

KNOW YOUR RIGHTS

RESTRAINING ORDERS FOR SURVIVORS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT – CALIFORNIA

Restraining orders are court orders that can protect someone from being abused, threatened, stalked, or harassed by another person. The person getting the restraining order is called the “protected person.” The person the restraining order is against is the “restrained person.”

EMERGENCY PROTECTIVE ORDER (EPO)

An emergency protective order is only issued by a judge at the request of law enforcement. These requests are made when law enforcement responds to an incident call and believes the victim needs immediate protection. Law enforcement can call a judge (at any time of day) to request an EPO to be granted effective immediately. An EPO can order the restrained party to move out of the home, order no contact between the restrained party and the protected party(ies), and grant temporary child custody. An EPO is shorter than the other available restraining orders. EPOs expire after five business days (seven calendar days) from the date they are issued. An EPO provides a person the opportunity to file for a longer restraining order.

CRIMINAL PROTECTIVE ORDER (CPO)

A criminal protective order is also issued by a judge to protect a crime victim. The CPO also can make similar orders to an emergency protective order. The difference between the two is that a CPO is issued only when the District Attorney files a case against the restrained party in a criminal proceeding. The restrained party must be arrested, charged or found guilty of certain crimes against the protected party. The District Attorney has the burden to prove that the victim needs a CPO. A CPO can last potentially up to three years. Only the District Attorney can request to renew the CPO.

TEMPORARY RESTRAINING ORDERS (TRO)

A temporary restraining order is a civil protection order that a person can request on herself if she feels that she is in immediate danger from the other party. A TRO can order the restrained person to stay away from the protected party(ies), order the restrained person to move out of the home, can grant temporary child custody, and can even make temporary orders for property control. In some cases, a TRO can be granted without notice to the restrained party.

After a person fills out the TRO paperwork, she takes it to the Court Clerk’s office for filing. The court clerk will take the TRO paperwork to a judge. The judge may grant the TRO if the judge believes an immediate order is necessary to prevent acts of domestic or sexual abuse. The TRO will be stamped to show whether it has been granted. Regardless of whether the TRO was granted, the clerk will provide a hearing date, typically within three weeks, where the petitioner may present her case for a permanent restraining order (DVRO see below). A temporary restraining order usually lasts between 21 to 30 days.

PERMANENT RESTRAINING ORDER/DOMESTIC VIOLENCE RESTRAINING ORDER (DVRO)

Permanent restraining orders are granted after a court hearing. The restrained party will need to have notice of the DVRO court hearing. It is not required for the protected party to have received any other protective order, including a TRO, prior to receiving the DVRO. In order to qualify for a DVRO, the protected party must have a close relationship with the restrained party. A close relationship includes those who are married, domestic partners, divorced, separated, in or were in a dating relationship, cohabitating, share a child, or closely related by blood, marriage, or adoption. The DVRO can last up to five years. One can file to have the order extended if she feels she needs further protection.

This information is intended as guidance for use by the general public. For legal advice about your own case, please consult the Legal Advocacy Project or a licensed attorney in your area.