

VICTIM'S RIGHTS

STATUTORY PROVISIONS

- An advocate and a support person (PC §679.04)
- Name withheld from the police report and charging documents (PC §293; GC §6254(f))
- Right to be heard at sentencing (PC §1191.1)
- Right to notice of release of defendant from custody (PC §§646.93PC and 679.02)
 - **VINE (Victim Info & Notification Every Day)**
 - www.vinelink.com
 - **1-877-VINE-4-LA (1-877-3452)**
- Right to court accompaniment (PC §868.5)

MARSY'S LAW

Prop 9 ("Marsy's Law") passed by electorate on 11/4/08 and victims' rights are now included in the **California Constitution**. The 17 specific Constitutional rights (Article 1, Section 28):

1. Right to be treated with fairness and respect and to be free from harassment and abuse throughout the judicial process.
2. Right to be reasonably protected from the defendant or those acting on his behalf.
3. To have the victim's safety considered in setting bail. Previously only the "safety of the community" was considered.
4. To prevent the disclosure of confidential information – medical and counseling records. Has been a misdemeanor to disclose address, phone number, etc. to a defendant or suspect.
5. To refuse a defense interview or to set reasonable conditions for the interview.
6. **To reasonable notice and to reasonably confer with the prosecutor regarding the arrest, charges, extradition, and plea bargain.**
7. **To reasonable notice of all public proceedings.**
8. **To be heard at any proceeding in which a right of the victim is at issue.** Victims have had a right to submit a Victim Impact Statement before sentencing.
9. To a speedy trial and prompt and final conclusion of the case and post-judgment proceedings.
10. To provide information to the probation officer regarding sentencing recommendations.
11. **To receive a copy of the probation report.**

12. **To be informed of the conviction, sentence, place and time of incarceration, scheduled release date, release, or escape.** VINE, 1707 form
13. Restitution for all crime-related losses. This was the only victim's right that was already a constitutional right. Defendant is also responsible to reimburse the Victims of Crime fund for any money that was paid to the victim.
14. Prompt return of property when no longer needed as evidence.
15. To be informed of and participate in all parole procedures.
16. To have victim's safety considered before any parole or post-judgment release is made
17. To be informed of all these rights – police and prosecutors must inform victims. Police hand out "Marsy's" cards and LADA sends out a letter to all victims at time of filing informing them of their rights.

Bolded portions are not automatic; the victim must request these rights.

WHAT WE OFFER

LADA Victim Advocates offer the following:

- **Crisis Intervention** – assess emotional and physical needs and refer to local agencies
- **Emergency Assistance** – find temporary shelter, food, prescriptions, eyeglasses or dentures, including possible relocation
- **Resources and Referrals** – for counseling
- **Direct Counseling** – to provide emotional support, check on victim's progress, etc.
- **Assistance with filing Victim of Crime claim forms** – State of CA administers the **Victim Compensation and Government Claims Board fund**. Every convicted defendant pays restitution to fund the program to reimburse direct victims, derivative victims and next of kin for crime-related losses. **ADULT VICTIMS MUST APPLY WITHIN ONE YEAR OF CRIME.**
- **Assistance in getting victim's property returned** – contact police or DA
- **Orientation to the Criminal Justice System**
- **Court Escort** – stay with victim when victim has to come to court to testify
- **Monitoring court cases** – keep victims up to date on progress of the case
- **Notification to friends, relatives, and employers** – if victim requests
- **Assistance in obtaining restitution** – from defendant; whatever not covered by VOC

PROTECTIVE ORDERS

TYPES

- There are many variations all with the same theme. The abuser must stay away from the victim.
- Sometimes there are exceptions
 - Peaceful contact order – can only have “peaceful” contact
 - Safe exchange of children – can only have contact to exchange children
- Pets can be included in these
- Require that all firearms be sold or transferred

PENALTIES

- Violation of an EPO, DVPO, CCPO or a RO is a crime.
- Multiple violations of a PO may constitute stalking pursuant to PC 646.9.
- If there is probable cause to believe that the orders have been violated when officers respond to a DV call, PC 836(c)(1) mandates arrest.
- If a CCPO is violated, it is potential witness intimidation under PC 136.1, a serious felony.

EMERGENCY ORDERS

- Statutory Authority – FC 6215, 6250-6275
- Can happen immediately upon law enforcement contact, can get the abuser out of the house immediately.
- Who gets the order?
 - Law Enforcement calls a judge who is available 24 hours per day.
- What has to be shown to the judge?
 - Reasonable grounds to believe that there is immediate and present danger of DV, child abuse, or child abduction by a parent or relative or household member based upon a recent incident of abuse or a threat.

DOMESTIC VIOLENCE ORDERS

- Statutory Authority – FC 6211, 6300-6389
- Who gets the order?
 - The victim. It is free.
- It is a two-step process.

- Temporary (OSC) (15 days)
- Permanent/You might be called to a hearing.
- What has to be shown to the judge?
 - Reasonable proof of a past act or acts of abuse.

CRIMINAL PROTECTIVE ORDER

- Statutory Authority – PC 136.2, 273.5(i), 646.9(k)
- Who gets the order?
 - The DA should ask and give the victim a copy.
- What has to be shown to the judge?
 - Upon good cause belief that harm, intimidation, dissuasion of a witness or a victim has or is reasonably likely to occur. Relatives of the offender can be served with this order (PC 136.2(a)(3)).
- The CCPO-DV trumps all other competing orders (except an EPO) – CRIMINAL WINS!! - PC 136.2(e)(2)

CIVIL RESTRAINING ORDER

- Statutory Authority – CCP 527, 527.6
- Who gets the order?
 - Person who has suffered “harassment”. No fee.
- What has to be shown to the judge?
 - Clear and convincing evidence that unlawful harassment exists.
 - Harassment – unlawful violence, a credible threat of violence,
 - or a knowing and willful course of conduct at a specific person that seriously alarms, annoys or harasses the person, and that serves no legitimate purpose. The course of conduct must cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to applicant.

ACTS BY THE VICTIM DO NOT NEGATE THE ORDER

- If the victim invites the offender in and violence occurs by the offender, the violence is a crime AND the order is violated. Only the restrained party can violate the order.

- Only the court can dictate or change the terms of a protective order – not the parties and their actions. PC 13710(b)

TERMS AND CONDITIONS

- Serve offender so s/he is on notice to conform their conduct (Sheriff, Friend, or Process Server)
- So long as offender is present to hear the terms of the order from the court, no additional proof of service is required.
- Standard T/C:
 - No harassment
 - Stay-Away within a certain distance
 - Kick-out
 - Children
- Modification: at least 6 months in program

TIME LIMITS

- EPO's are only valid for 5-7 days.
- Criminal orders can be valid up to 10 years
- Other orders may be valid during probation only
- Civil orders generally valid for 3 years.