

RESOLUTION 05-06-2018

DIGEST

Elder Abuse: Order for Anger Management

Amends Welfare and Institutions Code section 15676.03 to authorize the court to order anger management classes in Elder Abuse Restraining Order matters.

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 and many of those that are before the court are family matters. A judicial officer has expressed that it would be beneficial to have the discretion to be able to order this type of program.

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.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend the Welfare and Institutions Code section 15675.03 to read as follows:

1 § 15675.03

2 (a) (1) An elder or dependent adult who has suffered abuse, as defined in Section
3 15610.07, may seek protective orders as provided in this section.

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

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

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

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

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

21 (C) A county adult protective services agency shall be subject to any confidentiality
22 restrictions that otherwise apply to its activities under law and shall disclose only those facts as

23 necessary to establish reasonable cause for the filing of the petition, including, in the case of a
24 petition filed pursuant to clause (i) of subparagraph (A), to establish the agency's belief that the
25 elder or dependent adult has suffered abuse and has an impaired ability to appreciate and
26 understand the circumstances that place him or her at risk, and as may be requested by the court
27 in determining whether to issue an order under this section.

28 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

57 (i) After notice and a hearing, the court may issue and order requiring the restrained party
58 to participate in an elder abuse prevention or batterer's program approved by the probation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

115 time within the three months before the expiration of the order.

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

118 (3) If an action is filed for the purpose of terminating or modifying a protective order
119 prior to the expiration date specified in the order by a party other than the protected party, the
120 party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section
121 1005 of the Code of Civil Procedure, of the proceeding by personal service or, if the protected
122 party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division
123 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is
124 protected by the order cannot be notified prior to the hearing for modification or termination of
125 the protective order, the court shall deny the motion to modify or terminate the order without
126 prejudice or continue the hearing until the party who is protected can be properly noticed and
127 may, upon a showing of good cause, specify another method for service of process that is
128 reasonably designed to afford actual notice to the protected party. The protected party may waive
129 his or her right to notice if he or she is physically present in court and does not challenge the
130 sufficiency of the notice.

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

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

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

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

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

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

159 (o) (1) If a respondent, named in an order issued under this section after a hearing, has
160 not been served personally with the order but has received actual notice of the existence and

161 substance of the order through personal appearance in court to hear the terms of the order from
162 the court, no additional proof of service is required for enforcement of the order.

163 (2) If the respondent named in a temporary restraining order is personally served with the
164 order and notice of hearing with respect to a restraining order or protective order based on the
165 temporary restraining order, but the respondent does not appear at the hearing, either personally
166 or by an attorney, and the terms and conditions of the restraining order or protective order issued
167 at the hearing are identical to the temporary restraining order, except for the duration of the
168 order, then the restraining order or protective order issued at the hearing may be served on the
169 respondent by first-class mail sent to the respondent at the most current address for the
170 respondent that is available to the court.

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

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

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

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

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

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

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

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

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

211 (7) If the law enforcement officer determines that a protective order has been issued but
212 not served, the officer shall immediately notify the respondent of the terms of the order and
213 where a written copy of the order can be obtained, and the officer shall at that time also enforce
214 the order. The law enforcement officer's verbal notice of the terms of the order shall constitute
215 service of the order and is sufficient notice for the purposes of this section and for the purposes
216 of Section 273.6 of the Penal Code.

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

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

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

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

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

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

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

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

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

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

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

252 (3) Upon the filing of a petition for a protective order and upon issuance of an order

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

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

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

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

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

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

PROPONENT: Orange County Bar Association

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 06-02-2016, which was approved as amended.

Reasons:

This resolution amends Welfare and Institutions Code section 15676.03 to authorize the court to order anger management classes in Elder Abuse Restraining Order matters. This resolution should be approved in principle because it would give the court authority to order a restrained person to participate in an elder abuse prevention or batterer's program.

The current statute does not give the court the option of ordering a restrained person to participate in this type of program. The proposed amendment would grant the court the authority, when issuing a protective order to prevent elder abuse, to also order the restrained person to participate in an elder abuse prevention or batterer's program. This would give the court a tool similar to that which is already available for domestic violence restraining orders. Further, because family members are often the perpetrators, this approach would give the court a less disruptive option to attempt to heal family relationships by providing the tools and information to the abuser to break the cycle of abuse.

COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

TRUSTS AND ESTATES SECTION - SUPPORT

TEXCOM agrees that the court should be authorized to order a restrained party to attend anger management classes following the issuance of a protective order in elder abuse cases. Such may allow the restrained party to learn how to manage anger issues in a way that facilitates behavior modification, prevents ongoing elder abuse, and fosters family reunification.