

# CIVIL PROTECTIVE ORDERS

## What are civil protective orders?

Civil protective orders are court orders aimed at:

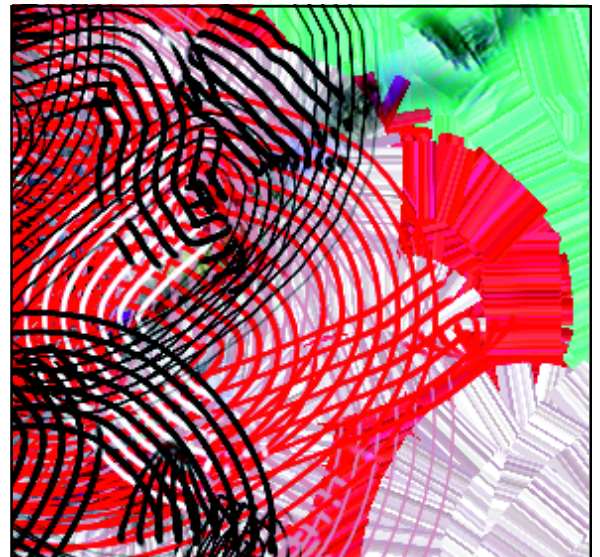
- Stopping violence
- Protecting abused parties, their children or their family members
- Holding batterers or harassers accountable for their behavior
- Providing restitution to abused parties

These orders can be issued against both adults and minors. In the case of the aggressor being a minor, the aggressor's parents must also be served personally with a copy of the order.

## What are the different types of civil protective orders?

**Domestic Violence Prevention Act (DVPA) Orders** can be obtained by any family member, person who is presently or has previously dated or lived with the aggressor, or person who has a child with the aggressor, by showing "abuse." "Abuse" is defined as sexual assault, violence resulting in injury, or acts or statements causing fear of imminent physical injury. The petitioner, or victim, may seek any of the following relief using the DVPA forms:

- **Restraining Order**– Prohibits restrained party from contacting, striking, molesting, telephoning, harassing, etc. the protected parties.
- **Stay Away Order**– Orders restrained party to stay up to 300 yards away from protected parties, their home, their employment, their school, their daycare, etc.
- **"Kick Out" Order**– Requires restrained party to leave the residence where the protected parties reside with only his personal belongings.
- **Custody/Visitation Order**– Specifies custody of parties' children and visitation arrangements (usually temporary).
- **Child Support Order**– Orders non-custodial parent to pay child support.
- **Property Order** – Allows protected parties to achieve temporary possession of property such as a car, furniture, etc.
- **Other** – The court can grant orders that provide for financial restitution for the protected parties, payment of protected parties' attorney fees, counseling for restrained party, etc.



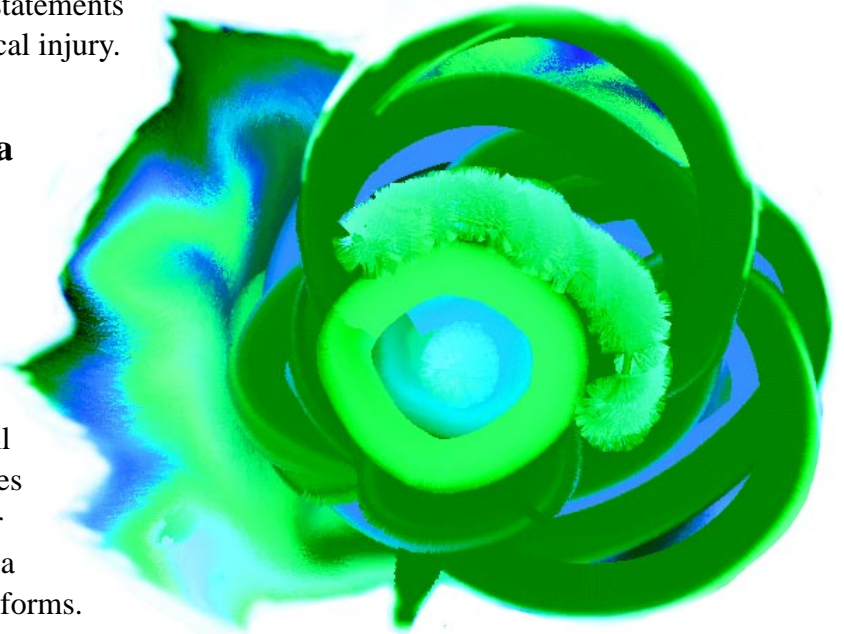
If the petitioner and the restrained party have a minor child together, were never married, and never

obtained court orders regarding custody and visitation, the petitioner **MUST** initiate a paternity proceeding soon after she applies for a protective order.

- **Family Law and Uniform Parentage Act Restraining Orders** provide the relief described above and can be obtained by any party seeking protection while s/he is going through a marital dissolution, a legal separation, a nullity proceeding, or a paternity proceeding.
- **Emergency Protective Orders** are issued **ONLY** by law enforcement officers to provide immediate, short term protection for the victims of domestic violence. The victim must report the abuse to a police officer and request his/her protection. The police officer must call the judge to request the order. To issue the order the judge must find reasonable grounds to believe that an immediate and present danger of domestic violence exists **AND** that the order is necessary to prevent the occurrence or reoccurrence of domestic violence. These orders are valid for five court days (seven calendar days) during which time the victim can seek a "permanent" DVPA restraining order. The necessary paperwork is completed by the law enforcement officer who will then also serve the defendant with a copy of the order.
- **Harassment Orders** are filed in two cases:
  1. In the case of people who do not qualify for DVPA Orders because the parties do not have one of the relationships mentioned above;
  2. Where the relationship does qualify **BUT** the behavior is not one the behaviors defined under the DVPA act, such as sexual assault, violence resulting in injury, or statements causing fear of imminent physical injury.

### **What happens when I file for a protective order?**

Filing for a protective order will (1) issue you a temporary protective order valid until the date of your hearing and (2) schedule a hearing to decide whether a "**permanent**" restraining order (up to three years) will be issued and to further decide the issues you brought forth regarding children or property. The hearing is usually set for a date two to three weeks after filing the forms.



### **How can I obtain a protective order?**

You must file the appropriate paperwork at the Family Court located at 170 Park Center Plaza in San Jose. The forms can be obtained through many organizations working with domestic violence victims, Family Court Clinic (408-299-8567), or at Rose Printing (408-293-8177) for a small fee. You must file the forms with the DOCUMENT EXAMINER who takes the paperwork to be signed by the judge. Ask the examiner when you can pick up the signed paperwork. When the paperwork is ready, go to the CLERK'S OFFICE and pick it up. The paperwork will be stamped FILED and have an assigned case number. Then you must serve the restrained party with copies of the paperwork.

## **What does it mean to "serve" the restrained party?**

Serving means hand-delivering a copy of the order to the restrained party. The victim CANNOT serve the restrained person. The victim can find a friend or relative to serve the order or the victim can hire a process server, someone who works serving orders. Also the sheriff can serve the restrained person for a fee, or the victim can obtain a FEE WAIVER so that the sheriff can serve the order for free.

The person serving the order on the restrained party must be at least eighteen years old and complete a PROOF OF SERVICE form for you. A copy of this form should be stapled to each copy of the protective order you deliver to the police departments listed on the order. The original PROOF OF SERVICE should be filed at the court BEFORE the hearing date. If you are unable to file the original before the hearing, be sure to take it with you to the hearing. The order must be served on the restrained person at least two days prior to the hearing. If you cannot serve the order in time for the hearing, you can ask to postpone the hearing date so that you have time to serve the order. You may postpone the hearing date for this reason up to three times. If the person to be restrained is a minor, the minor's parents must also be served personally with a copy of the order. The decision to issue a "permanent" restraining order cannot be made until the hearing. The hearing cannot be held until the restrained party is personally served with the temporary order.

## **How is a protective order enforced?**

Protective orders are enforced by the police when contacted by YOU. You must contact the police when the restrained party violates the order. Should the restrained party be unaware of the existence of the order it is the responsibility of the police to inform the restrained party that the protective order exists against him and then enforce the order. Both temporary and "permanent" orders are enforceable once they are issued.

## **What are the penalties for violating a protective order?**

Any intentional and knowing violation of a protective order is a misdemeanor punishable by a fine of not more than \$1000 and/or by imprisonment in a county jail for not more than one year. If the violation results in physical injury to the protected party, the punishment can be raised to \$2000 and/or imprisonment for between a minimum of thirty days and a maximum of one year.



*Fact Sheets for Teen Parents can be found on-line at: <http://www.teenparents.org>*