

# Information about Criminal Protective Orders and Civil Restraining Orders

## What is a Criminal Protective Order (CPO)?

A CPO is issued by a Judge in Criminal Court (San Jose, Palo Alto or Morgan Hill) to protect someone from a "Restrained Person." It may be issued after the Defendant (the Restrained Person) is arrested, charged or found guilty of certain crimes against the Victim. The case is filed by the District Attorney's Office on behalf of the People of the State of California. The District Attorney's Office is the prosecutor. CPO's may include stay-away orders, no contact or peaceful contact orders. The expiration date is listed on the CPO.

## What is a Civil Restraining Order?

A Civil Restraining Order is issued by the Superior Court to protect someone. Civil restraining orders may include stay-away orders, no contact or peaceful contact orders. The expiration date is listed on the order. If the date is not on the order, the order expires in 3 or 5 years, depending on the type of order. In this case, the lawsuit is filed by the Victim and the other party is the Restrained Person. The District Attorney is not involved in this lawsuit.

## What are the differences between CPO's and Civil Restraining Orders?

	<b>Criminal Protective Order (CPO)</b>	<b>Civil Restraining Order</b>
Who files for the Order?	The District Attorney	The Protected Person
What Court grants this kind of order?	Criminal Court in San Jose, Palo Alto or Morgan Hill	Family, Juvenile and other Civil Courts
How long can it last?	Up to 3 years (it may end early if the court's jurisdiction ends)	Up to 3 years (Civil Harassment) or 5 years (DVPA "family court" orders). DVPA orders can be renewed at Protected Person's request before they expire.
What if it's violated? (Penal Code §273.6)	Possible arrest, parole or probation violation, prosecution and conviction	Possible arrest, prosecution and conviction
How does it end?	It expires at the end of probation, parole or the expiration date on the CPO, whichever comes <b>first</b> (note: this can be much shorter than 3 years)	It expires at the date printed on the Civil order unless the order has been extended by the Court.

## Can I have both kinds of orders?

You can. People often do. If you are the Protected Person it may be a good idea to ask for a Civil Restraining Order even if you have a CPO because the CPO can expire for reasons beyond your control. A Civil restraining order doesn't expire "early" unless it is ordered to expire by the Court following a hearing.

## **If there are orders in Family Court and Criminal Court, which order will be enforced?**

Generally, CPOs take priority over civil restraining orders by law (Penal Code §136.2). Even if a Civil Restraining Order was made after a CPO, the CPO will have priority and should be enforced by law enforcement. So, if the CPO is a peaceful contact order and the civil order is a no contact and stay away order, the law generally requires that the criminal order be enforced.

An exception to the requirement that a CPO has priority is an Emergency Protective Order (EPRO) issued under certain circumstances. If there is a CPO or existing restraining orders involving the same Protected Person and the same Restrained Person and the EPRO is more restrictive than the other existing orders, then the orders in the EPRO will control. For example, if there is a peaceful contact CPO and the EPRO is a no contact and stay away order, the EPRO will be enforced over the CPO.

## **What if the orders are different?**

It is important to know if your CPO and Civil restraining orders are different. If they *are* different, the CPO will control. For example, if the Civil restraining order says the Restrained Person and Protected Person can have contact with each other but the CPO says "no contact," then the parties can have no contact, even if the Civil restraining order was issued later.

## **How can I make the orders the same?**

Read the flier "How to Ask the Judge to Change Your Criminal Protective Order" to learn how to change a CPO. For help applying to change a Civil restraining order or a CPO you can visit the Restraining Order Help Center in the basement of Family Court, 170 Park Center Plaza, San Jose (408-534-5709). They have a list of other agencies and referrals to attorneys that can help, too. You can also find that list on the court's website – [www.scselselfservice.org](http://www.scselselfservice.org).

## **When do the orders expire?**

Protective or restraining orders expire on the date written on the orders for the expiration date. The orders can be temporary, which usually means that they will be in effect for a short while until the hearing on the motion for long term orders. The orders can also be long-term following a hearing to determine if the orders should be in effect and for how long. If the orders do not have an expiration date written on them that means that they will be in effect for three (3) to five (5) years from the date of the hearing, depending on the type of restraining order.

## **What is a "no contact" order?**

A no contact order is an order that requires that the Defendant or Restrained Person have no contact with the protected people. It may also include a stay away order, which orders the Restrained Party to stay away from the Protected Party, his or her home, workplace, vehicle, and other specified locations. No contact includes no telephoning, faxing, emailing, text messaging, or sending messages to the other person through a third party.

## **Can there be exceptions to no contact orders for child visits?**

If the Restrained Person and the Protected Person have children together, the Court can include an exception to the no contact orders to allow for peaceful contact relating to court ordered visitation. This would allow for contact only about the children and visitation and for no other reason. Generally, this is done where there are custody or visitation orders already in place or one of the parties intends to get custody or visitation orders. Orders with this exception do not permit someone to harass the other party or to make contact to talk about things other than court ordered visitation, such as the parties' relationship.

## What is a peaceful contact order?

A peaceful contact order allows the Protected Person and Restrained Person to have contact with each other, as long as the contact is peaceful. Usually, there is no stay away requirement in a peaceful contact order. Peaceful contact orders mean, for example, that a person cannot: hit or strike the other person, throw things (such as the TV remote) at or near the other party, threaten to hit, harm, or kill the other party, destroy or damage the furniture or the phone, call the other person names, argue so loudly that the neighbors are disturbed, prevent the other party from leaving the house or otherwise blocking the movements of that person, pull out the phone wires from the wall, or have your friends come over and do what otherwise cannot be done.

## What do you do if you are contacted by the other party and there is a no contact order in place?

If there is a no contact order in place and the protected party contacts you, you must quickly end all such contact. If the protected party calls you, invites you over, or contacts you in any manner, you must end the contact as soon as possible. You must hang up the phone, decline the invitation, or leave the immediate area where they are. If you do not do this, ***you can and will be arrested*** for violating the protective or restraining orders.

The protective or restraining order prohibits you from having any contact with the Protected Person. The order does not prohibit the Protected Person from contacting you, therefore, they are not breaking the law by contacting you, but you are, if you continue the contact.

The law very clearly states that the acts of the parties do not affect the terms and conditions of the orders. Penal Code § 13710(b). Any changes to the orders must be done by the Court.

## What happens if the protected person and I are at the same public place at the same time and is a stay away order?

If there is a stay away order in place, that means that you must stay away from the Protected Person for the duration of the order, unless there are specific exceptions regarding the exchanges of children under the terms of a court order for custody or visitation. If you go into a public place like a restaurant and see the Protected Party there, you must leave as soon as possible in order to avoid being in violation of the court orders. If you are in a public place and the Protected Party enters that place, you should not approach the Protected Person or make any effort to contact him or her. If the Protected Person does not leave the place after a reasonable time, you will need to leave yourself to avoid a potential arrest for violating the stay away provisions of the court orders. ***Note: There is no rule about the person who is in the public place first being allowed to stay when there is a stay away provision in the court order.***

## Can a protective or restraining order be changed?

A CPO or a civil restraining order can only be change by a court order. If the Restrained Person or the Protected Person wants to modify the civil restraining order or CPO, they need to file a motion with the Court and have it served on the other party personally. Criminal Court motions must be served on the District Attorney's Office and on the Probation Department, if the Restrained Person is on probation. The forms that are required to request a modification of a CPO can be obtained from the Clerk's Office at the Hall of Justice.

To modify a civil restraining order, a party must file a motion in the Family Court, 170 Park Center Plaza, San Jose, CA. The motion must be served personally on the other party and both parties should attend the hearing on the motion.

The forms are available at the Restraining Order Help Center, 170 Park Center Plaza, San Jose, CA or online at the Court's website: [www.scselselfservice.org](http://www.scselselfservice.org). The Court will schedule a hearing on the motion once the papers are filed. Both parties should appear for the hearing.

## **What if the Protected Person and Restrained Person have children together and I think there should be visits?**

- First, make sure the CPO and/or Civil restraining order you have allows the parents to have contact for visits if you think there should be visits. You can do this by checking on the following:
- If you have a CPO that orders that the Restrained Person stay away from the Protected Person, make sure that boxes 12 or 13 on the CPO are checked (see attached sample). If they are checked then this is an exception to the CPO that allows the parents to exchange the children for visits if the Family Court Judge makes a visitation order.
- If boxes 12 or 13 are not checked then you need to file a motion to change the CPO to allow contact for visits. If your children are protected on the restraining order and these boxes are not checked then visits are not allowed.
- If the CPO is changed to allow limited contact, follow the Court's existing visitation order, if there is one, or apply to the Court for a new visitation order.
- If you have a Civil restraining order make sure that there is an exception for peaceful contact for court ordered visitations. This will either be written in or a box will be checked off that says this.

## **How do I get a Visitation Order or change the order I have?**

- To do this, you can visit the Court's website ([www.scselselfservice.org](http://www.scselselfservice.org)), read the custody & visitation handout available outside the Court's Self-Help Center/FLFO, visit the Self-Help Center/FLFO at 99 Notre Dame Avenue, San Jose, or see a legal services provider or a private attorney. You can find referrals to legal services providers and attorneys at the Centers or on our website. They can help you open a new Family Law case if you don't have one already or they can help you file to change the custody and visitation order you have already if it is not working for your family anymore.
- Again, make sure your CPO and/or Civil restraining order have an exception for the parents to have peaceful contact regarding visits or you may not be able to follow the visitation order you get.

## **Once we have a visitation order and our CPO or Civil order allow for contact for visits, what else do we do?**

Make sure to follow your orders very carefully – both the visitation and restraining orders. Don't make changes to either of the orders on your own with the other parent. If you think a change would be best for your children, file a motion with the Court asking for the change. If you don't do this, the Restrained Person could be arrested when you didn't think that parent was violating the Court order.