



**Los Angeles  
Center for  
Law and Justice**

## **Domestic Violence Restraining Orders**

October 22, 2024

# AGENDA

- Why this work is important
- Domestic Violence 101
- Domestic Violence Restraining Orders (DVROs) and the Law
- Restraining Order Hearings
- CLASP Project and Other LACLJ Pro Bono Opportunities



# Why This Work Is Important

## Abuse is Happening in Our Communities

- 1 in 3 of Women and 1 in 6 of Men experience abuse in their lifetime<sup>1</sup>
- About 7 million women are raped and/or physically assaulted by an intimate partner each year
- 20,000+ restraining orders filed in L.A. county annually
- 166,890 calls to law enforcement in CA in 2018<sup>1</sup>

## Gaps in Access to Justice

- 67% of CA family law litigants are self-represented at the time their petition is filed<sup>2</sup>
- LACLJ receives over 50 calls on average each week
- **80-90% of victims are unrepresented in their restraining order hearings**

## Stakes Are High

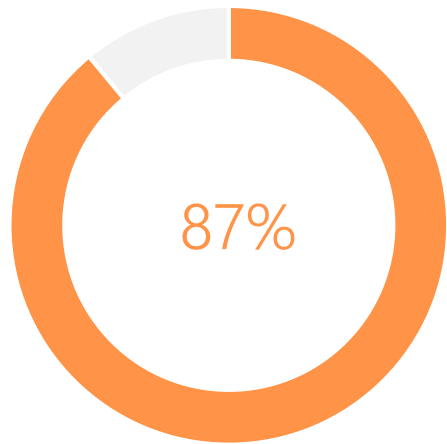
- 75% of domestic violence related emergency room visits occur after separation
- 75% of law enforcement calls for domestic violence occur after separation
- Fatality risk is highest at or near the time of separation

1. National Coalition Against Domestic Violence (2020). Domestic violence in California. Retrieved from [www.ncadv.org/files/California.pdf](http://www.ncadv.org/files/California.pdf)
2. Judicial Council of California Task Force on Self-Represented Litigants. Statewide Action Plan for Serving Self-Represented Litigants. Retrieved from <https://www.courts.ca.gov/documents/selfreplitsrept.pdf>.

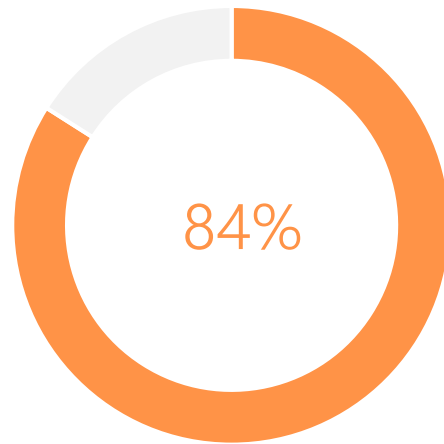
# ABOUT LACLJ

Over 1,000 clients served each year

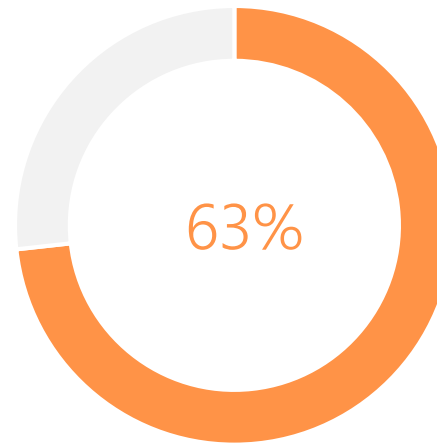
100% Low-Income  
(Live below 200% of the FPL)



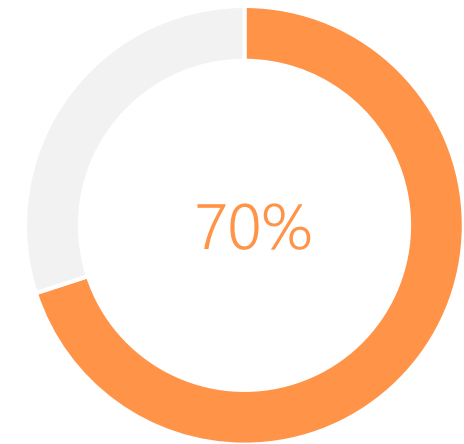
are Latino/Hispanic



are Women

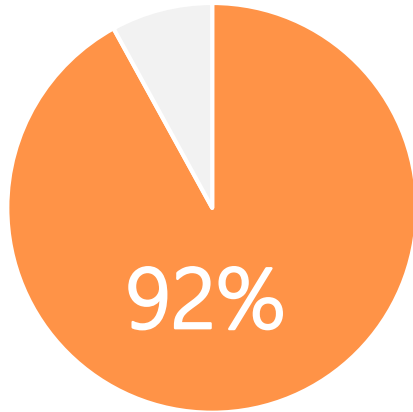


are Parents of Minors

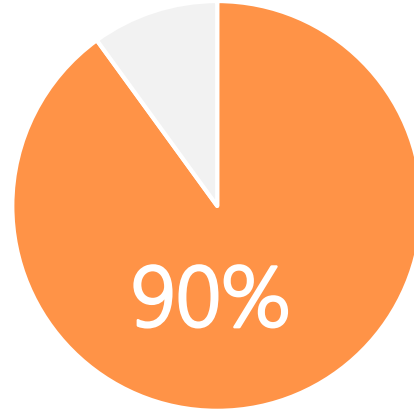


are Immigrants

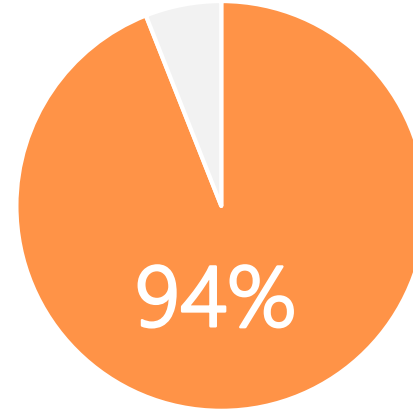
## ABOUT LACLJ



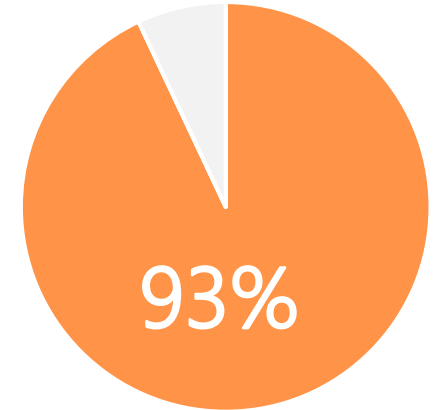
Clients report having a better relationship with their children



Clients report experiencing less fear



Clients report more confidence



Clients report feeling more hopeful

Overall, clients report an ability to build **stable family** relationships, an enhanced **sense of safety**, a connection with **community resources**, improved **economic stability** and improved sense of **empowerment** and emotional well-being.



# What is Domestic Violence?



# WHAT IS DOMESTIC VIOLENCE?

## Learning Objectives:

At the conclusion of this section, participants will:

1. Define domestic violence
2. Identify the dynamics of domestic violence
3. Recognize common coping mechanisms and trauma responses to domestic violence

# WHAT IS DOMESTIC VIOLENCE?

Domestic violence is a pattern of behaviors used by one partner to maintain power and control over another partner in an intimate relationship.

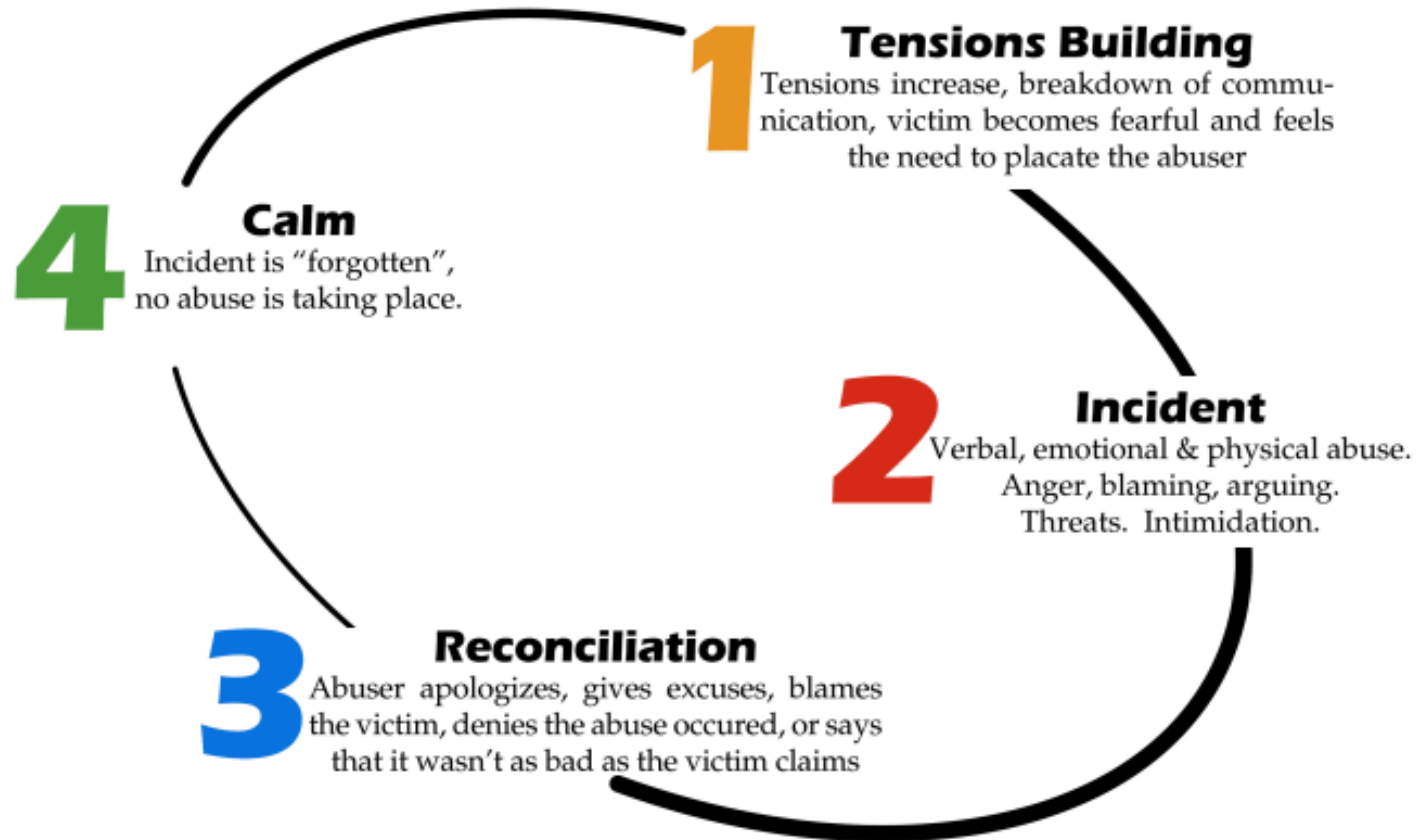
- Physical & Sexual Violence
- Threats & Intimidation
- Emotional Abuse
- Economic / Financial Abuse
- Coercive Control





# WHAT IS DOMESTIC VIOLENCE?

## Cycle of Abuse



# FACTORS THAT MAY IMPACT A SURVIVOR'S DECISION TO STAY OR LEAVE

Fear

Language Barriers

Lack of Resources

Believing Abuse is Normal

Immigration Status

Cultural/Religious Reasons

Children

Love

Fear of Being Outed

Embarrassment or Shame

Distrust of law enforcement or the legal system

Leaving is often the most dangerous time for a victim of abuse, because abuse is about **power and control**. When a victim leaves, they are taking control and threatening the abusive partner's power.

# WHAT IS TRAUMA?

Trauma is an **emotional response** to a terrible event, like abuse. Immediately after the traumatic event, the response might be denial or shock. However, over time trauma may **overwhelm an individual's ability to cope**. It can result in feelings of **sadness and helplessness**, lead to **disruption in sleeping and eating** and even manifest in **physical pain**.



# TRAUMA-INFORMED SERVICES

Being trauma-informed means being **aware of and sensitive to an individual's traumatic experience**. Being trauma-informed also means understanding the way someone's traumatic experience may **impact** their **behavior**. Make sure to use language that shows an awareness and responsiveness to the person's trauma and is **judgement-free**. Give **options and choices**, not demands and directives.

I'm not sure I understand.

Can I ask a few questions to clarify?

I know this is difficult. Would you like to take a break?

Are you comfortable including...?

Are you able to remember anything else about this event?

I think some more detail could help.



# Being Trauma-Informed In Practice: Reviewing Paperwork

If you are reviewing paperwork, you may have follow-up questions about the abusive incident or timeline. You will be speaking with the advocate, not the client, but try to word your questions and comments with **awareness**, **sensitivity** and **no-judgment**.

I think some more specifics would be helpful here

I want to make sure I can provide helpful feedback, but do not understand how the incident unfolded. Can you provide a little more information on what happened?

Does the Petitioner remember anything that was said during this incident?



# Being Trauma-Informed In Practice: Client Meetings

## Be sensitive to client needs

- Childcare (don't discuss case in front of children)
- Transportation
- Comfort in office environment

## Do you need an interpreter?

- Interpreter must be neutral and competent
- Do not use children of the parties (even adult children) as interpreters

# WHAT IS DOMESTIC VIOLENCE?

## Key Learning Points:

In this section, you learned:

1. Power and Control is at the center of domestic violence
2. There are many reasons, including a response to trauma, that might impact a survivor's decisions in responding to domestic violence.
3. Being trauma informed means being aware of how trauma might impact behavior and using judgment-free language to provide choices rather than demands

# Restraining Order Law





# Domestic Violence Restraining Orders and the Law

## Learning Objectives:

In this section, participants will:

1. Learn the types and stages of domestic violence restraining orders
2. Learn the legal requirements to qualify for a domestic violence restraining order
3. Learn the types of relief available in domestic violence restraining orders
4. Review forms and declaration that make up the domestic violence restraining order

# RESTRAINING ORDER LAW

## Domestic Violence Prevention Act

- Family Code Section **FC § 6200** and **FC § 6300** et seq.
- Provides a temporary order pending other litigation to protect the survivor and their children.

### Purpose

To prevent acts of domestic abuse.

# RESTRAINING ORDER LAW

## Types of Restraining Orders

	Emergency Protective Order (EPO)	Domestic Violence Restraining Order (DVRO)		Criminal Protective Order (CPO)
		Temporary Restraining Order (TRO)	Restraining Order After Hearing (ROAH)	
<b>How it is issued</b>	Law enforcement requests the EPO by phone and judge approves at scene of incident	Petitioner files in court and the TRO is granted by a judge after review of the petition, if it proves all elements	Judge grants the order after a hearing if the case is proven	Requested by state and judge grants the order as part of criminal case if charges are filed or after conviction
<b>How long it lasts</b>	Up to 7 days	Usually 3 weeks, but can be continued	Up to 5 years, but can be renewed	Up to 10 years
<b>What it can order</b>	Stay away, no contact and temporary care and control of children	Stay away, no contact, personal conduct, custody/visitation, care of animals, payment of debts, move-out orders, record communications, no firearms, property control/restraint	Everything in TRO plus child/spousal support, attorney fees, programs, reimbursement for costs and services	Stay away, no contact, personal conduct, care of animals, no firearms, no dissuading victim or witness from testifying, record communications



# RESTRAINING ORDER LAW

We will discuss the following types of restraining orders:

- 1) Emergency Protective Order (EPO)
- 2) Domestic Violence Restraining Orders (DVROs):
  - 1) Temporary Restraining Order (TRO)
  - 2) Restraining Order After Hearing (ROAH)



## Emergency Protective Order (EPO)

An emergency protective order is a restraining order that is given by a judge at the request of a law enforcement officer, usually at the scene of a domestic violence incident.

An EPO only lasts up to seven days. It provides emergency protection and time for the petitioner to file their request for DVRO.

The EPO can require the abusive person to stay away from the protected person, not to contact their and it can grant temporary care and control of children to the protected person.

## Temporary Restraining Order

A temporary restraining order is an order granted by the court at the time the DVRO request is filed.

It lasts for 3 weeks, until the hearing.

It can require respondent to stay away from petitioner, not to contact petitioner, to stop specific acts like harassing or stalking and it can grant custody and visitation orders, payment of certain expenses and the right to temporarily live in a shared home.



## Restraining Order After Hearing

The restraining order after hearing is granted after the hearing on the DVRO request when the judge believes petitioner has proven their case by a preponderance of the evidence.

It can last up to 5 years, but can be renewed.

It can require respondent to stay away from petitioner, not to contact petitioner, to stop specific acts like harassing or stalking.

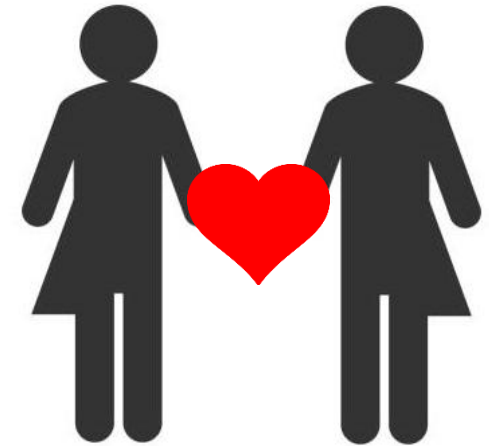
It can also include orders for custody and visitation, child support and spousal support, move out orders, orders to reimburse for money paid due to the abuse, orders to participate in parenting classes, substance abuse treatment programs and batterer's intervention programs.



# RESTRAINING ORDER LAW

## Elements

- Qualifying Relationship (FC § 6211)
  - Current/Former Spouse
  - Current/Former Cohabitant
  - Current/Former Dating or Engaged Relationship
  - Child in Common
  - Related by Blood or Marriage to the 2<sup>nd</sup> Degree





# RESTRAINING ORDER LAW

## Elements

### ➤ Abuse

- Physical abuse NOT required
- **FC § 6300:** Affidavit or Testimony Shows Reasonable Proof of Past Act(s) of Abuse
- **FC §§ 6203,6320:**
  - Causes or attempts to cause **physical** injury
  - **Sexual** assault
  - **Reasonable fear** that you or another is in danger of **immediate, serious physical injury**
  - Other behavior that can be enjoined including threats, harassment, stalking, destroying your personal property, or **disturbing your peace**
    - **Coercive Control**, including reproductive coercion



# RESTRAINING ORDER LAW

## Remedies



Stay Away / No  
Contact Order



Protect 3<sup>rd</sup>  
Parties/Pets



Orders Not  
to Abuse



Move Out  
Order



Financial  
Support



Custody &  
Visitation



Record Unlawful  
Communications

# RESTRAINING ORDER LAW

Stay Away/  
No-Contact  
Order

**FC § 6320:** Coming within a specified distance

Can include protection for OP to stay away from home, school, work, car, 3rd parties etc.

Order not to contact any protected parties  
*directly or indirectly*

# RESTRAINING ORDER LAW

Protect  
3<sup>rd</sup> Parties  
and Pets

## Protection of 3rd parties

**FC 6320(a):** Court may protect other named family or household members in its discretion on a showing of good cause

## Protection of Pets

**FC 6320(b):** Court may include a grant of the exclusive care, possession, or control of any animal and may order the respondent to stay away from the animal



# RESTRAINING ORDER LAW

Orders  
Not to  
Abuse

**FC § 6320:** Molest, attack, strike, stalk, threaten, sexually assault, batter, impersonate, harass, telephone, destroy personal property, disturb the peace

# RESTRAINING ORDER LAW



Move Out  
Order

**FC § 6321:** Order excluding party from dwelling regardless of which party holds legal or equitable title or is the lessee of the dwelling



Financial  
Support

## Child and Spousal Support

**FC § 6341:** Court may, after notice, order a party to pay any amount necessary for the support and maintenance of the child or any amount authorized by spousal support statutes. Requires filing an Income and Expense Declaration or Financial Statement. Orders are not made until after the hearing.

## Bill/Debt Payment

**FC § 6342.5:** Court may order a party to continue to pay bills or make payments on debt.



# RESTRAINING ORDER LAW

## Custody & Visitation

**FC § 6323:** Order determining the temporary custody and visitation of the minor children subject to **FC § 3064** if the party seeking protection has established a parent-child relationship

When making an order the court shall specify the time date, place and manner to ensure the safety of all family members

### Legal Custody

- Who makes the decisions about the child's health, education and well-being
- Sole or Joint Custody

### Physical Custody

- Who the child lives with
- Sole or Joint Custody

### Visitation:

- The parent who does NOT have physical custody still has a right to visitation.



# RESTRAINING ORDER LAW

Custody  
&  
Visitation

**FC § 3040:** Court has widest discretion to choose a parenting plan that is in the best interest of the child

**FC § 3044:** Presumption applies when there is a finding that abuse occurred within the last 5 years: Custody to abusive parent is detrimental to the best interest of the child

Court must consider the 7 factors listed in **FC § 3044** before deciding whether the presumption has been rebutted  
- Jaime G v. H.L



# RESTRAINING ORDER LAW

## Custody & Visitation

Visitation: **FC §§ 3011, 3020, 3100**

- Even if **FC § 3044** not rebutted OP will still get some visitation
- State facts to show why request is in best interest
  - Consider age of child, school location, work schedules, caretaking history, substance abuse or mental health concerns
- Reasonable vs. Set schedule
- Monitored/Supervised or Virtual visitation
- Clients residing in a DV shelter
  - Must protect shelter location



# RESTRAINING ORDER LAW

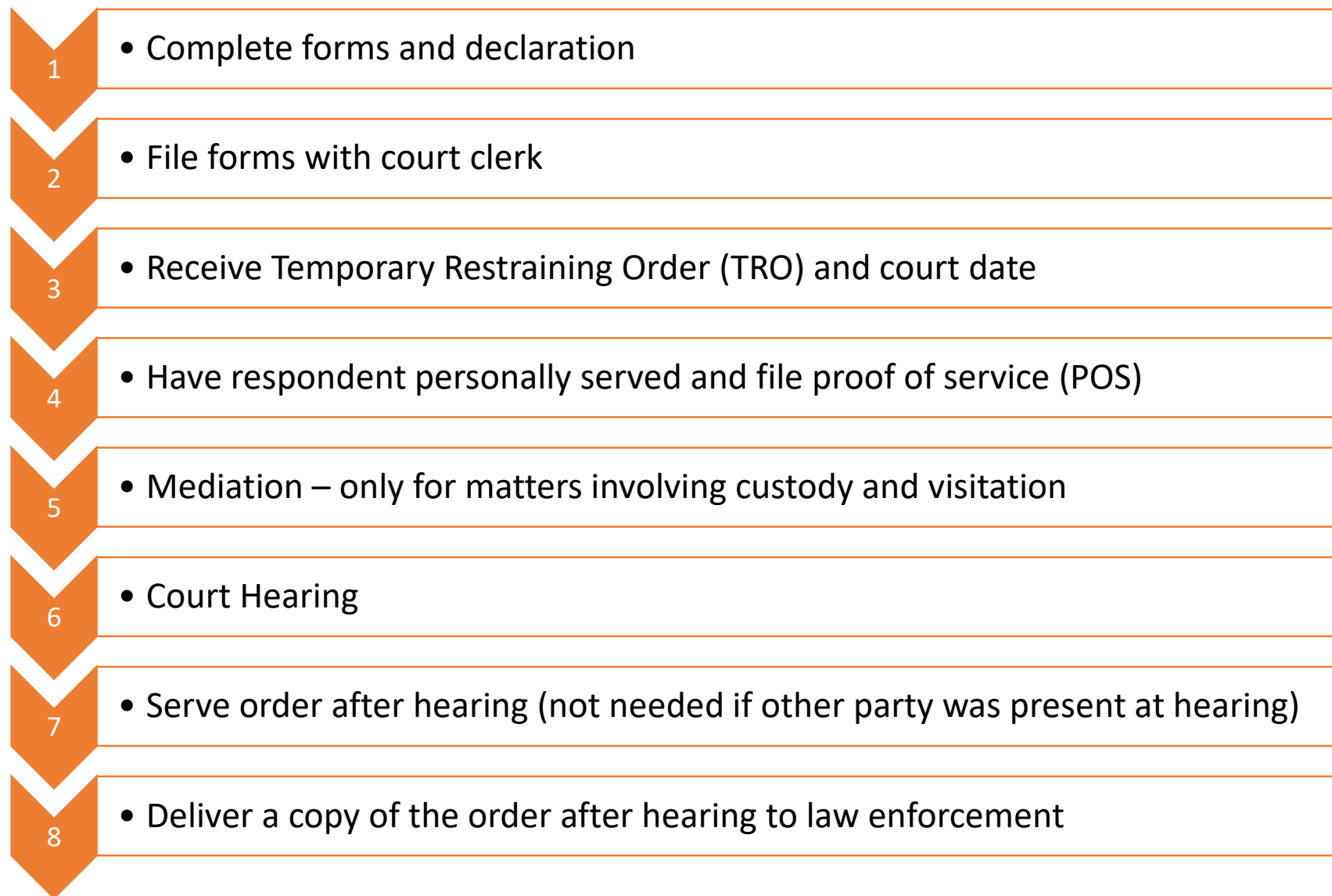


## Other Remedies

- Property Restraints and Orders
  - Temporary use or possession of property, e.g. vehicle
  - Not sell or dispose of property (if married)
- Not make changes to insurance
- Rights to Mobile Devices and Wireless Accounts
- Batterer's Intervention Program
- Attorney Fees and Costs
- Other Orders
  - Return or retrieval of belongings
  - Other classes or treatment programs

# RESTRAINING ORDER LAW

## The DVRO Process



# RESTRAINING ORDER LAW

## The DVRO Forms

### DV-100 Request for DVRO

- **DV-105** Request for Child Custody and Visitation Orders
- **DV-108** Request Order: No Travel with Children
- Declaration

### DV-109 Notice of Hearing

### DV-110 Temporary Restraining Order

- **DV-140** Custody and Visitation Order Attachment
- **DV-145** Order: No Travel with Children

### Other Forms

- **FL-150/FL-155** Income & Expense Declaration/Financial Statement (Simplified)
- **CLETS-001** CLETS Info Sheet
- Local forms (Declaration re: Ex Parte Notice, Cover Sheet, Interpreter request)

## The Declaration

1. Introduction
  - Contains a description of the qualifying relationship
2. Description of Abuse
  - Most Recent Incident
  - Other Incidents (worst, first, etc.)
  - General abuse dynamics
3. Custody and Visitation
4. Other Orders
5. Conclusion

The survivor's opportunity to tell their story in their own words

# WHAT IS DOMESTIC VIOLENCE?

## Key Learning Points:

In this section, you learned:

1. An Emergency Protective Order is a 7-day order requested by law enforcement. A Temporary Restraining Order lasts up to 21 days and is requested by the Petitioner. A Restraining Order After Hearing can last up to 5 years.
2. The elements to obtain a domestic violence restraining order are 1) a qualifying relationship and 2) abuse. Abuse does not have to be physical and can include coercive control or disturbing the peace.
3. DVROs can include orders for custody and visitation, support, property, and other key remedies in addition to stay away and no contact orders.
4. The declaration is the petitioner's opportunity to share the important facts of their story in their own words.

# Restraining Order Hearings





## Key Learning Points

In this section, you will learn:

1. What to expect at restraining order hearings.
2. Possible outcomes of the hearing.

# THE HEARING

## What to expect?

- Mini trial
  - Direct and cross examinations (not limited to facts in declaration)
  - Present exhibits
  - Make objections
  - Opening and closing statements
- Lasts about 2-4 hours
- Courts vary on hearing procedure
  - Judge may ask questions
  - Judge may not want opening and closing
  - Judge may ask for offers of proof only

# THE HEARING

What could happen?



Default



Continuance



Stipulation/Order



Approval/Denial



# THE HEARING



## DEFAULT

- If Opposing Party does not appear
- Court will ask about service
- May still require a prove up
  - Ensure court orders every issue pled

# THE HEARING



## CONTINUANCE AND REISSUANCE

- Occurs when:
  - Opposing Party hasn't been served
  - OP has not filed a response and requests time to respond =
  - Court finds good cause to continue
  - Criminal case pending?
- Must obtain Reissuance if continuing court hearing, or the TRO is dissolved (Use form DV-116)
- RP has right to 1 continuance to prepare a written response IF has not already filed response
  - FC § 245(a); *NM v. WK* (2024)
- Written response is not required- 5th amendment issues

# THE HEARING



## STIPULATION/ORDER

- Should attempt to meet and confer, especially if opposing counsel
  - Note: no duty to M&C in DV cases, but some courts may expect it. **CRC 5.98**
- Possible leverage points: duration of RO, att’y fees, parenting plan, support orders
- Common types of settlements and offers:
  - Avoid non-CLETS!!! (they are **not enforceable**)
  - Stipulation to Restraining Order After Hearing (on DV-130 form)
  - Long-term Temporary Restraining Order (on DV-110 form)
  - Partial settlement of some issues such as visitation, property, support

# AFTER THE HEARING



## APPROVAL

- Restraining Order After Hearing (ROAH)
  - Best practice is to prepare proposed order in advance (form DV-130)
  - Sometimes clerk fills their own version out, but check for errors before leaving courtroom
- Service Issues
  - If OP present – no service needed
  - If OP not present – need to personally serve if different from TRO. Otherwise can serve by mail.
- Review order with client in their preferred language

# AFTER THE HEARING



## DENIAL

- Ask for Statement of Decision if you believe it may be denied based on legal error
- Motion to reconsider
- Writ
- Appeal
- Safety Planning



LACLJ  
Pro Bono  
Opportunities



## Learning Objectives:

At the end of this section, participants will:

- Learn how our California Legal Access for Survivors Partnership (CLASP) project operates and how pro bono attorneys can support the CLASP project by reviewing restraining orders
- Learn about other opportunities to continue to support survivors of domestic violence, sexual assault, and human trafficking.

## Limited Legal Services of CLASP

### California Rule of Professional Conduct 6.5

- No requirement to do a conflict check
- Rules concerning actual or imputed conflicts of interest apply only if the attorney knows about the conflict

### No Attorney-Client Relationship Formed

- Providing legal information and education only, no legal advice
- Clients are informed about limitations of services at intake
- Might assist both parties to a case if both are seeking a restraining order

# CLASP PROJECT

Advocate meets with petitioner to complete intake forms, court forms and declaration

Advocate emails forms and declaration to on-call attorney

Attorney reviews the **forms and declaration** to make sure they are **complete and clear**

Attorney emails advocate with feedback re: how to complete the forms or clarify the declaration

Advocate incorporates attorney feedback into the forms and declaration

Advocate reviews the finalized forms and declaration with petitioner

Petitioner e-files with advocate or is given paper documents to file

Advocate follows up with petitioner to learn outcome of Temporary Restraining Order

## Attorney Expectations for CLASP

- ✓ Check email regularly during the volunteer shift. All petitions will be emailed to the attorney.
- ✓ Provide feedback as soon as possible but no later than **24 hours** after receiving each petition from an advocate.
  - Remember that feedback should be limited to how to **clarify** or **improve** the declaration and to complete **missing** information from forms, but no legal advice should be given.
- ✓ Answer **follow-up** questions related to the feedback
- ✓ Average of 1-2 petitions per day, but it may be more, or it may be none
- ✓ Respond to a **brief survey** that will be emailed at the end of the shift to share the number of petitions reviewed and how the shift went

# STAYING INVOLVED WITH PRO BONO OPPORTUNITIES

## Pro bono opportunities with LACLJ:

- ✓ Restraining Orders – CLASP or Representation
- ✓ Vacatur
- ✓ Consumer Debt Clinic
- ✓ Immigration – Adjustments on U-Visas, T-Visas, VAWA Petitions
- ✓ Appeals and Motions to Reopen
- ✓ Criminal Justice Advocacy – Restitution Hearings, Marcy's Law Advocacy
- ✓ Other Family Law Matters – QDROs, Divorce, Property Division, Custody



[Learn More!](#)

# STAYING INVOLVED WITH PRO BONO OPPORTUNITIES

## Benefits of volunteering with LACLJ:

- ✓ Training and ongoing technical assistance for any volunteer opportunities
- ✓ Opportunities to **litigate** a trial or work on an appeal
- ✓ Some representation, like restraining order hearings, is **limited scope** and usually completed in 3-6 weeks
- ✓ Make an **impact in a survivor's life** by offering critical representation or legal assistance

## WHY VOLUNTEER?



**“I’M SO HAPPY AND THANKFUL. I WON’T LIVE IN FEAR THINKING HE CAN TAKE MY DAUGHTER AWAY FROM ME. I HOPE TO GO BACK TO SCHOOL AND START A BETTER LIFE FOR HER.”**





**Amanda Jancu**  
Pro Bono Manager

[AmandaJ@LACLJ.org](mailto:AmandaJ@LACLJ.org)

Sign Up!



[ProBono@lajl.org](mailto:ProBono@lajl.org)

Learn more at [www.LACLJ.org/volunteer](http://www.LACLJ.org/volunteer).



**THANK YOU!**



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