

RESOLUTION 06-02-2016 (As Amended)

DIGEST

Elder Abuse: Orders for Anger Management

Amends Welfare and Institutions Code section 15657.03 to empower judicial officers to order anger management classes in Elder Abuse Restraining Order matters.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Welfare and Institutions Code section 15657.03 to read as follows:

§15657.03

1 (a) (1) An elder or dependent adult who has suffered abuse, as defined in Section
2 15610.07, may seek protective orders as provided in this section.

3 (2) A petition may be brought on behalf of an abused elder or dependent adult by a
4 conservator or a trustee of the elder or dependent adult, an attorney-in-fact of an elder or
5 dependent adult who acts within the authority of a power of attorney, a person appointed as a
6 guardian ad litem for the elder or dependent adult, or other person legally authorized to seek the
7 relief.

8 (3) (A) A petition under this section may be brought on behalf of an elder or dependent
9 adult by a county adult protective services agency in either of the following circumstances:

10 (i) If the elder or dependent adult has suffered abuse as defined in subdivision (b) and has
11 an impaired ability to appreciate and understand the circumstances that place him or her at risk of
12 harm.

13 (ii) If the elder or dependent adult has provided written authorization to a county adult
14 protective services agency to act on his or her behalf.

15 (B) In the case of a petition filed pursuant to clause (i) of subparagraph (A) by a county
16 adult protective services agency, a referral shall be made to the public guardian consistent with
17 Section 2920 of the Probate Code prior to or concurrent with the filing of the petition, unless a
18 petition for appointment of a conservator has already been filed with the probate court by the
19 public guardian or another party.

20 (C) A county adult protective services agency shall be subject to any confidentiality
21 restrictions that otherwise apply to its activities under law and shall disclose only those facts as
22 necessary to establish reasonable cause for the filing of the petition, including, in the case of a
23 petition filed pursuant to clause (i) of subparagraph (A), to establish the agency's belief that the
24 elder or dependent adult has suffered abuse and has an impaired ability to appreciate and
25 understand the circumstances that place him or her at risk, and as may be requested by the court
26 in determining whether to issue an order under this section.

27 (b) For purposes of this section:

28 (1) "Abuse" has the meaning set forth in Section 15610.07.

29 (2) "Conservator" means the legally appointed conservator of the person or estate of the
30 petitioner, or both.

31 (3) "Petitioner" means the elder or dependent adult to be protected by the protective
32 orders and, if the court grants the petition, the protected person.

33 (4) "Protective order" means an order that includes any of the following restraining
34 orders, whether issued ex parte, after notice and hearing, or in a judgment:

35 (A) An order enjoining a party from abusing, intimidating, molesting, attacking, striking,
36 stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not
37 limited to, making annoying telephone calls as described in Section 653m of the Penal Code,
38 destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or
39 coming within a specified distance of, or disturbing the peace of, the petitioner, and, in the
40 discretion of the court, on a showing of good cause, of other named family or household
41 members or a conservator, if any, of the petitioner. On a showing of good cause, in an order
42 issued pursuant to this subparagraph in connection with an animal owned, possessed, leased,
43 kept, or held by the petitioner, or residing in the residence or household of the petitioner, the
44 court may do either or both of the following:

45 (i) Grant the petitioner exclusive care, possession, or control of the animal.

46 (ii) Order the respondent to stay away from the animal and refrain from taking,
47 transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or
48 otherwise disposing of the animal.

49 (B) An order excluding a party from the petitioner's residence or dwelling, except that
50 this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is
51 in the sole name of the party to be excluded, or is in the name of the party to be excluded and any
52 other party besides the petitioner.

53 (C) An order enjoining a party from specified behavior that the court determines is
54 necessary to effectuate orders described in subparagraph (A) or (B).

55 (D) When issuing such Protective order, the court may also order the following:

56 (i) Only after notice under section 1005 of the Code of Civil Procedure and a hearing, the
57 court may issue an order requiring the restrained party to participate in a substance abuse
58 prevention or batterer's program approved by the probation department as provided in Section
59 1203.097 of the Penal Code.

60 (ii) (aa) if the court orders a restrained party to participate in an elder abuse prevention or
61 batterer's program pursuant to subdivision (ii), the restrained party shall do all of the following:

62 (1) Register for the program by the deadline ordered by the court. If no deadline is
63 ordered by the court, the restrained party shall register no later than 30 days from the date the
64 order was issued.

65 (2) At the time of enrollment, sign all necessary program consent forms for the program
66 to release proof of enrollment, attendance records, and completion or termination reports to the
67 court and the protected party, or his or her attorney. The court and the protected party may
68 provide to the program a fax number or mailing address for purposes of receiving proof of
69 enrollment, attendance records, and completion or termination reports.

70 (3) Provide the court and the protected party with the name, address, and telephone
71 number of the program. The Judicial Council shall promulgate forms as necessary to effectuate
72 this subdivision.

73 (iii) The courts shall, in consultation with local domestic violence programs, develop a
74 resource list of referrals to appropriate community elder abuse programs and services to be
75 provided to each applicant for an order under this section.

76 (5) "Respondent" means the person against whom the protective orders are sought and, if
77 the petition is granted, the restrained person.

78 (c) An order may be issued under this section, with or without notice, to restrain any
79 person for the purpose of preventing a recurrence of abuse, if a declaration shows, to the
80 satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or
81 dependent adult.

82 (d) Upon filing a petition for protective orders under this section, the petitioner may
83 obtain a temporary restraining order in accordance with Section 527 of the Code of Civil
84 Procedure, except to the extent this section provides a rule that is inconsistent. The temporary
85 restraining order may include any of the protective orders described in paragraph (4) of
86 subdivision (b). However, the court may issue an ex parte order excluding a party from the
87 petitioner's residence or dwelling only on a showing of all of the following:

88 (1) Facts sufficient for the court to ascertain that the party who will stay in the dwelling
89 has a right under color of law to possession of the premises.

90 (2) That the party to be excluded has assaulted or threatens to assault the petitioner, other
91 named family or household member of the petitioner, or a conservator of the petitioner.

92 (3) That physical or emotional harm would otherwise result to the petitioner, other named
93 family or household member of the petitioner, or a conservator of the petitioner.

94 (e) A request for the issuance of a temporary restraining order without notice under this
95 section shall be granted or denied on the same day that the petition is submitted to the court,
96 unless the petition is filed too late in the day to permit effective review, in which case the order
97 shall be granted or denied on the next day of judicial business in sufficient time for the order to
98 be filed that day with the clerk of the court.

99 (f) Within 21 days, or, if good cause appears to the court, 25 days, from the date that a
100 request for a temporary restraining order is granted or denied, a hearing shall be held on the
101 petition. If no request for temporary orders is made, the hearing shall be held within 21 days, or,
102 if good cause appears to the court, 25 days, from the date that the petition is filed.

103 (g) The respondent may file a response that explains or denies the alleged abuse.

104 (h) The court may issue, upon notice and a hearing, any of the orders set forth in
105 paragraph (4) of subdivision (b). The court may issue, after notice and hearing, an order
106 excluding a person from a residence or dwelling if the court finds that physical or emotional
107 harm would otherwise result to the petitioner, other named family or household member of the
108 petitioner, or conservator of the petitioner.

109 (i) (1) In the discretion of the court, an order issued after notice and a hearing under this
110 section may have a duration of not more than five years, subject to termination or modification
111 by further order of the court either on written stipulation filed with the court or on the motion of
112 a party. These orders may be renewed upon the request of a party, either for five years or
113 permanently, without a showing of any further abuse since the issuance of the original order,
114 subject to termination or modification by further order of the court either on written stipulation
115 filed with the court or on the motion of a party. The request for renewal may be brought at any
116 time within the three months before the expiration of the order.

117 (2) The failure to state the expiration date on the face of the form creates an order with a
118 duration of three years from the date of issuance.

119 (3) If an action is filed for the purpose of terminating or modifying a protective order
120 prior to the expiration date specified in the order by a party other than the protected party, the
121 party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section
122 1005 of the Code of Civil Procedure, of the proceeding by personal service or, if the protected

123 party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division
124 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is
125 protected by the order cannot be notified prior to the hearing for modification or termination of
126 the protective order, the court shall deny the motion to modify or terminate the order without
127 prejudice or continue the hearing until the party who is protected can be properly noticed and
128 may, upon a showing of good cause, specify another method for service of process that is
129 reasonably designed to afford actual notice to the protected party. The protected party may waive
130 his or her right to notice if he or she is physically present in court and does not challenge the
131 sufficiency of the notice.

132 (j) In a proceeding under this section, a support person may accompany a party in court
133 and, if the party is not represented by an attorney, may sit with the party at the table that is
134 generally reserved for the party and the party's attorney. The support person is present to provide
135 moral and emotional support for a person who alleges he or she is a victim of abuse. The support
136 person is not present as a legal adviser and may not provide legal advice. The support person
137 may assist the person who alleges he or she is a victim of abuse in feeling more confident that he
138 or she will not be injured or threatened by the other party during the proceedings if the person
139 who alleges he or she is a victim of abuse and the other party are required to be present in close
140 proximity. This subdivision does not preclude the court from exercising its discretion to remove
141 the support person from the courtroom if the court believes the support person is prompting,
142 swaying, or influencing the party assisted by the support person.

143 (k) Upon the filing of a petition for protective orders under this section, the respondent
144 shall be personally served with a copy of the petition, notice of the hearing or order to show
145 cause, temporary restraining order, if any, and any declarations in support of the petition. Service
146 shall be made at least five days before the hearing. The court may, on motion of the petitioner or
147 on its own motion, shorten the time for service on the respondent.

148 (l) A notice of hearing under this section shall notify the respondent that if he or she does
149 not attend the hearing, the court may make orders against him or her that could last up to five
150 years.

151 (m) The respondent shall be entitled, as a matter of course, to one continuance, for a
152 reasonable period, to respond to the petition.

153 (n) (1) Either party may request a continuance of the hearing, which the court shall grant
154 on a showing of good cause. The request may be made in writing before or at the hearing or
155 orally at the hearing. The court may also grant a continuance on its own motion.

156 (2) If the court grants a continuance, any temporary restraining order that has been
157 granted shall remain in effect until the end of the continued hearing, unless otherwise ordered by
158 the court. In granting a continuance, the court may modify or terminate a temporary restraining
159 order.

160 (o) (1) If a respondent, named in an order issued under this section after a hearing, has
161 not been served personally with the order but has received actual notice of the existence and
162 substance of the order through personal appearance in court to hear the terms of the order from
163 the court, no additional proof of service is required for enforcement of the order.

164 (2) If the respondent named in a temporary restraining order is personally served with the
165 order and notice of hearing with respect to a restraining order or protective order based on the
166 temporary restraining order, but the respondent does not appear at the hearing, either personally
167 or by an attorney, and the terms and conditions of the restraining order or protective order issued

168 at the hearing are identical to the temporary restraining order, except for the duration of the
169 order, then the restraining order or protective order issued at the hearing may be served on the
170 respondent by first-class mail sent to the respondent at the most current address for the
171 respondent that is available to the court.

172 (3) The Judicial Council form for temporary orders issued pursuant to this subdivision
173 shall contain a statement in substantially the following form: "If you have been personally served
174 with a temporary restraining order and notice of hearing, but you do not appear at the hearing
175 either in person or by a lawyer, and a restraining order that is the same as this temporary
176 restraining order except for the expiration date is issued at the hearing, a copy of the order will
177 be served on you by mail at the following address: If that address is not correct or you wish to
178 verify that the temporary restraining order was converted to a restraining order at the hearing
179 without substantive change and to find out the duration of that order, contact the clerk of the
180 court."

181 (p) (1) Information on a protective order relating to elder or dependent adult abuse issued
182 by a court pursuant to this section shall be transmitted to the Department of Justice in accordance
183 with either paragraph (2) or (3).

184 (2) The court shall order the petitioner or the attorney for the petitioner to deliver a copy
185 of an order issued under this section, or a reissuance, extension, modification, or termination of
186 the order, and any subsequent proof of service, by the close of the business day on which the
187 order, reissuance, extension, modification, or termination was made, to each law enforcement
188 agency having jurisdiction over the residence of the petitioner, and to any additional law
189 enforcement agencies within the court's discretion as are requested by the petitioner.

190 (3) Alternatively, the court or its designee shall transmit, within one business day, to law
191 enforcement personnel all information required under subdivision (b) of Section 6380 of the
192 Family Code regarding any order issued under this section, or a reissuance, extension,
193 modification, or termination of the order, and any subsequent proof of service, by either one of
194 the following methods:

195 (A) Transmitting a physical copy of the order or proof of service to a local law
196 enforcement agency authorized by the Department of Justice to enter orders into the California
197 Law Enforcement Telecommunications System (CLETS).

198 (B) With the approval of the Department of Justice, entering the order or proof of service
199 into CLETS directly.

200 (4) Each appropriate law enforcement agency shall make available information as to the
201 existence and current status of these orders to law enforcement officers responding to the scene
202 of reported abuse.

203 (5) An order issued under this section shall, on request of the petitioner, be served on the
204 respondent, whether or not the respondent has been taken into custody, by any law enforcement
205 officer who is present at the scene of reported abuse involving the parties to the proceeding. The
206 petitioner shall provide the officer with an endorsed copy of the order and a proof of service,
207 which the officer shall complete and send to the issuing court.

208 (6) Upon receiving information at the scene of an incident of abuse that a protective order
209 has been issued under this section, or that a person who has been taken into custody is the
210 respondent to that order, if the protected person cannot produce an endorsed copy of the order, a
211 law enforcement officer shall immediately attempt to verify the existence of the order.

212 (7) If the law enforcement officer determines that a protective order has been issued but

213 not served, the officer shall immediately notify the respondent of the terms of the order and
214 where a written copy of the order can be obtained, and the officer shall at that time also enforce
215 the order. The law enforcement officer's verbal notice of the terms of the order shall constitute
216 service of the order and is sufficient notice for the purposes of this section and for the purposes
217 of Section 273.6 of the Penal Code.

218 (q) Nothing in this section shall preclude either party from representation by private
219 counsel or from appearing on the party's own behalf.

220 (r) There is no filing fee for a petition, response, or paper seeking the reissuance,
221 modification, or enforcement of a protective order filed in a proceeding brought pursuant to this
222 section.

223 (s) Pursuant to paragraph (4) of subdivision (b) of Section 6103.2 of the Government
224 Code, a petitioner shall not be required to pay a fee for law enforcement to serve an order issued
225 under this section.

226 (t) The prevailing party in an action brought under this section may be awarded court
227 costs and attorney's fees, if any.

228 (u) (1) A person subject to a protective order under this section shall not own, possess,
229 purchase, receive, or attempt to receive a firearm or ammunition while the protective order is in
230 effect.

231 (2) The court shall order a person subject to a protective order issued under this section to
232 relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of
233 Civil Procedure.

234 (3) Every person who owns, possesses, purchases, or receives, or attempts to purchase or
235 receive a firearm or ammunition while subject to a protective order issued under this section is
236 punishable pursuant to Section 29825 of the Penal Code.

237 (4) This subdivision does not apply in a case in which a protective order issued under this
238 section was made solely on the basis of financial abuse unaccompanied by force, threat,
239 harassment, intimidation, or any other form of abuse.

240 (v) In a proceeding brought under paragraph (3) of subdivision (a), all of the following
241 apply:

242 (1) Upon the filing of a petition for a protective order, the elder or dependent adult on
243 whose behalf the petition has been filed shall receive a copy of the petition, a notice of the
244 hearing, and any declarations submitted in support of the petition. The elder or dependent adult
245 shall receive this information at least five days before the hearing. The court may, on motion of
246 the petitioner or on its own motion, shorten the time for provision of this information to the elder
247 or dependent adult.

248 (2) The adult protective services agency shall make reasonable efforts to assist the elder
249 or dependent adult to attend the hearing and provide testimony to the court, if he or she wishes to
250 do so. If the elder or dependent adult does not attend the hearing, the agency shall provide
251 information to the court at the hearing regarding the reasons why the elder or dependent adult is
252 not in attendance.

253 (3) Upon the filing of a petition for a protective order and upon issuance of an order
254 granting the petition, the county adult protective services agency shall take all reasonable steps to
255 provide for the safety of the elder or dependent adult, pursuant to Chapter 13 (commencing with
256 Section 15750), which may include, but are not limited to, facilitating the location of alternative
257 accommodations for the elder or dependent adult, if needed.

258 (w) Any willful disobedience of any temporary restraining order or restraining order after
259 hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

260 (x) This section does not apply to any action or proceeding governed by Title 1.6C
261 (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code, Chapter 3
262 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, or Division
263 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a
264 petitioner's right to use other existing civil remedies.

265 (y) The Judicial Council shall develop forms, instructions, and rules relating to matters
266 governed by this section. The petition and response forms shall be simple and concise, and shall
267 be used by parties in actions brought pursuant to this section.

268 (z) This section shall become operative on July 1, 2016.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: Presently, the Court in Elder Abuse Restraining Orders cannot or is not empowered to use resources as are granted in Domestic Violence Restraining Orders.

The Solution: This resolution will permit the Court to use the same resources and issue the same orders in Elder Abuse Restraining case that are currently used in Domestic Violence Restraining Order situations. This legislation will empower judicial officers in Elder Abuse Restraining Order matters to use the same resources that are available in Domestic Violence Restraining Order matters.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESPONSIBLE FLOOR DELEGATE: Edward Stone

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RESOLUTIONS COMMITTEE RECOMMENDATION

The CCBA's Resolutions Committee recommended Disapproval of this resolution. The full Conference rejected that recommendation and approved the resolution.

COUNTERARGUMENTS**BAR ASSOCIATION OF NORTHERN SAN DIEGO COUNTY**

The Bar Association of Northern San Diego County recommended Disapproval of this resolution. The full Conference rejected that recommendation and approved the resolution.

TEXCOM

The Executive Committee of the Trusts & Estates Section of the State Bar this resolution as drafted, and stated the concept proposed is commendable. The full Conference rejected that recommendation and approved the resolution.