

JUVENILE DEPENDENCY & DELINQUENCY

	Dependency (WIC §213.5)	Delinquency (WIC §213.5)
Proof	<p>TRO: If related to domestic violence, reasonable proof of past acts of abuse. If not related to DV, reasonable proof of harassment, unlawful violence or credible threat of violence, & great or irreparable harm would result to petitioner (WIC §213.5(a) & (b); FC §6300; CCP §527.6(d) & §527.8 (e))</p> <p>OAH: If related to domestic violence, preponderance of evidence (Evid. Code §115). If not related to domestic violence, clear & convincing evidence (CCP §527.6(i) & §527.8(j))</p>	
When Can R.O. Be Filed	After §300 petition filed and until petition is dismissed or dependency is terminated (WIC §213.5(a); CRC 5.630(a))	After §601/602 petition filed and until petition is dismissed or wardship terminated (WIC §213.5(b); CRC 5.625(a), 5.630(a))
How Can R.O. Petition Be Made	<ul style="list-style-type: none"> Orally at any scheduled hearing (CRC 5.630(b)(1)), or By written application, which must be submitted on form JV-245 (CRC 5.630(b)(2)) or On court's own motion (WIC §304; CRC 5.630(b)(1)) 	
Who Can Petition	Parent, child, guardian, social worker, probation officer, present caregiver of child, court appointed special advocate, representative of Indian tribe, or other with interest or relationship to child	
Who Can Be Protected	<ul style="list-style-type: none"> Dependent or child subject to §300 petition (Juvenile Court has exclusive jurisdiction for restraining orders regarding dependent children. WIC §213.5(a)) Other children in household (Juvenile Ct has exclusive jurisdiction for restraining orders regarding children in home of dependent children. WIC §213.5(a)) Parent, legal guardian or current caretaker of child, regardless of whether child resides with them Current or former social worker Current or former court appointed special advocate (WIC §213.5(a)) 	<ul style="list-style-type: none"> Ward or child subject to §601/602 petition Other children in household of ward Parent, legal guardian or current caretaker of child, regardless of whether child resides them Current or former probation officer Current or former court appointed special advocate <p><i>If restrained party is ward or subject to §601/602 petition:</i></p> <ul style="list-style-type: none"> Any person court finds to be at risk from conduct of child Any person with whom association with child would be detrimental to child (WIC §213.5(b))
Who Can Be Restrained	<ul style="list-style-type: none"> Any person 	<ul style="list-style-type: none"> Any person Ward or child subject to §601/602 petition
Hearings and Proof	<ul style="list-style-type: none"> Application may be heard simultaneously with any scheduled hearing (WIC §213.5(c)(5)) Proof at hearing may be by application and attachments, additional declarations or documentary evidence, contents of juvenile court file, testimony, or any combination (CRC 5.630(f)(1)).¹ Orders must be prepared on forms JV-250 and JV-255 (CRC 5.620(b), 5.625(a), 5.630(d)(2)) 	
Orders / Enjoined Actions	<ul style="list-style-type: none"> Do not molest, attack, strike, stalk, threaten, sexually assault, batter, harass, telephone (including, but not limited to, making annoying calls as described in Penal Code §635m), destroy personal property, contact (either directly or indirectly, by mail or otherwise), come within specific distance or, or disturb the peace² (WIC §213.5(a)&(b)) Exclude any person from dwelling of person who has care, custody, control of child (WIC §213.5(a), (b) & (e)) (Juvenile court has exclusive jurisdiction for residence exclusion orders regarding dependents. WIC §213.5(a)) Take no action to get address/location of protected person/family members/caregivers/guardians. (WIC §213.7) Do not use/own/possess any guns/firearms/ammunition; relinquish those in or subject to immediate possession or control within 72 hours of receiving order (Fam Code §6389; CRC 5.630(h)) On good cause, court may grant exclusive care, possession and control of animal, and order restrained part stay away from animal and not take, transfer, encumber, conceal, molest, attack, strike or dispose of animal (WIC §213.5(a)&(b)) 	
Requirements for Residence Exclusion Order WIC §213.5(e)	<p>Court may exclude person from dwelling of person who has care/custody/control of child, regardless of which party holds legal or equitable title or is lessee, only on showing that:</p> <ul style="list-style-type: none"> Party who will stay in dwelling has right under color of law to possession of premises; and Party to be excluded has assaulted or threatened to assault other party or any other person under care, custody, and control of other party, or any minor child of party or of other party; and Physical or emotional harm would otherwise result to other party, to any person under care, custody, and control of the other party, or any minor child of the party or of the other party. 	
Duration	<p>Ex Parte TRO: 21 days; 25 days if good cause (WIC §213.5(c)(1))</p> <p>Order After Hearing: up to 3 years (WIC §213.5(d)(1)); does not end automatically at termination of Juvenile case</p>	
Termination & Renewal	May be terminated by court before expiration date; or extended by mutual consent of all parties; or extended by further order of court on motion by any party to restraining order. (WIC §213.5(d); CRC 5.630(j)). After dismissal of jurisdiction, Family Court has jurisdiction to renew restraining order. (<i>Maria G. Garcia v. Gilbert Escobar</i> (2017) 17 Cal.App.5th 267)	
Violation	Willful and knowing violation is misdemeanor, punishable under Penal Code §273.65 (WIC §213.5(h))	
Notice	<p>TRO: may be granted ex parte (WIC §213.5(d)(1); CCP §527(c); CRC 5.630(d))</p> <p>Hearing: personal service sooner of: within 5 days of TRO being granted or 2 days before hearing (CCP §527(d)(2))</p>	
Continuance	Respondent entitled to one continuance (§213.5(c)(2)); either party on showing of good cause (§213.5(c)(3))	
Priorities for Enforcement Penal Code §§ 136.2(c) and (e)	<ul style="list-style-type: none"> Emergency Protective Order (EPO), if more restrictive and if same parties Any no contact provision in any restraining order, whether criminal or civil A criminal protective order (CPO) 	

¹ Court may consider testimony that does not relate to specific facts alleged in request for restraining order. (*IRMO Davila and Mejia* (2018) 29 Cal.App.5th 220)
² Domestic violence perpetrated by father on mother in presence of children supports issuance of restraining order even if children were not "in the line of fire" because such behavior disturbed the peace of the children. There is no requirement of a threat of physical injury. (*In re Bruno M.* (2018) 28 Cal.App.5th 990)