

Restraining Orders: The Secret Weapon of California Retailers

By **John Dahlberg** - June 16, 2023



There is one falsehood you will hear repeated with weary disgust when you ask owners and managers of shopping centers and tenant stores why they tolerate people who trespass, loiter, beg, steal, fight, drink, use drugs, and engage in other disorderly conduct at their properties: “The police won’t do anything.”

The reality is, that is just wrong. The police and local sheriff *will* usually arrest and remove people who have been served with court stay-away orders. Better still, most chronic disorderly and violent trespassers *will stay away* from protected premises once they learn of the orders because they want to avoid police contact that results from disobedience.

If owners do not take control of their properties, disorder likely will worsen for tenants, customers, and tenant employees. With shocking impunity, disorderly and violent California trespassers use private commercial property to loiter, camp, beg, yell, fight, rob, steal, drink, take and sell drugs,

urinate, defecate, occupy parking lots with derelict vehicles, and engage openly in sex acts. Some threaten and batter customers and employees. Some brandish and use deadly weapons. People who loiter and beg passively in front of a store one week may enter it the next to batter customers or employees who ask them to leave or to clear out of store restrooms, which they often monopolize to conceal stolen merchandise or to smoke, snort, or inject drugs.

If owners or managers do not stop disorder and violence, tenants and customers will flee, social media will turn sour, and owners will see the value of their investment go south fast. As if that isn't bad enough, visitors and tenant employees may also sue owners for injuries at the hands of unstable or violent trespassers while local officials will threaten owners with lawsuits to abate nuisances based on complaints from the police, politicians, government agencies, and the community.

The Solution

No matter how long trespassing, disorder, and violence have been present at any store, center, or other private commercial or residential property, two types of highly effective civil restraining orders will still be enforced by California police and sheriffs: anti-trespass orders and workplace violence orders. A willful violation of these orders is a crime. Even today—and even in California—most peace officers will arrest for this violation.

A California Superior Court will issue a temporary, preliminary, and permanent injunction against persons who trespass or who create disorder, commit crimes, cause nuisances, and disrupt business. Owners and managers can seek emergency trespass and nuisance restraining orders when a new lawsuit is filed by owners, managers, or lessees. In some counties this takes about a week; in others, two or three.

Examples from Real Cases

Common Area Trespassers and Their Disorderly Conduct: Unidentified persons trespass in common areas where they could loiter to fight, beg, smoke meth, and urinate. Some camp overnight in exterior areas, leaving human and dog waste, needles, and drug paraphernalia. A trespass and

nuisance order will command them to stay away from the entire center. In the owner or manager's court petition, the trespasser should be identified by name, which the police will usually provide. If no name is known, a California court will allow the center to designate the person by a fictitious name such as John Doe in its petition if a clear full face picture of the trespasser is also provided to the court and is attached to the court orders.

The Loud Shoplifter: A retailer has daily losses from a prolific nonviolent shoplifter who creates a disturbance by yelling and cursing each time they are told to leave the store. A court will restrain them from entering the store premises and adjacent parking lot.

Workplace Violence Safety Act Restraining Orders: Employers can obtain one-day workplace violence temporary restraining orders against any person who targets an employee or independent contractor guard with violence, threats of violence, stalking, or harassment in the workplace. The employer usually then gets an order that is good for up to three years a few weeks after the first order is signed by a judge.

Threat of Violence: A center property manager or contractor guard tells trespassers to leave based on their disorderly behavior. The owner or manager of the center may obtain a workplace violence stayaway order to protect its independent contractor guard. The same order is available if the threatened employee works at a store or if violence occurs.

The Angry Stalker: A store customer repeatedly enters a store to accuse an employee of wronging the customer. The customer invades the employee's personal space and is loud and angry. Although there was no direct threat or violence, the angry and persistent customer's stalking and harassment is well within the workplace violence statute.

The Lovelorn Stalker: Change the facts of the prior example so that the customer professes only unwanted romantic feelings for the employee. The customer visits the store daily and waits in the lot with flowers for the employee at quitting time. The employer may obtain a workplace violence order due to stalking and harassment even though the customer professes benevolent feelings towards the employee.

What You Need to Get an Enforceable Order

1. **You Need a Commitment from the Police to Enforce Restraining Orders.** Owners or managers need to meet face to face with police department decision makers to ensure the department will arrest and transport people who willfully violate restraining orders. In all but a handful of California jurisdictions, the police and sheriffs want to help beleaguered shopping centers rid themselves of violence and disorder.
2. **You Also Need Names and Admissible Evidence.** To get a rapid order, the owner, lessee, guard, manager, or employer must present the court with a declaration setting forth with specificity and under oath the threats, violence, trespassing, or other offensive and disorderly conduct to be enjoined by the court. This information is usually collected by security professionals and property managers while offender names come from street cops who deal with the offenders at the property.

Why Restraining Orders Work Even if the Police Will Not Arrest for Trespassing

In California, police and sheriff's deputy recruits are taught not to arrest trespassers under the state trespass law even if the trespasser is on the premises and in violation of the owner's wishes in the officer's presence. This hands-off practice explains why owners and managers complain that the police do not remove people who violate the state trespass laws. Here are two reasons why the restraining order is effective anyways:

- **Violating a Restraining Order is a Separate Crime Called Contempt of Court.** California peace officers still arrest and transport those who willfully violate restraining orders under the contempt of court laws. There is a frustrating irony here: although the police will not arrest for trespassing, they will arrest a person who violates a court order that prohibits trespassing.
- **Most Restrained People Voluntarily Comply with Stay-Away Orders.** The typical offenders who create disorder are convicts with state prison or jail time. Many assume they have warrants even when they don't (though some do). Some are on probation or parole and are subject to search. Many have drugs and drug paraphernalia, and some possess firearms, knives, stolen credit cards, and other stolen property. Others are intoxicated. None really want police contact. Those with prior criminal court experience know that violating a restraining order will result in police contact that they want to avoid. Because of this, they usually comply with stay-away orders voluntarily.

Out of the hundreds of orders we have served up and down the state, I can think of only a few reported violations. Each violator was arrested and prosecuted for contempt of court. After that, they stayed away.

If an owner or manager has failed to seek a restraining order against a homeless person because their name is unknown, a good relationship with the police usually fixes the problem. In most jurisdictions, beat cops will give the manager or the security professional the offender's name and they will be glad to hear you are doing something to better conditions at the property. For their part, cops love restraining orders because they are a valuable tool to suppress violence and other criminal behavior at stores and centers the community needs.

There are also many ways to locate transients who must be served with orders. We serve well over 93 percent of the transients who are restrained by the court orders we get.

Be careful though—you do not want to take action against orderly homeless persons. Owners and managers should take no action against an orderly person who is transient, homeless, poor, messy, babbling to themselves, or wearing ragged clothing, etc. Although these people may linger, owners should ask them to move along only if they treat lingering well-dressed customers likewise. (Even

then, some allowance may also have to be given if they appear to have a disability that makes it hard for them to leave a property with alacrity). The presence of orderly transient, poor, and unsightly people may well draw ill-advised customer complaints, but that alone is not a sufficient legal basis to tell them to leave or to seek an order against them. Owners or managers who do so may end up on the wrong end of a very costly civil rights lawsuit and embarrassing publicity.

Getting a restraining order is expensive. Collaborating closely with the police is time-consuming. But doing nothing is ruinous.



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