

Domestic Violence and Child Custody

If you are involved in a family law case involving children and there has been domestic violence, here is important information about a law that affects you.

What is "child custody"?

There are two types.

- *Physical custody:* Whom the child lives with
- *Legal custody:* Who makes important decisions regarding the child's health care, education, and welfare

What is "domestic violence"?

It means to hit, kick, scare, throw things, pull hair, push, follow, harass, sexually assault, or threaten to do any of these things. It also includes other actions that make someone afraid of being hurt. Domestic violence can be spoken, written, or physical.

How does the judge decide if there is domestic violence in my case?

The judge will treat your case as a domestic violence case if, in the last 5 years,

- A parent was convicted of domestic violence against the other parent or
- Any court has decided that one parent committed domestic violence against the other parent or the children

Otherwise, the judge will decide based on all the evidence in your case. The judge cannot decide based only on the conclusions or recommendations of Family Court Services staff or a child custody evaluator.

What if the judge decides there is domestic violence in my case?

If a court decides there is domestic violence (now or in the past 5 years) against a parent or the children, the judge must follow special rules to decide custody of the children.

Usually, the judge *cannot* give custody to the person who committed domestic violence. But the judge can give that person visitation.

Are there exceptions?

Yes. The judge can give custody to the person who committed the domestic violence. To do so, the judge must consider whether:

- It is best for the child
- The person has:
 - Completed a 52-week batterer's program
 - Not committed any other domestic violence
- The person has obeyed court orders to:
 - Complete an alcohol or drug abuse program or a parenting class
 - Follow all terms of probation or parole or a protective or restraining order

This law applies to any person seeking custody, not only a parent. To read the law, see California Family Code section 3044 (attached). Other laws also apply.

Need Help?

For more information, contact:

See: LEGAL RESOURCE LIST
(attached)



ADMINISTRATIVE OFFICE
OF THE COURTS

CENTER FOR FAMILIES, CHILDREN
& THE COURTS

California Courts Online Self-Help Center: www.courtinfo.ca.gov/selfhelp/

Family Code Section 3044

January 1, 2004

(a) Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence against the other party seeking custody of the child or against the child or the child's siblings within the previous five years, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child, pursuant to Section 3011. This presumption may only be rebutted by a preponderance of the evidence.

(b) In determining whether the presumption set forth in subdivision (a) has been overcome, the court shall consider all of the following factors:

(1) Whether the perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interest of the child. In determining the best interest of the child, the preference for frequent and continuing contact with both parents, as set forth in subdivision (b) of Section 3020, or with the non-custodial parent, as set forth in paragraph (1) of subdivision (a) of Section 3040, may not be used to rebut the presumption, in whole or in part.

(2) Whether the perpetrator has successfully completed a batterer's treatment program that meets the criteria outlined in subdivision (c) of Section 1203.097 of the Penal Code.

(3) Whether the perpetrator has successfully completed a program of alcohol or drug abuse counseling if the court determines that counseling is appropriate.

(4) Whether the perpetrator has successfully completed a parenting class if the court determines the class to be appropriate.

(5) Whether the perpetrator is on probation or parole, and whether he or she has complied with the terms and conditions of probation or parole.

(6) Whether the perpetrator is restrained by a protective order or restraining order, and whether he or she has complied with its terms and conditions.

(7) Whether the perpetrator of domestic violence has committed any further acts of domestic violence.

(c) For purposes of this section, a person has "perpetrated domestic violence" when he or she is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in any behavior involving, but not limited to, threatening, striking, harassing, destroying personal property or disturbing the peace of another, for which a court may issue an ex parte order pursuant to Section 6320 to protect the other party seeking custody of the child or to protect the child and the child's siblings.

(d) (1) For purposes of this section, the requirement of a finding by the court shall be satisfied by, among other things, and not limited to, evidence that a party seeking custody has been convicted within the previous five years, after a trial or a plea of guilty or no contest, of any crime against the other party that comes within the definition of domestic violence contained in Section 6211 and of abuse contained in Section 6203, including, but not limited to, a crime described in subdivision (e) of Section 243 of, or Section 261, 262, 273.5, 422, or 646.9 of, the Penal Code.

(2) The requirement of a finding by the court shall also be satisfied if any court, whether that court hears or has heard the child custody proceedings or not, has made a finding pursuant to subdivision (a) based on conduct occurring within the previous five years.

(e) When a court makes a finding that a party has perpetrated domestic violence, the court may not base its findings solely on conclusions reached by a child custody evaluator or on the recommendation of the Family Court Services staff, but shall consider any relevant, admissible evidence submitted by the parties.

(f) In any custody or restraining order proceeding in which a party has alleged that the other party has perpetrated domestic violence in accordance with the terms of this section, the court shall inform the parties of the existence of this section and shall give them a copy of this section prior to any custody mediation in the case.

LEGAL RESOURCE LIST

SAN LUIS OBISPO SUPERIOR COURT

1035 PALM STREET, ROOM 385, SAN LUIS OBISPO, CA 93408; PHONE: (805) 781-5706

This list includes non-profit agencies, which provide legal, mediation and referral services at low or no cost. Also listed are self-help internet sites. This list is not comprehensive. The Court is not responsible for the type of service you receive from the listed agencies.

CHILD SUPPORT SERVICES DEPARTMENT

1200 Monterey Street, SLO, CA 93401

(866) 901-3212

WALK-IN HOURS: Mon - Fri 8 am – 5 pm

PHONE HOURS: Mon - Fri 1 pm – 5 pm

SERVICES: Assist to establish, modify or enforce child support and health insurance.

<http://www.slocounty.ca.gov/css>

FAMILY COURT SERVICES

Mailing Address:

901 Park Street, Paso Robles, CA 93446

(805)226-3251 Hours: Mon-Thurs 8:30am-4pm

SERVICES: Mediate child custody issues between parties in family law cases to reach a parenting plan agreement.

Separate appointments available.

COST: Free

<http://slocourts.net/fcs>

SELF-HELP CENTER

FAMILY LAW FACILITATOR OFFICE

(805) 788-3418 Recorded Information

1035 Palm St. 3rd Floor Atrium, SLO, CA

901 Park St. Rm 112 Paso Robles, CA

WALK-IN HOURS: Mon, Tues, Wed,

Thurs: 8:30 am – 11:30 am

WORKSHOPS: Start or Respond to Divorce Case Workshop and Child Support, Custody and Visitation Workshop.

View workshop schedule at

http://slocourts.net/self_help/family_law/facilitator_schedule

APPOINTMENTS: Follow-up appointments may be scheduled by coming to our walk-in or workshop.

SERVICES: Assist in divorce, legal separation, nullity, paternity, restraining orders, guardianship and name change cases. Help obtain and modify child support, custody and visitation orders.

COST: Free

http://slocourts.net/self_help/family_law

211 SLO COUNTY

P.O. Box 14309, SLO, CA 93406

2-1-1 or (805) 549-8989 or (800) 549-8989

SERVICES: 24-hour information and referrals to community resources.

COST: Free

<http://www.unitedwayslo.org/211/211.html>

SLO LAWLINE

(805) 548-8884

PHONE HOURS: Mon – Thurs 9am – 4pm

SERVICES: Program staff provides referrals to legal assistance programs in SLO County. SLO County Bar Association volunteer lawyers, if available, may provide legal information and advice at no charge to individuals who are unable to afford a lawyer.

COST: Free

<http://slobar.org/>

LAWYER REFERRAL AND INFORMATION SERVICE (LRIS)

(805) 541-5502

PHONE HOURS: Mon – Fri 9am – 1pm

No Walk-Ins.

SERVICES: When appropriate, provide a referral to an LRIS attorney in any of the following areas of law: Appellate, Bankruptcy, Business, Collection, Criminal Defense, Employment, Estate Planning, Family Law, (including Limited Scope) General Civil Litigation, Landlord/Tenant, Malpractice, Personal Injury, Real Property. Assist with other resources including referrals to local county agencies when applicable.

COST: \$40.00 LRIS administrative fee if referred to an attorney. Attorney's regular fee will apply following the initial appointment.

Online request may be submitted at

<http://www.slobarlriss.org>

RISE

51 Zaca Ln, Ste. 140, SLO, CA 93401

1030 Vine St., Paso Robles, CA 93446

855-886-RISE(7473) toll-free, 24-hr crisis line

HOURS: Mon - Fri 8:30 a.m. – 5:00 p.m.

SERVICES: Serving victims of domestic violence and sexual assault. Assistance with obtaining temporary restraining orders, counseling and shelter services and advocacy and accompaniment. All services are confidential and available in Spanish.

COST: Free with donations accepted.

www.RISEslo.org

WOMEN'S SHELTER PROGRAM OF SAN LUIS OBISPO

781-6400 24-Hour Crisis Line

HOURS: Mon - Fri 9:00 a.m. – 5:00 p.m.

SERVICES: Provide counseling and shelter for victims of domestic violence and their children. Survivors of domestic violence may receive assistance filing for restraining orders, please call (805) 781-6418. For emergency shelter, please call (805) 781-6400. For counseling, please call (805) 473-6507.

COST: Free with donations accepted. Sliding scale for counseling services.

<http://www.wspso.org>

CALIFORNIA RURAL LEGAL ASSISTANCE

1011 Pacific St., Ste. A, SLO, CA 93401

(805) 544-7994

OFFICE HOURS: Mon, Tues, Wed, Thurs
9:00 am to 12:00 pm and 1:00 pm to 5:00 pm
Fri 9:00 am to 12:00 pm

COST: Free for low-income individuals

SERVICES: Assist in civil law cases, including housing, labor and employment, education, civil rights and public benefits. Do not assist with family law, criminal law or debt collection.

Eviction Program: Assist self-represented tenants and landlords with eviction issues.

Walk-In: 9am to 12pm Mon and Wed in San Luis Obispo Courthouse and Tues in Paso Robles Courthouse.

Workshops: 1:30pm on Mon and Wed at 1120 Mill St. Ste. A in San Luis Obispo and Tues at Paso Robles Courthouse 901 Park St.

<http://www.crla.org>

CATHOLIC CHARITIES

3592 Broad Street, Ste. 104, SLO, CA 93401

(805) 541-9110

OFFICE HOURS: By Appointment Only

PHONE HOURS: Mon – Fri, 9:00 a.m. – 5:00 p.m.

SERVICES: Assist in immigration and housing cases

COST: Sliding Scale

CREATIVE MEDIATION

285 South St, Ste. J, SLO, CA 93401

(805) 549-0442

HOURS: Mon – Fri, 9:00 a.m. – 4:00 p.m.

SERVICES: Offer mediation and conflict-coaching services to resolve small claims and community, landlord/tenant, and neighbor issues, with specialized services for family conflict including elder concerns, parent/teen and child custody/visitation.

COST: Free or Low Cost

<http://www.creativemediation.net>

SAN LUIS OBISPO COUNTY LAW LIBRARY

1050 Monterey St. Room 125, SLO, CA 93408

(805) 781-5855

HOURS: Mon – Fri, 9 am – 4 pm

SERVICES: Reference materials available including Nolo Press publications, copier, and computer with internet access.

<http://www.sloccl.org>

SAN LUIS OBISPO LEGAL ASSISTANCE FOUNDATION

1011 Pacific Street, Suite B, SLO, CA 93401

(805) 543-5140

(805) 543-1305 fax

OFFICE HOURS: By Appointment Only.

COST: Free (donations appreciated)

Senior Legal Services Project Services

Legal assistance for seniors age 60+ residing in San Luis Obispo County with elder abuse, durable powers of attorney, advance health care directive, landlord-tenant, and consumer law. Call for an appointment in the SLO office or at various senior centers around the County. For appointment: (805) 543-5140.

Government Benefits Program: Legal assistance for seniors age 60+ or disabled adults experiencing difficulties with application for, and/or management of their public assistance benefits including Social Security retirement & disability, SSI, and Medi-Cal. For appointment: (805) 543-5140.

Veterans Assistance Program: Legal assistance for qualified homeless veterans who participate in CAPSLO's Supportive Services for Veteran Families Program. Referrals through CAPSLO only: (805) 503-9867.

www.slolaf.org

SMALL CLAIMS ADVISORY

1050 Monterey St, Room 223, SLO, CA 93408

(805) 781-5856 - Press Option 3

PHONE AND WALK-IN HOURS: Mon – Fri,
9:00 a.m. – 12:00 p.m.

SERVICES: Assist to complete small claims forms, answer procedural questions and provides referrals to legal resources and publications.

COST: Free

http://www.slocounty.ca.gov/DA/Economic_Crime_Unit.htm

INTERNET SITES FOR SELF-HELP

• California Courts Self-Help Center:

www.legalselfhelp.ca.gov

• California Child Support Guideline Calculator:

<https://www.cse.ca.gov/ChildSupport/cse/guidelineCalculator>

• Judicial Council Forms:

<http://www.courts.ca.gov/forms.htm>