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| Country and target area of study | United States of America Domestic Violence Laws & Regulations in the State of California |
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| Reporting date | March 9th, 2025 |

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| I. Outline of the legal protections for domestic violence victims and their children | |
| ⌘ Including the legal definition of domestic violence in the target area of study | |
| ⌘ Including names of laws or regulations | |
| <p>In California, there are several laws designed to protect victims of domestic violence, and their minor children. for example, 2 fundamental sets of laws that protect victims of domestic violence are ; “ the California Domestic Violence Prevention Act” (DVPA), and the California Penal Code (domestic violence criminal statutes)</p> <p>The California Domestic Violence Prevention Act (DVPA) is codified as law in California under Family Code Section 6200 et seq., and it is designed to prevent harmful effects of domestic violence and to ensure a period of separation and other preventive measures to take place upon request immediately, between the parties who are involved in such situations.</p> <p>DEFINITION OF DOMESTIC VIOLENCE UNDER THE DVPA</p> <p>The DVPA defines "domestic violence" as abuse perpetrated against specific individuals, including a spouse or former spouse, a cohabitant or former cohabitant, a person with whom the respondent is having or has had a dating or engagement relationship, a person with whom the respondent has had a child, a child of a party, or any other person related by consanguinity or affinity within the second degree. Cal Fam Code §6211</p> <p>Under the DVPA, "abuse" is broadly defined to include intentionally or recklessly causing or attempting to cause bodily injury, sexual assault, placing a person in reasonable apprehension of imminent serious bodily injury, or engaging in behavior that could be enjoined under §6320 of the California Family Code. this includes actions such as molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party.</p> <p>The definition of abuse under the DVPA is not limited to physical violence but also includes non-physical forms of abuse that destroy the emotional calm of the victim.</p> <p>DEFINITION OF DOMESTIC VIOLENCE UNDER THE CALIFORNIA PENAL CODE.</p> <p>Domestic Violence under Section 13700 of the California Penal Code is defined as abuse</p> | |

committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. Abuse is further defined in §13700 of the Penal Code, as intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another. *People v. Caceres*, 39 cal. app. 5th 917, *People v. Mani*, 74 Cal. App. 5th 343, *People v. Carter*, 60 Cal. app. 4th 752.

II. Legal process regarding domestic violence

1 Handling of abusers by the police

(1) Outline

Types of protective orders

The police can ask for an Emergency Protective Order (EPO) to protect the victim of a crime, usually when the victim calls the police or 911 for help.

If the defendant (the person accused of committing the crime) is arrested and charged, a judge can issue a Criminal Protective Order (CPO) to protect the victims and even the witnesses.

(2) Names of police in your target area, contact information, how to contact, etc.

Los Angeles Police Department, and Los Angeles County Sheriff's Department for example are the law enforcement entities, for the city and county of Los Angeles. LAPD officers and or Sheriff Deputies can request an Emergency Protective Order (EPO)

In the United States there is also a National Domestic Violence Hotline, where victims can call to 1.800.799.SAFE (7233), Text START to 88788, and there is also A.I. Chat for information in regards to abuse.

(3) Police procedures when they are notified of domestic violence

The officer fills out an Emergency Protective Order (form EPO-001) application and contacts a judge to review the application. A judge is available 24/7 to sign off on these emergency orders.

The judge can order the EPO to prevent future harm if there is domestic violence (domestic abuse), child abuse, child abduction, stalking, or abuse against an elderly person or dependent adult.

An EPO can include orders that the defendant:

Not contact people protected by the order

Not harass, stalk, threaten or hurt people protected by the order

Stay a certain distance away from people protected by the order or places they live or go regularly

Move out from a home that is shared with the protected person

Not have guns, firearms, ammunition, or body armor

An EPO only lasts a short time, usually 5-10 days. If the person protected by the EPO needs protection that lasts longer or wants to ask for other orders, they can apply for a restraining order

A police officer can ask for a Gun Violence Emergency Protective Order (GVEPO) to stop someone from having guns, firearms, and ammunition. The police may ask for this type of order if they are worried that someone will hurt themselves or others with a gun or firearm. A GVEPO can't include other court orders, like stopping the person from contacting or going near others.

The officer fills out a [Gun Violence Emergency Protective Order \(form EPO-002\)](#) application and contacts a judge to review the application. A judge is available 24/7 to sign off on these emergency orders.

If granted, a GVEPO will last up to 21 days. There will be a court hearing (court date), where the police and the person listed on the order will have to go to court. At the court hearing, the judge will decide whether to extend the GVEPO. If extended, this order can last from 1 to 5 years.

(4) Police procedures when they were notified that restraining order or any other orders are not followed by abusers

The specific penalties for violating a protective order depend on the type of order and the nature of the violation. For example, in a stalking case, a violation may result in jail time and fines, while the penalties may be different in a domestic violence case.

Some of the more common penalties for violating a protective order include:

- Criminal charges, including a Class 1 misdemeanor/Class A misdemeanor
- Potential jail time
- Fines
- Contempt of court

The penalties for a first offense violation will be less severe than for subsequent violations. The penalties may also be worse if minor children are involved.

If there is an order of protection against someone and if they technically violated the order but did not harm or threaten to harm the victim, then they can simply document the behavior for future reference.

If the other party hurts the victim or threatens the victim, the first thing the victim should do is call law enforcement. Not only will they come out and remove the other party from the premises, but they will also formally document the event.

The police will arrest the other party and charge them with a misdemeanor. The court will then hold a hearing to determine what action, if any, is necessary.

Depending on the terms of the court order and the nature of the other party's violation, the judge may do any of the following:

- Hold the violator in contempt of court
- Impose a jail sentence
- Issue a more restrictive order of protection

In California, violating any term of a valid protective order is a misdemeanor offense under Penal Code 273.6 PC. If the court issues a restraining or stay-away order, the Defendant (Restrained party) must comply with its provisions or risk further criminal prosecution.

If the person has a prior 273.6 PC conviction and gets charged with it again in a case that involves violence, threats of violence or injury to the victim, the person can be charged with a felony punishable by up to 3 years in jail or prison.

(5) Treatment for victims who are immigrants/foreigners (including assistance of interpreter, etc.)

For immigrants/foreigners who don't speak English or even for undocumented immigrants, these are some of the resources within California for cases in regards Domestic Violence.

- <https://www.domesticshelters.org/> can help to find trained domestic violence advocates close to the victims. Immigrants who don't have documentation or legal IDs can get help from domestic violence shelters. Shelters don't require formal identification.
- The [National Domestic Violence Hotline](https://www.ndvh.org/) (800-799-SAFE) offers phone, text or chat support and provides information, education and referrals in more than 200 languages.
- The [Tahirih Justice Center](https://www.tahirih.org/) focuses on helping immigrant survivors of violence based on gender.
- The [National Immigrant Women's Advocacy Project](https://www.naiw.org/) provides resources and a directory of programs that serve immigrants.
- Legal aid providers and law schools may offer immigration clinics in the area of the victim.
- [Immigrant Women's Support Services](https://www.imwss.org/) offers domestic violence help in 16 different languages.

(6) Any other useful information related to the handling of abusers by the police

This link will display further information and Domestic Violence Guidelines.

https://post.ca.gov/Portals/0/post_docs/publications/Domestic_Violence.pdf

2 Protective measures for domestic violence victims

- ※ **Including orders that prohibit the abuser from approaching the victim, and victim's children or relatives, and orders obligating the abuser to vacate the residence shared as the main home with the victim (s) for protection**

(1) Outline (Specific Jurisdiction - California)

The California Domestic Violence Prevention Act (DVPA) provides several protections for victims of domestic violence. Under the DVPA, courts can issue protective orders to prevent further acts of domestic violence. These protective orders can include restraining orders that prohibit the abuser from contacting or coming near the victim, and can be issued ex parte, after notice and hearing, or in a judgment. Additionally, the DVPA authorizes emergency protective orders, which can be issued by a judicial officer at the request of a law enforcement officer who believes there is an immediate and present danger of domestic violence.

Victims of domestic violence are also entitled to various forms of emergency assistance, such as medical care, transportation to a shelter or hospital, and police standbys for removing personal property and ensuring safe passage out of the victim's residence. Furthermore, the California Emergency Management Agency administers a comprehensive shelter-based services grant program to provide emergency shelter, transitional housing, legal advocacy, and other support services to victims and their children.

The DVPA also includes provisions for restitution, allowing courts to order the abuser to compensate the victim for loss of earnings and out-of-pocket expenses incurred as a direct result of the abuse.

As stated above, the Police can ask for an **Emergency Protective Orders (EPO)** to protect the victim of a crime. Typically after the incident the victim will call the police or 911 for help. If the abuser is arrested and charged, a judge then can issue a **Criminal Protective Order (CPO)** to protect the victim and witnesses.

A victim may also be able to file their own case to ask for a restraining order. **(Domestic Violence Civil Restraining Order)**

A civil restraining order can include some of the same orders as an EPO or CPO, like ordering the defendant to stay away from the victim. But in restraining order cases filed by a victim (instead of law enforcement), additional protections may be available.

A victim can have a restraining order and an EPO or CPO at the same time. If the court orders conflict (for example, if different orders are about the same thing), see the last page of the protective order or restraining order documents for instructions about which court orders to follow.

(2) Necessary time to obtain the orders

In 2020, California lawmakers passed a bill (SB 273) that extended the statute of limitations for domestic violence to five years. This means that victims of domestic violence now have five years to file a police report or charge the abuser with a crime. However it is extremely important to file the request for civil restraining order as soon as possible. This because the more recent the incident is, there will be more credibility at the time of the hearing for the court to consider.

Once a victim seeks for help and request a Restraining Order, a Temporary Restraining Order may be issued immediately when the judge believes that the petitioner is in immediate danger and needs protection before the court rules hears the full merits of the case; a Temporary Restraining Order lasts between 20 to 25 days, or until the hearing on the merits of the permanent orders held.

(3) Term of validity of the orders

Once a victim turns in a request to the Court, the Judge will decide quickly to grant Temporary Restraining Order (TRO) or not; and set future hearings to determine the necessity of long-term restraining orders, which can last up to 3 or even 5 years depending on the particular matter.

However, if after expiration of orders the victim still requires protection, a renewal to the Long term Restraining Order can be renewed. If renewed, the judge could extend it for another 3 to 5 years, or make the order permanent for a different time depending on the particular case.

(4) How to start the legal process

1. Fill out all required Forms
 - 1.1. DV-100 Request for Domestic Violence Restraining Order Form
 - 1.2. CLETS-001 Confidential CLETS information Form
 - 1.3. DV-109 Notice of Court Hearing Form
 - 1.4. DV-110 Temporary Restraining Order Form
2. Fill out these forms for specific situations, such as Custody and/or Spousal Support
3. Check if there are any local form to complete depending on the Court.
4. File (turn in) the legal papers with the Court (this website [Find my court | Judicial Branch of California](#) will display which courthouse is the proper jurisdiction according to the City/Zip code of the victim. The filing can be also done online.

5. The judge may be able to review the request on same day of filing. If not, the victim will need to go back to the courthouse the next day. It is recommended to ask the clerk when the Petitioner can return to pick up the stamped court papers.
6. Review the documents stamped by the Judge; if the judge signed form DV-110, it means a Temporary Restraining Order was granted. The orders granted on the judicial council form DV-110 is valid and in full force and effect, but only until the court date for the hearing of the matter on its merits. The victim must go to this hearing if he/she wants a long-term restraining order. And must present all of her evidence with or without lawyer.
If the judge does not grant the temporary restraining order, the judge can still issue a permanent order at the time of the hearing if justice so requires.
7. Serve all the forms previously mentioned and stamped by the Court with the hearing date to the abuser/respondent. This service can be completed also by a sheriff without cost, or the victim may choose someone else to serve the documents, as long as this person is not a party to the case and is at least 18 years of age.

(5) Whether appointing a lawyer is mandatory or not

Retaining a lawyer is not mandatory, the victim can get free legal help from the Self-Help Center at the corresponding County Courts.

(6) Useful information for victims who are immigrants/foreigners

<https://www.uscis.gov/sites/default/files/document/brochures/IMBRA%20Pamphlet%20Final%2001-07-2011%20for%20Web%20Posting.pdf>

(7) Other useful information related to protective measures for victims

<https://www.womenslaw.org/laws/ca/restraining-orders>

3 Possible countermeasures expected to be taken by the abuser when a victim takes protective measures described in 1

- ✧ Including an appeal against the orders described in 1, filing a petition for a ne exeat order, lodging a complaint against the victim on the ground that the victim also used violence on the abuser, etc.

(1) Outline (From California Jurisdiction perspective)

In California, when a person has been served with a restraining order against him/her these are the steps he/she must follow:

If there's a Temporary Restraining Order, the Respondent must turn in, sell, or store any firearms and ammunition he/she has or owns. Also, if they have any body armor, they must relinquish it, and then needs to submit statements about what he/she did with such guns and

firearms.

If they do not comply, they could be arrested and charged with a state or federal crime.

If the other side asked for child support, spousal support, lawyer's fees, or for the Respondent to pay debts, he/she needs to complete a form called an Income and Expense Declaration (form FL-150). This form asks how much money the person earns and what his/her expenses are. The respondent must turn in this form, attaching proof of income (like paystubs) from the past two months to the form.

The Respondent has the right to respond to the domestic violence restraining order; this can be done in writing letting the Judge and the other side know whether he/she agrees or disagrees with the request for restraining order, and why. The Respondent may also request protection in his/her favor upon Judge's discretion.

(2) Term of validity of the countermeasures

The Respondent has to comply with orders immediately upon service; in terms of the option to respond in writing he/she can do that before the Hearing Date set by the Court.

(3) Measures that can be taken by the victim against the countermeasures by the abuser

The Restraining Order by itself, protects the integrity of the victim, since it includes all of the following:

- Not contact or harm the protected person, including children or others listed as protected people
- Stay away from all protected people and places
- Not have any firearms (guns), firearm parts, ammunition, or body armor. This includes homemade or untraceable guns, like "ghost guns."
- Move out of the place that they share with the protected person
- Follow custody and visitation orders
- Pay child support
- Pay spousal support
- Pay debt for property
- Give control of property (examples: cell phone, car, home) to the person asking for protection.

Once the abuser is served, the police can arrest them for violating the order. It is highly recommended for a protected person to always have available copy of the Restraining Order granted and if needed contact the police immediately.

4 Legal process for claiming living expense to the abuser

(1) Outline (California)

The victim may be entitled to receive spousal support from the abuser, especially if the abuse has affected the ability of the victim to work.

(2) Necessary time to obtain the orders

The spousal support is requested at the same time when filing for the Restraining Order, but if the victim for any reason did not mark this option in the initial filing, he/she can amend the Petition and request this to the Judge as well.

(3) Term of validity of the orders

The judge decides the amount by looking at the:

- **Needs** of spouse with less money
- **Ability to pay** for spouse with more money

The judge will look at how much one spouse needs to meet their expenses and whether the other spouse makes enough to meet that need. The judge could also consider domestic violence as a factor to decide the amount of spousal support.

If the spousal support derives from the Restraining Order, it will be valid for same term, unless the Judge directs a specific period.

(4) How to start legal process

Following the same legal process when seeking the restraining order (stated above); selecting in the form item 25 on form DV-100, and complete form FL-150. This form gives the judge an idea of what is the victim's financial situation, like monthly income and living expenses.

(5) Whether appointing a lawyer is mandatory or not

Retaining a lawyer is not mandatory, the victim can get free help from the Self-Help Center at the corresponding County Court.

(6) Useful information for victims who are immigrants/foreigners

(7) Any other useful information related to measures for claiming living expense to the abuser (including administrative measures to claim living expense to the abuser)

Victims of crime in California are entitled to a variety of assistance services. These services include crisis intervention, emergency assistance (such as food, housing, and clothing), resource and referral counseling, direct counseling on problems resulting from the crime, and assistance in processing, filing, and verifying claims for compensation. Victims can

also receive help in obtaining the return of property held as evidence, orientation to the criminal justice system, court escort, and notification to friends, relatives, and employers about the crime and the victim's condition.

Additionally, victims are entitled to restitution for economic losses suffered as a result of the crime. This includes medical and mental health counseling expenses, loss of income, and other pecuniary losses that have not been reimbursed from other sources. Victims can also apply for assistance from the Restitution Fund for specified types of assistance, which does not disqualify them from participating in other public assistance programs.

Victim advocates are available to assist victims with understanding their rights, applying for restitution, communicating with the prosecution, receiving support services, and preparing victim impact statements. Law enforcement and prosecuting agencies are required to inform victims of their rights, including those related to housing, employment, compensation, and immigration relief. Noncitizen victims of trafficking, domestic violence, and other serious crimes are eligible for public social services and health care services similar to those available to refugees.

Furthermore, various programs and centers to provide comprehensive services to crime victims, including legal resource centers and victim-witness assistance centers, which offer information, assistance, and referrals.

5 Divorce process involving domestic violence victim

(1) Outline (California)

Any history of domestic violence will be relevant to the court during divorce proceedings. Evidence of domestic abuse can have a profound effect on the outcome of a California divorce and directly impact the divorce settlement, making it even more important for divorcees ending abusive marriages to understand their rights and take appropriate legal steps to protect themselves.

(2) General trend of the legal decision about child custody in divorce process involving domestic violence victim

Courts consider various factors to ensure that custody arrangements are in the minor children's best interests, but domestic violence can shape custody decisions.

- Safety Considerations: Courts prioritize the safety of the child when making custody determinations. Evidence of domestic violence, even if it was not directed at the child, can be a significant factor. A parent who has exhibited violent behavior may be deemed unfit for custody, and the court may impose supervised visitation or deny visitation rights altogether to protect the child.
- Emotional and Psychological Impact: Exposure to domestic violence can have long-term emotional and psychological effects on children. Courts recognize the potential

harm of placing a child in an environment where violence has occurred. This recognition can lead to custody decisions that favor the non-abusive parent, thereby limiting the child's exposure to the harmful effects of domestic violence.

- Parental Fitness: Courts evaluate each parent's ability to provide a stable, nurturing environment. A history of domestic violence can cast doubt on the abusive parent's fitness, affecting both physical and legal custody decisions. In many cases, the court will grant custody to the non-abusive parent and take steps to ensure that the abusive parent has limited or no unsupervised access to the child.
- Protective Orders and Custody: Survivors of domestic violence can seek protective orders, which may include provisions for temporary custody of children. These orders serve as a legal barrier to protect survivors and their children from further abuse and can influence final custody arrangements.

(3) General trend of the legal decision about the residence of the child in divorce process related to domestic violence victims

There are two types of child custody:

- Physical custody: The person that the child lives with on a regular basis.
- Legal custody: The right for a person to make important decisions about the child's health care, education, and welfare.

For both types of custody, parents can share custody (joint custody) or one parent can have full custody (sole custody). A judge grants custody based on what's in the best interest of a child.

If there was a conviction for domestic violence or a restraining order:

If a parent has been convicted or committed domestic violence for an incident that happened in the last five years, then a law called "California Family Code Section 3044" applies. This law requires a judge to go through a detailed decision-making process before giving abusive parent custody of a child.

This usually means that the judge grants the non-abusive parent sole legal and physical custody of the child. The parent who committed the abuse can still get some visitation with the child.

(4) General trend of the legal decision about the childcare expenses in divorce process related to domestic violence victims

Child support may be requested by either parent of a child, or by the person that has legal or physical custody of the child. There are different ways to ask for child support orders, depending on the situation. A parent can ask for child support alone, or as part of another family law court case, for example, a Divorce, or Domestic Violence case. If the parents of the child are not married, paternity (legal fatherhood) must be established before support can be

requested.

If one of the parents has been getting public assistance (Temporary Assistance for Needy Families or TANF), or if a private case with the Department of Child Support Services (DCSS) has been opened, DCSS will automatically start a child support case against the other parent.

Child support is for the purpose of providing food, clothing, medical care and ability to get an education.

(5) General trend of the legal decision about visitation in divorce process related to domestic violence victims

In situations involving domestic violence, courts often implement supervised visitation to protect children during interactions with the abusive parent. This ensures safety while maintaining the parent-child relationship under monitored conditions, such as supervised visitations. Custody restrictions can include limiting interaction or requiring the abusive parent to complete intervention programs. Familiarity with these protective measures is crucial for victims seeking to ensure their child's safety during custody proceedings.

6 Legal process for child custody modification

(1) Outline (please specify your target area of study)

If the victim has a child with the other side, he/she can ask the judge to make custody and visitation orders immediately.

(2) How to start the legal process for child custody modification

Following the same procedure for the filing of the Domestic Violence Restraining Orders, fill out the next forms as well:

1. Request for Child Custody and Visitation Orders (form DV-105)
2. Child Custody and Visitation Order (form DV-140)
3. Request for Orders to Prevent Child Abduction (form DV-108) (optional)
4. Order to Prevent Child Abduction (form DV-145) (optional)

(3) Whether appointing a lawyer is mandatory or not

Retaining a lawyer is not mandatory, the victim can get free help from the Self-Help Center at the corresponding County Court.

(4) General trend of the legal decision about child custody modification

Rule 5.381 – Modification of child custody, visitation, and support orders in Domestic Violence Prevention Act cases

- Application of rule

This rule addresses court procedures for the modification of child custody, visitation, and support orders in accordance with Family Code section 6340(a).

- (b) Filing fees

A filing fee may be charged on a request to modify a child custody, visitation, or support order only after a protective order, as defined in Family Code section 6218, is no longer in effect. The filing fee, if charged, is the same as the filing fee for a motion, application, or any other paper requiring a hearing after the first paper.

- (c) Retention

The court must retain any child custody, visitation, or support order filed in a Domestic Violence Prevention Act as a Family Law order under Government Code section 68152(c)(5).

(5) Any other useful information related to legal process for altering child custody

<https://www4.courts.ca.gov/documents/3044sheetEN.pdf>

7 Legal process for getting permission to move to another place with children (domestically and internationally)

(1) Outline (please specify your target area of study)

Generally, a parent can change where a child lives if:

- It won't interfere with the current orders for custody and visitation (parenting time)
- They've let the other parent know about the change (given notice)

If a parent wants to relocate a child's home to a place that is far away and interferes with the custody and visitation order, the parent may need to ask for a court order before the child can move with that parent. This is called a relocation case but is also known as a move-away case.

(2) How to start the legal process for getting permission to move to another place with children

To start the legal process for moving to a new location with children in California, the Petitioner must file a "move-away request" with the family law court, formally notifying the other parent of the intention to relocate and providing details about the proposed move, including reasons for relocation and the new visitation schedule, considering the limitations imposed by the Restraining Order; this process typically involves giving written notice to the other parent at least 45 days before the planned move, and the court will ultimately decide if the move is in the child's best interest based on various factors like the child's relationship with both parents and the impact of the move on their well-being.

(3) Whether appointing a lawyer is mandatory or not

Retaining a lawyer is not mandatory, the victim can get free help from the Self-Help Center

at the corresponding County Court.

(4) General trend of the legal decision related to moving to another place with children

A parent with a sole physical custody order is more likely to be able to move with the child. To make a decision, the judge will first consider:

- Whether the parent wanting to move has sole or joint physical custody of the child
- Whether the physical custody order is a "permanent order"

In general, a custody order is permanent if it was made as part of the judgment (the final papers that ended a case).

Typically, if there is a permanent custody order, the judge will

- Allow a parent with sole physical custody to move away with the child unless the other parent can show that moving away would harm the child
- Not allow a parent with joint physical custody to move away with the child unless that parent can show moving away is in the child's best interest

If there is not a permanent order on custody (there is not a judgment for child custody and visitation in the case), then the judge will make a decision based on what's in the best interest of the child without any assumptions based on physical custody.

Judges make decisions in the best interest of the child. Knowing whether a parent has sole or joint physical custody is a starting point. A judge will also consider other factors, like:

- The distance of the move: A longer distance move may make it hard (and expensive) for the child to see both parents regularly.
- Current custody arrangement: The judge will look at the custody order. They will also consider what time the child actually spends with each parent if it's different than the order says and the child's relationship with each parent.
- The relationship between the parents: A judge can consider the co-parenting relationship. Do the parents talk badly about one another in front of the child? Do they allow the other parent to have access to or contact with the child (following the court order)?
- The child's age: A move at a younger age can impact a child differently than an older child. Sometimes, for an older and mature child, the judge may ask a counselor to talk with a child to find out what they want.

8 Legal process for changing visitation schedules

(1) Outline (please specify your target area of study)

To change a visitation schedule in a domestic violence case in California, the petitioner

needs to file a Request for Order (FL-300) with the court. It can be also used the Child Custody and Visitation (Parenting Time) Application Attachment (FL-311).

(2) How to start the legal process for changing visitation schedules

Steps

1. Fill out the Request for Order (FL-300)
2. Include any attachments, such as a parenting plan
3. File the forms with the court clerk
4. Have the other parent served with the request
5. File a Proof of Personal Service (FL-330)
6. Attend a hearing

Fees

There may be a fee to file the forms.

The petitioner can request a fee waiver if they can't afford the fee.

Mediation

Parties may need to go to mediation before seeing the judge.

Mediators can help to reach an agreement on parenting time.

If they reach an agreement, the judge will review it and decide whether to approve it.

(3) Whether appointing a lawyer is mandatory or not

Retaining a lawyer is not mandatory, the victim can get free help from the Self-Help Center at the corresponding County Court.

(4) General trend of the legal decision about changing visitation schedules

Parental behavior is a common reason for voluntary seeking a custody modification in California; If one parent is concerned about their co-parent providing a safe and stable environment because of issues such as substance abuse, neglect, or other harmful behaviors, a modification may be necessary.

9 Retaining a lawyer

(1) How to find a lawyer with expertise in dealing with domestic violence

Some ways to find a lawyer:

- Contact the county's lawyer referral service
- Call the local county bar association (which will have a lawyer referral service or other resources)
- Go to LawhelpCalifornia.org to find more information on a State Bar-certified lawyer referral service
- Call the State Bar's Lawyer Referral Services Directory at 1-866-442-2529 (toll free in

California) or 1-415-538-2250 (from outside California)

- Search for a State Bar-certified specialist (if in need of a very experienced attorney in a particular area of law)

This link displays all Attorney's in California based on the Specialty Area, for Domestic Violence the area is Family Law)

https://apps.calbar.ca.gov/members/lr_search.aspx

- Asking friends, co-workers, employers, or other lawyers if they know any lawyers who have experience with this type of problem. Businesspeople or professionals like bankers, ministers, doctors, social workers, and teachers are also good sources of referrals.
- The victim can check to see if he/she may belong to a prepaid group legal service plan through the employer, union, or credit union.

(2) How to find a lawyer who is good at Japanese language

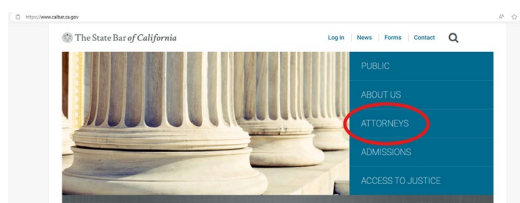
To find a Japanese lawyer in California:

- **State Bar Search**

Utilize the California State Bar's online search feature to filter by practice areas and language capabilities, looking for lawyers who are fluent in Japanese.

These are the steps:

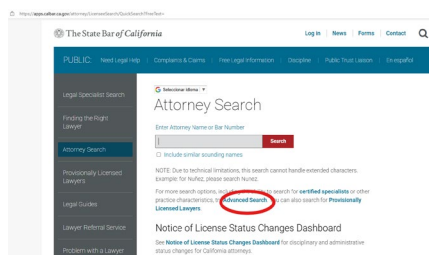
1. [The State Bar of California Home Page](#)
2. Select "Attorneys"



3. Scroll down and select "Search"



4. Then select "Advanced Search"



5. Look for “*Languages Spoken*” category, select “*Japanese*” and then click on “Advanced Search”

The screenshot shows the 'Advanced Search' page of The State Bar of California. The page has a header with the logo and navigation links. Below the header, there are several search filters. The 'Languages Spoken' filter is expanded, showing 'Japanese' as the selected option. The 'Advanced Search' button is highlighted with a red circle.

6. Finally, a list of more than 500 attorneys will be displayed.

- **Japanese American Bar Association (JABA):**

Connect with the JABA, which specifically caters to lawyers with Japanese American heritage and can provide referrals to suitable attorneys.

(3) How to ask a lawyer

Before contacting a lawyer, it is important to clearly understand the nature of the legal problem to find the right type of lawyer (e.g., family law, criminal defense, personal injury).

To ask a lawyer in California, a person can contact a certified lawyer referral service through the State Bar of California by calling (866) 442-2529, which will connect them with a lawyer suited to their legal issue; they can also search for a certified legal specialist online based on the specific area of need, or look for legal aid organizations if the person qualifies for low-cost or free legal services depending on their income level.

Most lawyers offer initial consultations to discuss the situation and determine if they are a good fit for the case.

(4) General information about lawyer fee

In California, lawyer fees can vary significantly based on the type of case, attorney experience, and location, but generally range from around \$178 to \$509 per hour with an average around \$344 per hour; factors like case complexity and the lawyer’s expertise can impact the final fee, with some lawyers charging considerably more for specialized legal areas like corporate or family law.

Lawyers bill in different ways:

- **Fixed fee:** The lawyer charges a set fee to do something, usually for routine legal matters

- Hourly fee: The lawyer charges by the hour
- Retainer fee: A "down payment" on any legal services. The legal fees will be subtracted from the retainer. If the retainer starts to run out, it may need to add more money.
- Contingency fee: the person pays the lawyer from the money he/she receives if they win the case or settle it out of court. If the case is lost, the lawyer does not receive a fee.
- Statutory fee: The cost is set by law

(5) Legal aid

Free and low-cost legal help

Court-based self-help services

All California superior courts have free legal self-help programs. Self-Help staff can help a person if they need legal information and don't have a lawyer.

They can:

- Tell them about their case
- Help them with the forms they need
- Explain their legal options

Note they can tell them how to do things but can't tell them what they should do. They also cannot go to court for any person.

Low-cost referral services

Lawyer referral services can tell about free or low-cost legal services in areas for people who qualify. If they do not qualify for free help, they can give other information to help someone to find legal help that does not cost a lot of money.

For example, they offer lists of lawyers who can meet with the interested party for 30 minutes for a small fee (around \$40.00).

Some lawyers may help with key parts of a case and let the litigant do the rest (this is called limited-scope representation).

Legal aid services

A person may be able to get free or low-cost legal help in non-criminal cases from a legal services program. This will depend on the income and type of legal problem. This website ([Find Legal Help | LawHelpCA - Legal aid and legal help near you](#)) will display legal aid offices in different areas and find out what areas of law they cover.

Public interest organizations

Non-profit public interest organizations, like groups concerned with civil liberties or housing discrimination, may be able to help. These groups sometimes have staff lawyers who might be able to handle a case. Others provide legal help only to groups of people rather than

to individuals.

Government Agencies

There are several government agencies that can offer legal help. For example, the Department of Child Support Services can get or enforce a child support order.

If a person is being charged with a crime and he/she cannot afford a lawyer, they may qualify for free help from their local public defender's office. Usually, the court will refer them to a public defender. If the public defender cannot take the case or if there is no public defender in that area, the court will usually appoint another lawyer to represent them for free.

Law Schools

Some law schools have free legal clinics for certain types of legal problems. The local bar association or local court will likely know about these clinics and can give more information.

Law library programs

Many public law libraries have free programs, like legal workshops or "Lawyer in the Library" where a person can get free legal information.

Law librarians can also help with legal research and help to find legal books, online resources, and even sample templates that can be used in a legal case.

(6) Useful information for victims who are immigrants/foreigners

(7) Any other useful information related to retaining a lawyer

<https://www.calbar.ca.gov/Public/Free-Legal-Information/Working-with-an-Attorney/What-to-Expect-Regarding-Fees-and-Billing>

<https://www.lalawlibrary.org/files/Get%20Legal%20Help%20by%20Topic.pdf>

<https://selfhelp.courts.ca.gov/get-free-or-low-cost-legal-help>

(LAWYER REFERRAL SERVICES)

<https://app.powerbigov.us/view?r=eyJrIjoiazDM4ZGVIMDgtODBhMy00ZGRmLWI3ZTEtNTk2M2Q5ODk0ODM4IiwidCI6Ij1NTc3YmE1LTNIYmQtNGVjNS05MGQ3LTBIODE0OGE4MzE4YSJ9>

(1) **Measures to help victims apply for visas or renew the period of stay in your target area of study when the victims who are immigrants/foreigners cannot expect assistance from abusers (including special visa issued for domestic violence victims, etc.)**

(2) **How to apply**

- **U VISA**

Step 1: File Form I-918, Petition for U Nonimmigrant Status

Submit Form I-918, the Petition for U Nonimmigrant Status. Include all required information, and don't cut corners.

Step 2: Obtain Law Enforcement Certification

Form I-918 Supplement B, or the "Law Enforcement Certification," proves the victim's cooperation with authorities.

Step 3: Submit Supporting Documents

The application must include evidence of victimization and cooperation.

Gather police reports, medical records, and any proof of abuse.

- **VAWA (Violence Against Women Act)**

The victim must either first file the VAWA petition then apply for a green card, or he/she can apply for both at the same time:

If a visa is immediately available, the victim can file Form I-360 (VAWA self-petition) and Form I-485 (Green Card application) at the same time. This is called concurrent filing and is usually available to immediate relatives of U.S. citizens (spouses, children, and parents).

If a visa is not immediately available, he/she must first file and get Form I-360 approved. Once it's approved and a visa is available, he/she can then file Form I-485 to adjust their status. This often applies to VAWA self-petitioners who were married to a lawful permanent resident (LPR).

This is the process of first applying for VAWA and then adjusting status to a green card.

Step 1: Prepare Form I-360

- File Form I-360 ("Petition for Amerasian, Widow(er), or Special Immigrant") with U.S. Citizenship and Immigration Services (USCIS).
- No filing fee is required.

Step 2: Gather supporting documents

- Evidence of the abusive relationship (police reports, medical records, restraining orders, affidavits from family, friends, or professionals).

- Proof of relationship to the abuser (marriage certificate, birth certificate)
- Proof of good moral character (letters from community leaders, clean criminal record).
- Proof of shared residence with the abuser (lease agreements, bills, or mail).
- For children included in the petition: Birth certificates proving parental relationship.

Step 3: Submit the Application

- Mail the completed Form I-360 and supporting documents to the appropriate USCIS address.

Step 4: Wait for USCIS Decision

Processing times vary, but if the petition is approved:

- If the victim is eligible, he/she may apply for a work permit (EAD) and eventually a green card (Form I-485).
- If children are included in the petition, they may also apply for a green card.
- If the victim is in removal proceedings, approval of VAWA can help him/her seek relief from deportation.

○ **ASYLUM**

National foreigners may qualify for political asylum if they show that they have been or fear persecution in their country of origin by their government, by individuals or by a group of their government. As a result, they must prove one of the following 5 grounds for persecution:

1. Nationality.
2. Race.
3. Religion.
4. Belonged to a social group.
5. Political beliefs.

In summary, victims of domestic violence may be eligible for asylum but under very limited circumstances. Therefore, a person can apply for asylum if:

1. The violence perpetrated against the victim is motivated by one of the 5 previously mentioned reasons, and
2. The government of the victim's home country is unwilling or unable to protect the victim from the abuser.

This is the process of seeking asylum in the United States

Step 1: Arrival at a U.S. Port of Entry

Immigrants seeking asylum at a port of entry in the U.S. must express their intention to apply for asylum to a U.S. Customs and Border Protection (CBP) officer. This can be done at any legal entry point, including airports, seaports, or land borders.

Step 2: Credible Fear Interview

Upon expressing the desire to seek asylum, the individual undergoes a credible fear interview conducted by a U.S. Citizenship and Immigration Services (USCIS) asylum officer. The purpose of this interview is to determine if there is a significant possibility that the individual could establish eligibility for asylum.

Step 3: Filing the Asylum Application

If the credible fear interview is successful, the next step is to file Form I-589, Application for Asylum and for Withholding of Removal, with USCIS. This must be done within one year of arrival in the United States unless there are extraordinary circumstances.

Step 4: The Affirmative Asylum Process

Initial Review: The application is first reviewed by USCIS.

Interview Notice: The asylum seeker will receive a notice to attend an interview at a local asylum office.

Asylum Interview: During the interview, an asylum officer will ask detailed questions about the applicant's experience and reasons for seeking asylum.

Decision: After the interview, USCIS will issue a decision. If asylum is granted, the applicant becomes an asylee and can eventually apply for lawful permanent residence and citizenship.

Step 5: Defensive Asylum Process

If an individual is already in removal proceedings, they must apply for asylum defensively:

Removal Proceedings: This occurs if an individual is caught entering the U.S. without proper documentation or has overstayed their visa.

Immigration Court: The application is filed with an immigration judge who will hear the case.

Legal Representation: It is crucial for asylum seekers to have legal representation during this process to provide the best chance for asylum being approved.

Hearing and Decision: The judge will hear the case and make a decision. If asylum is granted, the applicant receives the same protection and benefits as in the affirmative process.

Step 6: Post-Decision Options

Appeals: If asylum is denied, the individual can appeal to the Board of Immigration Appeals (BIA) and, if necessary, to the federal courts.

Asylee Status: If granted asylum, individuals can apply for lawful permanent resident status (a green card) one year after being granted asylum. Eventually, they can apply for U.S. citizenship.

- **T-VISA**

A person may be eligible for T nonimmigrant status if:

- Is or was a victim of a severe form of trafficking in persons.
- Is physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry because he/she was trafficked.
- Complied with any reasonable request from a law enforcement agency for assistance in the detection, investigation, or prosecution of human trafficking (unless he/she was under the age of 18 at the time at least 1 of the acts of trafficking occurred or he/she is unable to cooperate due to physical or psychological trauma; if either case applies, the person may not need to show that they complied with reasonable requests from law enforcement);
- Show that the victim would suffer extreme hardship involving unusual and severe harm if he/she was removed from the United States; and are admissible to the United States. If the victim is not admissible, he/she may be eligible for a waiver of certain grounds of inadmissibility. He/she may apply for a waiver using Form I-192, Application for Advance Permission to Enter as a Nonimmigrant.

T Visa Application Process

Step 1: Prepare Documentation

Before starting the application process, gather all necessary documentation to support the claim as a victim of human trafficking, such as police reports, affidavits from law enforcement officers, court documents, detailed personal statement outlining the experience with human trafficking, cooperation with law enforcement, and the severe hardship the victim would face if deportation, copies of passport, birth certificate, and any other identification documents evidence that of physical presence in the U.S. due to trafficking.

Step 2: Complete Form I-914

Form I-914, Application for T Nonimmigrant Status, is the primary form required for applying for a T Visa.

Step 3: Complete Form I-914A (If Applicable)

If the victim has eligible family members, he/she will need to complete Form I-914A, Application for Family Member of T-1 Recipient.

Step 4: Submit the Application (I-194 and if applicable I-194A) to USCIS.

Step 5: Attend the Biometrics Appointment

Step 6: Await the Decision

USCIS will review the application and the supporting documentation. This process can take several months. The petitioner might be requested to come in for an interview or give further information during this period.

Step 7: Receive the Decision

Once USCIS has made a decision, the Petitioner will receive a Notice of Action (Form I-797) indicating whether the application has been approved or denied. If approved, the Petitioner will be granted T Nonimmigrant Status for four years, with the possibility of extension.

○ **SPECIAL IMMIGRANT JUVENILE STATUS**

Non-citizen children who are living in the U.S. and have been neglected, abused, or abandoned by a parent might be able to get a green card (U.S. lawful permanent residence) through "Special Immigrant Juvenile Status" (SIJS).

Step 1: State Court Finding of Neglect, Abuse, or Abandonment

A child is eligible for Special Immigrant Juvenile Status only if a court in the state where they live finds the child is neglected, abused, abandoned, or something similar, by one or both parents, and that it is not in the child's best interest to return to their home country. Court terms, procedures, and legal standards vary from state to state. The court will need to issue something usually called "special findings" or a "predicate order."

Types of State Court Proceedings

A child who deserves Special Immigrant Juvenile Status most often makes it into the court system in one of three ways:

1. A family might be reported to the police or child welfare agency because of abuse or neglect of children. Such a case might enter the juvenile court system in order to determine whether the child should be made a ward of the state or placed with a private guardian. A government attorney will handle the case. If the child does not yet have legal, permanent immigration status in the U.S., the child or interested adults should ask the attorney to consider Special Immigrant Juvenile Status when presenting the case.
2. A non-abusive parent or other family member could petition for custody in family court as part of a divorce or paternity case, alleging abuse, neglect, or abandonment by the one of the parents. In this situation, the person seeking custody would usually need to hire a private attorney. The judge might also ask that a separate attorney called a "Guardian ad Litem" (GAL) meet with the child and the family. The GAL will make a report to the judge about the family situation

and the best interests of the child.

A family member or friend may petition in court to be the legal guardian of the child. This option is often used when the parents have left the child with a friend or relative, and have stopped taking care of the child, but no reports have been made to police or child welfare authorities. In many states, this is done in probate court. As with a custody case in family court, the potential guardian can hire a private attorney, and the judge may appoint a "Guardian ad Litem."

Step 2, Submitting I-360 Petition for Special Immigrant Juvenile Status

Once the juvenile court order is obtained, the next step is to petition USCIS for SIJS.

To petition for SIJ classification, the following forms and supporting documentation must be submitted to USCIS:

- Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant
- Evidence of minor age: 1 of the following including English translation, if applicable
Birth certificate, passport, official identity document issued by a foreign government, such as any other documents that satisfactorily establish the age.
- Valid juvenile court order(s) that make the required determinations and include or are supported by evidence of the factual basis for the court's determinations.
- Written consent (PDF) from the U.S. Department of Health and Human Services of Refugee Resettlement if the minor is in HHS custody and the juvenile court order.
- Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.

Step 3: Await a Current Priority Date

After USCIS approves the I-360, the child might need to wait before taking the next step toward applying for a green card. That's because the child is not eligible until they have a current "priority date," meaning that a visa is available to them in the fourth preference (EB-4) immigrant visa category for special immigrants.

Step 4: Apply for U.S. Permanent Residence (Adjustment of Status)

Once the priority date is current, the child will need to submit Form I-485 "Application to Register Permanent Residence or Adjust Status" and supporting documents to USCIS.

III. Information for domestic violence victims preparing to return to your country based on the 1980 Hague Convention

- ※ **A typical case is supposed where a domestic violence victim, who removed children without consent of the abuser, is preparing to return to the country of habitual residence with children after relevant proceedings in accordance with the 1980 Hague Convention.**

1 How to know whether an arrest warrant is out against the victim before he/she returns to the country of habitual residence

- ※ **Including measures to obtain official or reliable information about the arrest**

| |
|---|
| <p>warrant other than asking the abuser</p> |
| <p>To find out if there is a warrant for an arrest in California:</p> <ul style="list-style-type: none"> • Search the website of the sheriff's department or Superior Court in the county where the victim thinks the warrant might be • Search the California Superior Court website • Run a criminal background check through the California Department of Justice • Contact the local sheriff's office or police department • Use a third-party service to run a criminal background check <p>How to search for a warrant</p> <ul style="list-style-type: none"> • Search the name, date of birth, and sometimes the driver's license number or case number • Request the criminal history record on the Office of the Attorney General's website |
| <p>2 Measures to terminate criminal proceedings against the domestic violence victim before he/she returns to the country of habitual residence</p> <p>✧ Including registering or enforcing orders which may be made by the foreign court when it made return order, any other legal or administrative measures, etc.</p> |
| <p>Criminal proceedings in California can be terminated by a motion to dismiss, diversion programs, or other measures.</p> <p>In the cases involving domestic violence, the victim may inform the prosecutor of the existence of protective measures, such as the restraining order, and at all the time keep all the evidence which will demonstrate the violence suffered by the abuser.</p> <p>If the victim has any foreign order which supports the evidence in his/her favor, a translated copy can be always presented to the prosecutor/Criminal Judge, even when the committed facts may not have occurred in their jurisdiction, it would help in the sense of understanding the full context and violent pattern of the abuser from past events.</p> |
| <p>3 Measures to secure accommodation, financial support, etc., for a domestic violence victim before he/she returns to the country of habitual residence</p> <p>✧ Including registering or enforcing orders which may be made by the foreign court when it made return order, any other legal or administrative measures, etc.</p> |
| <p>A California law (SB 1569) passed in 2006, provides that immigrant survivors of human trafficking, domestic violence, and other serious crimes may receive state and local benefits under the same rules that apply to refugees.</p> <p>Services are available regardless of immigration status include Medi-Cal, IHSS, domestic violence and homeless shelters, the Supplemental Nutrition Program for Women, Infants & Children (WIC), food banks, soup kitchens, school breakfast and lunch, prenatal care, family planning, emergency medical services (including labor and delivery), community clinics, and</p> |

services from most nonprofit agencies.

Services provided under the Victims Compensation Program also are available regardless of immigration status. To get these services, the trafficking survivor must agree to cooperate with police and court agencies in investigating or prosecuting the offender.

4 Any other useful information for a domestic violence victim preparing to return to your country based on the 1980 Hague Convention

The 1980 Hague Child Abduction Convention operates between Contracting States to secure the return of children who are wrongfully removed or retained away from the country of their habitual residence, in breach of a left-behind parent's rights of custody. It is based on a presumption that it will usually be in a child's best interests that they be returned promptly so that the authorities and courts in the home country for the children in turn, can decide issues relating to legal and physical custody.

Domestic Violence is a very important issue in cases under the Hague Convention. In particular, Article 13 (1) (b) of the Convention provides that a court may refuse to return a child where 'there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation'. When the Article 13 (1) (b) exception is established, the court has legal discretion as to whether it is possible to return a minor to his/her home country or not.

It is often the case that parents plead the Article 13 (1) (b) exception and resist the return of the child on this basis; the 'grave risk' in a case of this nature may relate not only to direct physical/emotional harm perpetrated by the left-behind parent to the taking parent, but also to the potential impact on the parent's ability to care for the child if the child is returned caused by a deterioration in that parent's mental health.

It may be argued that protective measures can be put in place which would lessen any grave risk of harm in this context – *undertakings* (are promises given by the parents to the court) may be given in relation to their behavior towards the other parent. Information may be provided to the court about the social and judicial services available in that country which can protect the left behind parent and the child. There has, over time, been a significant increase in returns being refused on the basis of Article 13 (1) (b), either as a sole ground or combined with other exceptions for return.

If a child is returned to the country of their habitual residence, there will often follow an application by the taking parent to relocate lawfully with the child. The efficacy of a country's relocation jurisdiction is therefore of vital importance, not only in deterring abductions but also in the context of the child's ongoing protection from future harm. If, for example, a parent is likely to suffer a deterioration in their mental health as a result of an order for return, protracted relocation proceedings which do not adequately consider the child's best interests will compound this risk.

In October 2023, the Eighth Meeting of the Special Commission on the practical operation of the 1980 Hague Child Abduction Convention and 1996 Hague Child Protection Convention took place in the Hague. Domestic abuse in the context of international child abduction was a significant issue discussed at the Special Commission.

The Special Commission has recommended that the *'expeditious determination of international family relocation applications may strengthen the aim of the 1980 Child Abduction Convention of deterring international child abduction and encouraged the promotion of the Washington Declaration on International Family Relocation ...'* It is hoped that – in light of the above, Contracting States will look at the adequacy of their family law systems in dealing with relocation cases through the lens of the 1980 Hague Abduction Convention, as the two categories of case go hand in hand. In short, there needs to be better solutions for supporting the international relocation of children globally. This would be in furtherance protection of all children and a practical deterrence of international child abduction.

IV. Any other relevant information

Domestic Violence as a Defense under Article 13 (b) of the Hague Convention must be proved in United States Courts with a high level of evidence. "Clear and Convincing Evidence" is the evidentiary standard. Thus, if you have been victim of domestic violence in your home country and intend to raise such a legal defense, it is extremely important that you consult with a licensed attorney with expertise and experience in the litigation of Hague Convention Cases involving domestic violence. For more information about the above feel free to contact our office at www.jesuseduardoarias.com