legal aid clinics.

WHAT IS DOMESTIC VIOLENCE?

This brochure discusses the ways you can use the Domestic Violence Prevention Act (also called the DVPA) to get protection from domestic violence. The DVPA defines domestic violence as threatened or actual abuse from someone in your family or in your home or with whom you have a close relationship. This includes a:

- Spouse or former spouse;
- Person you are dating or used to date (it does not have to be an intimate or sexual relationship);

- Mother or father of your child;
- Person related to you by blood, marriage, or adoption (such as a mother, father, grandparent, or in-law); or
- Person who regularly lives or used to live in your home.

The DVPA is designed to protect you or your children under the age of 18 who live with you from actual or threatened violence such as:

- Physical injuries;
- Sexual assault;
- Attacking, striking, or battering;
- Molesting;
- Harassing;
- Stalking;
- Harassing or threatening telephone calls;
- Destroying personal property;
- Disturbing your peace; and
- Threatening to do any of the above.

Under the DVPA, abuse can be physical, sexual, or verbal. It can include spoken or written abuse.

HOW CAN I GET PROTECTION RIGHT NOW?

If you need protection right now, you should call a local law enforcement agency, domestic violence shelter, or the

National Domestic Violence Hotline at 1-800-799-7233 or 1-800-799-SAFE.

WHAT IS A RESTRAINING ORDER AND WHAT CAN IT DO?

A restraining order is a court order. It can require the person you want restrained to stop threatening you or beating you or your children or the people who live with you. Restraining orders can also tell someone to stop calling, move out, stay away from where you live or work, give up a gun, limit the time he or she spends with your children, pay certain bills, pay child support, release or return certain property, or pay some or all of your attorney fees. These orders can last for as little as a week or as long as three years. They can also be permanent. If you get a restraining order, you can ask a police officer, sheriff's deputy, or other law enforcement officer to make the other person do what the order says. You should be ready to not see or talk to that person while the restraining order is in effect.

WHO WILL DECIDE MY CASE?

Decisions about whether to issue a restraining order under the Domestic Violence Prevention Act can be made by several different kinds of judicial officers. A judge, such as a superior court judge or a tribal court judge, can make all types of decisions for that court. Other judicial officers such as commissioners, referees, hearing officers, or magistrates are appointed to handle particular types of

cases or decisions. To make things simpler in this brochure, we will refer to all of these different types of judicial officers as the “judge.”

SHOULD I GET A RESTRAINING ORDER?

Domestic violence restraining orders can be an important part of your plan to protect yourself, your children, or other people who live with you. You will not have to pay a filing fee to get a restraining order from the court. It can be hard, though, to decide if, or when, you should ask the judge for a restraining order. If you aren’t sure whether you want to end your relationship or get back together with the person you want to be restrained, you should be aware that while the restraining order is in effect, you must be prepared to not see or talk to that person. Consider talking with the staff at a domestic violence shelter, a counselor, or an attorney to help you decide. Sometimes, when you decide to get a restraining order, move out, or get help, the other person might try to make you stay by hurting or scaring you. This is why *safety plans* are so important. These are discussed further in step 2.

DO I NEED LEGAL ADVICE?

There are a lot of legal issues in a domestic violence case, and the law regarding these types of cases changes often. Many people, though, are able to handle their domestic violence cases on their own. If you choose

not to have, or cannot afford, a lawyer to represent you in court, you will be called a “*pro per*” litigant. You do not have to hire a lawyer to help you with your case, but it is a good idea to at least meet briefly with an attorney to:

- get your court forms reviewed before you file them;
- help you understand your legal rights and the court process; and
- find out about any recent changes in the law that might affect your case.

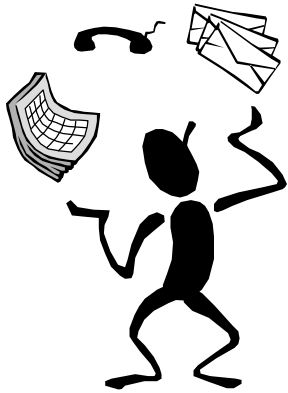
You will find special information in boxes like this:

➡ **ALERT!** To get help with legal questions, you may contact:

- a private attorney (many county bar associations have a lawyer referral service that list attorneys who can meet with you for a small fee or just help you with parts of your case);
- an attorney from your local bar association’s “pro bono” (free) legal representation panel;
- the district attorney;
- a domestic violence shelter;
- the county Victim Witness Assistance program;
- the Family Law Facilitator (if child or spousal support is also involved);

- the National Domestic Violence Hotline Number at: 1-800-799-7233 or 1-800-799-SAFE for referrals to other resources in your area.

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6 SUCCESS STEPS:

This brochure outlines six steps for completing your Domestic Violence Prevention Act (DVPA) case. These are:

1. **Get information, support, and resources you need;**
2. **Decide on a plan of action;**
3. **Prepare and serve your court forms;**
4. **Attend your court hearing;**
5. **Enforce or change court orders; and**
6. **Plan for a future without violence.**

✓ STEP 1: GET ⁸ INFORMATION, SUPPORT, AND RESOURCES YOU NEED


Most people need more than just legal help in domestic violence cases. For example, you or your children may be afraid, or have a hard time dealing with your feelings or emotions at this time. You may also be worried about where you will live, or how you will find work or pay for childcare. There are people in your county who can help or can tell you where else to go for help. Try your county mental health, public health, social services, or employment departments. Many domestic violence shelters also have information on the resources that can help you in your area. Some of the resources or options to consider include:

- **Legal information:** Private attorney, legal aid program, Family Law Facilitator, district attorney, self-help books or videos;

- **Domestic violence information:** Domestic violence shelter and support staff, Victim Witness Assistance program, or crisis hotline;
- **Mental health information:** Counselor, social worker, or other health professional specializing in domestic violence; books, videos, and other materials;
- **Spiritual support:** Priest, minister, rabbi, or other religious leader informed about domestic violence;
- **Employment information:** Local unemployment agency or other department;
- **Help with child care:** School districts, local job training programs, and area preschools;
- **Information about and support for children affected by domestic violence:** Schoolteacher, children’s counselor, youth leader, pediatrician, books, videos, and other self-help materials; and
- **Support during mediation or court proceedings:** Battered women’s shelters, Victim Witness Assistance programs. (Domestic violence victims are allowed to bring a support person for emotional support during mediation sessions or court hearings. This person,

however, cannot represent you or speak on your behalf).

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 **STEP 2: DECIDE ON A PLAN OF ACTION**

Once you know who is available to help and what kinds of choices you need to make, it’s time to decide what you will do next. Courts and restraining orders can be part of your action plan, but first you will have to learn about the different kinds of court orders you can get. Then you can decide what kind of court orders may help.

WHAT KINDS OF RESTRAINING ORDERS ARE THERE?

You qualify for a restraining order if there is both (1) a close relationship between you and the person you want restrained and (2) actual or threatened abuse. In your DVPA action, you can ask the court to grant the following types of restraining orders:

1. *Personal conduct orders.* These are orders to stop specific acts against you and anyone else included in the restraining order. This order can stop the

restrained person from doing the following things to you and other protected people in the order:

- Contacting;
- Sending any message (including email);
- Molesting;
- Attacking;
- Striking;
- Stalking;
- Threatening;
- Sexually assaulting;
- Battering;
- Harassing;
- Telephoning;
- Destroying personal property;
- Disturbing your peace.

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1. *Stay-away orders.* These are orders to keep the person you want to restrain a certain distance away (such as 100 yards, the length of a football field) from:

- You;
- Where you live;
- Your place of work;
- Your child's school or place of child care;
- Your vehicle;
- Other important places where you go.

1. *Residence exclusion (kick-out) orders.* These are orders telling the person to be restrained to move out from where you live and take only clothing and personal belongings until the court hearing.

WHAT ADDITIONAL ¹² ORDERS CAN A JUDGE INCLUDE?

You may also ask the judge to grant *additional orders* such as:

- **Child custody and visitation orders:** If you and the person to be restrained have one or more children together, the judge can decide where the children will live, which parent will make decisions affecting the children, and how the children will spend time (where, when, and whether supervised) with the restrained parent.
- **Removal of child:** You may ask the judge to restrict either or both parents from traveling or moving outside of the city, county, area, or state with the children.
- **Child support:** You may ask the judge to order the restrained parent to pay child support according to California's guideline.
- **Property control:** You may ask the judge to give each

person “exclusive temporary use, possession, and control” of certain things that you own together (such as a car, truck, boat, computer, tools, electronic equipment, bank accounts, or household appliances) until your dispute is resolved. If you need to have the restrained person continue to make the loan payments, be sure to include this request.

- **Give up guns (firearms relinquishment):** The judge can order the person to be restrained to sell or give any guns they own to a law enforcement agency during the time the restraining order is in effect, and can order him or her not to buy a gun while the restraining order is in effect.
- **Restitution:** You may ask the judge to order the restrained person to pay back lost earnings or other expenses (such as ambulance, medical, dental, shelter, and counseling bills) that are a result of the domestic violence.
- **Counseling:** You may ask the judge to order the restrained person to attend a “certified batterers treatment program” or other counseling service.
- **Attorney fees and costs:** You may ask the judge to order the restrained person to pay part or all of your attorney fees and costs, if you hired an attorney to get the restraining order.

- **Other:** You may ask the judge to make other orders necessary for your protection.

➡ ***ALERT!*** Neighbors, coworkers, or others who are bothering or harassing you are not covered by the *Domestic Violence Prevention Act* procedures discussed in this pamphlet, but, there are legal procedures to get “civil harassment orders” against persons not covered by the *Domestic Violence Prevention Act*. If you need this kind of order, get legal advice to find out about the forms you will need and the court process you will have to follow.

OTHER TYPES OF RESTRAINING ORDERS

If a police officer responds to a domestic violence call, the police officer can call a judge (any time, day or night) and ask for an *emergency protective order* which goes into effect immediately. An emergency protective order can only last for five to seven days, giving you time to go to court to request the DVPA restraining order discussed in this brochure. The emergency protective order can make the other person leave the home, keep the person away from you, and not see your children, at least on a

temporary basis. There are also restraining orders, not covered in this brochure, that can be issued by the criminal, civil, juvenile, and probate courts.

HOW LONG DO RESTRAINING ORDERS LAST?

All restraining orders have a time limit. If the judge grants your request for a temporary restraining order, it will last until the *Order to Show Cause* hearing on the restraining order, which is usually about three weeks. After that, the court can grant a restraining order that will last up to three years. You can later ask the court to renew that restraining order, either for another three years or permanently, whether or not there has been any more violence or threats of violence. If you need a renewal, you should apply before it expires (runs out).

WHAT IF I CHANGE MY MIND?

You may drop your request for a restraining order anytime before the judge makes a final decision at the Order to Show Cause hearing. You should consider talking to a counselor or attorney before you drop your request. If you change your mind after the hearing and orders are made by the judge, you must file forms to change (modify) or drop (dismiss) the restraining order. *This step is important so that the other person is not charged with violating a court order.*

YOUR NOTES:

WHAT IS A SAFETY PLAN?

A *safety plan* covers all of the steps you should take to keep you and your children safe from domestic violence. Although each safety plan is different, yours should cover:

- **Where will you live?** Should you leave your present residence, or should you ask the court to order the person you want restrained to leave? If you will leave, how and when will you leave? When and where will you go? What will you take?
- **Where will your children live?** If the person you want protection from is also the parent of any of your minor children, you need to get advice from an attorney, the district attorney, or a domestic violence counselor regarding the rights and responsibilities that both you and the other parent have concerning the children.
- **What important documents will you need?** You should keep certified copies of your restraining order with you at all times, and keep copies of other

important legal or other papers such as court orders if you move or go to live in a shelter.

- **What emotional support or counseling will help you and your family members?** Many domestic violence victims need extra help in handling their experiences or in dealing with substance abuse, mental health issues, anger management, and parenting or relationship problems.

✓ **STEP 3: PREPARE AND SERVE YOUR COURT FORMS**

All California courts use the same basic set of forms, although some courts add other local forms. You may get all of the forms you need from the court clerk's office at no charge. Some court clerks will have one packet with a copy of each of the forms that you might need for a domestic violence restraining order. In other clerks' offices, you must ask for the specific forms you want. You can also find copies of the court forms you will need in certain self-help law books, at a law library, or on the Internet at <http://wwwLawCA.com>.

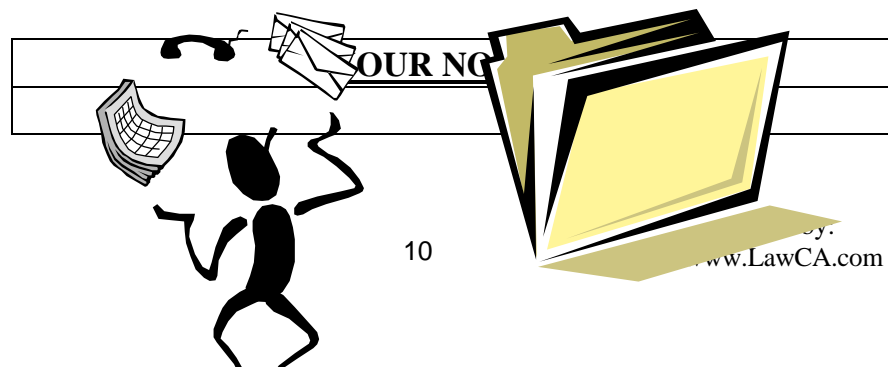
➡ **ALERT!** Please get and refer to the *Domestic Violence Restraining Orders Instruction Booklet, Form DV-150* which is available at no charge from your court clerk for line-by-line instructions on filling out

each of the forms.

Throughout this booklet, we will give the full name and form number for each of the forms discussed. You can get a list of the most recent forms from the court clerk. You will find the form name printed at the center of the bottom of each form. You should note that court forms could be revised from time to time. You will find the form number and the date the form was last revised in the bottom left corner of each form.

➡ **ALERT!** Court forms may change on January 1 or July 1 of each year. Out-of-date forms will be returned to you without being filed. It is important that you check with a private attorney, with the court's Family Law Facilitator, with the court clerk, or on the Internet at www.LawCA.com

to make sure that the forms you use are current. You can check the date the form was released by looking on the bottom left-hand portion of the form.



order child support, attorney fees, or service costs.

3. ***Order to Show Cause and Temporary Restraining Order (CLETS), Form DV-110.*** This form will become your temporary restraining order if it is signed by the judge.

NOTE: If you do not have any children under the age of 18 with the person to be restrained, skip to number 5. If you have children with the person to be restrained, you will need to complete the following forms listed in item 4 below.

10. Attach to form DV-110 if you need custody and visitation orders before the hearing:
- Child Custody and Visitation Order Attachment, Form 1296.31A.*** Attach this form if you need custody and visitation orders before the hearing.
 - Supervised Visitation Order, Form 1296.31A(1).*** Only attach this form if you want supervised visitation.
5. ***Proof of Service, Form DV-140.*** This form is used to show that the person to be restrained has been served with completed forms as required by law. It must be used with **all the form** you file with the court. It must be filled out and signed by the person who served the forms before you file it with the court.

6. ***Restraining Order After Hearing (CLETS), Form DV-130.*** This is the order issued after your hearing.

NOTE: If you do not have any children under the age of 18 with the person to be restrained, complete number 7(d) but skip numbers 7(a), 7(b), and 7(c). Then go to number 8. If you have children with the person to be restrained, you will need to complete the following forms in number 7(a), (b) and (c) below.

10. Attach to form DV-130:
- Child Custody and Visitation Order Attachment, Form 1296.31A.***
 - Supervised Visitation Order, Form 1296.31A(1).***
 - Child Support Information and Order Attachment, Form 1296.31B.*** If you have a child support order, you should read and attach (i) and (ii) to your order:
 - Notice of Rights and Responsibilities—Health Care Costs and Reimbursement Procedures, Form 1285.78.***
 - Information Sheet on Changing a Child Support Order, Form 1285.79.***

NOTE: If you have a child support order, you should also ask a Family Law Facilitator to help you complete item 7c(iii). You do not have to give this form to the parent. The information is only for the court.

- (iii) ***Child Support Case Registry Form, Form 1285.92.***
- (iv) ***Wage and Earnings Assignment Order, Form 1285.70.***
- d. ***Domestic Violence Miscellaneous Orders Attachment, Form 1296.31E.***

8. ***Application and Order for Reissuance of Order to Show Cause, Form 1296.15.*** If you cannot have the person to be restrained served before the hearing on your restraining orders, complete and file this form before your hearing date to continue your temporary orders. If you are filing the Application and Order for Reissuance of Order to Show Cause on the same day as your court hearing, you should bring it with you to the hearing so that the judge can sign the order right then. Otherwise, you will have to prepare all the papers and start the process all over again.

10. **Fee Waiver.** There is no charge for *filing* all your restraining order papers. You only need to fill out the fee waiver forms below if you want the sheriff or marshal to *serve* your papers at no charge:

- a. ***Information Sheet : Waiver of Court Fees and Costs, Form 982(a)(17)(A).***
- b. ***Application for Waiver of Court Fees and Costs, Form 982(a)(17).***

- c. ***Order on Application for Waiver of Court Fees and Costs, Form 982(a)(18).***

NOTE: Read the information sheet and fill out Forms 982(a)(17) and 982(a)(18). These forms are confidential forms for the court. Do *not* have them served on the person to be restrained.

10. ***Responsive Declaration to Order to Show Cause, Form DV-120.*** The person to be restrained may file this form to object to the restraining orders you have requested. A blank *Responsive Declaration to Order to Show Cause* form must be served with the other forms on the person to be restrained.

GENERAL INFORMATION ON COMPLETING COURT FORMS

Most people find it easier to fill out court forms by going through each form one section at a time. If you have questions about one of the sections on a form, leave that section blank until you can get your questions answered. You may ask a private attorney, the Family Law Facilitator (when child or spousal support are also involved), or a legal aid center for help in understanding and filling out your court forms.

Many court forms are printed on both sides. If you decide to copy a two-sided form, you may use a separate page for each side of the form. If you decide to copy both sides of the form onto the front and back of one piece of paper,


6. **Check whether your court has any special local rules** about the forms you need or how the forms must be filled out (i.e., paper color, ink color) and when you have to tell the person to be restrained that you are asking for a restraining order.

especially busy court or if you file later in the day, the order might not be signed until the next court day.

Often local court rules will require that you provide notice to the person to be restrained before they issue restraining orders. If the judge has approved the order, the clerk will give you a date for the court hearing, generally about three weeks later. Then, the clerk will fill in the date, time, and department for your hearing on all of the copies of your court forms. The court clerk will keep the original set of court forms, and give you the extra copies.

You will need one copy of the final court order for each law enforcement agency, person protected by the order, school, daycare provider, ²⁹ persons who will help enforce the court order, and two copies for yourself. This means, for example, that if you want to give copies of the court order to three law enforcement agencies, you will need at least five copies of your forms. The court may charge if you need more than five “certified” copies of your DVPA orders.

NOTE: You must go to the scheduled court hearing if you want your *temporary restraining orders* to last after the Order to Show Cause hearing. If the judge issues a restraining order after the court hearing, it can last up to three years.



FILE COMPLETE FORMS GET A COURT HEARING DATE

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If possible, you should ask the clerk your court forms before you file them. You can file your forms either by mail or in person. If you file by mail, it will take a few extra days, and you must send an extra copy and a stamped, self-addressed envelope so the court clerk can mail you an official (filed) copy of each form.

Only a judge can review and approve requests for *temporary restraining orders*. The judge may sign the order the same day you request it, but if you file in an

SERVE YOUR FIRST FORMS ON THE PERSON TO BE RESTRAINED

The law requires that the person to be restrained be given formal notice that you have filed for a restraining order. In fact, the judge cannot make any long-term orders or judgments unless and until the person to be restrained has been properly “served” with copies of your forms. *You can't be the one to serve these forms on the person to be restrained.* Your forms can be served by anyone over 18 years of age that is not involved in your case, including friends, relatives, the county sheriff, or a process server. If you hire a professional process server to serve the person to be restrained, you must pay separately for that. It helps to give the process server a picture of the person you want restrained and a ³⁰ times and places when it will be easier to find the person to be restrained for service of the forms. You should also try to find a process server who is close to where the person you want restrained lives or works, since a process server's fee is often based on how far he or she has to travel to serve your forms. Whoever serves these forms must give the person to be restrained an easy-to-read copy of all the forms which you filed with the court *plus* a blank *Responsive Declaration to Order to Show Cause (Domestic Violence Prevention)*, Form DV-120.

NOTE: You may not have to pay to have the court forms served on the person to be restrained. If you cannot afford to pay, you may file a fee waiver application with the court (see page 23). The judge may waive your fee so that the sheriff or marshal will serve your papers for free. If the person to be restrained is in jail, there is no fee to have the person served.

THE PROOF OF SERVICE FORM

The judge cannot decide to give you a long-term restraining order until the person you want restrained knows about the court case. The judge will know that the case can continue when he or she sees the *Proof of Service*, Form DV-140 in the court file. This form must be filled out and filed with the court *before* your Order to Show Cause hearing. You ³¹ should also make sure to bring extra copies of the *Proof of Service* form to the court hearing. As soon as the *Proof of Service* form is filed, you should give copies of your court orders to each law enforcement agency listed on your *Application*. This helps to ensure that if the restrained person violates the court order before the court hearing, he or she can be arrested.

➡ **ALERT!** The judge cannot give you a long-term restraining order until the other person is served a copy of the court papers and has had a chance to respond. If you are having trouble serving the court papers properly,

remember, you should get legal advice or hire a trained process server to help.

<u>YOUR NOTES:</u>

DEADLINE FOR SERVING THE PERSON TO BE RESTRAINED

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The other person has the right to know that a court case has been filed. He or she also has the right to respond to what you say in your court papers. Unless the judge allows less time, this means that you have to have the other person served no later than 15 days before the court hearing. That is often only 3 or 4 days from the time the judge issues the temporary papers so you have to move very quickly. The *Application for Order* has a place to ask to have more time to serve the person to be restrained. Unless the judge allows less time, the other person has 5 court days before the hearing to file a *Responsive Declaration to Order to Show Cause (Domestic Violence*

Prevention), Form DV-120. If he or she was not served on time, you must file an *Application and Order for Reissuance of Order to Show Cause*, Form 1296.15. This tells the court about the problem regarding serving the person to be restrained and allows the judge to extend any *temporary restraining orders* until a later hearing date.

FORMS YOU WILL NEED TO BRING TO THE COURT HEARING

In most counties, you must fill in the parts of the court forms the judge will use to list the restraining orders that he or she is willing to give in your case. You should bring copies of all papers you have filed with the court as well as the *Proof of Service* forms in case the judge was not given your complete filing. Every case calls for a *Restraining Order After Issuance (CLETS) (Domestic Violence)*, Form DV-130. If you asked for special orders (such as *removal of child from geographical area, property control, attorney fees and costs, or restitution*) on your *Application* form, you will also need a *Domestic Violence Miscellaneous Orders Attachment*, Form 1296.31E. If you ask for:

- *Child custody*, you will also need a *Child Custody and Visitation Order Attachment*, Form 1296.31A;
- *Any visits to be supervised*, you will need *Supervised Visitation Order*, Form 1296.31A(1); or
- *Child support*, you will want to bring a *Child Support Information and Order Attachment*, Form 1296.31B.

➡ **ALERT!** If you have not already done so, **please get and refer to the *Domestic Violence Restraining Orders Instruction Booklet, Form DV-150*, which is available at no charge from your court clerk for line-by-line instructions on filling out each of the forms covered in this brochure.**

PREPARING FOR YOUR ORDER TO SHOW CAUSE HEARING ³⁴

You should take time before your court hearing to plan how you will present your case to the judge. To prepare:

- Talk with an attorney, domestic violence counselor, or, if there are child support issues, with the Family Law Facilitator about the court process;
- Go to court to watch other DVPA restraining order hearings (especially ones conducted by the judge who may hear your case); and
- Read all of the court forms for your case.

Attorneys and domestic violence counselors can answer questions and give you brochures, videotapes, or books

that will help you understand more about your DVPA case. You might also ask the court clerk for a list of times you could watch the judge you may have handle other DVPA cases. It is important that you know what all of the court forms say.

If the person to be restrained filed a *Responsive Declaration to Order to Show Cause*, Form DV-120 you should have received a copy of his or her court forms in the mail. After reading the *Responsive Declaration*, think about what questions the judge might ask and decide what other information or witnesses can show what you say is true. This might include police or medical reports or other official records. If there are witnesses who saw what happened, you can bring them to the hearing and the judge ³⁵ allow them to tell what they heard or saw.

You and the person to be restrained will have to go to mediation if you have children and can't agree about custody and visitation. You have the right to bring a support person with you to mediation, and you can ask the mediator to meet separately with you (and your support person) without the person to be restrained being present.

Mediation gives parents a chance to work out how they will share time with their children and how decisions that

- Photos; medical, repair, or other bills; police reports; and other papers that are important to your case. (For any document you intend to have the judge consider, bring the original and two copies. Give the court clerk or bailiff one copy to give to the restrained person.)
- Your proposed *Restraining Order After Hearing*, Form DV-130; and (if needed) *Domestic Violence Miscellaneous Orders Attachment*, Form 1296.31E; *Child Support Information Order and Attachment*, Form 1296.31B; and *Child Custody, Visitation, and Support Attachment*, Form 1296.31A; *Supervised Visitation Order*, Form 31A(1).

If you are asking for child support, meet with the court's Family Law Facilitator if possible to find out what child support should be and take these documents to court as well:

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- Your last three pay stubs,
- Your most recent federal and state tax returns; and
- Proof of child care or uninsured health care expenses for the child.

If at all possible, arrange for someone to watch your child while you go to court. Some courthouses have children's waiting rooms. Call your court clerk to ask, before you go to court.

If your child has important information about the violence or threats, ask an attorney, victim witness counselor, or the domestic violence counselor about how to have the judge hear from your child.

CHECK IN WITH COURT PERSONNEL

Check in with the clerk or bailiff as soon as you get to court. If the person to be restrained is also at the court, and you are worried about your safety, tell the clerk or bailiff so that they can help you. After you have checked in, take a seat and wait until your case is called. **Do not talk to, confront, or argue with the restrained person if you see him or her.**

HEARING IF THE RESTRAINED PERSON IS NOT PRESENT

The person to be restrained does not have to come to the court hearing. If he or she does not come to court, your court hearing will probably be short if you have filed a *Proof of Service* form. If you don't have your *Proof of Service* form, or you didn't get the other person served in time, remember that you can ask the judge to sign an *Application and Order for Reissuance of Order to Show Cause*, Form 1296.15. Otherwise, you will have to start

all over again. Most judges have a short time available to handle DVPA court hearings. Listen carefully if the judge asks questions, and give only the information that the judge asks for.

When your hearing ends, ask the judge to tell you how long your restraining orders will last, so that you can fill that part in on the *Restraining Order After Hearing* form (that you will already have started to fill out). Then, ask the clerk if you may hand your proposed *Restraining Order After Hearing* form and all of the attachments to the clerk to give to the judge.

If the judge grants all the orders you asked for and your form was filled out properly, the judge will sign and return the form to you. If the judge denies or changes some of the orders, he or she will tell you if you need to fill out a new form.

If you asked for child support, be sure you know:

- How much the child support⁴⁰ is for each child;
- When the child support starts; and
- Whether extra amounts are added for child care, uninsured health care costs, or other items.

HEARING IF THE RESTRAINED PERSON IS PRESENT

If the person to be restrained is in court, you should already have a copy of his or her *Responsive Declaration*. If he or she tries to file a *Responsive Declaration* on the day of your hearing, you can ask the judge for extra time to read the form and gather extra information, witnesses, or statements from witnesses. If the judge sets a date for a new hearing, be sure that the judge also extends any *temporary restraining orders* that are in effect until that new date.

When your case is called, you will be asked to come up to the tables in front of the judge. Then the judge will ask each of you to give your name for the court “record.” The judge usually has only a short time to hear your case and make a decision. Many judges will ask only a few questions to help them understand what has happened. Since this hearing is the result of your request for a restraining order, you will be asked to testify first. If you have statements from witnesses (“declarations”) or documents to show, be sure to give them to the bailiff to give to the judge at the time during the hearing when you think the information will⁴¹ be the most sense.

When you have finished, the person to be restrained will have the chance to ask you or any of your witnesses questions about what was said. **Do not interrupt either the judge or the restrained person when he or she is speaking during the court hearing.** Then it is the

restrained person's turn to tell his or her side of the story and present witnesses, and to show whatever documents he or she thinks are important. You will have a chance to ask the restrained person and his or her witnesses questions.

At the end of the hearing, the judge will either inform you of his or her decision while you are both present in court, or tell you that he or she will decide the case later (perhaps after reviewing the evidence in more detail). If your orders are granted, ask the judge to tell you how long your restraining orders will last, so that you can fill that part in on the *Restraining Order After Hearing* form that you will already have started to fill out. Then, ask the clerk if you may hand your proposed *Restraining Order After Hearing* form, and any attachments like the *Child Custody and Visitation Order Attachment*, to the clerk to give to the judge. If the judge grants all of the orders you asked for, and your form was filled out properly, the judge will sign and return it. If the judge denies or changes some of the orders you asked for, he or she will tell you if you need to fill out a new form.

If you asked for child support, be sure you take notes on:

- How much the child support is for each child;
- When the child support starts; and
- Whether extra amounts are added for child care, uninsured health care costs, or other items.

FINISHING AND FILING THE *RESTRAINING ORDER AFTER HEARING* FORM

Once the judge has signed the *Restraining Order After Hearing* form, take all the copies to the clerk's office so they can be stamped and returned to you. If you get confused about exactly what the judge has ordered, you can ask for a copy of the "minute order," which is usually available from the court clerk a few days after the hearing. This information can be helpful.

IF YOU RECEIVED CHILD SUPPORT ORDERS

You will need to fill out and file, and the judge must sign, several more forms if the judge ordered the restrained person to pay child support. You can get help from the Family Law Facilitator with all of these forms at no charge. The forms include:

- *Child Support Information and Order Attachment*, Form 1296.31B; and
- *Wage and Earnings Assignment Order*, Form 1285.70.

There are two information sheets which should be attached as well:

- *Notice of Rights and Responsibilities—Health Care Costs and Reimbursement Procedures*, Form 1285.78; and

- *Information Sheet on Changing a Child Support Order*, Form 1285.79.

The court will also want you to complete a confidential form called the *Child Support Case Registry*, Form 1285.92.

COLLECTING CHILD SUPPORT THROUGH WAGE ASSIGNMENT

To start collecting child support send a filed copy of the *Wage and Earnings Assignment Order*, Form 1285.70 to the restrained person’s employer. You can use the address listed on the pay stub or W-2 form that was attached to the restrained person’s *Income and Expense Declaration* or *Financial Statement (Simplified)*. This form tells the restrained person’s employer how much money to withhold and where the money should be sent.

<u>YOUR NOTES:</u>

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STEP 5: ENFORCE OR CHANGE COURT ORDERS



The *restraining order* tells the restrained person what he or she can or cannot do. It is the restrained person’s responsibility to make sure they do not violate a restraining order. The restraining order will be good for a limited time. Usually, this is for three years. However, the child custody, visitation, and child support sections of the court order will last until replaced by a new court order.

ENFORCING YOUR DVPA RESTRAINING ORDER

The first step in enforcing your court order is to make sure that everyone who needs a copy of the order gets one. **The person to be restrained can be served by mail with their copy of the *Restraining Order After Hearing*, Form DV-130 (and all attachments such as the *Child Custody and Visitation Order Attachment*, Form 1296.31A), if he or she was at the court hearing when the judge made the order or the order is exactly the same as what you asked for on your *Application and Declaration for Order*, Form DV-100.**

Otherwise, you must have him or her served personally by someone over age 18 who is not involved in the case.

Following is a list of some of the other people who may also need a copy of the final *Res⁴⁵ g Order After Hearing*:

- The landlord if the protected person rents and the order includes a *residence exclusion*;

- Law enforcement agencies;
- Security officers at the protected person's residence or workplace;
- Visitation supervisor if the order provides for supervised visitation;
- A protected child's school or child care provider;
- The protected person's employer if the order includes a stay-away-from-work order;
- Financial institutions if one of you has an order to have use and control of an account at that financial institution;
- Counseling agency if either the person to be protected or the person to be restrained are ordered to attend counseling;
- Health care providers or insurance companies if the order requires the person to be restrained to pay restitution directly to the protected person's health care provider or health or car insurance company; and
- Others that are listed on, or are affected by, the court order.

Your restraining order is enforceable in every state, territory, or Indian reservation. If you move out of California, contact the police, sheriff, or other law enforcement in the state, territory, or reservation where you move so that they know to enforce your orders. **They will probably tell you to bring them a certified copy of your orders.** Also, provide copies to your

children's new schools or daycare providers that can help enforce the order in your new state.

➡ **ALERT!** Make sure that you can prove that the restrained person got a copy of the DVPA restraining order. If you are having him or her served by mail, the person who mails the forms must fill out and file the back of the *Proof of Service*, Form DV-140. If the court order is being served personally, have the person who serves the *Restraining Order After Hearing*, Form DV-130, fill out and file the front side of the *Proof of Service* form.

WHAT IF THE RESTRAINED PERSON DOES NOT FOLLOW THE COURT ORDER?

If the restrained person violates the order by committing or threatening domestic violence, contact a law enforcement agency. The restrained person may be arrested, charged with a crime, and put in jail. Always have both a *certified copy* (that you get from the court clerk) of your *Restraining Order After Hearing (CLETS) (Domestic Violence)*, Form DV-130 with any attachments such as the *Child Custody and Visitation Order Attachment*, Form 1296.31A and your filed copy of the *Proof of Service*, Form DV-140 with you at all times. The police officer or sheriff's deputy will read the court order to see if it has been violated. He or she will then decide what action to take to enforce the court order. If

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