



# Implementing the APS-Initiated Elder Abuse Restraining Order (AIRO)

OCTOBER 21, 2021



DEPARTMENT OF JUSTICE

**Elder Justice**  
INITIATIVE



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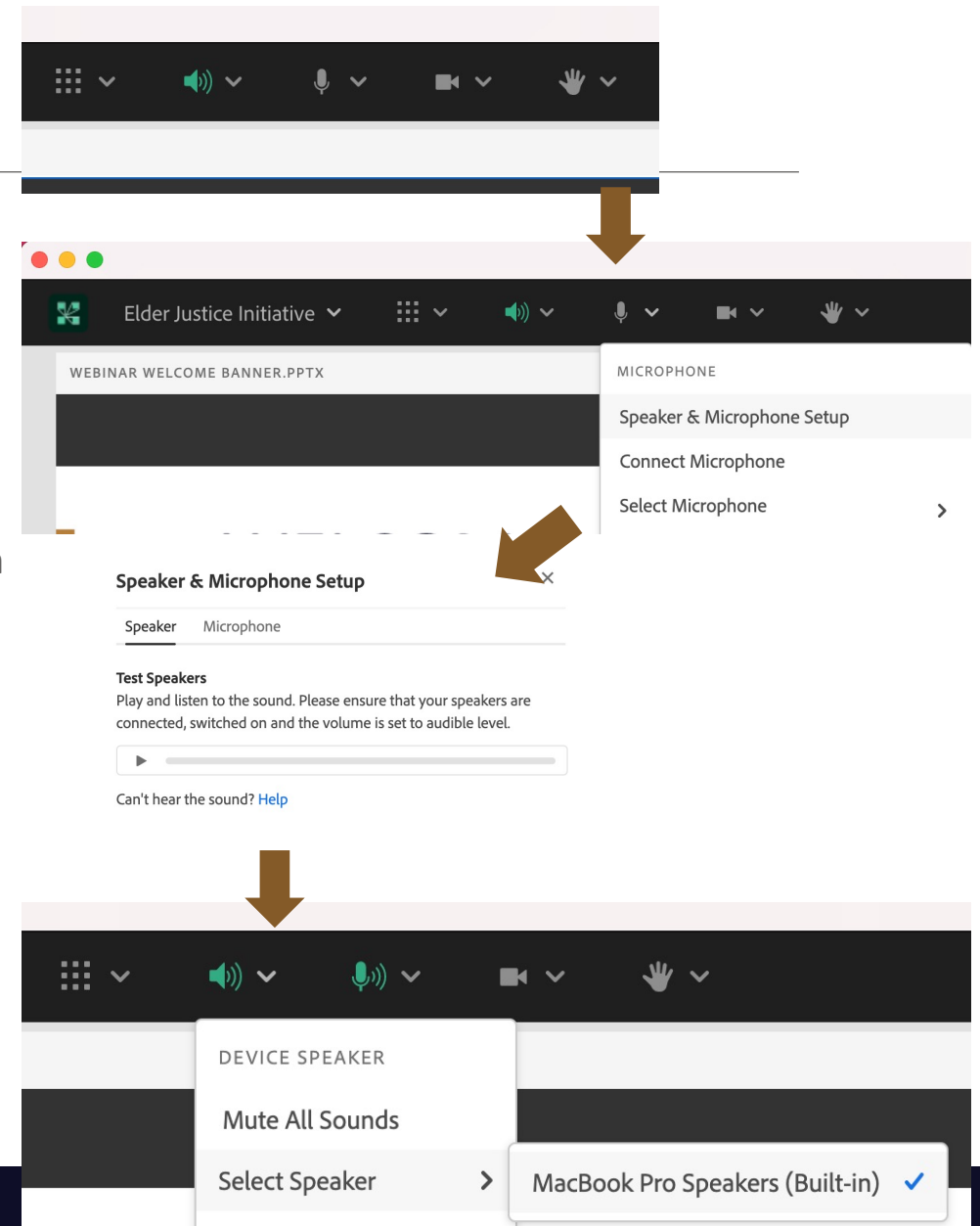


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# ELDER JUSTICE INITIATIVE

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The **mission** is to support and coordinate the Department of Justice's enforcement and programmatic efforts to combat elder abuse, neglect, and financial fraud and scams that target older adults.

The Initiative does so by—

- Promoting justice for older adults.
- Helping older victims and their families.
- Enhancing state and local efforts through training and resources.
- Supporting research to improve elder abuse policy and practice.

# ELDERJUSTICE.GOV

You are fighting elder abuse on the front lines. We have got your back.



## Outreach Materials

Get involved, get safe community presentations, pamphlets, and materials on all types of elder abuse.



## Prosecutor Video Series

Training videos geared toward successful prosecution of elder abuse cases.



## Elder Abuse Research

References to articles, books, and government reports on all types of elder abuse and financial exploitation topics.



## Elder Abuse Statutes

State statutes relevant to elder abuse cases.



## MDT Guide & Toolkit

Start or grow a local elder abuse case review multidisciplinary team with this research- and resource-rich toolkit.



## Financial Exploitation & Reporting

Learn about financial scams and find the right reporting agency.



## Webinars

Webinars targeted to elder abuse professionals and those interested in elder abuse topics



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# POLL QUESTION

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**What is your professional affiliation?**

- Adult protective services
- Aging services
- Civil legal services
- Financial services/industry
- Health care services
- Law enforcement
- Long-term care ombudsman
- Mental health services
- Other government agencies
- Prosecutor
- Research
- Victim services
- Other

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# POLL QUESTION

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**What is your experience working in elder justice?**

None to a little experience

Somewhat experienced

Extremely experienced



# Implementing the APS-Initiated Elder Abuse Restraining Order (AIRO)

Riverside County

Julie Orozco, Regional Manager

Raymond Mistica, Deputy County Counsel



# Presenters



Julie Orozco is a Regional Manager with the Riverside County, Department of Public Social Services, Adult Services Division. In this role, she oversees the division's APS Administrative Support Programs, including policy, custodian of records, quality assurance, the C.A.R.E. (Curtailling Abuse Related to the Elderly) Program, Elder Abuse Forensic Center (EAFC), as well as legislative and media projects.



Raymond Mistica is a Deputy County Counsel IV with the Riverside County, Office of County Counsel handling matters for the Riverside County Department of Public Social Services, Adult Services Division. He was admitted to the California State Bar in 2003.

# National Statutory Review: Elder Abuse Restraining Orders

Shelly, do you want to add any of your research here?

# Restraining Orders: Overview

- Protective orders are used to restrain the conduct of a person.
- Five (5) types that may apply to protecting elders and dependent adults:
  - **Emergency Protective Order (EPO)** – Family Code §§6240-6274
    - Limitation: Short duration. Lasts only 5 court days. Only brought by law enforcement.
  - **Criminal Protective Order (CPO)** – Penal Code §136.2
    - Limitation: Requires a criminal case filed in criminal court to be brought by District Attorneys.
  - **Domestic Violence Restraining Order (DVRO)** – Family Code §§6200 et seq.
    - Limitation: Requires a specified familial/household relationship between the restrained party and the protected party. Has to be brought by the abused person.
  - **Civil Harassment Restraining Order (CHRO)** – Code of Civil Procedure §527.6
    - Limitation: Has to be brought by the abused person. Would not apply to neglect or financial abuse cases.
  - **Elder or Dependent Adult Protective Order (EDAPO)** – Welf. & Inst. Code §15657.03
    - Limitation: Applies only to elders (age 65 and over) and dependent adults.

# APS Initiated Restraining Order (AIRO)

## Background:

- **2014:** Riverside County CARE Team submitted legislative proposal
- **2016:** Became a law
- Modified W&IC 15657.03 and 15610.07
- Allows APS to file a request for a restraining order to protect an elder or dependent adult who:
  - has an impaired ability to appreciate and understand the circumstances that place him or her at risk of harm, or
  - has provided written authorization for APS to file the restraining order on their behalf.



# Implementation



- Established planning/implementation meetings (APS Managers, staff experienced with restraining orders, County Counsel, Public Guardian, Probate Court).
- Determined County Counsel would file the petitions
- Designated AIRO Coordinator (per County Counsel request)
- Wrote internal procedures (step-by-step instructions)
- Developed policy
- Case submission, debrief discussion, and modification to policy and procedures
- Presentations made to APS staff

# The Legal Authority

## WELFARE & INSTITUTION CODE § 15657.03

- **LAW:** Pursuant to Welfare & Institutions Code section 15657.03(a)(3)(A), a petition may be brought on behalf of an elder or dependent adult by a county adult protective services agency in either of the following circumstances:
  - If the elder or dependent adult has suffered abuse and has impaired ability to appreciate and understand the circumstances that place him or her at risk of harm.
    - Under this option, APS is required to make a referral to the Public Guardian upon filing. (Section 15657.03(a)(3)(B).)
  - If the elder or dependent adult has provided written authorization to a county adult protective services agency to act on his or her behalf.
- **BURDEN:** A protective order may be issued upon reasonable proof of past acts of abuse. (Section 15657.03(c).)
  - Don't need any particularized showing that the wrongful acts will be continued or repeated. (*Godowsky v. Godowsky* (2009) 175 Cal.App.4<sup>th</sup> 128.)
  - Burden of proof is on the petitioner and under preponderance of the evidence standard. (*Godowsky v. Godowsky* (2009) 175 Cal.App.4<sup>th</sup> 128; *Book out v. Nielsen* (2007) 155 Cal.App.4<sup>th</sup> 1131.)
- **SCOPE:** The court has broad authority to enjoin any specified behavior. (Section 15657.03(b)(4)(C).)

# The Legal Authority

## WELFARE & INSTITUTION CODE § 15657.03

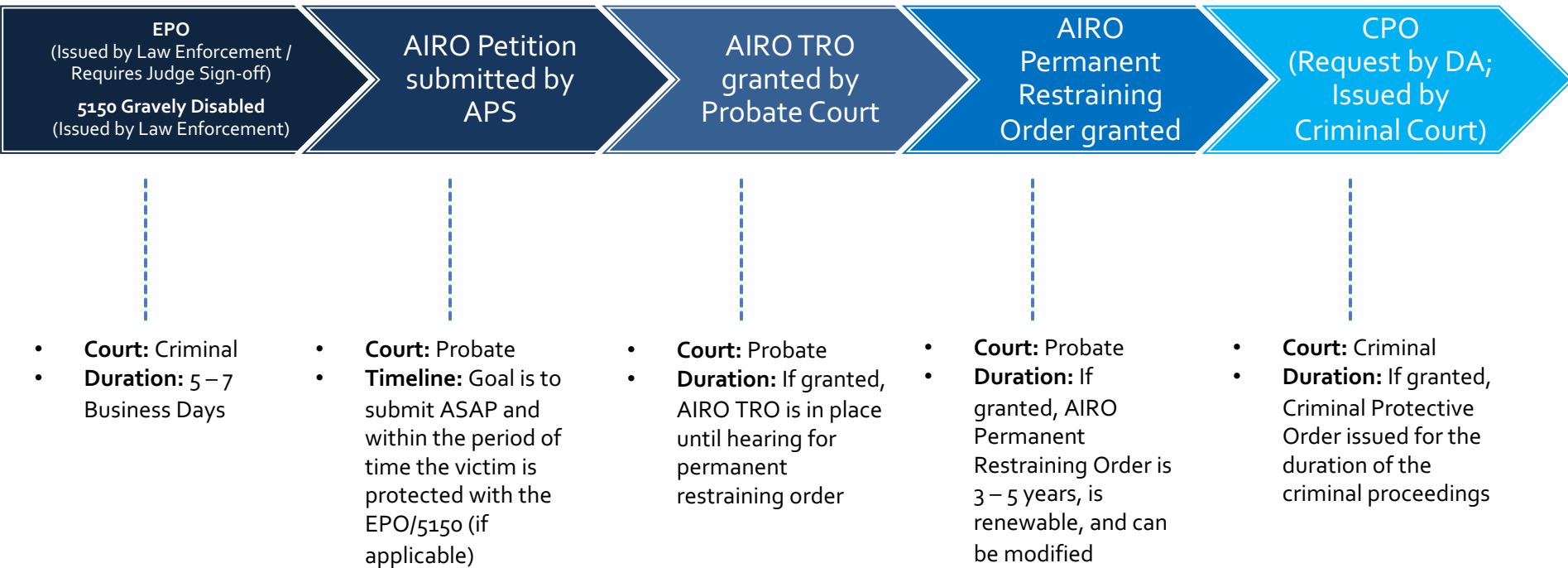
- **LIMITATIONS:**
  - If seeking an order excluding the suspected abuser from the residence, the APS client must have legal or equitable title of, or lease rights in, the residence. (Section 15657.03(b)(4)(B).) On the other hand, can “kick-out” suspected abuser even if suspected abuser has legal rights to the residence.
  - To obtain a temporary restraining order excluding the suspected abuser from the residence, you must show that the suspected abuser has assaulted or threatened to assault the APS client. (Section 15657.03(d).)
  - To obtain a permanent order excluding the suspected abuser from the residence, the court must find that the physical or emotional harm would otherwise result to the APS client. (Section 15657.03(h).)
- **TIMING:** Temporary restraining orders may be granted upon the filing of the petition and last until the permanent hearing. (Section 15657.03(d).) Hearing on permanent orders are within 21 days from the filing of the petition unless good cause shown requiring 25 days. (Section 15657.03(f).)
- **DURATION:** The permanent order has a duration of not more than five years but may be renewed. (Section 15657.03(i)(1).) If the order does not on its face state the expiration date, the duration is three years from the date of its issuance. (Section 15657.03(i)(2).)

# Filing Considerations

- Is the client in imminent danger of abuse?
- Does the client have an impaired ability to protect him/herself or their assets from the abuse?
- Does the client remain vulnerable to continued victimization?
- Do we have sufficient facts/evidence that abuse has occurred?
- Other protective measures have been insufficient to mitigate the abuse.
- A reliable third party exists (e.g., licensed facility, relative, public guardian) to protect the elder/dependent adult.



# Utilizing the AIRO and other Interventions





# Implementation Considerations/Challenges

- County Counsel involvement
- Time Consuming (packet, process)
- Utilization of a specialist
- Can initially be viewed as a fix-all solution to challenging cases (it is not)
- Law enforcement history (suspect/victim; interagency cooperation; public records)



# Implementation Considerations/Challenges

- Repercussions for the client/county (e.g., when you remove caretaker)
- The need to tailor the order to the facts of the case (never want order to be overreaching)
- Community partners seeing AIRO as a tool to obtain protection during planned intervention gaps
- APS social worker testimony
- Potential criticism when the agency elects to not do an AIRO



# Benefits of the AIRO

- Protects your most vulnerable clients
- Gives law enforcement the authority to enforce the order
- Gap measure (while waiting for conservatorship, criminal proceedings)
- Provides legal authority to keep client protected/ confidential



# Riverside County AIRO Outcomes (8/2016 – 9/2021)

- AIROs submitted: 15
- TRO Granted: 15
- Permanent Granted: 11
  - Permanent Withdrawn: 1
  - Permanent Denied: 2
  - Removed from Calendar (client deceased): 1
- AIRO Consult Only: 18



# CASE PRESENTATIONS

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# AIRO Case Presentation #1

- **Pseudonym:** Jane Doe A
- **Age:** 87
- **Gender:** Female
- **Living situation:** Lived at home with son, daughter and son-in-law
- **Medical history:** hypertension, atrial fibrillation, hypothyroidism, left sided hemiparesis, dementia, and Chronic Obstructive Pulmonary Disease (COPD). Was on hospice due to a significant cerebrovascular accident (CVA).

# Case History

- **Criminal History:** Perpetrators had two prior criminal cases (2009 and 2014) involving PC 368 (Elder Abuse) against victim
- **APS History:**
  - History of client refusing services, insisting on returning to home of abusers
  - History of suspects removing victim from medical facilities AMA (Against Medical Advice)
  - Family hiding client so department could not assess capacity/interview client

# Presenting Case



August 25,  
2016

- Hospice aid walked in on son sexually assaulting victim, called 911
- Law enforcement dispatched, son arrested, son-in-law arrested
- EPO issued by law enforcement
- Client listed as Jane Doe in hospital while AIRO in process

# Presenting Case

August 25,  
2016

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- Joint visit conducted (APS, DA investigator, neuropsychologist)
- Capacity assessment completed

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- TRO granted

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September 2,  
2016

- AIRO filed with Probate Court
- TRO granted

September 22,  
2016

- Court hearing for Permanent Restraining Order
- 3 restraining orders granted
- Client is safe

# Positive Outcomes

- Client removed from abusive environment
- Protective orders issued (EPO, AIRO)
- Conservatorship with family
- Criminal convictions



Suspect	Filed/Certified Charges	Sentence
Suspect 1 (son)	Rape/Unable to consent; Cruelty to and Elder; <b>Assault with intent to commit mayhem, rape, sodomy, oral cop</b>	2 years in prison
Suspect 2 (daughter)	Cruelty to and Elder	Trial Readiness Conference in-progress
Suspect 3 (son-in-law)	<b>Cruelty to and Elder</b>	212 days Work Release Program, 36 months formal probation, CPO (no contact)

# AIRO Case Presentation #2

- **Pseudonym:** John Doe
- **Age:** 80
- **Gender:** Male
- **Living situation:** Lived in a memory care facility
- **Medical history:** high blood pressure, vascular dementia, history of ischemic stroke



# Case History

- **Criminal History:** No criminal history on perpetrators
- **APS History:** No APS history

# Presenting Case



February 16,  
2021

- Facility reported that they had not received rent for nine months, totaling over \$28,000
- The son was the identified party responsible for making payments
- The son was also not paying for his father's medications

# Presenting Case

February 16,  
2021

- Facility reported that they had not received rent for nine months, totaling over \$28,000
- The son was the identified party responsible for making payments
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February 17,  
2021

- APS conducted first contact with the client.
- Alleged perpetrator, son, was responsible for managing finances.
- APS determined that the client had dementia.
- APS determined client was now 30,000 in arrears and was at risk of being evicted.
- APS determined that client had enough assets to cover expenses (receiving over \$12,000/month).
- APS placed a hold on client's bank accounts and retirement funds.

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## February 25, 2021 – March 15, 2021

- Requested bank records to assess activity.
- APS determined that son and daughter-in-law consistently used client's debit card for expenses that were not related to his care; regularly transferred money from his account to their account; and were taking out personal loans in client's name with payback from client's account.
- APS assessed a total loss of \$350,000

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April 14,  
2021

- Due to the son continuing to try to access the client's financial resources (e.g., switch client's bank for trust, access funds in mutual fund account APS was not aware of), APS requested an EPO from law enforcement, which was granted.

# Presenting Case



April 23,  
2021

- AIRO submitted
- Temporary AIRO issued

# Presenting Case



April 23,  
2021

- AIRO submitted
- Temporary AIRO issued

May 5,  
2021

- Court issued permanent AIRO for three (3) years.

# Presenting Case



April 23,  
2021

- AIRO submitted
- Temporary AIRO issued

May 5,  
2021

- Court issued permanent AIRO for three (3) years.

May 26, 2021 –  
June 9, 2021

- Client's granddaughter petitioned for conservatorship and was approved for person and estate



# Positive Outcomes

- Client's future assets protected (Had \$51,000 when case closed)
- Helped secure housing/avoid eviction with advocacy and financial assistance
- Protective orders issued (EPO, AIRO)
- Conservatorship with family (granddaughter)
- Law enforcement was able to obtain a written confession from the son and charges will be filed with the District Attorney by end of 2021

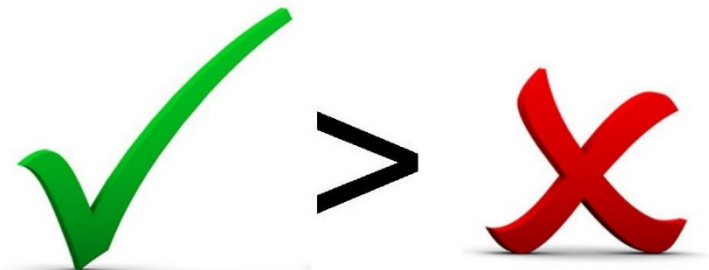


# Legal Lessons Learned

- Be prepared to conduct an evidentiary hearing.
- Court may set hearing as soon within a week, or up to 25 days (typically 21 days).
- For cost considerations, a county may use their local law enforcement for process serving. However, for hard-to-locate individuals or out-of-state perpetrators, a professional process server may be needed.
- In cases where criminal charges are pending, the perpetrator/responder to the AIRO may exercise their 5<sup>th</sup> amendment right against self-incrimination, which may delay the AIRO proceedings.

# AIRO: Final Words

- The AIRO can be a valuable tool to aid APS in their effort to protect vulnerable clients
- The AIRO has especially helped with cases of financial abuse. The AIRO helps to safeguard assets sooner.
- While a time-consuming process, it has had positive outcomes for our clients
- Strongly recommend a coordinator to help facilitate process; helps provide a main point of contact for everyone



# POLL QUESTION

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How helpful did you find this webinar?

Very helpful

Somewhat helpful

Not at all helpful

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# QUESTIONS?

If we cannot get to your question today, please e-mail us at [elder.justice@usdoj.gov](mailto:elder.justice@usdoj.gov)