

Temporary Child Custody & Visitation Orders

During the pendency of a proceeding where the custody of a minor child is in issue (including domestic relations status actions, Ca Fam § 3120 actions for exclusive custody, DVPA actions provided a parent-child relationship has been established, UPA actions and Ca Fam § 17404 county agency support enforcement actions), the court may make whatever temporary custody order "seems necessary or proper." [CA Fam §§ 2045(b), 2047, 3021, 3022, 3060 et seq., 6323(a)]

All custody adjudications are subject to uniform statutory standards rooted in the child's best interests, with the primary concern being the child's health, safety and welfare. [See Ca Fam §§ 3011, 3020, 6223]

The court may also issue a temporary order determining the right of a party to visit a minor child "on the conditions the court determines." [CA Fam §§ 2045(b), 2047, 6323(a)(1)]

Issuance Of Temporary Child Custody Or Child Visitation Orders On Ex Parte Application

Temporary custody/visitation orders may be issued ex parte (Ca Fam §§ 2045(b), 6323) or after notice and hearing (Ca Fam §§ 2047, 6340(a)). The "ex parte" procedure allows for a hearing to be held within 24 hours of oral notice of the hearing to the opposing party.

However, an order granting (or modifying) custody or visitation cannot issue on an ex parte basis unless there has been a showing of immediate harm to the child or immediate risk the child will be removed from the state. [Ca Fam § 3064; Ca Fam § 6323(a) (incorporating by reference § 3064 limitation on ex parte visitation orders)]

For purposes of § 3064, "immediate harm to the child" includes a parent's acts of "domestic violence" (any act of domestic "abuse" as defined by the DVPA) found to be of "recent origin" or "part of a demonstrated and continuing pattern of acts of domestic violence." [Ca Fam § 3064]

Further, in conjunction with any ex parte custody order, the court must enter an order restraining the person receiving custody from removing the child from the state pending notice and a hearing on the custody order. [Ca Fam § 3063]

Ex Parte Orders Valid Only For 20 Days

Any ex parte order governed by the Family Code, ex parte child custody orders ordinarily must be returned for OSC hearing within 20 days (Ca Fam § 242). If the responding party does not appear or respond within the time set, the temporary custody order "may be extended as necessary, pending the termination of the proceedings." [Ca Fam § 3062(a)]

Exception - 90 Day Extension: If, despite good faith efforts, service of the ex parte order and OSC cannot be effected in a timely fashion and there is reason to believe, based on petitioner's affidavit or declaration under penalty of perjury, that respondent has possession of the children and is either avoiding the court's jurisdiction or is concealing the children's whereabouts, the OSC hearing may be reset and the ex parte order extended up to an additional 90 days. [C Fam § 3062(b)]