

## Sample Protective Custody Warrant

1	IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA	
2	IN AND FOR THE COUNTY OF JEFFERSON, EAST JUSTICE CENTER	
3		
4	THE DISTRICT ATTORNEY OF THE COUNTY	} Case No.: 4815162342 PROTECTIVE CUSTODY WARRANT FOR JIMMY SMITH, A MINOR CHILD. (FAMILY CODE §§3134.5, 3441 et seq.)
5	OF JEFFERSON,	
6	Appearing pursuant to Family Code §§ 3130-	
7	3134.5	
8	JOHN SMITH,	
9	Petitioner,	
10	vs.	
11		Respondent
12	JANE SMITH,	
13		
14		
15		
16	TO ANY PEACE OFFICER OF THE STATE OF CALIFORNIA, OR WITHIN THE	
17	UNITED STATES OF AMERICA:	
18	Proof by verified statement under penalty of perjury having been made this day to me by	
19	Ike Handoo, Deputy District Attorney, and on further review, this Court has determined that	
20	there is sufficient reason to issue a Protective Custody Warrant for the minor child <b>Jimmy</b>	
21	<b>Smith</b> , born February 30, 2011.	
22	You are therefore commanded forthwith to take <b>Jimmy Smith</b> , born February 30,	
23	2011, into protective custody and deliver him into the custody of John Smith.	
24	This warrant may be served in the same manner as a Warrant of Arrest, and may be	
25	served at any time of the day or night.	
26	Notice is hereby given that a hearing in this matter will be held, on the next court date	
27	after the service of this warrant, to determine whether this Court's order of September 31, 2011	
28	shall be further enforced by this Court. Failure by either party to attend this hearing may result	
	Protective Custody Warrant per Family Code §3134.5	

## Applicable Law

### Family Code § 3134.5

#### **Protective Custody Warrants**

- Upon request of the district attorney, the court may issue a protective custody warrant to secure the recovery of an unlawfully detained or concealed child.
- The protective custody warrant for the child shall contain an order that *the arresting agency shall place the child in protective custody, or return the child as directed by the court.* The protective custody warrant may be served in any county in the same manner as a warrant of arrest and may be served at any time of the day or night.

## Important Law

### Penal Code §279.6

**A law enforcement officer may take a child into protective custody if:**

- It reasonably appears that a person is likely to conceal the child, flee the jurisdiction with the child, or, by flight or concealment, evade the authority of the court, or
- There is no lawful custodian available to take custody of the child, or
- There are conflicting custody orders or conflicting claims to custody and the parties cannot agree which party should take custody of the child, or
- The child is an abducted child.

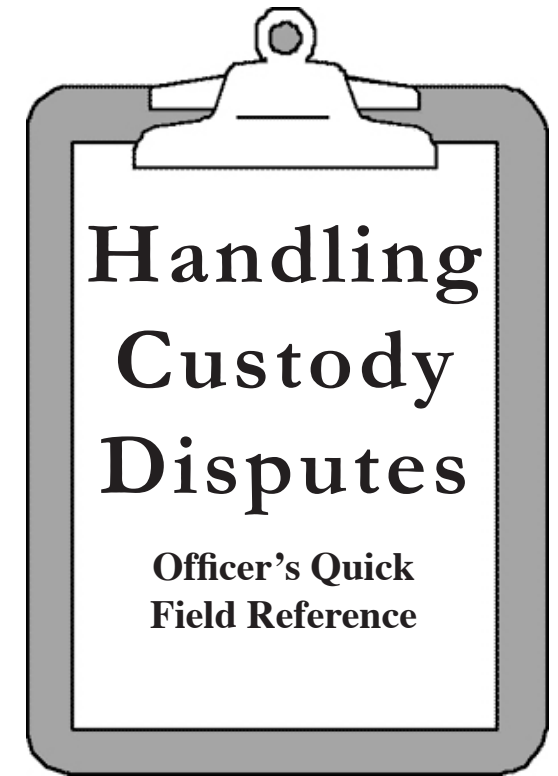
**When a law enforcement officer takes a child into protective custody pursuant to this section, the officer shall do one of the following:**

- Release the child to the lawful custodian of the child, unless it reasonably appears that the release would cause the child to be endangered, abducted, or removed from the jurisdiction.
- Obtain an emergency protective order . . . ordering placement of the child with an interim custodian who agrees in writing to accept interim custody.
- Release the child to the social services agency responsible for arranging shelter or foster care.
- Return the child as ordered by a court of competent jurisdiction.

### Family Code §6250

**A judicial officer may issue an emergency protective order (EPO) when a law enforcement officer asserts reasonable grounds to believe:**

- Based on a reasonable belief that a person has an intent to abduct the child or flee with the child from the jurisdiction, or has made a threat to do so,
- A child is in immediate and present danger of being abducted.



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## Tips for Custody Disputes:

- Take your time
- Carefully read the papers
- Ask questions as needed
- Do NOT get emotionally involved
- Be careful about the actions you take
- If you are unsure about what actions to take, consult your Watch Commander

Tell the party with the order that out-of-state custody orders **MUST** be registered in California before they can be enforced here; a family attorney can advise them further. You are unable to take action at the scene with only an unregistered out-of-state order.

**and**

Do a welfare check (if there is a risk, including abduction or flight, talk to your Watch Commander about an EPO), then refer all parties to the Family Law Court, where they can get the correct orders for enforcement.

**END STEP**

For further questions,  
contact your local District  
Attorney's Office.

# Handling Custody Disputes

## Start Here

Does either party have a signed court order?

**no**

**yes**

Is it either (1) a California court order, or (2) an out-of-state order registered here?

**no**

**no**

**yes**

Does the order **specifically** direct law enforcement to pick up the children? This is generally called a Protective Custody Warrant. (Note: a typical custody order, describing who has custody or visitation, is **not** enough!)

**no**

**yes**

Check with your Watch Commander, then follow the directions of the order. You may be ordered to serve one or more of the parties with notice of a subsequent hearing.

**END STEP**

Tell the parties that without a court order specifically directing law enforcement to take action, you (as a peace officer) can only:

1. Complete a welfare check on the children, and take any appropriate action as a result of that welfare check, and
2. Interview all the parties to determine whether there is probable cause to believe that there is a risk of abduction, risk of flight with the child(ren), or other risks.

**Does there appear to be such a risk?**

**yes**

**no**

Consult with your Watch Commander about whether the risk justifies the children being taken into protective custody.

**Does your Watch Commander believe that protective custody is warranted?**

**no**

**yes**

Refer all parties to the Family Law Court where they can get the correct order for enforcement.

**END STEP**

Your Watch Commander will instruct you to:

- Get an EPO regarding the children as codified by PC §279.6(b)(2) and FC §6250, or
- Release the child to the social service agency responsible for arranging shelter or foster case pursuant to PC § 279.6(b)(3)

**END STEP**