

THE STATE BAR OF CALIFORNIA

CAN THE
LAW HELP
PROTECT
ME FROM
DOMESTIC
VIOLENCE?

GET THE
LEGAL
FACTS
OF LIFE

Can the law help protect me from domestic violence?

- 1 *What is domestic violence?*
- 2 *How can the law help me if I'm abused?*
- 3 *What happens if I don't show up for my court hearing?*
- 4 *Can a restraining order protect my children?*
- 5 *Can the order require the restrained person to pay child support?*
- 6 *Will a restraining order keep me safe?*
- 7 *Can I get help filling out court papers?*
- 8 *Do I have to put my address on court papers?*
- 9 *What does it cost to get a restraining order?*
- 10 *If I seek a restraining order, will the abuser go to jail?*
- 11 *Will I be reported to ICE if I seek a restraining order?*
- 12 *What should I do if the abuser violates the restraining order?*
- 13 *Should I tell my boss about the restraining order?*
- 14 *Is there only one type of restraining order?*
- 15 *What will happen if my spouse or partner is arrested for hurting me?*
- 16 *What if I decide to drop the charges?*
- 17 *Where can I get help and support?*
- 18 *Do I need a lawyer? How do I find one?*

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The Domestic Violence Committee of the Family Law Section of the State Bar of California played a key role in developing, editing and revising this pamphlet.

Violence happens between intimate partners and in families. It can start with shouting and cursing (verbal abuse) and can escalate to pushing, hitting and even death. Often the abuser will say he or she is sorry, and you want to believe that the abuse won't happen again. But then it does happen again, and sometimes it is worse. The abuser tells you that no one will believe you. The abuser says it is your fault. But no matter what you do or don't do, the abuse continues. And you are afraid.

You are afraid of your spouse, your boyfriend or girlfriend, your adult son or daughter. You want to leave, but you are afraid of what your abuser will do. There have been threats, even threats of bodily harm or death. You may have children whose safety is at risk.

You have reason to be afraid. Violence escalates unless steps are taken to change things. And children who witness such violence between their parents or other family members are likely to be emotionally scarred, if not physically wounded, as well.

You do not have to face the problem alone. Help is available – whether or not you decide to leave. People will believe you. National and local domestic violence hotlines can refer you to shelters, counseling, legal assistance and support in your area. And while the law cannot protect you absolutely from domestic violence, it can help you protect yourself. You can file for a restraining order against your abuser free of charge. And if you do move out, you may be able to keep your new address confidential on official documents, such as court papers and your driver's license. No intimate partner or family member has the right to abuse you verbally, physically, sexually, emotionally, financially or in any other way.

1 *What is domestic violence?*

The law defines domestic violence as abuse toward an intimate partner or family member. This may include your current or former spouse or dating partner, a person you have lived with in a family unit (not just roommates) or a relative by blood, marriage or adoption. It is a type of violence that cuts across all cultures, ethnic backgrounds, education levels, and income brackets. It impacts same-sex partners as often as heterosexual partners. It occurs among teenagers as well as senior citizens, and men as well as women.

Domestic violence is behavior driven by a need

to control. It can range from threats, annoying telephone calls and stalking (such as following the victim to and from work) to unwanted sexual touching, hitting and destruction of the victim's personal property.

2 *How can the law help me if I'm abused?*

If you are in immediate danger, call 911. If you have children, they, too, could be at risk. When the police arrive, explain what happened. The officers can contact an on-call judicial officer and issue you an *Emergency Protective Order* (also called an EPO) on the spot. This legally prohibits the batterer from coming within a certain distance of you. It also may grant you temporary custody of your children. To obtain an EPO, there must be an "immediate and present danger" that you and/or your child will suffer domestic violence, or that your child will be abducted by the other parent. The EPO will remain in effect for five court days or seven calendar days, whichever is shorter.

To obtain a longer-term restraining order, you must file an application for a *Temporary Restraining Order* (TRO) at your local family law court. If your application for a TRO is granted, it will take effect as soon as your abuser is *served* (which means personally delivered) with a copy of your court papers. The abuser does not have to sign any papers or agree to any orders. You can request that a local law enforcement agency serve your court papers on your abuser free of charge. Neither you nor anyone else protected by the TRO can serve the court papers on the abuser. Any other adult, however, can serve such papers for you.

After you file your TRO application, the court will give you a date to return for a court hearing about two to three weeks later. Your TRO (after personal service on the abuser) will be effective until this hearing. At the hearing, you may request that the TRO be made "permanent," which means that it may be good for up to five years (the judge may issue it with an earlier expiration date). The order may then be renewed.

A domestic violence restraining order usually requires the batterer to stay at least 100 yards—the length of a football field—away from you and have no contact with you, either in person or through others, by e-mail, telephone or otherwise. The judge may make

exceptions for peaceful contact that relates to parenting (the exchange of a child for visitation, for example).

3 *What happens if I don't show up for my court hearing?*

If you don't show up for the court hearing scheduled within three weeks of filing, your TRO will simply expire. The papers served on the batterer (now the *restrained party*) warn that if he or she fails to show up for the court hearing, the judge may grant the requested orders for up to five years without further notice. In such a case, the "permanent" restraining order would then have to be served on the abuser. (If the batterer was at the hearing, this would not be necessary).

4 *Can a restraining order protect my children?*

Yes. You may request that all children in the house be protected by the orders. If the judicial officer finds your statements to be credible (that the abuser has harmed or threatened the children, or threatened to abduct them), your request will probably be granted after a hearing. The judge can also order the restrained person to stay away from the children's school, the family home and any other location where they may be in jeopardy.

If you and the abuser are the children's parents, the judge may give you a TRO with temporary custody of the children and specific or no visitation to the other parent. If you are seeking custody of your children, you will have to attend court-ordered mediation before your court hearing for a permanent restraining order. If you feel intimidated, request a mediation session apart from the restrained person; it is your right in domestic violence situations. In addition, a support person may accompany you to the mediation session, though she or he cannot participate.

5 *Can the order require the restrained person to pay child support?*

Yes. The court may issue an order for child

and/or spousal support at the court hearing for a permanent restraining order *if* you have requested it in your application and *if* you have prepared an income and expense statement.

You may be able to get a child support order if you have any children with the abuser and can prove your abuser's relationship to the children. (You may be able to establish this relationship if you are married to the abuser, if the abuser admits to being the parent, or if the abuser has previously been legally established as your child's parent.) You will have to complete, file and serve an *Income and Expense Declaration or Financial Statement (Simplified)* with your TRO application.

And if you are married to the restrained person, you may also request spousal support. To do so, you would have to complete, file and serve an *Income and Expense Declaration* with your TRO application.

The judge also can assign you sole temporary possession of the family home – regardless of who owns it or whose name is on the lease. But safety concerns should prevail. If it is not safe for you to remain there, even with a restraining order, and if you have no other safe options, you should seek help from a local domestic violence shelter or other support agency.

The order can also grant you exclusive use of other property, such as a car. The law even allows the judge to require that certain debts be paid while the order is in effect, that property not be transferred or sold, and that the restrained person reimburse you for losses caused by his or her abuse.

If you already have a divorce pending against your abuser, you may be required to file your restraining order in that case. Or you may be permitted to file a new case. The court, however, will probably merge the new case into the divorce case.

6 *Will a restraining order keep me safe?*

Not necessarily. Keep in mind that a restraining order can help protect you, but it is still just a piece of paper. Don't get a false sense of security. Studies suggest that restraining orders *lower*, but *do not eliminate*, the risk of ongoing violence. Some batterers respect such orders; some do not. Learn to trust your instincts: If you don't feel safe, you probably are not safe.

In some instances, seeking a restraining order may put you in greater danger of significant bodily injury or death. The data suggests that most serious injuries and fatalities occur after the victim leaves his or her abuser. You may want to consider moving to a domestic violence shelter or the far-off home of a friend unknown to the batterer. If you have children with the batterer, however, you may not conceal them from him or her or you could be subject to criminal charges for kidnapping. Get legal advice if you are thinking about leaving the state or hiding the children from the batterer.

Not leaving an abusive partner, however, could be extremely dangerous in the long run. Domestic abuse often escalates and rarely stops without intervention.

Consider contacting a domestic violence advocate to help you create a detailed safety plan. To find an advocate, contact the National Domestic Violence Hotline at 1-800-799-SAFE (799-7233) or, for TTY, 1-800-787-3224. Or go to thehotline.org. You can also find guidance on the California Courts website at courtnfo.ca.gov in the *Self-Help Center*.

7 *Can I get help filling out court papers?*

Yes. Most family law courts have domestic violence programs that offer information on local resources. Many courts have programs that can assist you in filling out forms and prepare you to represent yourself in court. Some may provide a “support person” who can accompany you to hearings. Most of these programs offer free services, but some may request a small fee or donation. You will have to check with your local court to see what is available.

8 *Do I have to put my address on court papers?*

No. In some courts, you may write “address confidential due to domestic violence” on your forms. Other courts require that you have an address where the court may contact you, but even a post office box would be sufficient.

Additionally, the law allows survivors of domestic violence to keep their home addresses confidential

through the Safe At Home program, which is run by the Secretary of State's office. If you meet certain criteria, the Safe At Home program will give you a substitute mailing address to use on official documents, including court papers and your driver's license. In addition, participants can suppress their DMV records, complete a confidential name change and register to vote without making their home address available to the public. As a registered voter in the Safe At Home program, you automatically receive absentee voter status. Also, if you decide to get married while in the program, your address will remain confidential on those documents as well.

Here's how the program works: You apply through one of the many designated local domestic violence services programs. To qualify, you must meet criteria establishing you as a victim-survivor of domestic violence. Then you will be issued a Safe At Home ID card with the substitute address. All first-class mail, legal documents and certified mail sent to you at that address will be forwarded within 48 hours. If you follow the rules, you can use the address for up to four years. For more information, call the program toll-free at 1-877-322-5227 or go to sos.ca.gov/safeathome.

Keep in mind, however, that the Safe At Home program is simply one more protective measure. It is not a guarantee of safety. While it may provide vital assistance, no such program is fail-safe. Use all measures possible to keep yourself and your children safe.

9 *What does it cost to get a restraining order?*

Nothing. Unlike other court applications, there is no filing fee for domestic violence restraining orders. In addition, you may request that a local law enforcement agency serve the order to your abuser free of charge.

10 *If I seek a restraining order, will the abuser go to jail?*

No. A restraining order is a civil—not criminal—action. It legally bars the abuser from coming near you. Its aim is to help prevent future domestic violence, to help keep you and your children from getting hurt. As

long as your abuser does not violate the order or face any criminal charges, he or she will not be arrested.

However, the judge may order the abuser to attend counseling sessions or batterer's intervention classes. In granting the restraining order, the judge also could – if he or she feels it would help the situation – require you to get counseling as well.

11 *Will I be reported to ICE if I seek a restraining order?*

Anyone, including an angry spouse, could report you to the Immigration and Customs Enforcement (ICE) at any time. It is not, however, an automatic step in the TRO court process to make such a report. This does not mean, of course, that it could never happen. But you need not be afraid that ICE will be notified automatically if you file for a restraining order.

You also should be aware of a special provision in the laws governing immigration and naturalization that may apply to you. If you are undocumented and married to a legal permanent resident or U.S. citizen, contact an attorney immediately about your right to self-petition for legal status under the Violence Against Women Act (VAWA). Or, if you are undocumented and not married to a legal permanent resident or U.S. citizen but are cooperating with law enforcement in a criminal investigation, contact a lawyer about obtaining a U-visa.

12 *What should I do if the abuser violates the restraining order?*

Call 911 immediately if you believe that you might be in danger. At the very minimum, you should notify the police. Remember to carry a copy of your EPO, TRO or permanent restraining order with you at all times. Show it to the police when reporting the violation. Restraining orders are valid nationwide. In California, they are entered into California's Law Enforcement Telecommunications System (CLETS); this means that a record of the order should be retrievable by every law enforcement agency in the state. But keep a copy of the order with you as an added precaution – even in California. The law states that the court must provide you with five stamped,

certified, endorsed copies at no charge.

What happens to the abuser will depend on the specific situation. He or she could be arrested for violating the restraining order (a misdemeanor), jailed for up to a year and/or fined \$1,000. If the abuser takes or conceals a child in violation of the order or physically injures you, he or she could be charged with a felony, which is punishable by a state prison sentence and/or a fine.

Don't be caught off-guard. Make a detailed safety plan to help you prepare for an emergency in case your abuser violates the restraining order (see #6). Teach your children what to do if the batterer shows up. Alert your children's daycare provider or school officials, and give them a copy of the restraining order. Make sure that your home is as secure as possible. Consider installing an alarm system or moving to a gated complex. Most importantly, refrain from contact with the batterer. Let your telephone answer machine pick up calls before you do. Confide in a trusted neighbor, and ask him or her to call the police if the abuser comes near your home.

13 *Should I tell my boss about the restraining order?*

Only you can assess your particular situation. But there are compelling reasons for alerting your employer. For example, an unknowing co-worker could give the batterer your personal information, which you wanted to keep confidential. Or, a co-worker could wind up caught in the middle of a violent scene in or near your workplace.

Maybe you are worried that you will lose your job if you reveal your circumstances. If you inform your employer that you are a victim of domestic violence and that you must miss work to go to court, to the doctor or to another related appointment, the law prohibits the employer from firing you or demoting you simply because you are a survivor of domestic violence. And if your supervisors are aware of the potential danger, they will be better equipped to help protect you and your co-workers. For example, they, too, could seek a restraining order if the situation warrants it. And company security could be warned to be on the lookout for your abuser—and to alert you and your supervisors if he or she approaches the building.

14 *Is there only one type of restraining order?*

No. A *domestic violence restraining order*—instituted by the Domestic Violence Protection Act—applies only to certain kinds of relationships. Its specific purpose is to prevent the recurrence of domestic violence and to separate those involved so that they can “seek a resolution of the causes of the violence.”

Even if your problem involves domestic violence, you must meet certain criteria to qualify for this type of restraining order yourself. You must have dated, had an intimate relationship with, been engaged to, lived with or been married to the abusive person. You also would qualify if you have a child together or if you are otherwise closely related by blood, marriage or adoption.

What if, however, your daughter’s boyfriend will not stop calling you in search of your daughter? Perhaps he is even leaving threatening messages on your answer machine. In this case, your daughter may be able to seek a domestic violence restraining order, depending on the circumstances. But you, as the parent, would need to seek a *civil harassment restraining order* to legally bar your daughter’s boyfriend from contacting you.

A civil harassment restraining order often applies to a variety of irritating, non-life-threatening kinds of harassment (such as a neighbor’s dog that barks all night). However, if you are being stalked by a batterer with whom you have not had a relationship, it might apply to you as well.

Both types of restraining orders prohibit contact and bar the restrained person from possessing or buying a firearm—or even trying to acquire one. By law, anyone violating this restriction is subject to a \$1,000 fine and imprisonment. Such a violation is a separate federal crime as well.

15 *What will happen if my spouse or partner is arrested for hurting me?*

What happens next will depend on the circumstances that led to the arrest. How seriously were you injured? Was anyone else hurt? Did he or she threaten you or anyone else? Has he or she ever been arrested for anything like this before? Depending on the case,

your abuser could be placed on probation and referred to a “batterer’s intervention” program, or spend time in custody.

A police investigator will probably contact you after the arrest. If not, you may want to call the police and request a follow-up interview. Some law enforcement agencies have special domestic violence response units. However, you should be aware that the handling of domestic violence cases differs from county to county.

It is not uncommon for batterers to be put on probation for three years and ordered to undergo one year of batterer’s intervention classes in an approved program. Judges presiding over such cases also frequently impose a criminal “stay-away order,” which is similar to a TRO. You can also request such an order of the court. The criminal stay-away order usually will remain in effect throughout the batterer’s probation and may remain in effect for up to 10 years if the order provides for it.

For assistance, you could call the California Victim Compensation Program at 1-800-777-9229 (or go to victimcompensation.ca.gov) for more information and to find the nearest Victim Witness Assistance Center. A Victim Witness Assistance advocate may be able to provide you with some guidance. In some counties, advocates can help you locate the investigator or prosecutor handling your partner’s case, advise you of what to expect, and even escort you to court. They also should be able to tell you whether your county has a victim-witness notification system that will contact you when your partner is released from jail. (For notification, you must register with the system, which is known as VINE.)

16 *What if I decide to drop the charges?*

In a criminal case, that decision is not yours to make. Your forgiveness does not excuse your partner from the consequences of committing a crime. As the victim, your opinion and perspective are important. But an act of domestic violence is, by law, a crime against the state – not just a crime against you. If criminal charges are filed, it is up to the judge and, in some cases, a jury to decide whether there is enough evidence for a conviction.

If you are concerned about your safety because of the criminal charges against your abuser, discuss your concern with law enforcement and the prosecutor handling your case.

17 *Where can I get help and support?*

Call the National Domestic Violence Hotline at 1-800-799-SAFE (799-7233) or, for TTY, at 1-800-787-3224. Whoever answers the phone can help you deal with your situation, and can refer you to local shelters, counseling and assistance.

You are not alone. Data suggests there are close to 8 million instances of intimate partner violence each year among adults nationwide—resulting in some 1,500 deaths a year. It is not your fault. And help is available.

In California, there are many local assistance programs. You may be able to get free counseling for your children as well as yourself. You may even be able to recoup wages lost while recovering from injuries incurred by a spouse or partner. The California Victim Compensation Program provides such financial help to crime victims who meet certain criteria. Other losses that may be reimbursed by the program include the cost of medical and dental work, mental health counseling, financial support, a funeral and burial, and job retraining. Call the Victims of Crime Resource Center toll-free at 1-800-VICTIMS (842-8467) or the Victim Compensation Program at 1-800-777-9229 for more information.

18 *Do I need a lawyer? How do I find one?*

Whether or not you need a lawyer depends on your specific situation. For example, do you plan to file for divorce? Are you facing a custody dispute? Are you afraid that your children could be in danger if awarded to your spouse? What kinds of assets are at stake?

Property settlements and custody arrangements can be complicated. The ongoing threat of domestic violence only further complicates the situation. A lawyer can tell you how the court may divide your property and help you put your settlement agreement

into writing. A lawyer can also help you understand your legal rights regarding your children, and present your best case for custody and support.

You can probably find sufficient assistance, at little or no cost, to file for a TRO without hiring a lawyer. But domestic violence cases often involve a variety of issues, including spousal support and the division of property, in which a lawyer's assistance could have a crucial impact on the outcome. And if your abuser is represented by an attorney, you may want to have an attorney as well. Only you know the extent of your situation.

If you decide you need a lawyer and you don't know one, ask a friend or employer to recommend one. Or call a State Bar-certified lawyer referral service in your area. For an online list of certified lawyer referral services, go to the State Bar website at calbar.ca.gov/lrs. Or, to hear a recorded message with the phone numbers of certified services in your county, call 1-866-44-CA-LAW (442-2529). If you are calling from out of state, call 415-538-2250. Or, look in the Yellow Pages of your telephone directory or call a local bar association.

State Bar-certified lawyer referral services, which must meet minimum standards established by the California Supreme Court, can assist you in finding the right lawyer for your particular problem. Most of these services offer half-hour consultations for a modest fee.

Attorneys who are members of certified lawyer referral services must carry insurance, agree to fee arbitration for fee disputes, meet certain standards of experience and be State Bar members in good standing.

Lawyer referral service fees do vary. Don't forget to ask whether there is a fee for the referral or initial consultation. And if you decide to hire a lawyer, make sure you understand what you will be paying for, how much it will cost and when you will be expected to pay your bill. You may want to talk to several attorneys before you hire one.

Lawyers who handle custody and divorce cases are called family law attorneys. Some are "certified specialists" in family law. This means that they have met standards for certification set by the State Bar of California. However, not all lawyers who have experience in family law have sought certification.

If you cannot afford to pay for legal advice, you may have some other options. For example, you may belong to a "legal insurance" plan that covers these

kinds of services. Or, if you have very little income, you may qualify for free or low-cost legal help. Check the white pages of your telephone directory for a legal services program in your area. (California's statewide legal services website — **LawHelpCalifornia.org** — can help you locate a local program and provide you with additional resources as well.) Or ask a State Bar-certified lawyer referral service if it offers such assistance or if it can refer you to a no-cost legal services organization.

For more information, see the State Bar pamphlet *How Can I Find and Hire the Right Lawyer?* To find out how to obtain a free copy of this pamphlet and other State Bar consumer education pamphlets, call 1-888-875-LAWS (875-5297) or send an e-mail request to **pamphlets@calbar.ca.gov**. Or visit the bar's website — **calbar.ca.gov** — where you'll find the consumer education pamphlets, as well as information on ordering them. The pamphlets also can be ordered in bulk.

The purpose of this pamphlet is to provide general information on the law, which is subject to change. It is not legal advice. Consult a lawyer if you have a specific legal problem.

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