

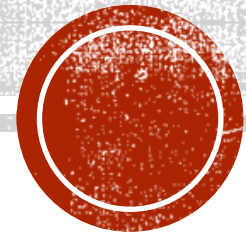


**LEGAL AID
FOUNDATION
OF LOS ANGELES**

Justice • Equity • Hope

**FAMILY LAW &
IMMIGRATION
RIGHTS FOR
FOSTER YOUTH**

Liza M. Davis, Staff Attorney



SUPPORTING FAMILIES WORKGROUP

LAFLA.ORG

- Attorneys and paralegals who provide legal assistance to victims of serious crimes such as domestic violence, torture, trafficking, etc. regarding family law and immigration matters
- We provided counsel and advice or limited assistance to pro per litigants in various community and court clinics
 - Immigration Clinic
 - Long Beach
 - Domestic Violence Clinics
 - South LA Clinics
 - Shelter Clinics
 - South LA Community Clinic
- *We do not assist with dependency or guardianship cases*





Toll Family Law Counseling Center—Los Angeles

• Superior Courthouse
111 N. Hill Street, Room 245 Los Angeles, CA 90012

Domestic Violence Clinic—Long Beach

• Long Beach Courthouse
275 Magnolia Avenue, Room 1004 (1st floor, behind Convenience Store)

Domestic Violence Clinic—Santa Monica

• Santa Monica Courthouse 1725 Main Street

IMPORTANT: Our courthouse-based domestic violence clinics (Downtown LA, Long Beach, Santa Monica) are temporarily available by phone only from 9 a.m.–12 p.m. and 1–3 pm., Mondays, Wednesdays, and Fridays. Call 800-399-4529, extension 8097, for help. We also hold a virtual domestic violence clinic from 9 a.m.–12 p.m. over Zoom, Tuesdays and Thursdays. Call 800-399-4529, no extension, for help.

GOALS

- Basic understanding of:
 - Family Law
 - Intersection with Dependency
 - Domestic Violence Restraining Orders
 - Family Law issues for unmarried parents, including obtaining and modifying child custody/visitation
 - Immigration Law
 - SIJS
 - Other Immigration Relief



WHO ARE “FOSTER YOUTH”?

- a foster child or foster youth is someone under the age of 21 (in California) who has been removed from their home due to abuse or neglect by a parent or guardian.
 - 0-18 years old: traditional foster case
 - 18-21: AB12 Extended Foster Care
 - Former foster youth: 18-21 can access Independent Living Services (ILP)
 - See ILPONLINE.ORG
- Probation vs. Dependency
 - BOTH the juvenile delinquency court and the juvenile dependency court remove children from their home
 - Youth who were only ever on probation and never had a DCFS case can **STILL** be foster youth, if they were placed in an out of home placement



CASE EXAMPLE



FOSTER YOUTH AND DOMESTIC VIOLENCE

Jessica

- 23 year old mother of 3 kids, ages 5, 4, and 2 and all are biologically/legally OP's kids. Jessica began seeing OP when she was 13 and he was 23. They married when Jessica turned 18. Physical abuse began shortly after they were married. OP would hit himself, threaten Jessica, destroy the apartment, and tell her he was going to kill himself. Jessica called the police and filed for a restraining order (RO). After mediation, OP and Jessica reconciled and OP moved back into the house. Jessica withdrew the RO. DV incidents occurred regularly and in front of the kids at times. OP moved in and out of the apartment where Jessica and the kids lived three times before Jessica filed for divorce. After Jessica filed for divorce, OP broke Jessica's car's windshield during a fight about visitation.

Darlene

- 20 year old mother of a 1 year old boy. Darlene was with OP for about 5 years. Darlene broke up with OP after the first incident of abuse when OP hit her at a family party. Post breakup, OP, OP's father, and his brother tried to beat Darlene up. She called the police. Shortly after OP and his brother assaulted Darlene, she went to court and filed a temporary RO against OP, his brother and his father. Darlene did everything she could to get RO to protect her but RO expired after a month because OP and his family are homeless so she could not serve them. Darlene stopped contacting OP and does not allow him any visitation.



INTERSECTION OF DEPENDENCY AND FAMILY LAW

Jessica

- CPS found out about Jessica's involvement with OP at age 13 and reported it to police. The DA investigated but declined to file charges against OP because Jessica's grandparents condoned the relationship. Even when Jessica made contact with police regarding the ongoing acts of violence by the father, there was no CPS investigation opened to determine whether Jessica's children were at risk of harm.

Darlene

- When Darlene called the police on OP and his family, the police reported the incident to CPS. Emergency social worker told Darlene to file a restraining order against OP or child would be removed. Darlene could not serve OP through the civil RO process because he is homeless so CPS filed a petition. Darlene was required to start parenting, DV, and individual counseling classes before her adjudication. After 3 months, the court found Darlene to be a non-offending parent. Her case remained open for six months and she is still subject to CPS surveillance, including unannounced visits



ADDITIONAL FACTS TO CONSIDER...

Jessica

- Former foster youth
- No probation involvement
- White
- In the process of adopting two siblings and has a strong network of adults supporting her
- No visible tattoos
- In school

Darlene

- Former foster youth
- Former probation involvement
- Latinx
- Homeless
- No family support
- Tattoos on face and hands
- Works at organization aimed to rehabilitate ex-gang members

Is it possible that law enforcement and/or CPS assessed the threat to the children differently based on these facts?



KEY QUESTIONS:

Why does this matter?



TROUBLING STATISTICS

- Teen girls in foster care are estimated to be **twice** as likely as their peers not in foster care to get pregnant by age 19. ([Coleman-Cowger, Green, & Clark, 2011](#); [Courtney et al., 2010](#); [National Campaign to Prevent Teen and Unplanned Pregnancy, 2011](#); [Pecora et al., 2003](#))
- Children born to a current or former foster youth are about **EIGHT** times more likely to have their children placed in foster care than the general population. ([Pecora et al., 2010](#))
- County Child Protective Services (CPS) disproportionately file petitions against parents of color in Dependency court. ([Bowman et al., 2009](#); [Fluke et al., 2003](#); [Hill, 2004](#); [Rolock & Testa, 2005](#))
- Children of color are disproportionately placed in foster care.



CHILD WELFARE CASES INVOLVING
CHILDREN AND FAMILIES OF COLOR
ARE MORE LIKELY TO BE:

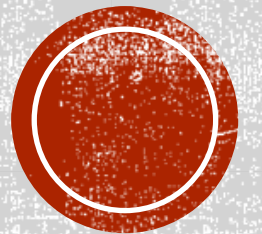


Systemic racism and ableism must be confronted as fundamental components of our child welfare system. Racism is not simply a matter of *personal prejudice* and *hate* but a multifaceted problem that is prevalent within and across systems.

<https://chronicleofsocialchange.org/opinion/child-welfare-is-not-exempt-from-structural-racism-and-implicit-bias>



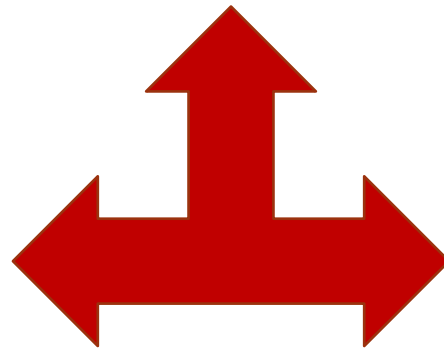
FAMILY LAW & DEPENDENCY COURT



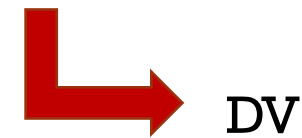
HOW DOES A DEPENDENCY CASE START?

- Referral (Anyone! Group home, transitional housing provider, family member, friends, neighbors, CSW, police and other mandated reporters)

- DCFS investigates
 - Inconclusive
 - Unfounded
 - Substantiated
 - No action if resolved
 - VFM/301 Contract
 - VFR
 - File a petition
 - Removal of child



**Family
Law Court**



DV



WHAT IF DCFS STARTS INVESTIGATING FOSTER YOUTH AFTER SUFFERING DV?

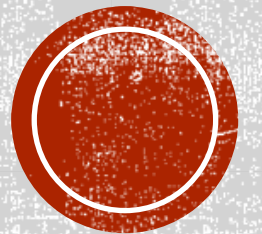
- Sometimes, when a mandated reporter (CSW, teacher, therapist, police officer) finds out that a youth has been a victim of DV and has a child they will call the DCFS Hotline
 - If this happens, a social worker (not your CSW) will contact you and investigate the wellbeing of your child
 - Sometimes this social worker will tell you to go file a DVRO for protection or to go to Family Law court to get custody order
 - Contact your minor's attorney (CLC) and your CSW to let them know this is happening. Sometimes, these people will help avoid a new case

*If you already have a family law case or DVRO case and DCFS still sends you to Dependency, your DVRO/custody case will transfer to Family Court.

- Case will transfer back to Family Court with an "Exit Order" when your Dependency case closes



**DOMESTIC VIOLENCE
RESTRAINING ORDERS
*FOR ANYONE IN NEED OF
PROTECTION FROM DV**



DIFFERENT TYPES OF DV RESTRAINING ORDERS

- **Emergency Protective Orders (EPO), see CA Family Code (“CFC”) §6250**
 - Issued by law enforcement, upon verbal order by judge on call 24/7, when person determined to be in immediate and present danger of DV.
 - Lasts 5-7 days (the earliest of 5th court day or 7th calendar day) per **CFC §6256** .
- **Civil Temporary Restraining Order (TRO), see CFC §6320 et seq.**
 - Preliminary restraining order; Lasts up to 21 days – until service and court hearing; and
 - Can be reissued up to 3 times.
- **Civil Restraining Order After Hearing (ROAH), see CFC §6340 et seq.**
 - Good for up to 5 years, **CFC § 6345**;
 - Valid for 3 years if no expiration on face of order; and
 - Renewal within 3 months of expiration for 5 years or permanently, *without a showing of further abuse*.
- **Criminal Protective Orders (CPO)**
 - Issued for misdemeanor or felony spousal abuse for up to 10 years;
 - May be issued pending trial or post trial as a condition of probation; and
 - If no expiration date listed, expires 3 years after date of issuance or when probation terminates.



UNDER THE DOMESTIC VIOLENCE PREVENTION ACT, CFC § 6203, ABUSE IS DEFINED AS ANY OF THE FOLLOWING:

- Intentionally or recklessly causing or attempting to cause bodily injury;
- Sexual assault;
- Placing a person in reasonable apprehension of imminent serious bodily injury to that person or to another; or
- Engaging in any behavior that has been or could be enjoined such as molesting, attacking, striking, stalking, threatening, battering, harassing, telephoning, destroying personal property, contacting the other by mail or otherwise, disturbing the peace of the other party.



ABUSE NEED NOT BE PHYSICAL

- **Burquet v. Brumbaugh, (2014) 223 Cal. App. 4th 1140: His refusal to accept end of relationship as disturbing her peace.**
- **Marriage of Nadkarni, (2009) 173 Cal.App.4th 1483: Defines disturbing the peace (he hacked into her emails and forwarded some of her attorney-client privileged confidential communications.)**
- **Conness v. Satram, (2004) 122 Cal.App.4th 197: Harassing phone calls, letters, false reports re parole violations.**
- **Tech-enabled abuse: harassment, stalking, tracking, etc.**



REQUIRED RELATIONSHIP, PER CFC §6211

- Spouse or Former Spouse;
- Registered Domestic Partner or Former Registered Domestic Partner;
- Cohabitant/Formal Cohabitant (not merely roommate);
- Past or Present Dating/Engagement Relationship;
- Parties who have children together;
- Child of Party; or
- Relatives within 2 genealogical degrees (by blood, marriage, or adoption): parents, grandparents, siblings, children, & grandchildren.

What If I Don't Have The Required Relationship?

- Civil Harassment Restraining Order



WHO CAN BE PROTECTED?

- Person requesting the domestic violence restraining order and their family or household members *who need protection*.
- Minors, 12 years and older, can file a domestic violence restraining order by themselves.
- A Guardian Ad Litem will need to file on behalf of minors under 12 years of age, CFC §6229.



ACCESS TO JUSTICE FOR DOMESTIC VIOLENCE VICTIMS

- FREE to apply for a domestic violence restraining order.
- An applicant is NOT required to show proof of immigration status. Immigration status should NOT be a consideration in granting domestic violence restraining orders.
- If interpretation is need, the Court will provide a FREE interpreter to the restraining order applicant.
- FREE service of orders by sheriff.




WHAT TYPE OF ORDERS CAN YOU GET?

- Stay Away Orders (inc. Protection of Others Listed)
 - Cannot have contact or go near you, your children, and other family/household members (if included): Standard orders are 100 -yard stay away from you, your children, your home, your school/workplace, your vehicle, the children's school or childcare, and other places that you frequent, such as a relative's home, or possibly a place of worship.
- Residence Exclusion or Move Out Orders
- Firearm Restriction
- Record Unlawful Communications
- Pets: Possession and Stay-Away Order
- Child Custody, Visitation, and Support
- Property Control & Debt Payment
- Freeze Marital Assets and Spousal Support (if married)
- Attorney's Fees
- Batterer's Treatment Program
- Other orders



**FAMILY LAW
CASES FOR
PARENTING
YOUTH**



Three main types:
Exit Orders,
Paternity, and
Divorce

FAMILY LAW: WHAT DOES IT COVER?

I. Exit Orders from Dependency

II. Divorce/Dissolution

III. Paternity

IV. Restraining orders

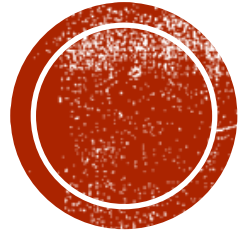
- *DVRO: Pursuant to California Family Code §§ 6300 and 6306, a restraining order may only be issued to prevent a recurrence of domestic violence if there is reasonable proof of past act or acts abuse. These may be issued against a family member, a member of the household, or a stalker.*
- *Abuse? § 6203: intentionally or recklessly cause or attempt to cause bodily harm, commit sexual assault, or place a person in reasonably apprehension of imminent serious bodily harm or engage in any behavior that has been or could be enjoined pursuant to Section 6320 (incl. harassing, destroying personal property, etc).*
- Custody/Visitation included under any of the cases listed above
- What if only one person is listed on the birth certificate?



EXIT ORDERS FROM DEPENDENCY COURT

- In LA County, all dependency cases that end with custody orders automatically get assigned a case number in family law court
 - Who gets custody orders from dependency court? Parents who have a case open against them in Children's Court and get their case closed with custody of their children
- Exit Order
 - Final order from dependency court when case is closed. Exit order can include a finding of paternity and custody orders (*more on this later...*)
 - Can exit orders be modified?
 - YES! Modify exit orders in family court using case number listed on exit order
 - Must show a "significant change in circumstances"





**WHAT IF DEPENDENCY
COURT HAS NOT BEEN
INVOLVED?**

PATERNITY — UNMARRIED PERSONS

- A Uniform Parentage (UP) case establishes who the legal parents of a child are if the parents were not married when the child was born.
- A Voluntary Declaration of Paternity (VDP) has the effect of judgment of paternity.
- If a person is established as a legal parent of a child, that person **MUST** support the child. A legal parent also has the right to get custody and/or visitation rights related to the child.



PATERNITY PROCESS

Step One: Start Case

- File and serve court forms (*Request to Establish Paternity*)

Step Two: Request Orders

- Some relief that can be requested:
 - Who the father or sometimes the mother is, DNA genetic testing
 - Child custody, visitation, and support
 - Name change of minor child
 - Change or add name of parent to birth certificate

Cons:

- Finding of paternity grants all parents involved right to minor child (if other parent is not on the birth certificate they have no legal rights to child)
- If other parent is not in child's life he may want to be after paternity is filed.



WHO IS THE OTHER PARENT?

- Uniform Parentage Act (UPA):
 - Now gender neutral.
 - Presumed Parents: Married (or Domestic Partners—previously), CFC §7540.
 - Other presumptions: Attempts to marry; receives child into home and openly holds out as parent; would have done so but for actions of other parent; adjudication and acknowledgment of paternity, CFC §7611.
 - NOT rape, CFC §7611.5.
- How Many Parents?
 - In re M.C., (2011) 195 Cal.App.4th 197: 2 Moms (one hospitalized, one incarcerated) + 1Dad; Court held CA mandates no more than 2 parents.
 - CFC §3040, amended in response to In re M.C.: CA now permits multiple parents where detrimental to child to find otherwise.



CUSTODY: THERE ARE TWO TYPES

Legal Custody

- Person(s) who makes the decisions re the child's welfare – esp. re health, education, and religion
- *Legal custody can be joint or sole*

Physical Custody

- Primary caretaker, person with whom the child lives.
- *Physical custody can be joint, sole, or primary*



WHAT HAPPENS IF THERE ARE NO CUSTODY ORDERS?

In the absence of custody orders, both parents have equal rights and responsibilities regarding their children.

- **Legally: only parent/s listed on birth certificate have legal rights to child**
- **Real life: it's complicated**
 - If a dispute arises and one parent is trying to get the child from the other parent, the police will not intervene to take the child from one parent to give to other parent.
 - Police usually asks to see court order regarding custody
 - Child kidnapping is different



REQUEST FOR CUSTODY ORDER

If you want custody orders:

- File a "Request for Order" using your family law case number
 - Cases: Paternity, Divorce, Exit Orders

Other things you should know about custody disputes

- Mandatory custody mediation: Conciliation Court.
- No agreement - judge decides based on best interests of the child.
- Judge can order child custody evaluation.
- Judge can order appointment of Minor's Counsel



BEST INTERESTS STANDARD

- **CFC § 3044** Rebuttable Presumption Based on Violence: Batterer should not get primary custody if finding of DV within last 5 years. Can be rebutted by evidence that former batterer successfully completed 52-week treatment program; residential program for substance abuse; parenting classes etc.
- Criminal record; alcohol or drug abuse.
- Stability: Generally, courts are reluctant to upset the custodial arrangement prior to the hearing and contrary to any showing of detriment to the children, courts will maintain the status quo. Permanent orders frequently mirrors interim orders.
- Wishes of Child, Testimony, **CFC § 3042**: Child must be of “sufficient age and capacity to reason so as to form an intelligent preference as to custody or visitation.” Generally, the older the child the more weight, particularly with teens. Code provides for child of 14+ to “address” the court, unless court determines not in child’s best interests.
- Factors Not Considered: Relative wealth of parents, religious or social beliefs, sexual orientation, treated mental health condition.

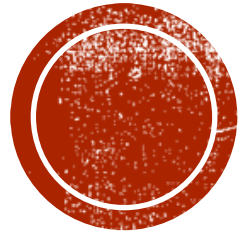


REBUTTABLE PRESUMPTION BASED ON VIOLENCE, CFC §3044

SAFETY is the KEY - CFC §3044(a): Custody to perpetrator of DV* is detrimental to the best interest of child.

- Based on DV conduct/finding/conviction within previous 5 years Factors to considered in overcoming presumption include:
 - (1) Best interest; frequent and continuing contact
 - (2) Successful completion of batterer's treatment program
 - (3) Successful completion of drug or alcohol program
 - (4) Successful completion of parenting class
 - (5) Compliance with probation/parole terms
 - (6) Criminal Protective Order or DVPA and compliance with terms/conditions
 - (7) Where DV perpetrator has committed any further acts of DV





IMMIGRATION LAW

SIJS, U-Visa, and other options

FOUR TYPES OF IMMIGRATION STATUS

1. Citizens
2. Legal Permanent Residents (green card holder)
3. Non-immigrants
4. Undocumented



SIJS (SPECIAL IMMIGRANT JUVENILE STATUS)

What is it?

- an immigration classification (visa) available to undocumented youth who are under 21 years old. If you get it, you can apply for a green card (lawful permanent resident status), you get protection from deportation and you get a work permit.

Who qualifies?

- Youth who are current dependents of the Juvenile Court (DCFS or Probation)
- Youth whose reunification with one or both parents is not viable due to abuse, neglect, abandonment or a similar basis found in state law
- Youth whose best interest it is NOT to return to his or her country of nationality or last habitual residence.
- Youth who are unmarried and under the age of 21 in the United States.



WHAT TO DO IF YOU'RE ELIGIBLE FOR SIJS?

- If you're eligible or believe you are eligible, you should talk to your minor's attorney (CLC) and your CSW. They must conduct an assessment and refer you to the DCFS Immigration unit (SIS Unit)
- What is the SIS Unit?
 - It's a unit in DCFS that helps foster youth apply for SIJS
 - You will be assigned an immigration case worker (not an attorney) who will help you with your case
 - This unit either does your case themselves or refers you to an attorney
 - Most foster youth cases are currently placed with Bet Tzedek: bettzedek.org
- What if I have a question or concerns regarding my case?
 - Speak to your SIS case worker
 - Tell your minor's attorney
 - Consult with an immigration attorney
- Website: <https://dcfs.lacounty.gov/youth/immigration/>



U-VISA

- An immigrant visa for undocumented immigrants (adults or children) who are victims of violent crimes such as domestic violence, rape, severe physical assault etc. who are willing to cooperate with law enforcement and DCFS in the investigation and prosecution of the crime
 - Basic requirements: (*not a complete list)
 1. Person applying was a victim of a crime
 2. Person suffered serious harm
 3. The person cooperated with the investigation of the crime
 - **Law enforcement/investigating agency (includes DCFS) MUST sign a certification saying you cooperated**



OTHER IMMIGRATION OPTIONS

- **T-Visas:** Undocumented immigrant (adults or children) submitted to forced prostitution or forced labor.
- **VAWA:** Permits an abused undocumented spouse or child of a U.S. citizen or lawful permanent resident to apply for a legal resident card without the cooperation of the abuser. An undocumented child can receive VAWA benefits even if he or she was not abused, as long as the child's parent qualifies for VAWA due to abuse.
- **Asylum:** Fear of persecution in their home country.
- **Family Based Petition:** immigration law allows U.S. citizens to petition for a spouse, child, parent or sibling to come and live permanently in the United States.
 - Legal Permanent Residents can petition for their spouse and children.



WHAT TO DO IF YOU'RE ELIGIBLE FOR AN IMMIGRANT STATUS OTHER THAN SIJS?

- If you're eligible or believe you are eligible for a visa, you should talk to your minor's attorney (CLC) and your CSW.
 - They should provide you with referrals to a free or low-cost immigration attorney
- What is a free or low-cost immigration attorney?
 - An attorney that works for a legal non-profit organization or a law firm
 - They are free or low-cost because they receive special grants/funding to help low-income people
 - Eligibility: every free/low-cost attorney has different eligibility criteria. Usually, the person has to be low income.
- BEWARE of notarios!!!





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