



Elder Abuse Restraining Orders and Recent Updates

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Today's Outline

What is an Elder Abuse Restraining Order (EARO)?

EARO Eligibility and Remedies

Comparison of Restraining Orders

Process for Getting Restraining Order

Trends with Elder Abuse Restraining Orders

Recent Legislative Changes for EAROs

Today's Goals

1. Issue spot what types of cases are appropriate for elder abuse restraining orders.
2. Understand who is eligible to file an EARO and what remedies EAROs provide.
3. Learn about recent legislative changes with AB 1243

What is an Elder Abuse Restraining Order (EARO)?

Elder abuse restraining orders fall under the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) found in the Welfare & Institutions Code (“WIC”) §15610

A type of restraining order that recognizes elder and dependent adults heightened vulnerability to abuse

Abuse is defined broadly to include financial, physical, neglect, isolation, deprivation by a care provider, abandonment, abduction, and other treatment leading to pain or mental suffering (WIC § 15610.07)

Mental suffering includes behavior, threats, and harassment that lead to fear, agitation, confusion, depression, or other emotional distress (WIC § 15610.53)

Case Example

Mary is 70-years-old and lives with her adult son, John. John helps Mary with some basic tasks. John struggles with mental illness and alcohol dependency. He sometimes takes Mary's debit card and withdraws her SSI money to spend on alcohol. John has on rare occasion gotten frustrated with Mary and cursed at her. Mary hasn't been to the doctor in over a year and by the end of the month runs out of money to purchase food. When Mary's other children express concerns about John, Mary becomes very defensive of him.

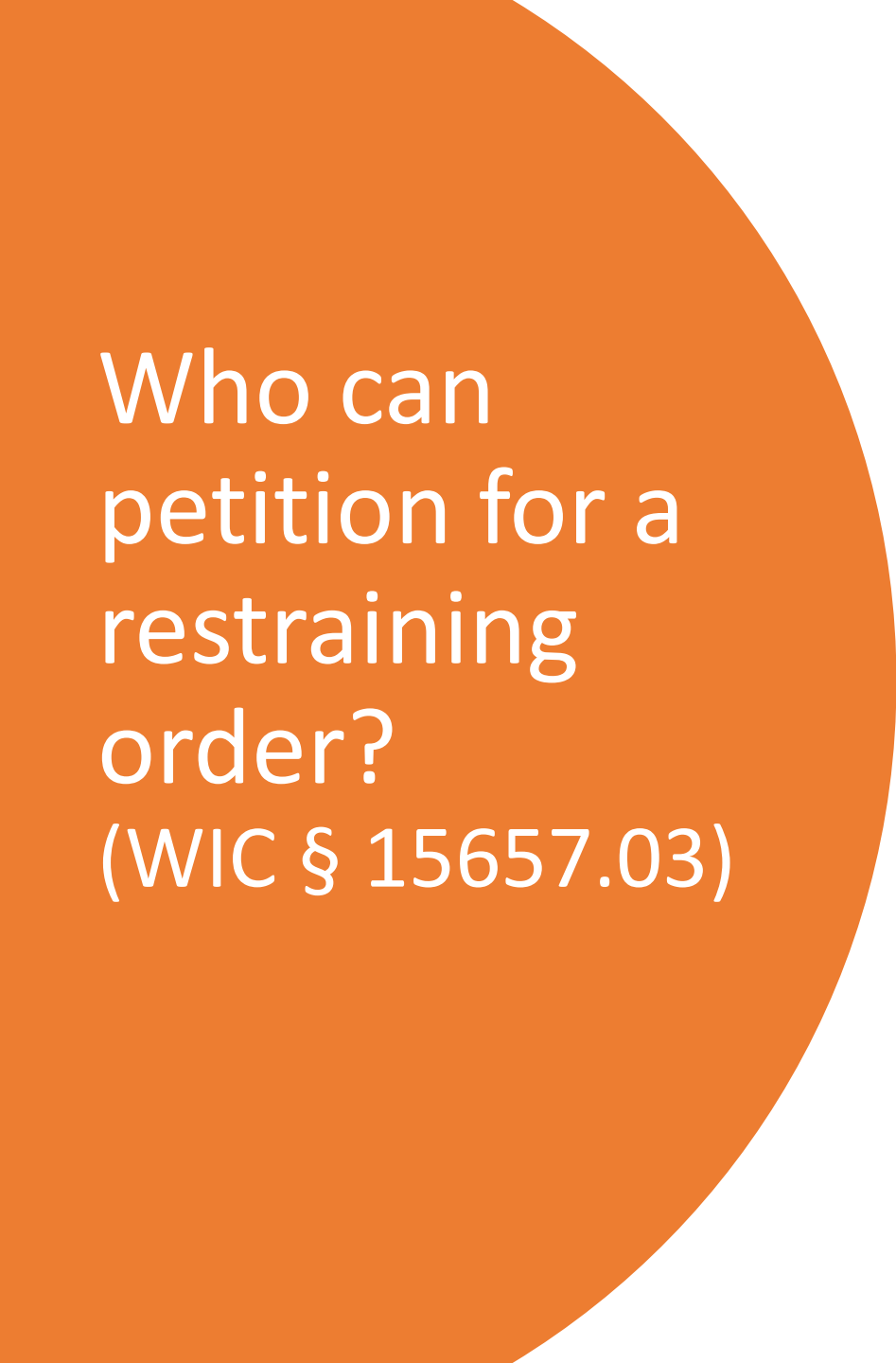
Elder Abuse Restraining Order Eligibility

Person age 65+ or dependent adult (WIC § 15610.27)

- Dependent adult: person 18 to 64 years old with physical or mental limitations that restrict ability to carry out normal activities (WIC § 15610.23)

The elder, dependent adult, or a person with legal authority on behalf of the elder or dependent adult can file the petition (WIC § 15657.03)

Victim of at least one type of abuse (WIC § 15657.03)

A large orange circle is positioned on the left side of the slide, partially overlapping the white background. It contains the text 'Who can petition for a restraining order? (WIC § 15657.03)' in white.

Who can petition for a restraining order? (WIC § 15657.03)

Elder or dependent adult who has suffered abuse

Conservator

Trustee

Power of Attorney

A guardian ad litem (GAL) for elder or dependent adult—GAL must be represented by or be an attorney

Adult Protective Services—not all counties doing this

What does a protective order provide?

(WIC § 15657.03)

Conduct: Prohibits specific conduct (abuse, harassment, etc.) and communication with the elder (no calls, mail, texts, etc.)

Stay Away: Typically 100 yards away, but can be modified for roommates or neighbors

Residence Exclusion: Move-Out Order—essentially and eviction

Care, possession or custody of an animal

Order enjoining party from specified behavior

New: Anger Management, Coerced debt finding, Stopping isolation

Move-Out Order (WIC § 15657.03)



Petitioner must be on title, a named lease-holder, or have permission from the title/lease holder in order to ask for a move out. Respondent can also be on title or on the lease as a co-tenant.

Temporary move-out: must show respondent has assaulted or threatened to assault

Permanent move-out: must show physical or emotional harm would otherwise result

Example: Two roommates share an apartment—Elder roommate can request a move-out against the other roommate.

Example: Elder lives with her son. Only son is on the lease. Elder cannot request a move-out against the son.

How to File an EARO

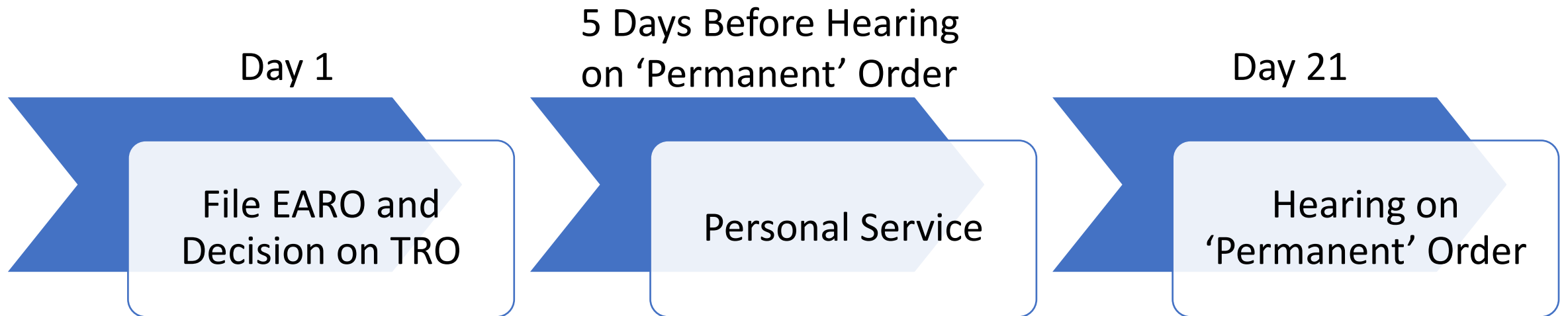
Forms:

- EA-100 Request for EARO
 - Can write “See attached declaration”
- EA-109 Notice of Court Hearing
- EA-110 Temporary RO
- CLETS Law Enforcement Data
- EA-130 EARO after Hearing
- Local Forms
 - Case cover sheet, no notice given
- EA-200 Proof of Personal Service

Filing at the Courthouse:

- Court self-help centers may assist litigants with forms
- Free to file
- Can submit in-person or electronically, depending on local rules
- Sheriff can serve the respondent

Timeline of an EARO Case



Typically 1 continuance is granted if respondent cannot be served in time.

Burden of Proof



- Court may grant elder abuse restraining order on a preponderance of the evidence standard
- Court may issue protective orders to prevent recurrence of abuse on reasonable proof of past act or acts of abuse of petitioning elder or dependent adult.

How will the judge decide?

Temporary Restraining Order

- Decision made solely on the paperwork submitted
- Petitioner can attach written documentation as evidence
- Typically petitioner does not give notice to other side before filing

Permanent Restraining Order

- Petitioner must appear in person or remotely, or case will be dismissed
- Respondent must be personally served
- If respondent doesn't show, order is not guaranteed
- Judge will hear evidence from the parties (testimony, text messages, photos)

EARO Hearings



- Can range in formality from quick acceptance of declaration in lieu of testimony to trials with witnesses and expert testimony
 - Depends on courthouse, judge, whether respondent appears, whether respondent is represented, complexity of allegations etc.
- Elder can bring an advocate to have at their side, but not to speak on behalf of elder
- When possible, elder should appear for the hearing, even if agent under power of attorney is petitioner
- Any witnesses that submit declarations must be available to testify at the hearing

Comparison of Restraining Orders—Civil

Elder Abuse (EARO)

- 65+ or dependent adult
- no qualifying relationship required
- move-out order possible
- lower standard of proof

Domestic Violence (DVRO)

- qualifying relationship required (dating, spouse, or relative)
- move-out order possible
- lower standard of proof
- additional remedies available e.g. shared accounts & restitution

Civil Harassment (CHRO)

- no required age or relationship
- no move-out order possible
- higher standard of proof
- most common for neighbor disputes

Trends in elder abuse where EARO may provide a remedy:

Relative with mental illness or substance abuse moves in with an older family member and becomes abusive.

Older adult homeowner allows strangers/squatters to move into home.

Caregiver becomes financially abusive by forging checks, adding themselves to the elder's bank account and withdrawing funds, or transferring real estate

Housing Issues and EAROs



When do landlord/tenant issues involving elders become abuse?

- Must be more than just unlawful detainer or standard roommate conflict.
- Courts weary of cases where people use restraining orders to get around doing an eviction.

Some cases rise to abuse and require restraining orders between older landlords and tenants, or landlords and older tenants

- Move-out orders may not always be possible—depends on the living arrangement and whether the parties share space.

Recent Legislation on Isolation and Coerced Debt



- In 2021, Bet Tzedek, Justice in Aging, and Public Law Center co-sponsored AB 1243
- A concerned third party who is being denied contact with an elder can use the restraining order process to request visitation and prevent future isolation
- Judge can issue finding of coerced debt so victims of financial elder abuse can dispute debts with creditors and credit reporting agencies

Case Example

Pia is 80 years old and lives in a condo with her husband of 5 years. Pia was diagnosed with dementia two years prior. Pia's husband is her caregiver and power of attorney. Pia's husband and Pia's three children from a prior marriage do not get along. After a particularly bad argument between Pia's husband and Pia's children, Pia's husband decided to disconnect Pia's phone and not allow any visitors in the home. Pia's three children are devastated and want to spend as much time with their mother as possible.

How to File an EARO Allowing Contact

Required Forms:

- EA-300 Request for EARO Allowing Contact
- EA-309 Notice of Court Hearing to Allow Contact
- EA-330 EARO Allowing Contact After Hearing
- EA-200 Proof of Service
- Local Forms
 - Case cover sheet



Helpful information sheet: EA-300-INFO

Requesting Contact— EA-300 Series

- Asks for person who's requesting contact to state their preexisting relationship with elder—don't need legal authority for elder to submit
- Asks for facts showing:
 - Elder wants contact
 - Contact has been prevented by X person
 - Reason contact prevented not because of abuse
 - Reason contact prevented not because elder didn't want it
- Asks when and how contact has been prevented

EA-300 Request for Elder or Dependent Adult Restraining Order Allowing Contact Clerk stamps date here when form is filed.

Use this form to obtain an order allowing contact between an elder or dependent adult and another person.

- Read *Can an Elder or Dependent Adult Restraining Order Allowing Contact Help Me?* (form EA-300-INFO) before completing this form.
- **Note:** This order cannot be issued if the elder or dependent adult lives in a long-term care or residential facility or is a patient at a hospital.
- If you want a restraining order for other abuse, such as physical or financial abuse, use *Request for Elder or Dependent Adult Abuse Restraining Orders* (form EA-100). Read *Can a Restraining Order to Prevent Elder or Dependent Adult Abuse Help Me?* (form EA-100-INFO) for more information.

1 Elders or Dependent Adults
(List each elder or dependent adult in the same household who wants to have contact with the person named in ③ and their age below.)

Full Name	Age

☐ Check here if there are more elders or dependent adults in the same household who also want to have contact with the person named in ③. List those persons and their ages on an attached sheet of paper and write "Attachment 1—Additional Elders or Dependent Adults" for a title. You may use form MC-025, Attachment.

2 Person Alleged to Be Preventing Contact

Full Name: _____

Address (if known): _____

City: _____ State: _____ Zip: _____

3 Person Who Wants Contact With the Elders or Dependent Adults

a. Full Name: _____

b. Describe this person's preexisting relationship to the elders or dependent adults named in ①:

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 3—Preexisting Relationship" for a title.

Fill in court name and street address:
Superior Court of California, County of

Court fills in case number when form is filed.
Case Number: _____

EA-330

To the Person in ②:

The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to \$1,000, or both.

⑦ ☐ **Order Allowing Contact**

a. ☐ You may not prevent the person in ③ from in-person or remote online or telephonic visits with the elders or dependent adults in ①.

b. ☐ Other terms of order allowing contact (specify):

⑧ ☐ **Other Orders** (specify):

Requesting Contact—EA-300 Series Cont.

- Can only request when isolation is the sole type of alleged abuse
- If granted, order allows contact and enjoins the respondent from isolating the elder
- No temporary orders available—
hearing required

Coerced Debt Added to EA-100

- Inspired by AB 2517 which allowed coerced debt findings in DVROs
- Coerced debt definition: Creating debt in an elder's name without their permission or through undue influence—manipulation, coercion, or threats
- AB 1243 allows debts caused by financial abuse to be labeled as “coerced debt”
- Must list the debts and describe what the respondent did to cause the debt
- Can add attachments about the debt and financial abuse details
- This court order may be useful to older adults in other arenas (creditors, law enforcement, credit reporting agencies)
- Note: you cannot get money back through a restraining order—you'd need a separate civil lawsuit for that

Case Example

Ricky's granddaughter, Alma, took Ricky to a Honda dealership where she purchased a new Honda civic sedan. Alma demanded that Ricky co-sign for the car, telling him that it was "just a signature" and threatening to leave him home alone all day and not bring him to his dialysis appointments if he didn't co-sign. Ricky felt like he had no other choice because he depended on Alma for transportation. Alma also called Ricky a "stupid old man." Now Honda is coming after Ricky for the monthly car payments since Alma stopped making payments.

Coerced Debt Added to EA-100

18 ☐ **Debts Caused by Financial Abuse**

You can ask the judge to decide at the hearing that certain debts or bills you have were caused by the person in ②'s financial abuse. This may help you defend against the debt if you are sued in another case.

a. If you want the judge to make this special finding, list the debts or bills you have that were caused by the person in ②'s financial abuse.

☐ *Check here if you want to list additional debts or bills that were caused by financial abuse. You can attach form MC-025 and write "Attachment 18a—Additional Debts" for a title.*

	<u>Money Owed To</u>	<u>For</u>	<u>Amount</u>
(1)	<div></div>	<div></div>	\$ <div></div>
(2)	<div></div>	<div></div>	\$ <div></div>
(3)	<div></div>	<div></div>	\$ <div></div>

b. Describe what the person in ② did to cause the debts and bills that you listed above. Provide as much detail as you can about the person in ②'s financial abuse.

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 18b—How Debt Was Incurred" for a title.*

Bet Tzedek's Self-Help Elder Abuse Restraining Order Clinic—Logistics

- Currently ALL Remote –we conduct intakes via phone and then email or mail the forms
- Mondays, Wednesdays, Fridays 9:00 am -5:00 pm
 - We respond to calls and emails within 2 business hours on clinic days.
- Stanley Mosk EARO Kiosk on Wednesday mornings
- Call **(323) 648-4730** or Email **eaclinic@bettzedek.org**
- Partnership grant with LA Superior Court
- Will provide self-help services to litigants and respondents
- Our staff can assist callers in any language



Feel free to reach out with questions!



Dani Kaiserman, Esq. (she/her/hers)
Elder Justice Staff Attorney
Bet Tzedek Legal Services
dkaiserman@bettzedek.org
(323) 549-5837