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**RELEASING CHILDREN FROM CHILD CARE AND CUSTODY ISSUES:
WITH WHOM CAN THE CHILD GO HOME?**

By the Staff of the Child Care Law Center

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INTRODUCTION

When and to whom to release a child in their care is an inevitable dilemma for child care providers. Providers are legally responsible for children left in their care and should release children only to certain people. In the absence of a court order, these people are:

- 1) the child's parent(s) or legal guardian(s);
- 2) anyone authorized in writing by the parent who has *physical custody*;¹ and
- 3) police and child welfare workers with proper authorization.

Normally, the only people who will come for a child are those who are requested to do so by the parent(s). However, once in a while, someone will come to pick up the child who does not have the parent(s)' consent, or a parent who has no legal right to pick up a child will attempt to do so. In order to protect themselves and the children in their care, child care providers must be prepared for these situations.

As an initial precaution, the Child Care Law Center recommends that all child care providers develop a written policy on the release of children. The policy should say that each child may be released only to the child's custodial parent(s) or to a person authorized by the custodial parent(s). Names, addresses, and telephone numbers of anyone authorized by the parent to visit the child at the program and/or take the child from the program should be obtained before or at the time of the child's enrollment and updated as often as necessary. If a program's policy requires that a person authorized by the parent to pick up the child meet certain qualifications (such as being at least 18 years of age), the program should inform the parent of this at the time of enrollment. An example of a form for this purpose is an Appendix to this article.

When the person authorized to pick up the child is unexpectedly delayed you may decide to let a child leave with someone not on the authorized release list. If you want to allow this, explain at the time of enrollment that persons not named in the enrollment form must have a dated note signed by a custodial parent authorizing you to let the child leave with them. It is best to require that a parent confirm this arrangement with you by phone or in person beforehand.

In addition, some practical arrangements, such as adequate supervision, need to be in place to ensure that no one can remove a child without your knowledge. There should also be rules in place to ensure that anyone (even the person with custody) who comes to pick up the child notifies you of that purpose and obtains your consent before removing the child from your care. The policy should also contain procedures for checking the identification of authorized individuals who are unfamiliar to the program staff, such as requiring a photo I.D. or a note signed by the parent. You cannot guarantee that an unauthorized person will never remove a child, but you are obligated to take reasonable steps to prevent such a removal. These rules should be clearly set out in your enrollment form.

In addition to the information discussed above, a comprehensive policy should address the provider's responsibilities when parental rights are shared, releasing a child to an intoxicated

adult, releasing a child without supervision, releasing a child to a sibling or other child, releasing a child in the absence of a proper car seat, failure to pick up child, and child abuse and domestic violence. These issues are outlined below.

HOW CAN I TELL WHO REALLY HAS CUSTODY OF THE CHILD?

Child care providers must release a child to an adult who has physical custody of the child. When the parents are married and not separated, both parents have equal custody. But there are many other situations where a provider must determine who has the authority to pick up a child or make decisions about a child's care. When custody is shared between parents, the law distinguishes between *legal* and *physical* custody of children.

Legal custody is the right and responsibility to make decisions relating to the health, education and welfare of a child.² Usually, a parent with legal custody is authorized to decide whether the child will enroll at a given family child care home or center.

Physical custody is the right and responsibility to supervise and reside with a child, subject to the rights of the other parent to visitation.³

Legal and physical custody can be held jointly between parents or solely by one. In addition, all rights to custody of a child can be changed by a court order.⁴ For a more complete list of the varieties of custodial arrangements (such as joint custody), please turn to the Glossary.

HOW DO I KNOW IF THE PERSON ENROLLING THE CHILD HAS PARENTAL RIGHTS TO THAT CHILD?

Unfortunately, it is not always a good idea to accept the word of the person enrolling the child as to who has custody. Not only can a court order change custodial rights, parents can be misinformed about their rights and obligations. For example, a parent might not realize that during the initial period of separation, before the court is involved, each parent has an equal right to pick up the child.

If the parents are married or have not taken any legal steps to separate, either one may enroll a child in child care because both have full custodial rights. If parents are not married, or are legally separated, you must determine who has legal custody of the child because that is the person who can make decisions about the care of the child. If the parents have joint legal custody, either parent may make decisions for the child unless a court has specifically noted otherwise.⁵

In order to determine whether an individual has legal custodial rights to a child, the provider must ask the enrolling parent what his or her parental relationship is to the child, and whether there is a legal document affecting the parent's custodial rights. You should also ask if anyone

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else has a legal relationship with the child (such as another parent, step-parents, or guardians) and whether there have been court proceedings concerning the child. You should ask for a copy of all legal documents affecting custodial rights. In particular, you should ask for copies of any restraining orders issued by the court that relate to the child, the enrolling parent, or to other family members. You may ask with whom the child is living (both parents, one parent, grandparent, step-parent, etc.) because that person may have physical custody and/or may need to be listed as a person authorized to pick up the child.

If the parents are not living together, you should ask if a legal decision has been made about the child's custody. If so, ask who has physical custody and who has legal custody. While a parent with legal custody can make decisions about the child's education, only a parent with physical custody at the time of the pickup can make decisions about picking the child up from care. If parents have joint legal custody, either parent may make decisions for the child unless the court has specifically noted otherwise.⁶

To be sure about who is entitled to make decisions about and pick up the child, you should request a copy of the most recent custody order. Make sure you get a copy and the parent agrees to provide any updated order. Read it carefully, because the court order can assign physical custody rights so make sure you understand what it says. Also, because custody orders can be modified, it is best to require the person with physical custody to alert you to changes by giving you an updated, certified copy of any modified custody order. In order to understand a particularly complex court order, you may wish to consult the parents' attorneys who were involved in the proceedings. In addition, in California, the Office of Family Court Services, Court Facilitator's Office, or Family Dispute Resolution Services in Superior Court may be consulted for the status of any custody order.⁷

Before accepting enrollment of a child from someone who is not the child's parent, you should ask for either a written authorization from the parent(s), or a court order showing that the person attempting to enroll the child has legal custody or guardianship.

The best time to inquire into the parental relationship is during the enrollment process and before a problem arises. The provider should request copies of all relevant documents such as court orders, and keep them on file. In some counties, you can view a list of the orders on file on line.

HOW SHOULD I OBTAIN THIS VERY PERSONAL INFORMATION FROM AN ENROLLING PARENT?

You should ask to see a copy of any court order confirming the custody arrangement. Orders will often specifically state who is to pick the child up from day care as well as who has legal custody to make decisions about a child's care. Find out if there are any protective or restraining orders. If there are, request copies for your file. With the parent's authorization, you may want to alert local law enforcement regarding the existence of the restraining order and the child's enrollment. Assure the parents that this information will be kept completely confidential, although some other information (such as illness or injury report) may not be confidential. Be aware that you might be required by a subpoena to produce the documents to a court.

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Again, it is very important that you get this information during the enrollment process. Explain to the parent that this is part of your enrollment procedure so that the parent does not feel singled out. It is also important to emphasize that this information is confidential and will not be released to anyone, absent a court order. Most parents will probably feel safe leaving their child with a provider who is organized and has procedures built into their program which try to ensure the children's safety.

WHAT SHOULD I ASK A PARENT DURING THE ENROLLMENT PROCESS TO CLARIFY THE PARENTAL RELATIONSHIP?

Some recommendations include asking the following:

- Each parent's legal relationship to the child;
- Whether any other person has a legal relationship to the child (through adoption or re-marriage);⁸
- Information regarding custody arrangements and a copy of the court custody order;
- A copy of the child's birth certificate; and
- The name, address, and telephone number of the non-enrolling parent (whether or not the child has any contact with the other parent)

WHAT IF THERE IS A CUSTODY PROBLEM BETWEEN PARENTS OF AN ENROLLED CHILD?

When you are aware that there are or have been court proceedings concerning a child, ask for a certified copy of the most recent court order dealing with custody and/or visitation. A certified copy will have the court seal impressed on it, and will be signed by a court clerk as being a true copy. Read the order carefully and get advice if its meaning is not clear. Ask to be notified and to be given certified copies of any new orders the court makes.

In your initial interview, you should ask the parent(s) to alert you if a custody problem comes up or there are changes in custody/visitation orders while the child is in your care. Explain that you need to be aware of significant family changes because they affect the child's needs and your responsibilities to the parent(s).

If a custody problem currently exists, ask the parents to write down the specifics of the situation. Ask the enrolling parent specifically if s/he anticipates that someone with whom s/he doesn't want the child to leave with might come to pick up the child. If so, ask for the name(s) and relationship to the child of such a person(s).

If you think the custody dispute might cause a problem for you, ask them to provide in writing an agreement and schedule regarding who will pick up the child when, and under what circumstances.

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If the family's custody problem seems to be (or becomes) serious enough either to interfere with your care for the other children or to upset you frequently, you may decide that you cannot provide care for the child.

You should not discuss the dispute between the parents in front of the child (or others) or with anyone else, apart from those persons whose involvement may be necessary to prevent the removal of the child by an unauthorized person.

A custodial parent has the right to request that a family child care provider not allow a noncustodial parent to visit or pick up the child, as long as the custodial parent makes the request in writing and shows the provider a certified copy of the court order that prevents such visitation.⁹

WHAT KINDS OF CUSTODY ARRANGEMENTS COULD NON-PARENTS HAVE?

Sometimes individuals who are not the child's parents, such as family members and guardians have rights and responsibilities to a child. Relatives and guardians may have custody or visitation rights that must be respected by child care providers. You must respect these rights.

In some situations, a child may be placed in the custody of a non-parent, most commonly through a proceeding to appoint a "guardian of the person."¹⁰ When the parents of a child are unable or unwilling to look after that child, someone else concerned for the child's welfare, such as grandparents or family friends with whom the child is living, may ask a court to be awarded custody of the child.¹¹ If the court agrees, it will issue a document called "Letters of Guardianship," which is effective only if it has a court seal. A guardian of a child has both legal and physical custody; the child's parents no longer have any form of custody, although they may have visitation rights.¹²

Finally, if a child is at risk of harm from a parent, a non-parent may ask the court to remove the child from that parent's care.¹³ Usually, though, this type of proceeding is initiated by Child Protective Services (CPS).¹⁴ Custody may be given to a relative, such as a grandparent, or, if there is no suitable relative, the Department of Social Services will place the child in foster care or make some other arrangement.¹⁵ Again, the court may make provisions in these orders for visitation by a parent or non-parent.¹⁶

CONFIDENTIALITY AND RECORDS

WHAT SHOULD I DO IF PARENTS ASK ME TO GIVE THEM INFORMATION FROM MY RECORDS?

Parents who are angry with each other may try to make unilateral decisions about the child or may demand that the provider follow only his or her instructions. In such situations, the appropriate action on the part of the provider depends on the relevant custody order.

Providers are also likely to receive demands from parents for copies of records and information. Providers should be aware of the requirement to maintain the confidentiality of information and records and should develop clear policies against disclosing information or record. Information and records usually made available to parents, like any written illness or injury reports or parent/provider conferences, should be routinely available to both parents with legal custody since a parent with legal custody can make decisions about a child's health, education, and welfare.¹⁷ Records like sign-in sheets, which are generally not made available to parents, and records of payments or information about subsidies or social services referrals made on behalf of the child or one parent should not be released.¹⁸ Similarly, any enrolling adult should be provided a complete, signed copy of an admission agreement or current contract for services, but a parent without legal custody is not automatically entitled to a copy. Instead, request for copies should be directed to the enrolling parent.

A parent may try to get information needed for a modification of a custody order or a child support order, but the child care provider is not the appropriate source of information about the circumstances and resources of the other parent. While you may provide the person who pays for child care a receipt at the time of payment, you are not required to provide any documentation of payment to other persons. Particularly when the child care program becomes the "transfer point" for a child between the parents' households, there is a greater temptation for a provider to be viewed as a source of information for one parent about the other parent or the other household. Be thoughtful when one parent asks you for information regarding the other parent. If you have questions about whether particular information is confidential, consult with an attorney.

A provider may be served with a subpoena demanding an appearance to testify in court or to produce records. On receipt of any subpoena, the provider should immediately discuss the circumstance with an attorney who can determine if there appears to be good legal cause, such as confidentiality of the requested documents, for refusing to comply. If there is, the provider should make a formal legal motion that asks the court to strike the request. A subpoena should never be ignored, and providers should deal with subpoenas immediately, whether they are received in the mail or hand delivered.

DIVORCING PARENTS

WHAT SHOULD I EXPECT IF A CHILD'S PARENTS ARE GOING THROUGH A DIVORCE?

As the family adjusts to the separation or divorce, you may find yourself taking on new roles. The child will probably need more attention and caring from you than before. Either or both of the parents may also need extra attention. The child may vent some of the anger s/he feels about the divorce on you and the other children at your program. The parents may direct some of their anger at you, too. Although you may like one parent more than the other, it is important not to take sides, especially in front of the child.

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While you and the caring environment you provide can help both the child and the parents through this difficult time, you may have to limit what you will do for them. Since your responsibility is toward all of the children in your care, your limits should be based on what you are comfortable with, and what you can reasonably do while providing quality care for the other children.

WHAT IF THE DIVORCING PARENTS WANT TO USE MY PROGRAM AS A NEUTRAL TERRITORY?

You may be asked to act as a “go-between”, or to allow your program to be the neutral ground where the child is transferred from one parent to the other, or to become a conveyor of messages between the parents. This might be easy for you and a great help to the family, or it could prove to be unreasonably difficult. Regardless of who is asking you to take on certain additional responsibilities, you can and should set limits on what you will do for a particular family.

If you do undertake such responsibilities, do not discuss any personal information you may acquire with anyone other than those who are necessary to fulfill those responsibilities. Otherwise, you could breach the parent’s right to privacy.¹⁹

If there is a court order in which your child care program is named a “neutral facility,” you must comply with the order. This will usually mean that your child care will be the pick-up or drop-off location between parents. However, if there is not a court order, you are under no legal obligation to undertake responsibilities you have not agreed to previously. Even if the court suggests that the child care program take on additional responsibilities, you are not required to do so. If you decide that you want to assist the family, it is important to set up rules and boundaries on your involvement.

WHAT RESOURCES EXIST FOR PROVIDERS AND PARENTS IN THIS SITUATION?

If you are helping a child and her/his family through a divorce and want to talk the situation over with a sympathetic listener, one may be available at your local child care resource and referral agency or your family child care association. If you have questions about the family’s legal situation or your legal responsibilities, call your local bar association for a referral to a “family law” attorney. For families with custody problems, refer them to the local bar association, lawyer referral service, or legal aid/services office if the family is income eligible.

AUTHORIZED/UNAUTHORIZED PERSONS

CAN I RELEASE A CHILD TO ANYONE WHO COMES TO PICK HIM OR HER UP?

No. Providers are legally responsible for the safety of every child in their programs. This includes ensuring that children are only released to either an individual who has a legal right to the child or someone whom the child’s parent(s) or guardian has previously authorized. You can

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generally release a child to: 1) the legal parent(s); 2) legal guardian(s); 3) any person whom the parent or legal guardian has previously authorized; and/or 4) police and child welfare workers with legal authorization.

WHO IS AUTHORIZED TO PICK-UP THE CHILD?

An authorized person is someone who has permission to pick-up the child from the child care program. This will usually be the child's parent(s), legal guardian(s), anyone that the parent/guardian has properly authorized, and/or police and child welfare workers with legal authorization.

HOW DOES A PARENT PROPERLY AUTHORIZE AN INDIVIDUAL?

As part of your enrollment process, the parents should fill out an "authorization card" where they name all persons they permit to pick-up their child. The card should also include the authorized individual's address, telephone number (home and business) and any other pertinent information regarding the authorized person. You must inform the parent that you will only release the child to a "legal" parent, and/or anyone listed on the authorization form.

A provider might consider obtaining photographs of the authorized pick-up persons. This is particularly important in a domestic violence situation where batterers have been known to disguise and identify themselves as an authorized pick-up person. This procedure also shows that the provider is being cautious and responsible, and thereby less likely to be found negligent.

WHAT IS THE DIFFERENCE BETWEEN AN AUTHORIZATION CARD AND AN EMERGENCY CARD?

You are required by the Department of Social Services, Community Care Licensing Division to have an emergency card for each child²⁰. This card includes, but is not limited to, information such as whom to contact in the case of an emergency, the child's doctor, medications the child may be taking or any allergies.

In addition to the emergency card, we suggest that you have a separate "authorization card" for information regarding who may pick up the child and when. This gives you an opportunity to ask for detailed information regarding the authorized person, explain the purpose of the "authorization card" and emphasize the responsibility of the individuals who will be authorized to pick-up the child.

You may want to encourage parents to list different individuals on the emergency card, other than those named on the authorization card, because it provides you additional people to contact in case of emergency.

WHAT IF THE ENROLLING PARENT DOES NOT NAME THE OTHER PARENT AS AN AUTHORIZED PERSON?

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During the enrollment process, you should clearly understand the parental rights of each parent and explain to the enrolling parent that **unless** you have a court order stating otherwise, a provider **must** release the child to either “legal” parent. You should clarify to the enrolling parent that a court of law is the only entity with the authority to legally limit parental rights.

Keep in mind that a “legal” parent does **not** include unmarried fathers who have not established paternity. This means that a provider does not have the right to release the child to an unmarried father who has not established paternity, unless he is named on the authorized pick-up card.

WHAT IF AN UNAUTHORIZED PERSON DEMANDS TO TAKE A CHILD FROM MY PROGRAM?

Your primary legal obligation at all times is to protect the safety and well-being of the children in your care.²¹ Your obligation to the custodial parents is to contact them when an unauthorized person requests or demands that you release the child to him/her. If you can do so without risking the children’s safety and well-being or your own, resist the demand to let a child leave with an unauthorized person.

California licensing regulations allow providers to deny access to an adult whose behavior presents a risk to children in the home, and to parents who are subject to a court order denying contact with the child, if requested by the child’s parent or authorized representative.²²

The way you handle the demand of an unauthorized adult will depend a great deal on the circumstances — what you know about the family, the mood of the person making the demand, whether you are the only adult present, and how the children in your care react to the confrontation. While the best way to handle such an occurrence would be to avoid it, this will not always be possible.

If an unauthorized person tries to take a child from your program, stay calm, and ask for the person’s identification with a photograph. Emphasize the rules and procedures you are obligated to follow whenever you release a child. If possible, give the adult a copy of your policies to show that these rules apply to everyone, including grandparents, siblings, other relatives, neighbors and family friends. Explain that because you are legally bound to follow the instructions of the person with physical custody, you cannot allow the child to leave unless you have that person’s written authorization. If a parent does not have physical custody and is not otherwise authorized by the person with physical custody, a child should not be released to the unauthorized parent.

If the unauthorized person insists, telephone the person with physical custody and inform her/him of the situation, if this is possible without endangering yourself or the children in your care. If you feel that the situation is getting out of hand, or if the person threatens you or the children in your care, don’t hesitate to call the police. If you have a copy of a restraining or custody order, the police are required to enforce it. Realistically, however, you cannot do any more than resist and stall, until the police or the person with physical custody will arrive.

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If neither the police nor the person with physical custody arrives to assist, and you are alone, you should release the child only when everything else has failed, particularly when the release is to an unknown, unauthorized person. If you have had to let an unknown, unauthorized person take a child because of threats to you and/or children in your care, contact the police as soon as it is possible to do so safely. If you contact the police, be sure to get the unauthorized person's description and license plate number. If the child leaves with a known, but unauthorized, person, notify the person with physical custody immediately.

In order to avoid criminal liability, a provider should take all reasonable steps to resist the person's demands. We recommend that you do the following:

- Stay calm
- Obtain the person's name and ask to see some identification (if possible, make a copy of the identification)
- Explain that both the law and the facility's rules prevent the release of the child to any unauthorized person
- Explain that the only exception would be if the enrolling parent has signed a written authorization and it has been verified with the provider
- Immediately call the custodial parent and inform him or her of the situation
- If the parent confirms that the person is unauthorized, try to stall the person until the parent arrives, without releasing the child
- If the person abducts the child by force, obtain a detailed description of the unauthorized person, record the person's license plate, take note of the color and make of the car, and the direction in which they went and **immediately** call the police.

WHAT IF THE UNAUTHORIZED PERSON DEMANDING RELEASE OF THE CHILD CLAIMS THAT HE OR SHE IS THE CHILD'S PARENT BUT YOU HAVE NEVER SEEN THIS PERSON BEFORE?

- Stay calm
- Ask to see some identification and any applicable court orders
- Explain that you cannot release the child to any unauthorized individual
- Look through the child's enrollment records to see whom the enrolling parent named as the child's other parent. (NOTE: This is why it is important that you get this information during the initial enrollment process)
- Contact the custodial parent immediately and advise him or her of the situation
- If this individual is in fact the child's legal parent, explain to the custodial parent that unless you have a court order, you cannot refuse to release the child to the parent (Remember, this would **not** include an unmarried father who has not established paternity).
- Get as much information as possible from the parent picking up the child such as: where he or she is taking the child, the address and telephone number, and the vehicle description and license plate number.

WHAT HAPPENS IF I RELEASE A CHILD TO AN UNAUTHORIZED PERSON?

You could be held responsible for any injury suffered by the child while in the care of the unauthorized person. As the provider, you are legally responsible for all the children in your care and this includes ensuring a child's safety and well-being by properly releasing the child to someone whom the parent has previously authorized. If you happen to release a child to someone who does not have authorization, you must immediately contact and inform the child's custodial parent(s) of the situation. If appropriate, also contact the police.

WHAT SHOULD I DO IF A PARENT TELLS ME TO RELEASE HIS OR HER CHILD TO SOMEONE WHO IS NOT NAMED AS AN AUTHORIZED PERSON?

This is a very tricky situation, especially if the parent is requesting this over the telephone. In order to protect yourself from potential liability, you should require that the parent immediately provide authorization in writing, **before** the child is actually picked up. The writing should be signed and dated by the legal parent, and provide the name of the authorized person, as well as the date of release. The written authorization should also include the person's address, telephone number and a brief description of the individual.

WHAT IF RELEASING A CHILD TO AN UNAUTHORIZED PERSON RESULTS IN A KIDNAPPING?

It is not likely that you would be held criminally or civilly responsible in such a situation, if you have acted reasonably. An example of acting reasonably would be trying to resist the unauthorized person's demands and summoning assistance. Under California law, a person is subject to civil and criminal liability only for knowingly and willfully aiding in the concealment of a child from a person with physical custody.²³ In the case of a child care provider, this would mean that the unauthorized person somehow informed the provider that s/he was about to abduct and conceal the child from the person with physical custody and that the provider then released the child willfully and *without any resistance whatsoever*. In other words, as long as the provider takes reasonable steps to prevent the kidnapping of the child, no liability should result. In addition, if the unauthorized person has made any serious threats, you would be justified in releasing the child as a last resort in order to protect your own safety as well as the safety of the other children in your care.

EMERGENCY SITUATIONS

WHEN IS A CHILD WELFARE WORKER OR POLICE OFFICER AUTHORIZED TO TALK TO OR TAKE A CHILD FROM MY PROGRAM?

This usually occurs when there have been allegations of serious abuse or neglect that appears to place the child's welfare in danger. If any government official asks to speak to a child or asks you to let a child leave with her/him, insist on seeing the official's photo identification. Write down the officer's name and badge number. Be sure to have the phone numbers of the police

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department and child protective services near your phone, and always call to confirm the official's authority. You may be asked to provide the officer with the address and telephone number of the child's parent or guardian so he or she can be informed of the child's removal from your care. In California, and in many other states, a provider who cooperates with law enforcement agencies in cases of suspected child abuse cannot be held liable to the parent for damages, even if the charges are eventually dropped.²⁴

IF A CHILD IS INJURED WHILE IN MY CARE, CAN I RELEASE THE CHILD TO THE PARAMEDICS?

Whether or not you should release a child to the paramedics will depend on the extent of the injury and the need for emergency treatment. Remember, as a provider, you are legally responsible for the well-being and safety of all the children in your care. You must act as any other reasonable child care provider would act under similar circumstances, which would normally mean contacting the paramedics if there is a serious or life threatening injury to the child. If possible, you should immediately contact the parent(s) or anyone named as an emergency contact and advise him or her of the situation and obtain direction from him or her.

We suggest that during the enrollment process you discuss and have the parents clarify in writing what your role would be in a medical emergency situation, because some parents may be opposed to their child receiving medical treatment or attention.

RELEASING A CHILD TO AN INTOXICATED ADULT

Child care providers have to make on-the-spot decisions about the safety of a child when a person who appears to be drunk or impaired by drugs comes to pick up a child. State law gives you the right to deny access to any person who poses a threat to the safety of a family child care home.²⁵ Providers need to balance the fact that parents have the right to take their child out of child care at any time with the immediate concerns about the child's safety.

You can prepare yourself for this difficult situation by having policies in place regarding the release of children, access to the family child care home, and the termination of parent-provider contracts, as well as written procedures to follow in the event that an intoxicated adult does come to pick up a child.

WHAT CAN A PROVIDER DO TO PREPARE?

Should a parent arrive at your home in a condition that threatens the safety of the child, it would be helpful to have clear, written policies on how to handle this situation in the parent-provider contract (or the parent handbook if it is incorporated by reference into the contract). You can use the contract to put parents on notice that you will try to find other authorized persons to pick up the child in the event that an intoxicated adult arrives to pick a child up. See CCLC's article *Child Care Contracts: Information for Providers*, 2003 Revised Edition of this Handbook.

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State law gives you the right to deny access to any person who poses a threat to the safety of a family child care home.²⁶ While you still must turn the child over to the parent, you have the right to keep a person you consider dangerous away from your family and the other children in your care. You should inform parents that the provider-parent contract may be immediately terminated if an adult poses a threat to the safety of the family child care home. This will give you the ability to stop caring for the children of any adult who makes explicit threats of violence or actually acts in a violent manner towards you or the children in your care.

There are other steps you can take, in addition to policies, which may help you deal with this situation. Providers in California are required by licensing regulations to maintain a list of “emergency contacts” who are authorized by the custodial parent to pick up the child in the event of an emergency.²⁷ You may also want to maintain an “authorization card” which would have the names, addresses, and telephone numbers of all adults authorized to pick up the child. This information should be kept up to date by asking the custodial parent to review and update the list several times a year. If you can’t get in touch with the person(s) with custody, try the people on the emergency contact list or authorization card.

Keep a notebook in which you write down all instances in which you believe that a parent or other authorized person comes to pick up a child while under the influence of alcohol or drugs. Discuss each incident with the parent to ensure that there is not another explanation for the parent’s behavior, such as a disability, medication, or illness.

Arrange a conference with the parents any time you are concerned about the safety of a child. Remind them of the written policies. If the parents do not heed warnings and continue to come for the child in an intoxicated state, then you may have to consider terminating the parent-provider contract.

Share your written policies and procedures with your assistants and substitutes, so that they can make sound decisions when you are not available.

WHAT CAN A PROVIDER DO IF AN INTOXICATED ADULT COMES TO PICK-UP A CHILD?

If faced with this difficult situation, you can take several steps to attempt to keep the child safe. However, it is important to keep in mind that you cannot withhold a child from his or her custodial parent.

First, you must assess the amount of risk you think the adult poses to the child. Ultimately, this is a judgment call you will have to make based on your knowledge of the situation. It may help to think about a variety of factors, such as whether the parent could have a disability that might lead you to think they may be intoxicated, when in fact they are not, or whether the parent is willing to walk or take a bus or cab home. Ask yourself if it appears that the intoxicated adult’s ability to reason and respond in an emergency might be significantly impaired, if the parent is menacing or threatening to the child or others, or if the child has expressed fears or concerns about the behavior of the parent when the parent is intoxicated.

Then, you can follow these steps to try to keep the child safe while still respecting the right of the parent to take the child out of child care:

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- You can attempt, politely, to delay the parent to give them a chance to sober up. Offer food or something (nonalcoholic) to drink, engage them in conversation if possible. (Note: coffee alone does not sober anyone.)
- Provide the adult with a copy of your policies and explain your concerns.
- Contact the other parent if s/he is authorized to take the child out of child care.
- Contact other authorized persons on the emergency contact list.

If the parent wishes to leave and you have not been able to reach other persons who may be able to pick up the child, you will have to release the child to the parent. Depending on the state of the parent, you will have different responsibilities. If the intoxicated adult plans on driving the child home, you can ask the person to take the child home by another means of transportation or offer to call a taxi (at the parent's expense) to drive the adult and the child home.

If the adult appears to be so intoxicated that the child would be placed at risk of serious and immediate harm if released to that person, you have a few options. If the persons on the emergency list or other authorized persons cannot be contacted or are not able to come and pick up the child, then call the local child protective services (CPS) or the police or other local law enforcement. You can also attempt to keep the child at your home until a law enforcement officer takes the child into protective custody. The child should not go home with one of your assistants or another family who is not authorized to take the child. You must also keep in mind that the parent has a right to take his or her child home, and any attempts to interfere with that may have serious legal consequences.

If an intoxicated person poses a threat to the provider or any child, remember that your first concern is to protect the safety of the children. This situation is best approached by staying calm and explaining the policies and procedures of the family child care home. Explain that they apply to everyone. If this doesn't work and the person is still threatening you, you can take the following steps:

- Call the police. Explain that you and the children in your care are being threatened and are in danger. Request immediate assistance.
- Contact the people on the emergency contact list as quickly as possible.
- Try to stall the parent until the police arrive. Do not take any actions that will put you or the other children in danger. Remember that you can deny access to the facility to any person who poses a danger to you or the children.²⁸
- If you are forced to release the child because the individual has threatened you or the other children in your care, call the police as soon as you are safely able to do so. Try to give a description of the person, his or her car and a license plate number.

RELEASING A CHILD WITHOUT A CARSEAT

The California Vehicle Code requires that a parent or legal guardian use a proper restraint system for transporting a child under the age of six and under 60 pounds on a highway in a motor vehicle²⁹. As a child care provider, you most likely may not refuse to release a child if a parent or authorized parent does not have a car seat to transport a child. Since the parent or guardian has legal authority toward the child, if he or she knowingly fails to provide a car seat and decides

to transport the child anyway, the responsibility and liability will ultimately lie with them. However, you must act as a reasonable person would under similar circumstances concerning whether or not to release the child. Some recommendations include the following:

- Contact the other parent, or any authorized person to see if he or she can provide a car seat.
- Many providers maintain different sized car seats at their child care programs to lend out to parents who forget to bring one with them.
- Many police departments will lend out car seats at little or no cost for emergency situations.
- If this appears to be a continuing problem, discuss this matter with the parent(s) and explain that if corrective steps are not taken, you may choose to terminate the child from your child care program.

RELEASING A CHILD TO A SIBLING OR OTHER CHILD

California law does not directly address how old a person must be to be authorized by a parent to pick up a child from a program. However, it is recommended that programs either pick an age or make a decision depending on the individual situation, using at least the following criteria:

- the age of the child being picked up
- the distance that child has to travel
- the time of day (is it dark?)
- the safety of the travel route home
- the age and maturity of the individual picking up the child in your care.

Even if your state's licensing law does not require you to do so, you should require written permission from the parents and employ the sign-in/ sign-out procedures as described in the previous section. Also, if the accompanying child appears dangerous or intoxicated, the program should employ the same procedures as described above.

RELEASING A CHILD WITHOUT SUPERVISION

Depending on the age of the child and the state law, parent(s) may also be able to authorize their school-age children to be released unsupervised *if* the parent(s) provide written instructions that they give such permission. Programs may want to develop a form that releases them from liability once the child leaves the program if the parent authorizes the child to leave unsupervised. However, there should also be a policy to follow (such as calling the parent) if a child care provider suspects that a child might be in danger if allowed to leave unsupervised. Programs should also develop sign-in and sign-out procedures to be performed by staff, in order to keep careful account of children who arrive and leave without a parent or authorized person. If a child is given permission to leave unsupervised, but instead leaves with an older sibling or

friend, it is important to make it clear that staff, rather than the older child, has the responsibility of signing the child in or out of the program.

FAILURE TO PICK-UP A CHILD

WHAT SHOULD I DO IF A PARENT FAILS TO PICK-UP A CHILD?

This is not an easy situation because there is no clear-cut answer. When a parent fails to pick-up his or her child at the specific pick-up time, many providers decide to wait for a reasonable period of time before taking further steps because the parent may just be running late, and it may be an uncommon situation for this particular parent. However, if a long period of time has passed, or your business hours have ended, or you cannot wait any longer, here are some suggestions on how to deal with this situation:

- Stay Calm
- Attempt to reach the parent(s) to determine what time the child will be picked up
- If you are unable to reach the parent(s), contact individuals on the authorized pick-up list and emergency card
- If an “authorized person” is unable to pick-up the child, and you decide that you cannot or will not wait any further, you can contact your local police department
- A law enforcement officer may take a child into protective custody if there is no lawful custodian available to take custody of the child³⁰. After taking custody of the child, the police will contact and release the child to Child Protective Services, if the parent or any other “authorized” individual is still not located.

WHAT SHOULD I DO IF A PARENT CONTINUOUSLY FAILS TO PICK-UP HIS OR HER CHILD ON TIME?

We recommend that as part of your child care contract with the parent, you have a policy on late pick-up. Many providers have a policy where they reserve the right to immediately terminate the child from their child care after a certain number of late pick-ups or for failure to pick up the child at all. You can also include a provision that allows you to terminate the provider-parent contract if the parent is repeatedly intoxicated, ignores warnings, and refuses to make alternative arrangements for picking up the child after you have discussed your concerns with the parent(s).

CHILD ABUSE & DOMESTIC VIOLENCE

WHAT IF THERE HAS BEEN DOMESTIC VIOLENCE AND THERE IS A RESTRAINING ORDER IN EFFECT AGAINST ONE OF THE PARENTS OF AN ENROLLED CHILD?

Domestic violence is abuse by a family member, intimate partner or household member. It affects millions of women and children every year across the country.³¹ The widespread nature

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of domestic violence makes it highly likely that child care providers are serving or have served families who are experiencing family violence.

In order to protect herself and her children, the person who is experiencing abuse can apply to the courts for a restraining order. A restraining order, also called a protective order, is an order issued by a judge forbidding a person who has committed abuse (the “respondent”) from going to certain places, engaging in certain acts (such as further abuse), or contacting or coming within a certain distance of the person who asked for the order (the “petitioner”).³² A restraining order can also exclude the respondent from his residence and may sometimes include temporary custody and visitation provisions. A restraining order is a civil matter, not a criminal one, although a person who violates an order may be arrested.

In addition to the person who has been the victim of domestic violence, a restraining order may also cover any of her children under 18 who are living with her. In California, children and dependent adults who are at risk of abuse by a family or household member, and children at risk of abduction by a relative, can also be independently protected by an order.³³

In California, protective order forms explicitly include child care and schools as places that the respondent can be ordered to stay a certain distance away from³⁴. Temporary restraining orders (TROs) are in effect from the date they are issued until the date of the court hearing on the permanent order, usually several weeks. Permanent orders usually last for a period of three years unless the judge issues an order for a shorter amount of time, and may be renewed for another three years or permanently.³⁵

It is a good idea for child care providers to ask all families in their programs for copies of all current custody, restraining, and other orders affecting who can contact and pick up the children. (This includes restraining orders from other states, because federal law makes protective orders legally binding in all states.³⁶) Having this information is essential in order for providers to make the best decisions regarding the safety of themselves and the children they care for. Read over the terms of the orders carefully and make sure you understand what is and what is not allowed. If necessary, ask the parent who obtained the order to explain it. Because domestic violence is a very personal and often scary topic, child care providers should be sensitive to this in talking to parents. By getting a protective order, the victim of domestic violence is taking steps to keep herself and her children, as well as her child care provider, safe. Make sure the parent who obtained the order has provided a copy to the police. If the parent authorizes it, you should contact your local police to alert them to the existence of the order and to the enrollment of the child in your facility.

If someone who is restrained from coming to the child care home or from contacting or coming near the children tries to do so, a provider should assess the situation and immediately call the police. The provider should try to prevent the person from entering the premises or taking the child, if it is possible to do so safely. It is important for child care providers to have a safety plan in place ahead of time in case this situation arises, such as specifying who will lock the door, call the police, take the children away from the windows, etc. The most important

thing is for child care providers to keep themselves and those in their care safe, so they should not worry about offending the restrained party who is breaking the law by doing something that is prohibited.

Exposure to domestic violence often interferes with a child's emotional, psychological, academic and physical development. Education and awareness about the signs of domestic violence in children will allow child care providers to work effectively with the children in their care and their families, and help to keep the child, the provider, and all the children who are in child care safe.

CONCLUSION

As a child care provider, you play an enormously important role in caring for children. While you cannot prevent all problems from occurring, you can take some precautions to minimize their impact on your provision of child care. By establishing clear release policies at the time of enrollment and ensuring that parent(s) and guardian(s) are aware of and understand these policies, you generally can avoid the kinds of problems surrounding custody that occasionally arise in child care settings.

GLOSSARY

- *Adapted from the California Family Code and the California Probate Code, as well as Nolo Online Publications' website³⁷. These terms may have slightly different meanings in other states.*

Child Stealing/Parental Kidnapping: A criminal violation of the custody rights of a parent, where the non-custodial parent or a third person detains or conceals the child.

Custody Evaluation: A court-ordered investigation to determine the fitness of each parent and the best interests of the child with respect to custody.

Custody Order: An order issued by the court following a judicial proceeding to determine the custody and visitation rights of the parties. By law the order must specify the rights of each parent to the physical control of the child in sufficient detail to enable the parent deprived of that control to seek relief from violations (by, for example, civil contempt or criminal child stealing proceedings). A stipulated order (one made by agreement of the parties) may not contain this level of detail. The court may make temporary or permanent custody and/or visitation orders for a minor child. The court will issue an order³⁸ specifying each parent's custodial and visitation rights to the child. The court can order a custody order during Legal Separation, Dissolution, Paternity, and Domestic Violence Prevention Act proceedings.³⁹ When a married couple decides to end their marriage contract through the court, the court judgment and orders will include a custody order which will specify the rights of each parent with regard to the legal and physical control of the child. Without filing a petition for dissolution of marriage or legal separation of the parties, the husband or wife may bring an action for the exclusive custody of the children of the marriage.⁴⁰

Divorce: Dissolution of the marriage contract by the court. A divorce proceeding is usually accompanied by proceedings to determine the rights of each spouse regarding property division, support, custody, and visitation.

Guardian ad Litem: A person appointed by the court, where necessary to protect the child's legal rights because a child cannot sue or be sued on his/her own behalf.

Guardian of the Estate: A person appointed to protect the child's financial interests, if a child is entitled to receive significant money or property.

Guardian of the Person: A Legal Guardian who has been appointed by the court to protect the child's general welfare. Such a guardian has all the powers over a child that a parent with custody would have unless the court limits those powers.

Joint Custody (Shared Custody): means that parents who don't live together share the decision-making responsibilities for, and/or physical control and custody of, their children, either because they have agreed or because a court has ordered them to do so. Joint custody can exist if the parents are divorced, separated, no longer cohabiting or even if they never lived together. Joint custody may be joint legal custody, joint physical custody (where the children spend a significant portion of time with each parent) or both. It is common for couples who share physical custody to also share legal custody, but not necessarily the other way around.

Joint Custody: In California, the courts prefer a *joint custody* arrangement if it is consistent with the parents' wishes.⁴¹ Joint custody is a shorthand way of saying that the parents share legal and physical custody of their child.⁴² However, the court can order many other arrangements, including giving both parents legal custody but only one parent physical custody.⁴³

Joint Legal Custody: When parents have joint legal custody, either has the right to enroll the child, although the court order might say that this kind of important decision must be agreed upon by both parents or might specify a parent to make these decisions.⁴⁴ It is important to note that a parent who has joint legal custody, but not physical custody, still has a right to see the child's records.⁴⁵

Joint Physical Custody: means that the child spends time living with each parent.⁴⁶ The time need not be half and half; it can be divided in any manner decided by the court or the parents themselves as long as the child is assured frequent and continuing contact with both parents.⁴⁷ If the parents have joint physical custody, and the court order is not clear about time sharing, either parent may pick up the child from child care.

Legal Custody: means the right and obligation to make decisions about a child's upbringing. Decisions regarding schooling, medical and dental care, for example, are made by a parent with legal custody. See separate definitions in this glossary of "Joint Custody" and "Sole Custody."

Legal Guardian: After a custody proceeding, the court may recognize or order an adult, someone other than the child's parents, to be deemed the legal guardian of the child. This legal guardian is to have full legal and physical custody and thus full responsibility for the child.⁴⁸ An adult recognized by the court as having rights and responsibilities with respect to a child. When people use the term legal guardian they normally mean it to include all the rights and responsibilities of a parent to a child including the right to physical custody of the child. The child's natural parents are normally the child's legal guardians unless there have been court proceedings in relation to custody. A court can give custody to one parent or to someone who is not the child's parent. If a court makes an order giving custody to someone other than the parents, then that person becomes the child's legal guardian. There are some guardians who do not have the right to physical custody of a child such as a "Guardian ad Litem" and a "Guardian of the Estate".

Legal Separation: A court order arranging the terms (custody, support, etc.) under which a married couple will live separately without dissolution of the marriage “Legal” separation means that a spouse has filed an action for legal separation with the court and obtained an order that will distribute property, specify the custodial and visitation rights of each parent, as well as child support payment obligations. There is no requirement that the parties live apart, as long as they have the intent to estrange themselves from each other but at the end of the process, the parties remain married. There will be no court order assigning custody when parents have simply decided to physically separate but have not sought a change in legal status.

Mediation: The negotiation that may occur before a divorce and custody proceeding and is facilitated by an impartial third person appointed by the court. The purpose of mediation is to reduce the bitterness that might exist between the parties and to develop a settlement that enables each parent to continue having close contact with the child. Mediation may be faster and less expensive than litigation.

Modification Of Custody Order: After a substantial change in circumstances (such as job relocation of a custodial parent), or after repeated minor violations of the custody order, one party can petition the court for a modification of the order. While the custody order is considered permanent following custody proceedings, parents are free to request modifications of the order, and often these are granted.

Physical Custody: refers to where the child lives and who cares for the child on a daily basis.⁴⁹ The right of a parent to have a child live with him. Some states recognize the concept of joint physical custody where the child spends approximately half the time in each parent's home.

Primary Physical Custody: This term is often used by the courts to define a joint custody arrangement where one parent has the child with him or her the majority of the time and who then has the ability to make daily decisions for the child, when in his or her care. The “rights” of primary physical custody are virtually identical to those of sole physical custody, but in the former, the parents share “joint” legal custody.

Restraining Order (also called a Civil Protective Order):

An order by the court temporarily prohibiting a party from doing something, such as picking up a child at child care. A restraining order can be issued as part of a divorce proceeding, or in response to an occurrence of spousal or child abuse.

Separation: The period before a divorce is final when parents are estranged from each other. The parents can be living apart or still residing together, but there is an agreement to separate either temporarily or permanently.

Sole Legal Custody: One parent has the right and the responsibility to make decisions relating to the health, education and welfare of the child (such as the decision to enroll the child in child care).⁵⁰

Sole Physical Custody: The child resides with and is under the supervision of one parent, subject to visitation rights of the other parent.⁵¹ This parent is responsible for taking care of the child on a day to day basis. (Almost always the party with sole physical custody will also have either legal custody or shared/joint custody of the child.) Where child or spousal abuse is involved, a court may prohibit any contact between the non-custodial parent and the child by issuing a protective or restraining order.⁵² When visitation is allowed, the non-custodial parent may be authorized to pick up the child from your program for a particular visit. Sometimes the court requires that visitation take place only when another adult is present,⁵³ and you may be asked to allow the child care site to be used for this purpose. You have no obligation to agree, however. In determining whether or not you are willing to undertake such a responsibility, you should carefully explore the circumstances that led to the order for supervised visits.

Temporary Custody Order: A temporary custody order may be issued to stipulate the custody rights of the parties during the initial period of separation before formal custody proceedings.

Unmarried Father: Absent a court order of paternity, or an official declaration of paternity, an unmarried father does **not** have the same legal rights, regardless of biological parentage, as a married father. This means that an unmarried father who has not established paternity through a court order does not have any custody or visitation rights. Beginning January 1, 1997, an unmarried father can establish paternity by filing a voluntary declaration of paternity and filing it with the State Office of Vital Records. As with any paternity action, the voluntary declaration of paternity establishes the legal father. Orders regarding child custody, visitation and/or child support can then be made.⁵⁴

Visitation: The right to have temporary contact with the child for a specific length of time. The custody order will usually stipulate the amount of visitation time the non-custodial parent is allowed, and there must be adequate opportunity to visit at convenient times. Sometimes the order will require that the parent only visit when another adult is present, and the order usually specifies who will be that adult.

APPENDIX

Authorization to Leave Care

For my child's safety, the child care provider can allow my child(ren) to leave this program:

- (1) **only with me** (the person enrolling the child);
- (2) **persons I have specified below**; and (*optional*)
- (3) **in an emergency**, a person who is not listed below, when:
 - (a) I have told the child care provider in person or by phone that he/she is picking my child(ren) up and
 - (b) The child care provider has a signed and dated note from me authorizing her/him to send the child home with that person.

My child may leave the child care program with the following people:

<u>Name</u>	<u>Phone</u>	<u>Address</u>	<u>Relationship to Child</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Parent's Signature

Date

- *NOTE: At the time of enrollment, you may wish to ask for a photograph of any person, whom you do not already know, who is authorized to pick up the child.*

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¹ Physical custody is the right of a parent to have a child live with him. See Glossary at end of this article, and Nolo Online Publications, “Types of Custody,” <<http://www.nolo.com/lawcenter/ency/article.cfm/objectID/3842C8A7-F321-45AC-B238438010EAFE24/catID/AC0903D2-C845-40E8-850E1DCEDDEA5778>>

² Cal. Family Code §§ 3003, 3006 (West 2005).

³ Cal. Family Code § 3007 (West 2005).

⁴ Cal. Family Code § 3020 *et. seq.* (West 2005).

⁵ Cal. Family Code § 3003 (West 2005).

⁶ Cal. Family Code § 3003 (West 2005); see footnote 1, above.

⁷ For information about the Superior Court in each county, see the California Court system’s website <http://www.courtinfo.ca.gov/courts/trial/courtlist.htm>.

⁸ There is no “legal” relationship via marriage alone. For instance, a step-parent is not entitled to, and has no legal right to, custody and/or visitation absent a court order. The step-parent can only be authorized by his or her spouse, the child’s parent of legal and physical custody, to have “custody” of the child at a particular time.

⁹ 22 Cal. Code of Regulations § 102419 (a)(6), pursuant to Cal. Health & Safety Code § 1596.857 (West 2005)

¹⁰ Cal. Probate Code §§ 1510(b) and 2350 (West 2005)

¹¹ Cal. Probate Code § 1510(a), Cal. Family Code § 3041 (West 2005).

¹² Cal. Probate Code §§ 1514(a)-(b) and 2108 (West 2005).

¹³ Cal. Probate Code § 1510, Cal. Family Code § 3041 (West 2005).

¹⁴ Cal. Welfare & Institutions Code § 325 (West 2005).

¹⁵ Cal. Welfare & Institutions Code § 361.2-3 (West 2005).

¹⁶ Cal. Welfare & Institutions Code § 361.2(h) (West 2005).

¹⁷ Cal. Family Code § 3006 (West 2005).

¹⁸ But see Family Code § 3025: “notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to, medical, dental, and school records, shall not be denied to a parent because that parent is not the child’s custodial parent.”

¹⁹ Article 1, § 1 of the California Constitution gives all people in the state an inalienable right to privacy.

²⁰ 22 Cal. Code of Regulations § 102417(g)(7).

²¹ Cal. Health & Safety Code §§ 1597.467 and 1597.52 (West 2005).

²² Cal. DSS Manual CCL 102419(f)(3).

²³ Cal. Civil Code § 1714 (West 2000); Cal. Penal Code § 278 (West 2005).

²⁴ Cal. Welfare & Institutions Code § 16513 (West 2005).

²⁵ 22 Cal. Code of Regulations § 102419 (f).

²⁶ 22 Cal. Code of Regulations § 102419 (f).

²⁷ 22 Cal. Code of Regulations §§ 102417 (g)(7) and 10241.

²⁸ *Id.*

²⁹ Cal. Vehicle Code § 27360 (West 2005).

³⁰ Cal. Penal Code § 279.6(a)(2) (West 2005).

³¹ Domestic violence occurs in all kinds of families and relationships, including in same-sex relationships, and there are male victims abused by female partners. However, the vast majority of the victims of domestic violence are women abused by men. WELFARE AND DOMESTIC VIOLENCE TECHNICAL ASSISTANCE INITIATIVE, BUILDING OPPORTUNITIES FOR BATTERED WOMEN’S SAFETY AND SELF-SUFFICIENCY 4 (national Resource Center on Domestic Violence, 1997).

³² Cal. Family Code §§ 6240 *et seq.* (governing emergency protective orders) and §§ 6300 *et seq.* (governing protective orders and other domestic violence prevention orders).

³³ *Id.* at § 6250 (West 2005).

³⁴ See DV-130, Restraining Order After Hearing (CLETS) (Form Adopted by the Judicial Council of California).

³⁵ Cal. Family Code § 6345 (West 2005).

³⁶ 18 U.S.C. § 2265 (West 2000).

³⁷ Nolo Online Publications, “Types of Custody,”

<<http://www.nolo.com/lawcenter/ency/article.cfm/objectID/3842C8A7-F321-45AC-B238438010EAFE24/catID/AC0903D2-C845-40E8-850E1DCEDDEA5778>>.

³⁸ Court orders may take various forms, including Judgments and Addendums to Judgment, Marital Settlement Agreements, Restraining Orders (CLETS), and Orders After Hearing, to name the most common family law orders.

³⁹ Dependency Court and Guardianship orders also include custody orders.

⁴⁰ Cal. Family Code § 3120 (West 2005).

⁴¹ Cal. Family Code § 3080 (West 2005).

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⁴² *Legal custody* of a child is the right and obligation to make decisions about a child's upbringing, such as decisions regarding schooling, and medical and dental care. *Physical custody* is the right of a parent to have a child live with him.

⁴³ Cal. Family Code §§ 3081-87. (West 2005).

⁴⁴ Cal. Family Code §§ 3003 and 3083 (West 2005).

⁴⁵ Cal. Family Code § 3025 (West 2005).

⁴⁶ Cal. Family Code § 3004 (West 2005).

⁴⁷ *Id.*

⁴⁸ Cal. Probate Code § 1500 *et seq* (West 2005).

⁴⁹ Physical custody is the right of a parent to have a child live with him or her.

⁵⁰ Cal. Family Code § 3004 (West 2005).

⁵¹ Cal. Family Code § 3007 (West 2005).

⁵² Cal. Family Code § 3100(b) (West 2005).

⁵³ Cal. Family Code §§ 3100(b) and 3027.5(b) (West 2005).

⁵⁴ Cal. Family Code § 7573 (West 2005).