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Domestic Violence Now: The Law and Practice

The law relating to families and partners conduct is expanding the definition of domestic violence and its consequences. The Domestic Violence Prevention Act and Family Code recognize the profound impact of domestic violence on families and partners. There is a growing understanding that what was often referred to as a cycle of violence may more accurately be perceived as an escalation of violence with a need for early intervention now codified in new legislation and law.

The stated purpose of the Domestic Violence Prevention Act (DVPA) is to prevent acts of domestic violence, abuse, and sexual abuse, and to provide for a separation of the parties involved for sufficient time to allow the parties to seek a resolution of the causes of the violence. Cal. Family Code § 6220.

The DVPA provides protection for people in qualifying relationships in Family Code by a Domestic Violence Restraining Order (DVRO). A qualifying relationship is one by blood in two generations (children, siblings, parents, and grandparents), those in a dating relationship, spouses, and parents of a child (Cal. Family Code § 6205 et seq.), and children, twelve years or older, may seek a DVRO through a Guardian Ad Litem (Cal. Family Code § 6229). A person seeking protection may request protection for other members of the family or household and pets. As inclusive as the protection is, it will not extend to roommates, *O’Kane v. Irvine*, 47 Cal. App. 4th 207 (1996), it may depend on the court’s determination if a dating relationship existed, *Phillips v. Campbell*, 2 Cal. App. 5th 844 (2016), it will not extend to a step-parent, *Riehl v. Hauck*, 224 Cal. App. 4th 695 (2014), and persons named as protected parties can dispute inclusion and be removed from the DVRO, *In re C.Q.*, 219 Cal. App. 4th 355 (2013).

The DVPA is codified in California Family Code sections 6200 to 6460 and collects substantive law from California Code of Civil Procedure, the Family Law Act, and the Uniform Parentage Act. “Abuse” is defined as any of the following: (1) To intentionally or recklessly cause or attempt to cause bodily injury, sexual assault, (2) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or (3) To engage in any behavior that has been or could be enjoined pursuant to section 6320. Abuse is not limited to physical injury or assault. Cal. Family Code § 6203. Abusive conduct is judged against the above standard in Family Code section 6203.

The DVPA defines conduct that can be enjoined in Family Code section 6320. The court can enjoin conduct including molesting, attacking, striking, stalking, threatening, sexually assaulting, battery, credibly impersonating an actual person for the purpose of harming, intimidating, threatening, or defrauding another person, falsely impersonating another in his or her private or professional capacity, harassing, telephoning, making annoying telephone calls, 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.

Conduct such as assault, sexual or otherwise, stalking, and destruction of property, are obvious acts of domestic violence. The courts also found domestic violence occurred

when a husband physically abused a child resulting in the disturbance of the mother’s peace, *Gou v. Xiao*, 228 Cal. App. 4th 812 (2014), when a party sent repeated texts, posted personal information on Facebook and videos on YouTube, and showed up at the home of the other party without invitation despite arguments that they were not in a dating relationship, *Phillips v. Campbell*, 2 Cal. App. 5th 844 (2016), when one party

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accessed and publicly disclosed the other’s confidential emails, *In re Marriage of Nadkarni*, 173 Cal. App. 4th 1483 (2009), when a party persisted in unwanted contact and advances due to an inability to accept that the relationship was over, *Burquet v. Brumbaugh*, 223 Cal. App. 4th 1140 (2014), and when a party, if proven, repeatedly violated a temporary restraining order, *N.T. v. H.T.*, 34 Cal. App. 5th 595 (2019).

Conversely, domestic violence was not found to have occurred in the following two cases exemplifying the court’s use of discretion.

In *Jennifer K. v. Shane K.*, 47 Cal. App. 5th 558 (2020), the woman alleged the father of her child raped her in 2009, punched a refrigerator door in 2011, and slammed her into a door frame in 2017. The man admitted to punching the refrigerator in anger, when the woman was present, but he denied all other conduct. The court considered testimony from character witnesses and testimony regarding the nature of their relationship. Despite his admission, the woman had to prove the conduct was abuse as defined by Family Code section 6302, in that it was an intentional or reckless act that caused or attempted to cause bodily injury or that the act placed her in reasonable apprehension of imminent serious bodily injury. The court considered the facts and credibility of the parties and found no abuse.

In *Curcio v. Pels*, 47 Cal. App. 5th 1 (2020), a party to a prior relationship sought a DVRO. The conduct complained of was a Facebook post. The former partner posted the other party had perpetrated emotional and physical abuse described in detail. This case would seem to fall in line with *In re Marriage of Nadkarni* (*supra*) for the nature of the conduct via electronic means. It did not. The conduct was a single private post and was not communicated to the accused partner. The court found no abuse.

The legislature, through SB 1141, amended California Family Code section 6320 effective January 1, 2021, expanding the law based on the growing understanding of escalation of violence. The law now defines “disturbing the peace of the other party” to include “coercive control.” Cal. Family Law § 6320(c). The law now directs consideration of a “totality of circumstances” resulting in the destruction of the “mental or emotional calm” of the other party. The conduct includes but is not limited to “coercive control” defined as a “pattern of behavior that in purpose or effect unreasonably interferes with a person’s free will and personal liberty” and could include “unreasonably engaging” in such controlling conduct as: isolation, deprivation of basic necessities, control, regulation, or monitoring of the other party’s movements, communications, daily behavior, finances, economic resources, or access to services, compulsion of the other party by force, threat of force or intimidation to engage in conduct for which the other party has the right to abstain, or to abstain from conduct in which the other

party has the right to engage. “Coercive control” can be committed directly or indirectly, including through use of a third party, and through any means including telephone, online accounts, text messages, internet connected devices, or other electronic technologies. Cal. Family Law § 6320(c).

The established consequences of a DVRO include a legal presumption against joint custody, Cal. Family Code § 3044, residence exclusion regardless of ownership, Cal. Family Code § 6340(c), restitution for expenses arising from the domestic violence, Cal. Family Code § 6342, control of phones or other devices, Cal. Family Code § 6347, denial of spousal support, *In re Marriage of Shu*, 6 Cal. App. 5th 470 (2016) and Cal. Family Code § 4320(i)(m)(n) and (k), a fifty-two-week batter’s intervention program, Cal. Family Code § 6343, surrender of firearms, Cal. Family Code § 6389, and attorney’s fees for appointed counsel, Cal. Family Code § 6386. Monetary consequences include payment of attorney fees from community property, Cal. Family Code § 4325(2), fixation of date of separation as of the date of the incident or earlier, affecting division of assets and debts, Cal. Family Code § 4325(3), and receipt of

100% of retirement benefits of the convicted spouse, Cal. Family Code § 4325(3)(d).

The legislature, through SB 1221, amended Family Code section 4325 effective January 1, 2019, and expanded the monetary consequences against someone convicted of domestic violence in criminal court. It is now presumed that an award of spousal support to a criminally convicted spouse is “prohibited,” Cal. Family Code § 4325 (a)(1). The presumption is triggered by a domestic violence misdemeanor conviction within five years or a misdemeanor that results in probation with what are often referred to as “DV-terms” pursuant to Cal. Penal Code § 1203.097, including probation, protective orders, restitution, fines, fees, and classes. It is common for defense counsel to negotiate a plea to a lesser non-domestic violence charge and for the prosecutor to require “DV-terms” which, nevertheless, trigger these monetary consequences.

A single act or incident of domestic violence is often charged criminally so it is important to be cognizant of the intersection of family and criminal law.


A violation of a DVRO can be charged as a misdemeanor pursuant to Penal Code section 273.6. The party accused of violation is subject to the “must-arrest” provision of Penal Code section 836(c)1, putting an arrest on the defendant’s record with law enforcement and the Department of Justice. This is important because parties, over time, often relax or abandon restrictions over time or find reasons to make exceptions to restraints but fail to amend their DVRO.

The courts see parents, grandparents, children, spouses, partners, and household members, who allege or have suffered abuse as defined by the DVPA on one side, and see a person who will be subject to severe legal, economic, and social consequences, including possible loss of employment needed to support the other party or the children, on the other side.

There are circumstances where a three-to-five-year DVRO is the only right ruling and others where the expansion of the definition of domestic violence and seriousness of the consequences, may work an injustice. In the past, parties may have entered into “non-CLETS” orders, meaning the order was not

transmitted to the California Law Enforcement Telecommunications System (CLETS). The remedy for violation was contempt, not arrest. California, through SB 1089, enacted Family Code section 6380(j)(1) restating the law that “all protective orders subject to transmittal to CLETS pursuant to this section are required to be so transmitted.” “Non-CLETS” orders are prohibited now.

Some of our most thoughtful courts, with years of experience, who understand the preventative purpose of the DVPA, are using long-term Temporary Restraining Orders (TROs) to accomplish the purpose of the DVPA without triggering all of the consequences. The TROs are often modified and reissued as Amended TROs. Some courts reserve the right of the parties to a hearing at the expiration of the TRO, some set review hearings during the pendency of the TRO, some set the TRO to expire by operation of law and require a new request for new conduct. Knowing your court is important. The court cannot order the parties to agree to long-term TROs and their use must be agreed upon.

We are guided by the law, the growing understanding of escalation-of-violence, and recognition of the profound impact of domestic violence that tears at the foundations of families. We are also called upon, as counsel, to conscientiously advocate and accomplish the purpose of the DVPA and seek results that resolve the causes of the violence. Knowledgeable counsel with an understanding of the laws, consequences, and practice points can serve to prevent domestic violence for the benefit of every family member. 

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This article first appeared in Orange County Lawyer, June 2021 (Vol. 63 No. 6), p. 38.

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