

Understanding Domestic Violence, Custody & Restraining Orders in California: A Legal Guide

What steps should domestic violence survivors take to file a restraining order in California? Before filing, understand the court's perspective, especially in cases involving children. Courts are aware that some parents may make false claims of domestic violence to gain custody advantages through California Family Code 3044. Evidence is crucial since most cases are "he said, she said." Penal Code 633.6 allows victims to record incidents without the other party's knowledge when they feel endangered. The filing process involves a package of documents including DV-100, 105, 109, 110, and 130 forms. Free help is available through court resources or legal coaches.

What constitutes legal recording of evidence in domestic violence cases? Recording under Penal Code 633.6 must be specific to situations where abuse is imminent or occurring. It's not meant for constant surveillance but rather for documenting specific incidents of abuse. The recording must be fresh and relevant to current proceedings. This exception to confidential recording laws has strict guidelines and should only be used when necessary for proving domestic violence claims.

How do restraining orders impact custody and visitation rights? After filing, courts review requests within 24 hours and may issue temporary orders. These orders can be fully granted, denied, or partially approved pending a formal hearing within 20 days. If granted, they may restrict contact with children, though courts often allow peaceful communication regarding children. The restrained party must comply with these temporary orders until the formal hearing determines permanent arrangements.

Should children testify in domestic violence custody cases? Courts are generally reluctant to involve children in testimony, considering factors like age and maturity level. Children under 18 are considered unable to make fully informed decisions, and their testimony can lead to emotional manipulation or guilt. There's also concern about long-term psychological impact and potential damage to parent-child relationships. Courts prefer to protect children from the trauma of testifying against parents.

Can the court system better support children affected by domestic violence? Courts are limited in their capacity to provide support beyond legal decisions. They function as arbitrators rather than therapeutic resources. The focus should be on parents making responsible choices and seeking appropriate support services outside the court system. Legal professionals, like Linda Garrett, carefully evaluate domestic violence cases to ensure claims are legitimate and actions serve the best interests of all parties involved.