



By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 20.

# Restraining Orders: The Basics

By Louis V. Kosnett

---

The two most common forms of restraining orders in California are Domestic Violence Restraining Orders and Civil Harassment Restraining Orders. Each is adjudicated differently, involves different relationships between the parties, and requires different burdens of proof to be met before the order is issued.

---



**R**ESTRAINING ORDER CASES INVOLVE ONE party, the petitioner, asking the court to issue an injunction against another party, the respondent. An injunction, as defined by Black's Law Dictionary (10th Ed.) is "a court order commanding or preventing an action."

In effect, the petitioner requesting a restraining order is asking the court to command or prevent an action by the respondent. That action could be not speaking to the petitioner—whether in person, on the phone, or by electronic communication—or not approaching within a certain distance of the petitioner's home or work, for example.

Further, a petitioner may also ask that any injunction issued by the court apply to other members of her household, even if they are not a party.<sup>1</sup>

The two most common forms of restraining orders in California are Domestic Violence Restraining Orders and Civil Harassment Restraining Orders. Each is adjudicated differently, involves different relationships between the parties, and requires different burdens of proof to be met before the order is issued.

### **Civil Harassment Restraining Orders**

Civil Harassment Restraining Orders (CHRO) may be issued pursuant to Code of Civil Procedure (C.C.P.) §527.6, which provides in subsection (a)(1) that a person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section. Section (b) defines "harassment" as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose."

The course of conduct "must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner."

As written, the language is broad, and covers a wide range of behaviors by the respondent. Harassment can be physical violence, a threat of physical violence, or any course of conduct that "seriously alarms, annoys, or harasses the [petitioner]."

In addition, the behavior by the respondent must be that which would cause a "reasonable person" to suffer substantial emotional distress. Civil harassment orders are typically not issued for behavior by the respondent that is offensive only to an overly sensitive petitioner; however, if the respondent is aware of such sensitivity, and intentionally exploits it, then that may be considered harassment.

Further, the conduct must actually cause substantial emotional distress to the petitioner. As outrageous as the respondent's conduct may have been, no order can be issued if the conduct does not actually cause emotional distress to the petitioner. For example, if the petitioner was not aware of such behavior at the time that it was being performed, then there is a good argument that the petitioner has not met this required element under the statute.

In addition to the relationship between the parties, one of the distinguishing features of civil harassment restraining orders is the high burden of proof that the petitioner must meet for an order to issue after the hearing. The petitioner must prove all the elements of harassment by clear and convincing evidence.<sup>2</sup> While there is no set definition of what this burden of proof entails, it is generally seen as greater than a preponderance of the evidence (such as in civil trials), and less than beyond a reasonable doubt (as in criminal trials). California courts have defined the standard of "clear and convincing" as requiring a finding of high probability.<sup>3</sup>

A petitioner in a civil harassment restraining order case must therefore be prepared to satisfy a high burden of proof in order to convince a judge to issue the order.

Common civil harassment situations may be disputes involving landlord and tenant, employer and employee, neighbors, or non-romantic roommates.

### **Domestic Violence Restraining Orders**

The other most commonly filed restraining order petition is the Domestic Violence Restraining Order (DVRO). The law pertaining to DVROs is codified in California Family Code (Fam. Code) §6200, et seq., known as the Domestic Violence Prevention Act (DVPA).

Unlike the relationship between the parties in civil harassment petitions, the petitioner and respondent in a DVRO proceeding must have a close personal relationship with each other. The respondent in a DVRO must be associated with the petitioner in one of the following ways:



**Louis V. Kosnett** is a Los Angeles-based attorney practicing in the area of criminal defense and restraining order petitions. He can be reached at [louiskosnett@kosnettlaw.com](mailto:louiskosnett@kosnettlaw.com).




# LAWPAY IS FIVE STAR!



In our firm, it's actually fun to do our billings and get paid. I send our bills out first thing in the morning and more than half are paid by lunchtime.

**LawPay makes my day!**

– Cheryl Ischy, Legal Administrator  
Austin, Texas

Trusted by more than **35,000** firms and  
verified '5-Star' rating on  Trustpilot

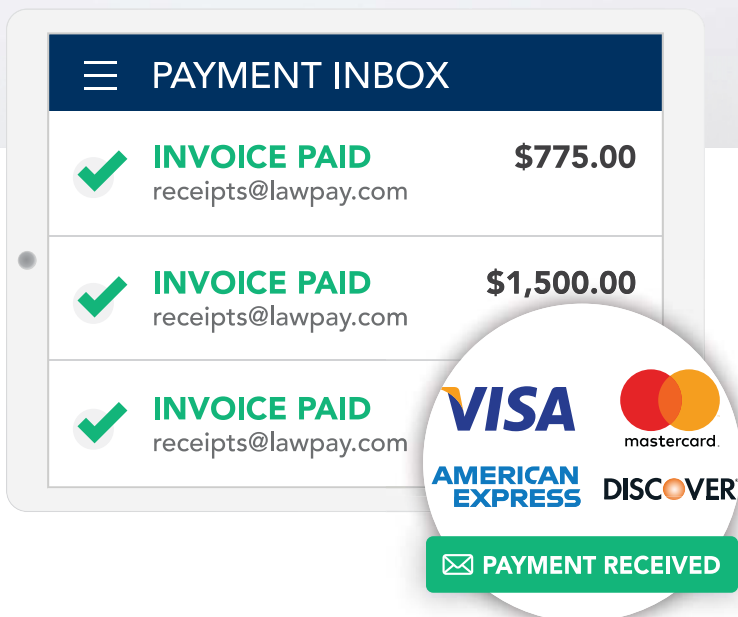
# LAWPAY<sup>®</sup>

AN AFFINIPAY SOLUTION

## THE #1 PAYMENT SOLUTION FOR LAW FIRMS

Getting paid should be the easiest part of your job, and with LawPay, it is! However you run your firm, LawPay's flexible, easy-to-use system can work for you. Designed specifically for the legal industry, your earned/unearned fees are properly separated and your IOLTA is always protected against third-party debiting. Give your firm, and your clients, the benefit of easy online payments with LawPay.

**866-751-8288** or visit [lawpay.com/sfvba](https://lawpay.com/sfvba)



LawPay is proud to be a vetted and approved Member Benefit of the San Fernando Valley Bar Association.



Special offer for  
bar members.  
**Call for details**



- A spouse or former spouse
- A cohabitant or former cohabitant, as defined in Section 6209
- A person with whom the respondent is having or has had a dating or engagement relationship
- A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3, commencing with Section 7600, of Division 12)
- A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected
- Any other person related by consanguinity or affinity within the second degree [blood relative]<sup>4</sup>

Accordingly, DVRO cases typically involve parties in a current or former dating relationship, spouses (often coinciding with a divorce case), or close family members. The court takes fewer chances with domestic violence situations, and will issue a restraining order if the petitioner

can show “...to the satisfaction of the court, reasonable proof of a past act or acts of abuse.”<sup>5</sup> This has been interpreted to mean that a petitioner must demonstrate abuse by only a preponderance of the evidence.<sup>6</sup>

### What is Abuse?

Under the DVPA, abuse is legally defined as intentionally or recklessly causing or attempting to cause bodily injury; sexual assault; placing a person in reasonable apprehension of imminent serious bodily injury to that person or to another; or engaging in any behavior that has been or could be enjoined pursuant to Section 6320. Abuse is not limited to the actual infliction of physical injury or assault.<sup>7</sup>

Abuse is defined more narrowly than the statute defining harassment for CHROs (C.C.P. §527.6). While harassment under C.C.P. §527.6 may cover any number of activities that could cause a reasonable person to suffer substantial emotional distress, abuse under the DVPA is limited to physical violence, sexual violence, credible threats of violence, or any activity under Fam. Code §6320.<sup>8</sup>

### How Restraining Orders Affect Your Record

Once a restraining order—either a CHRO or a DVRO—is issued by a judge after a hearing, it is entered into the Criminal Law Enforcement Telecommunications System (CLETS). This means that the issuance of the restraining order will show up on a criminal background check.

This can be especially problematic for someone working at or applying for government positions, positions that require that applicant to have a clean record, or any job where the applicant’s criminal record is routinely searched as a condition of employment. Many employers will draw negative inferences about the applicant based solely on the issuance of a restraining order appearing in the applicant’s background check.

In addition, once a restraining order after hearing is issued, the respondent is prevented from owning or purchasing a firearm while the restraining order is in effect. A violation of this order is typically charged as a misdemeanor.<sup>9</sup>

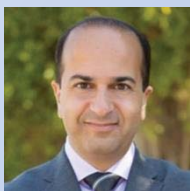
### Temporary Restraining Orders

At the time a restraining order petition is filed, typical practice is for the petitioner to simultaneously request a Temporary Restraining Order (TRO). A TRO is issued to maintain the peace and protect the petitioner while the case is pending, and does not affect the respondent’s criminal record.

A TRO may be (and typically is) issued by a reviewing judge upon reasonable proof of either harassment (for a CHRO) or abuse (for a DVRO), and that great or irreparable harm may result to the petitioner if the TRO is not granted. If a judge is unwilling to grant the TRO, that essentially means



## INSURANCE AND RETIREMENT PLANS FOR LAWYERS AND LAW FIRMS



**PEYMAN COHAN, ESQ**  
License # 0F47171  
[Peyman@cohan-horn.com](mailto:Peyman@cohan-horn.com)  
(323) 708-0072



**JOHN HORN, ESQ MBA CFP**  
License # 0I25017  
[John@cohan-horn.com](mailto:John@cohan-horn.com)  
(818) 802-5895

that the petitioner has not made a reasonable prima facie case of harassment or abuse, and does not bode well for the petitioner's case.

Although ex parte rules of court typically require that the opposing party be given notice a day in advance, a TRO often is issued without notice to the respondent in order to avoid the potential for violence or harassment.

### Steps to Obtain a Restraining Order

There are four well-defined steps to obtaining a restraining order:

1. Prepare the petition. The Judicial Council has developed forms that guide a petitioner through the steps involved in filing a restraining order. The Civil Harassment Petition is numbered CH-100, and the Domestic Violence Petition DV-100. These forms are freely available online as fillable PDFs through the Judicial Council website.<sup>10</sup>  
Although the form guides the petitioner through all the elements of a restraining order petition, the petitioner must still offer a narrative of the harassment or abuse inflicted on the petitioner by the respondent. The petition may be prepared by an attorney, but must be signed by the petitioner himself under penalty of perjury.
2. File the petition in the proper courthouse. The appropriate courthouse for filing a restraining order petition is in the county where the respondent lives or where the harassment or abuse takes place. For large counties like Los Angeles, the proper courthouse is generally the one closest to where the alleged abuse occurs. The Los Angeles Superior Court website features a filing locator that allows a petitioner to locate the proper filing courthouse by entering the address.<sup>11</sup>  
A petitioner is encouraged to arrive at the courthouse early to file the petition and allow time for the judge to review and issue the TRO the same day. Judges typically have a large calendar to get through, so the petitioner should be prepared to wait several hours if necessary.
3. Serve the court documents on the respondent. Once a Restraining Order Petition has been filed, the respondent must be given notice of the petition, and a chance to respond. The respondent must be served with the stamped Restraining Order Petition, a Notice of Hearing form containing the date that the case will be heard by the judge, the signed TRO (if one is issued), and a blank response form (either a CH-120 or a DV-120) for the respondent to complete. A judge will not issue a restraining order against a respondent based solely on the failure to file a written response, but a smart respondent will help himself by doing so, which gives the

**CISLO & THOMAS LLP<sup>®</sup>**  
Patent, Copyright and Trademark  
Litigation Attorneys at Law

**Successfully Won or Settled  
98% of Our Cases**  
"We have the best Intellectual Property  
Attorneys in Southern California,  
who litigate and protect IP."  
**Daniel M. Cislo, Esq.**  
Managing Partner  


**Serving Businesses in California Since 1979**  
Office Locations:  
West Los Angeles/Santa Monica  
Westlake Village  
Santa Barbara  
Pasadena  
San Diego  
[www.cisloandthomas.com](http://www.cisloandthomas.com) | (310) 979-9190

**DELIVERING  
VALUE**  
**Jenny Chen, Partner**  
Specializes in serving law firms and other professional services

- \* Attestation/Accounting
- \* Tax Planning and Compliance (Multi-State, International)
- \* Audits of Employee Benefit Plans
- \* Tax Credits and Incentives
- \* Controllership
- \* Business Valuation
- \* Estate and Trust Planning
- \* IT Systems Review and Consulting

**HUTCHINSON AND BLOODGOOD LLP**  
Certified Public Accountants and Consultants  
550 N. Brand Blvd., 14th Floor Glendale, CA 91203  
t 818.637.5000 [www.hbllp.com](http://www.hbllp.com)

Judge something in writing to review at the time of the hearing.

The petitioner may not herself serve the respondent.<sup>12</sup> Anyone else may do so, but petitioners are encouraged to use professionals, such as a registered process server or sheriff, in order to ensure that the service is carried out properly, and the proof of service form completed accurately. In cases of domestic violence, the sheriff will serve the orders free of charge. The respondent must generally be served at least five days in advance of the hearing, although if the respondent shows up without being properly served, the court will give her the choice of either proceeding that same day or continuing the hearing.

4. Attend the hearing. Both parties must attend the hearing on the date the court selects. Restraining order petitions are finally decided by a judge, and neither party is entitled to a jury. If the petitioner does not attend, the case is dismissed, and the TRO dissolved, without any argument necessary from the respondent. If the respondent does not attend, the petitioner must still offer either clear and convincing evidence of harassment (in civil harassment petitions) or reasonable proof of abuse (in domestic violence petitions) to the court.

Obviously, having only one party present to argue their side of the case greatly increases the petitioner's chance of having the restraining order granted. If the respondent does attend, they are entitled to one continuance as a matter of right, without having to demonstrate good cause. The petitioner, presumably given more time to prepare their case, does not have this right, and must demonstrate good cause for the hearing to be continued.

At the hearing, in addition to the evidence presented by the parties (which typically consists primarily of the parties' own testimony) the judge will consider absolutely everything, from the parties' demeanor, to their behavior towards one another and to the court, to even the clothes they wear and the way in which they present themselves. This is often the only opportunity each party will have to convince the judge that they are right. It is wise for each party to be on their best behavior. Judges

do not appreciate interruptions, disrespect, or wasting of the Court's time.

These hearings are typically fraught with tension, extremely emotional parties, and large stock of evidence and testimony (much of which is often irrelevant, according to evidentiary rules). Judges will often give the parties (most of whom are not represented by counsel) a large amount of leeway, but often eventually run out of patience, mindful of the full courtroom filled with petitioners and respondents waiting for their cases to be called.

For that reason, it is best practice for each party to start off with the strongest, most impactful evidence in their possession, and work their way down. It is unwise to interrupt or insult the other party, speak directly to the other party rather than to the judge, use profanity,

or demonstrate any lack of respect and deference to the court. Judges have little time with each case, and take everything they see and hear into account in their ruling. A judge's determination of each party's credibility is a significant factor. If a judge determines that one party is not credible, it is practically guaranteed that the ruling will not be in their favor.

#### **After the Hearing**

After the hearing, the judge will either issue a restraining order, or deny the petition. Often, a judge who feels that the petitioner has not quite met their burden will deny the petition "without prejudice," which means that if there are any further instances of abuse or

harassment by the respondent, the petitioner can re-file their restraining order petition.

If the judge grants the petition, both parties will be served with identical copies of the restraining order, clearly laying out what activities the respondent is legally prevented from taking with regard to the petitioner. These orders typically require the respondent to stay a certain distance away from the petitioner (and any other protected persons included on the petition, if any), the petitioner's home, car, and place of employment. It will also include an order to not contact the petitioner, and not own any firearms. In cases where minor children are involved, unless there is good cause not to do so, the order will often indicate that the petitioner and respondent may have brief, peaceful contact for issues related to the children.

The order will also inform the parties that if the respondent contacts the petitioner, the petitioner may record



An experienced attorney should be able to present evidence in the most compelling and effective way, maximize its effectiveness, and give her client the best chance to prevail."




the phone call without the respondent's consent (which, under normal circumstances, would be a crime).<sup>13</sup> The order will specify the length of time it is in effect, and the date it expires. A violation of either the TRO or the restraining order is typically a misdemeanor, which subjects the respondent to arrest and possible incarceration.<sup>14</sup>

### Do I Need to Pay for a Lawyer?

The vast majority of petitioners and respondents in both CHRO and DVRO petitions are self-represented, and the process is designed to be accessible to non-attorneys. However, considering what is at stake for both parties, it may be worth the expense to retain an experienced restraining order attorney. A respondent who represents himself risks not utilizing his best possible defense, and faces damage to his reputation, as well as his current or future employment prospects.

Similarly, a petitioner who acts as his own counsel risks emotion clouding both his thought process and judgment. This could impair her ability to present his best possible case against the respondent. An attorney, on the other hand, is more capable of resisting the challenges presented by the high level of stress and emotion inherent in restraining order hearings.

An experienced attorney should be able to present evidence in the most compelling and effective way, to maximize its effectiveness, and give their client the best chance to prevail.

In addition, the prevailing party in both CHRO and DVRO petitions may, at the discretion of the judge, be awarded reasonable attorneys' fees and costs.<sup>15</sup> It is good practice for every attorney to make that request at the earliest opportunity, and submit a Keech Declaration that details reasonable attorneys' fees and costs. 

<sup>1</sup> For purposes of this article, "his" and "her" are used interchangeably.

<sup>2</sup> See C.C.P. §527.6(i).

<sup>3</sup> See *In re Angelia P.*, 28 Cal. 3d 908, 919, 623 P.2d 198, 204 (1981).

<sup>4</sup> Fam. Code §6211

<sup>5</sup> Fam. Code §6300

<sup>6</sup> *Gdowski v. Gdowski*, 175 Cal. App. 4th 128, 137, 95 Cal. Rptr. 3d 799, 805 (2009)

<sup>7</sup> Fam. Code §6203

<sup>8</sup> (a) The court may issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, credibly impersonating as described in Section 528.5 of the Penal Code, falsely personating as described in Section 529 of the Penal Code, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.

<sup>9</sup> California Penal Code (Pen. Code) §29825.

<sup>10</sup> <http://www.courts.ca.gov/formsrules.htm>.

<sup>11</sup> <http://www.lacourt.org/filinglocator/ui/filingsearch.aspx?CT=FA>.

<sup>12</sup> C.C.P. §414.10.

<sup>13</sup> Pen. Code §632.

<sup>14</sup> Pen. Code §273.6.

<sup>15</sup> C.C.P. §527.6(s), Fam. Code §6344.



ADR Services, Inc. Proudly Welcomes

**Hon. Rita "Sunny" Miller** (Ret.)

**Mediator • Arbitrator • Referee**



**TYPES OF CASES HANDLED**

**Employment**

**Complex Business Litigation**

**Insurance and Reinsurance**

**Legal and Medical Malpractice**

**Intellectual Property**

**Products Liability**

**Toxic and Other Torts**

For scheduling, please contact Christie Woo  
at [christie@adrservices.com](mailto:christie@adrservices.com)

**310-201-0010**

**[www.JudgeMillerADR.com](http://www.JudgeMillerADR.com)**





# Test No. 121

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. The parties in a civil harassment or domestic violence restraining order case are known as the "plaintiff" and the "defendant."  
☐ True ☐ False
2. A Domestic Violence Restraining Order petition requires that the parties have a close personal relationship with each other.  
☐ True ☐ False
3. A petitioner in a Civil Harassment Restraining Order case must meet a higher burden of proof than a petitioner in a Domestic Violence Restraining Order case.  
☐ True ☐ False
4. Most parties in a restraining order case do not retain counsel.  
☐ True ☐ False
5. The petitioner may not serve the respondent with court documents herself.  
☐ True ☐ False
6. In order for a Civil Harassment Restraining Order to be issued against a respondent, it must be found by the judge that the respondent committed an illegal act.  
☐ True ☐ False
7. If the respondent does not appear at the restraining order hearing, the judge will automatically issue a restraining order against the respondent.  
☐ True ☐ False
8. If the petitioner does not appear at the restraining order hearing, the judge will dismiss the case  
☐ True ☐ False
9. After the hearing, the judge may, at their discretion, award the prevailing party reasonable attorneys' fees and costs.  
☐ True ☐ False
10. If the judge rules against the petitioner at the hearing, the petitioner is prevented from ever filing another restraining order petition against the same respondent.  
☐ True ☐ False
11. Recording a phone call without the other party's consent is illegal without a court order.  
☐ True ☐ False
12. A temporary restraining order may not be issued without notice to the respondent.  
☐ True ☐ False
13. A violation of either a TRO or Restraining Order after Hearing is a crime, subjecting the respondent to arrest and incarceration.  
☐ True ☐ False
14. A petitioner may request that other persons be protected as well, even if they are not parties.  
☐ True ☐ False
15. Since the issuance of a Restraining Order after Hearing does not make the respondent a criminal, such an order will not be visible on a criminal background check.  
☐ True ☐ False
16. A Domestic Violence Restraining Order after Hearing may be issued against the respondent even if there is no finding by the judge that the respondent used physical violence against the petitioner.  
☐ True ☐ False
17. Neither party in a restraining order case has the right to a jury.  
☐ True ☐ False
18. Once a Restraining Order after Hearing is issued, the respondent may keep any firearm he or she owns, but may not purchase new firearms.  
☐ True ☐ False
19. A petitioner has the right to one continuance of the restraining order hearing, without a showing of good cause.  
☐ True ☐ False
20. The party who speaks the loudest and interrupts most frequently usually prevails.  
☐ True ☐ False

## MCLE Answer Sheet No. 121

### INSTRUCTIONS:

1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the \$20 testing fee for SFVBA members (or \$30 for non-SFVBA members) to:

San Fernando Valley Bar Association  
5567 Reseda Boulevard, Suite 200  
Tarzana, CA 91356

### METHOD OF PAYMENT:

- ☐ Check or money order payable to "SFVBA"  
☐ Please charge my credit card for \$\_\_\_\_\_.

Credit Card Number \_\_\_\_\_

CVV code \_\_\_\_\_

Exp. Date \_\_\_\_\_

Authorized Signature \_\_\_\_\_

5. Make a copy of this completed form for your records.
6. Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0495.

Name \_\_\_\_\_  
Law Firm/Organization \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_  
State/Zip \_\_\_\_\_  
Email \_\_\_\_\_  
Phone \_\_\_\_\_  
State Bar No. \_\_\_\_\_

### ANSWERS:

Mark your answers by checking the appropriate box. Each question only has one answer.

1.	<input type="checkbox"/> True	<input type="checkbox"/> False
2.	<input type="checkbox"/> True	<input type="checkbox"/> False
3.	<input type="checkbox"/> True	<input type="checkbox"/> False
4.	<input type="checkbox"/> True	<input type="checkbox"/> False
5.	<input type="checkbox"/> True	<input type="checkbox"/> False
6.	<input type="checkbox"/> True	<input type="checkbox"/> False
7.	<input type="checkbox"/> True	<input type="checkbox"/> False
8.	<input type="checkbox"/> True	<input type="checkbox"/> False
9.	<input type="checkbox"/> True	<input type="checkbox"/> False
10.	<input type="checkbox"/> True	<input type="checkbox"/> False
11.	<input type="checkbox"/> True	<input type="checkbox"/> False
12.	<input type="checkbox"/> True	<input type="checkbox"/> False
13.	<input type="checkbox"/> True	<input type="checkbox"/> False
14.	<input type="checkbox"/> True	<input type="checkbox"/> False
15.	<input type="checkbox"/> True	<input type="checkbox"/> False
16.	<input type="checkbox"/> True	<input type="checkbox"/> False
17.	<input type="checkbox"/> True	<input type="checkbox"/> False
18.	<input type="checkbox"/> True	<input type="checkbox"/> False
19.	<input type="checkbox"/> True	<input type="checkbox"/> False
20.	<input type="checkbox"/> True	<input type="checkbox"/> False