



## DOMESTIC VIOLENCE

### Restraining Orders

#### Definitions:

**EPO (Emergency Protection Order):** This order is issued by a police officer with authorization from a judge. It is in effect for 5 court days (a maximum of 7 calendar days). It is used to give the victim protection until s/he can obtain a permanent order through the civil court.

**TRO (Temporary Restraining Order):** This order is issued through the civil court. The victim must apply for the order. The temporary order is valid for 21 days and has an assigned court date. The batterer is allowed to attend the civil hearing to argue against having the restraining order made permanent.

**RO (Restraining Order):** This order is also referred to as the Order After Hearing (OAH). The judge issues this order at the hearing. It may last for up to 3 years from the date of the hearing. You can have it extended by filing new papers before it expires.

**CPO (Criminal Protective Order):** A criminal judge, at a criminal proceeding, issues the order. It may be issued without the permission of the victim. If the victim is not present, s/he will receive a copy of the order in the mail. It takes precedence over any civil order. The duration of the order varies, but never extends beyond the term on the batterer's probation.

### Myths and Realities

**MYTH:** If the victim goes near the batterer, s/he is violating the restraining order.

**REALITY:** The order is not against the victim, unless otherwise stated. S/he is the protected party. It is the responsibility of the batterer to avoid contact with the victim.



**MYTH:** If the victim does not cooperate with the order or changes his/her mind and invites the batterer back, the order is no longer valid and the police will not enforce it.

**REALITY:** Once the judge signs a restraining order of any type, it is valid and enforceable until the expiration date or until it is changed by the judge. The parties cannot agree by themselves to change a restraining order. The batterer is subject to arrest even if the victim invites the batterer back in to the home.





**MYTH:** All restraining orders require the batterer to stay away from the victim

**REALITY:** There are generally two types of restraining orders. The first type is a “no contact/stay away” order requiring the batterer to avoid contact of any type and to stay at least a certain distance away (generally 100 yards). The second type is a “limited contact” or “no HAM” (Harass, Annoy, Molest) order. This type allows the batterer to have contact with and even live in the home as long as the batterer agrees not to “harass, annoy or moles” the victim.



**MYTH:** No “HAM” orders are useless because words such as “shall not harass, annoy or molest” are subjective and not enforceable.

**REALITY:** It is true that the definition of harassment is subjective. However, the officer should document the violation and determine whether or not arrest is appropriate and submit it to the District Attorney requesting prosecution. The victim has the right to request the District Attorney to proceed with civil contempt.



**MYTH:** Victims must file a copy of their restraining order with the police in order for it to be valid and enforceable.

**REALITY:** It is advisable to file a civil restraining order with the police department and in the interest of safety it should be done. However, a restraining order is enforceable as long as the victim has a valid and readable copy of the order with a proof of service attached. In the absence of a copy of the order, the officer can ask the victim to place the suspect under citizen’s arrest. In the case of a criminal protective order, the court files a copy with the local police and the victim is not responsible for providing a copy



**MYTH:** Restraining orders cost \$185 or more

**REALITY:** While other general harassment orders do have filing fees, any order filed under the Domestic Violence Prevention Act is issued free of charge. There is a small charge if a victim hires a professional process server to serve the order. However, a victim can have anyone over the age of 18 to serve the order as long as they are not listed in the order.





**MYTH:** A restraining order can last forever

**REALITY:** A civil restraining order generally lasts for three (3) years and can be renewed by the victim. A criminal protective order lasts only for the duration of the criminal proceeding, the time stated on the order or the length of the batterer's resulting probation. An emergency protective order last for five (5) court days or a maximum of seven (7) calendar days.



**MYTH:** Verbal and emotional abuse constitute grounds for a restraining order.

**REALITY:** Because there is a right to freedom of speech, it is sometimes more difficult to obtain a restraining order when the abuse has been verbal only (depending on the circumstances). However, when the verbal abuse extends to threats, it is much more likely that the court will issue a restraining order.



**MYTH:** Because civil restraining orders (TRO, RO) are filed by the victim against the batterer (as opposed to a criminal stay away), they are a private matter between the victim and the batterer. If the victim calls the batterer and asks him/her back, the restraining order has not been violated.

**REALITY:** Restraining orders are issued by a judge and remain valid until modified or rescinded by the court. If the victim invites the batterer back, the batterer is still subject to arrest for violating a court order. Even if a victim asks the court to modify a civil order, a criminal order may still be in place and the criminal order will take precedence over a modified civil order.



**MYTH:** A restraining order against the batterer results in the batterer not being able to see his/her children.

**REALITY:** A temporary civil restraining order may, at the victim's request, restrict visitation until the hearing date (21 days). This is not automatic, and in some cases, may not be granted. In addition, an emergency protective order can also request that the batterer not have access to the children for the duration of the order (5-7 days). It is extremely rare for a batterer to have a permanent restriction on visitation with the children. Family Court Services will work with the victim and the batterer to determine if visitation is appropriate and to arrange for visitation with the children under terms that make it safe for everyone involved. In some cases the court may order formally supervised visitation.





## Helpful Tips to Help the Police Officers

1. Have a readable copy of the TRO/RO. Make multiple copies for work, childcare, etc.
2. File copy of TRO/RO with police departments. Have date it was served.
3. Have current information on batterer, i.e., address telephone, place of employment etc.
4. Have batterer's vehicle license number.
5. Inform officer the language of the batterer/partner.
6. Custody and visitation should be clear.

### Whom to Contact

#### **SAVE (Shelter Against Violent Environments)**

Hotline (510) 794-6055  
Office (510) 574-2250

#### **Fremont Police Department**

Advocate's Desk (510) 790-6939  
General Number (510) 790-6800

#### **Newark Police Department**

Advocate's Desk (510) 790-7249  
General Number (510) 793-1400

#### **Union City Police Department**

Advocate's Desk (510) 657-5285  
General Number (510) 471-1365

#### **Hayward Police Department**

Advocate's Desk (510) 293-7125  
General Number (510) 293-7272

#### **San Leandro Police Department**

Advocate's Voicemail (510) 577-6000 x3267  
General Number (510) 577-3201

#### **Alameda County Sheriff**

(510) 667-7721

#### **Domestic Violence Law Project**

(510) 733-2071

#### **Second Chance – Batterer's Treatment**

Newark (510) 792-4357  
Hayward (510) 886-8696



**Terra Firma – Batterer’s Treatment**

(510) 675-9362

**Integrated Counseling – Batterer’s Treatment**

(510) 885-0607

**Red Cross**

(510) 429-3300

**Emergency Shelter Program**

Hotline (888) 339-7233

(510) 786-1246

**Parental Stress**

(510) 790-3803

**Youth & Family Services**

Fremont (510) 791-4344

Hayward (510) 784-7048

**Eden I & R**

(510) 537-2552

**Alameda County District Attorney’s Office**

Victim/Witness Assistance Division

(510) 272-6180

**Alameda County Social Services Agency**

Domestic Violence Resource Specialists

(800) 246-6833