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CALIFORNIA'S RESPONSE TO DOMESTIC VIOLENCE

The Honorable Billy G. Mills*
Mary Lyons McNamar**

I. INTRODUCTION

Domestic violence has existed since the beginning of family life.[1] It occurs between husbands and wives, parents and children in the traditional family. The concept of family, originally based on a married couple and their children, has now expanded to include people in nonmarital relationships, group families and families consisting of persons of the same sex. These non-traditional families also experience domestic violence.[2]

This article provides factual information on domestic violence and will examine past legal and judicial efforts to deal with violence in the California home. The article analyzes Chapter 795 of Senate Bill 9[3] that includes the Domestic Violence Prevention Act (DVPA) and related statutes which went into effect on July 1, 1980. Appendix A provides a simplified guide to using the new legislation. Although domestic violence is a nationwide concern, the emphasis here will be on California laws and remedies.

The terms used in this article and throughout the new legislation are defined in section 542 of the California Code of Civil Procedure.[4]

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1. Gil, *Societal Violence and Violence in Families*, in FAMILY VIOLENCE 14, 17 (J. Eekelaar & S. Katz eds. 1978).

2. Strauss, *Wife Beating: Causes, Treatment, and Research Needs*, in U.S. COMMISSION ON CIVIL RIGHTS, BATTERED WOMEN: ISSUES OF PUBLIC POLICY 468 (1978).

3. 1979 Cal. Stats., Ch. 795, at 2810-19. *See generally* Staff, *Review of Selected 1979 California Legislation* 11 PAC. L.J. 465 (1980).

4. CAL. CIV. PROC. CODE § 542 (West Supp. 1980).

> (a) *"[a]buse"* means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or another;[5]
>
> (b) *"[d]omestic violence"* is abuse perpetrated against a family or household member;[6]
>
> (c) *"[f]amily or household member"* means spouse, former spouse, parent, child, any other person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household and has sexual relations with another family or household member residing in the household, or who within the last six months regularly resided in the household during which time he or she had sexual relations with another family or household member presently residing in the household.[7]

It is this expanded definitional concept of family or household member which provides the most novel aspect of the new law.

Domestic violence, and the inability of law enforcement agencies to deal with the problem, was brought to the attention of Californians in 1978 when the Attorney General conducted two statewide conferences that highlighted the concern felt throughout the state.[8] The statistics examined at the conference revealed a problem of considerable magnitude.[9] It was estimated on the basis of existing reports and information from federal, state and local government agencies that there is some form of domestic violence in twenty-five percent of all families in this country.[10] Based on national statistics, it can be inferred that fifty percent of married women in California will be assaulted by their husbands at some time during the relationship.[11]

Statistics also show a correlation between wife-beating and wife-murder.[12] In California, between 1976 and 1978, 4.3 percent of male homicide victims were murdered by their

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5. *Id.* § 542(a).
6. *Id.* § 542(b).
7. *Id.* § 542(c).
8. *See* CALIFORNIA DEPARTMENT OF JUSTICE, INFORMATION PAMPHLET No. 11, HANDBOOK ON DOMESTIC VIOLENCE (3d rev. ed.) (1978).
9. *Id.* at 2-4.
10. *Id.* at 2.
11. R. LANGLEY & R. LEVY, WIFE BEATING: THE SILENT CRISIS 19 (1977).
12. Kansas City Police Department, Conflict Management: Analysis/Resolution 139 (1973).

wives and 18.5 percent of female homicide victims were murdered by their husbands.[13] In 1978, fifty-six percent of the murder victims were acquainted with their assailants and one out of every five victims was related to the offender.[14]

Domestic violence exists in all socio-economic classes and ethnic groups.[15] However, greater numbers of lower income victims are reflected in law enforcement data because middle-class victims are more apt to consult a physician or attorney rather than the police.[16] Nevertheless, when private attorneys are polled they report an incidence of middle-class domestic violence which correlates with legal aid findings of violence among the indigent.[17]

Harm is not limited to family members; domestic violence endangers law enforcement officers who are called to intervene. Nationwide eleven percent of the officers killed in action were killed while answering a call involving domestic violence.[18] Also, thirty percent of officers in the United States injured in action were injured while answering "disturbance" calls.[19]

The victims are not only those directly injured but all members of the family involved.[20] "A man who beats his wife is injuring not only her but also their children, and injuring them, perhaps permanently, in their attitudes towards other human beings. Domestic violence destroys the family and the family is the basis of our whole society."[21] Studies indicate that domestic violence is learned behavior and children from violent homes are apt to repeat this behavior in their homes

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13. DEP'T OF JUSTICE, STATE OF CALIFORNIA, HOMICIDE IN CALIFORNIA 52 (1978).

14. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES 13 (1978) [hereinafter cited as 1978 FBI UNIFORM CRIME REPORTS].

15. Stark & McEvoy, *Middle-Class Violence*, PSYCHOLOGY TODAY, Nov. 1970, at 52-53.

16. Parnas, *The Police Response to the Domestic Disturbance*, 1967 WIS. L. REV. 914, 915.

17. Truninger, *Marital Violence: The Legal Solutions*, 23 HASTINGS L. REV. 259, 271 (1971).

18. 1978 FBI UNIFORM CRIME REPORTS, *supra* note 14, at 307.

19. Disturbance is defined as "family quarrels, man-with-gun calls, bar fights, etc." *Id.* at 301.

20. Strauss, *Wife-Beating: How Common and Why*, in FAMILY VIOLENCE 34 (J. Eekelaar & S. Katz eds. 1978).

21. *Domestic Violence: Hearings Before the Senate Committee on Judiciary, California Legislature*, (Oct. 25, 1978) [hereinafter cited as *Hearings on Domestic Violence*] (statement of Senator Jerry Smith).

as adults.[22] Therefore, enactment of Senate Bill 9, which gives increased attention to domestic violence in California, comes none too soon.

II. EFFECTIVENESS OF PAST LEGISLATION

California previously dealt with domestic violence both criminally and civilly. While this article deals primarily with civil procedures, existing criminal sanctions will be briefly mentioned.

A. *Criminal Statutes*

Criminal statutes which may apply are: assault and battery;[23] assault with a deadly weapon or force likely to produce great bodily injury;[24] assault with intent to commit murder;[25] mayhem;[26] assault with intent to commit mayhem;[27] possession of a deadly weapon with intent to assault;[28] murder and justifiable homicide;[29] corporal injury;[30] disturbing the peace;[31] criminal contempt;[32] felony child stealing;[33] and child abuse.[34]

A violation of these criminal statutes in the home can be handled by either a police or citizen arrest. The police have authority to make an arrest if they have reasonable cause to believe a felony has been committed or if they witness the commission of a misdemeanor. If the police refuse or they lack evidence to make an arrest, the victim can make a citizen's arrest. Every citizen has the right to arrest a person who commits a crime in his or her presence.[35] Pragmatically, the citizen's arrest is not an effective alternative for the victim of domestic violence, both because of the danger involved to the

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22. Gelles, *Abused Wives: Why Do They Stay*, 38 J. MARR. & FAM. 659, 662 (1976).
23. CAL. PENAL CODE §§ 240, 242 (West 1970).
24. *Id.* § 245 (West Supp. 1979).
25. *Id.* § 217.
26. *Id.* § 203 (West 1970).
27. *Id.* § 220 (West Supp. 1979).
28. *Id.* § 467 (West 1970).
29. *Id.* §§ 187 (West Supp. 1979), 198, 199 (West 1970).
30. *Id.* § 273.5 (West Supp. 1979).
31. *Id.* § 415.
32. *Id.* § 166 (West 1970).
33. *Id.* §§ 278.5 (West Supp. 1979).
34. *Id.* § 273(a), (d) (West Supp. 1980).
35. *Id.* §§ 834, 837 (West 1970).

victim[36] and because most people aren't aware of the option.

The civil remedies available to victims of domestic violence are assault and battery compensation, dissolution, legal separation or nullity if married, and protective orders. The emphasis in this article and in the new legislation is primarily on protective orders.

B. *Civil Statutes*

Until July 1, 1980 there were three types of civil temporary restraining orders available in domestic violence cases. They were Family Law Act (FLA) orders, harassment orders, and several orders under section 527 of the Civil Code. If a temporary restraining order was violated, civil contempt procedures could be used to enforce the restraining order.[37] Unfortunately, "enforcement of protective orders has been generally non-existent."[38] The ineffectiveness of the existing restraining orders was analyzed in the Attorney General's conferences and hearings. Several reasons were found for the failure of temporary restraining orders (TRO's) to provide protection for the battered person. A brief analysis of each pre-Senate Bill 9 restraining order and its weaknesses follows.

The first category of TRO's was authorized in section 4359 of the Civil Code,[39] a part of the Family Law Act of 1970.[40] The statute provided a variety of protective orders for a narrow group of domestic violence victims consisting of married couples who had filed for dissolution, legal separation or nullity. The subsection restraining physical conduct enjoined "any party from molesting or disturbing the peace."[41] This wording was found to be too vague.[42] Even when a temporary restraining order was obtained, batterers often failed to understand the meaning of the order, and violated it. Law enforcement officials complained that the language was non-spe-

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36. *Hearings on Domestic Violence, supra* note 21, at 130 (statement of Carol Corrigan).

37. CAL. CIV. PROC. CODE § 1209 (West Supp. 1979).

38. ADVISORY COMMISSION ON FAMILY LAW TO THE SENATE SUBCOMMITTEE ON ADMINISTRATION OF JUSTICE, DOMESTIC VIOLENCE (October 23, 1978) [hereinafter cited as DOMESTIC VIOLENCE] (available from the Senate Rules Committee of the California State Legislature, Sacramento, California).

39. CAL. CIV. CODE § 4359 (West Supp. 1979).

40. *Id.* §§ 4000-5100 (West 1979).

41. *Id.* § 4359(2).

42. DOMESTIC VIOLENCE, *supra* note 38, at 11.

cific and caused difficulty in determining whether a violation had occurred.[43]

The attitudes of law enforcement officers also encouraged violations of TRO's. Traditionally, California police officers were trained in crisis intervention with the goal of keeping domestic violence out of the criminal justice system.[44] Domestic violence was considered a civil problem. Law enforcement agents were also aware that many cases would not go to trial even if an arrest were made because complainants often did not prosecute. Furthermore, one study in San Francisco in 1978 found only thirteen percent of serious felony beatings resulted in guilty findings even when prosecuted.[45] These factors, combined with the personal danger involved, made most law enforcement officers less than zealous in their response to domestic violence calls.

The policy of noninvolvement existed partially because section 4359 of the Civil Code provided no authority to file a TRO with local law enforcement agencies. Thus, police generally referred victims who possessed a TRO to their attorney.[46] In the event the marriage dissolved, the orders could not be included in final judgments, even though the need for protection was as necessary after separation as it was during the marriage. The final drawback to section 4359 was that it applied only where a Family Law Act action of dissolution, nullity, or separation had been initiated. There was no protective remedy for those in a nonmarital relationship or for the married couple who wished to stay together and try to resolve their differences.

Protection from domestic violence by obtaining restraining orders was expanded with the passage of section 527(b) of the Code of Civil Procedure[47] in 1977. This statute applied to a nonmarital relationship or to a married couple who wished to work out their differences without filing for dissolution, separation, or nullity. The protective order was issued on a showing of "actual violence resulting in physical in-

43. *Id.*

44. *Hearings on Domestic Violence, supra* note 21, at 111 (statement of Clement DeAmicis).

45. *Id.* at 113.

46. DOMESTIC VIOLENCE, *supra* note 38, at 16.

47. CAL. CIV. PROC. CODE § 527(b) (West 1980).

jury."[48] In practice, however, section 527(b) had several failings:[49] 1) It contained no provision to recover attorney's fees and costs (approximately $200-$400) if an attorney was used, and the filing was difficult for some people without the help of an attorney; 2) the section 527(b) order provided only 30 days protection; 3) there was some confusion about the scope of its applicability because section 527(b) didn't clearly define the specific behaviors which could be restrained.[50]

The third pre-Senate Bill 9 restraining order provided protection against harassment. A restraining order under section 527.6 of the Code of Civil Procedure could be obtained against a stranger as no personal relationship between the parties was required. With two additions, this order remains the same after Senate Bill 9. The new legislation provides a mechanism for registering the TRO with the police and a provision is added that allows a section 527.6 order only if the parties are not covered by the FLA,[51] Uniform Parentage Act (UPA),[52] or the DVPA.[53]

These early protective orders were a beginning but due to their various limitations and disadvantages, thousands of victims were still denied protection.[54] It was a concern for these victims that led the Attorney General to invite multidiscipline experts together to consider the problem. The data gathered and the information exchanged during the state-wide Conference on Domestic Violence in 1978 led to the establishment of the Study Group on Domestic Violence. The group's findings and recommendations were reviewed in legislative hearings held by Senator Jerry Smith, Chairman of the Senate Committee on Judiciary, who sponsored Senate Bill 9.[55]

III. DOMESTIC VIOLENCE PREVENTION ACT

Senate Bill 9 consists of the "Domestic Violence Prevention Act"[56] and related amendments and additions. All

48. *Id.*

49. *See* DOMESTIC VIOLENCE, *supra* note 38, at 14.

50. *Id.* at 15. Section 527(b) authorized a restraining order and a period of separation of the parties. Different courts interpreted this a variety of ways.

51. CAL. CIV. CODE §§ 4000-5100 (West 1979).

52. CAL. CIV. CODE §§ 7000-7020 (West Supp. 1979).

53. CAL. CIV. PROC. CODE §§ 540-553 (West Supp. 1980).

54. DOMESTIC VIOLENCE, *supra* note 38, at 17.

55. *Id.*

56. CAL. CIV. PROC. CODE §§ 540-553 (West Supp. 1980).

changes are under one bill which is helpful in interpreting ambiguous sections as it may indicate a legislative intent that they be construed together.[57] Substantively and procedurally, the ability to secure protective orders in a variety of situations has been greatly expanded.

To understand the legislation it is useful to examine the kinds of relief offered. Senate Bill 9 contains a number of variables that are best organized by categorizing the relationship of the parties. Once that is determined the possible remedies depend on whether the orders are ex parte or noticed and the type of relief sought.

Briefly, the types of relations covered under the new law are:

1) Family Law Act marriage relationships—a relationship in which a dissolution, legal separation, or nullity action has been initiated.

2) Domestic Violence Prevention Act family or household relationships[58]—members of this group can obtain a protective order if, prior to or at the time the order is granted, they are residing with the person to whom the order is directed. This category includes marital or nonmarital relationships.

3) Uniform Parentage Act parents of a child—no continuing relationship is necessary as long as a child resulted from a past union. The party entitled to relief is the one who has care, custody, and control of the minor child.[59]

4) No relationship other than the harassment complained of—the party entitled to relief is any person who is the subject of "harassment," providing no action is on file or could be filed under the Domestic Violence Prevention Act, the Uniform Parentage Act, or the Family Law Act. This is the revised section 527.6 harassment order.

A. *Overview*

After the relationship between the parties is determined, the applicable statutes must be examined. In the following section the statutes which are amended by the Domestic Vio-

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57. The Rutter Group, New Tools for the Family Lawyer: Protective Orders Under Domestic Violence Prevention Legislation 1 (1980) [hereinafter cited as Protective Orders].

58. *See* text accompanying note 7 *supra*.

59. CAL. CIV. CODE § 7020(a) (West Supp. 1979).

lence Prevention Act as contained in Senate Bill 9 are briefly mentioned to provide an overview and are then analyzed in depth.

The amendments and additions to the FLA under the Domestic Violence Prevention Act are found in section 4359 of the Civil Code (ex parte protective orders) which is expanded to provide for new orders, new procedures, and new enforcement measures.[60] Sections 4458 and 4516 of the Civil Code are added to authorize inclusions of restraining orders in final judgments and enforcement of such orders. Section 5102 of the Civil Code is amended to extend the availability of "move out" orders to spouses when harm would result to them or persons under their care, custody, or control and the family dwelling happens to be the separate property of one of the spouses.

Additions to the Uniform Parentage Act are found in section 7020 of the Civil Code,[61] authorizing certain FLA restraining orders during pendency of paternity actions, and section 7021 of the Civil Code, authorizing inclusion of the orders in a judgment entered under the Uniform Parentage Act.

The purpose of the Domestic Violence Prevention Act is

> to prevent the recurrence of acts of violence by a spouse or household member against another spouse or other family or household members and to provide for a separation of the persons involved in such domestic violence for a period of time sufficient to enable such persons to seek resolution of the causes of the violence.[62]

The DVPA remedies are in addition to other civil or criminal remedies already available. The amendments which establish the injunctive relief procedure are, first, section 527(a) of the Code of Civil Procedure which is amended to sanction ex parte issuance of TRO's under the Uniform Parentage Act (section 7020 of the Civil Code) and the DVPA (section 546 of the Code of Civil Procedure). Second, the former section 527(b) of the Code of Civil Procedure was totally repealed and replaced with the DVPA. The new section 527(b) authorizes reissuance of DVPA ex parte TRO's if a defendant could not be served on time. Third, section 529 of the Code of Civil Pro-

60. *See* text accompanying notes 65-70 *infra*.
61. *See* text accompanying notes 78-81 *infra*.
62. CAL. CIV. PROC. CODE § 540 (West Supp. 1980).

cedure is amended to relax bond requirements for injunctive relief.

Harassment orders (section 527.6 of the Code of Civil Procedure) are amended to require the plaintiff or the plaintiff's attorney to deliver the order to the court clerk the day it is issued and requires the court clerk to forward the order that day to the law enforcement agencies. The statute cannot be applied if relief is otherwise possible under the DVPA, the FLA, or the UPA.

Two other code sections should be noted. Section 273.6 of the Penal Code is added to make certain violations misdemeanors and Section 1377 of the Penal Code is amended to prohibit civil compromise of section 273.6 charges, a common occurrence in the past.[63] Section 26833.5 of the Government Code provides indigent plaintiffs free certified copies of the various TRO's that are to be registered with various law enforcement agencies.[64]

Confronted with this variety of new and changed laws, how does a practicing attorney locate the proper statutes under Senate Bill 9 and correctly use them? The first step is to examine the relationship between the parties.

B. *Analysis of Family Law Act Legislation*

1. *Ex parte orders.* If the couple is married and has initiated a proceeding for dissolution, legal separation or nullity, then FLA orders are available. If the proceeding is ex parte, the orders available consist of property restraint, restraint on personal conduct, dwelling exclusion, custody and visitation, property use, and restraint on "other" conduct. Changes of note under restraint on personal conduct[65] include the expansion of the earlier terminology of "molesting" and "disturbing the peace" to include a variety of named specific behaviors. Third party protection is expanded to "family and household members." Changes in the dwelling exclusion[66] make it immaterial who has superior title or right to possession; the applicant spouse, however, must now show assaultive or threatened assaultive conduct as well as a likelihood of physical or emo-

63. *See* CAL. PENAL CODE §§ 273.6, 1377 (West Supp. 1979).
64. CAL. GOV'T CODE § 26833.5 (West Supp. 1979).
65. CAL. CIV. CODE § 4359(a)(2) (West Supp. 1979).
66. *Id.* §§ 4359(a)(3), 5102.

tional harm. The custody and visitation section[67] for the first time expressly authorizes ex parte visitation orders. Restraint on other conduct[68] is non-specific authority to enjoin behavior effecting either personal conduct or "move out" orders. Presumably its usage will become commonplace as a basis for responding to unique situations not otherwise covered by the statutes.[69]

2. *Noticed Motions.* As before, the usual orders for support, custody, attorney's fees, payment of preexisting debts and the like are available *pendente lite* upon a noticed hearing under either the Notice of Motion or the Order to Show Cause procedure. In addition, under the DVPA, all the above discussed ex parte orders can also be issued upon notice and hearing.

In addition to ex parte and noticed orders, protective orders under the FLA can be included in interlocutory judgments and judgments to prohibit abusive personal conduct and other specific behaviors which effect abusive personal conduct.[70]

C. *Analysis of Domestic Violence Prevention Act Legislation.*

1. *Ex parte orders.* If there is no FLA proceeding pending, parties can obtain protective orders under the DVPA. Spouses can obtain any of the ex parte orders available under FLA. If the relationship is nonmarital, four of the six FLA orders can be issued ex parte. The four are: enjoining personal conduct, excluding one party from the home (if plaintiff can establish "right under color of law" to possession of the premises),[71] enjoining other specified behavior, and determining the temporary custody of a minor child of plaintiff and defendant.

2. *Noticed Motions.* Upon notice and hearing a variety of restraining orders can be issued under the DVPA. If the parties are married, any of the FLA ex parte orders are available through a noticed motion procedure. In the case of a

67. *Id.* § 4359(a)(4).
68. *Id.* § 4359(a)(6).
69. Protective Orders, *supra* note 57, at 4.
70. CAL. CIV. CODE § 4516 (West Supp. 1979).
71. CAL. CIV. PROC. CODE § 546 (West Supp. 1980).

nonmarital relationship, orders enjoining personal conduct, temporary use of property, and other specified behavior are available. Exclusion from residence orders are also available. Where the motion for such an order is made on a noticed hearing there is no requirement of title and right to possession. Temporary custody of a minor child of plaintiff and defendant can also be determined in a noticed hearing but not temporary visitation orders.[72]

In addition, under the DVPA where the parties are in either a marital or nonmarital relationship, the court can issue a variety of remedial orders with noticed hearing. They are orders for restitution to the applicant for costs incurred as a direct result of "abuse,"[73] restitution to defendant for expenses incurred because of an order issued upon insufficient facts,[74] orders requiring any party to participate in counseling,[75] child support orders if the child is in plaintiff's custody and defendant is the presumed natural father under section 7004 of the Civil Code,[76] and lastly, orders for payment of attorney's fees and costs to the prevailing party.[77]

D. *Analysis of Uniform Parentage Act Legislation*

1. *Ex parte orders.* If the relationship between the parties produced a child, proceedings can take place under the UPA.[78] This legislation does not require the parties to live together or to have any kind of continuing relationship.

Ex parte orders under the UPA restrain personal conduct exactly like the FLA restraining orders except that the protection is limited to the plaintiff and minor child.[79] It is also possible to get an order excluding the defendant from the dwelling of the party who has care, custody, and control of the minor child where there is threatened harm or abuse to minor or plaintiff.[80] Like the FLA and the DVPA, the UPA enjoins any other specified behavior where necessary to limit personal

72. *Id.* § 547(a).
73. *Id.* § 547(c).
74. *Id.*
75. *Id.* § 547(d).
76. *Id.* § 547(b).
77. *Id.* § 547(e).
78. CAL. CIV. CODE §§ 7000, 7020 (West Supp. 1979).
79. *Id.* § 7020(a)(1).
80. *Id.* § 7020(a)(2).

conduct or effectuate move out orders.[81]

2. *Noticed Motions.* Upon notice and a hearing any of the above ex parte UPA orders are available.[82] And, of course, there is nothing to prevent the commencement of DVPA proceedings to obtain those noticed hearing remedies available to unmarried persons if the parents reside in the same household.[83]

E. *Analysis of Harassment Legislation*

The last category of protective orders under Senate Bill 9 applies to the victim who has no redress under the FLA, the DVPA, or the UPA. An example might be a neighbor, or a girl friend or family member who is not a household member. Both ex parte and noticed hearing orders are available enjoining any "knowing and willful course of conduct directed at a specific person which seriously alarms, annoys or harasses such person, and which serves no legitimate purpose," provided the course of conduct would cause a reasonable person to suffer substantive emotional distress, and actually does cause plaintiff such distress.[84]

F. *Procedural Limitations in Senate Bill 9*

Timeliness is the first limitation. Ex parte orders under the FLA, the DVPA, or the UPA must be made returnable for an order to show cause hearing on the earliest day possible but not later than fifteen days or with good cause, twenty days.[85] Ex parte TRO's against harassment can remain in effect up to fifteen days but a hearing must be held within fifteen days of filing the petition for injunction.[86] Under general law, a defendant is entitled to one continuance as a matter of right. The one exception is a FLA proceeding where the court can require an immediate hearing "in the interest of justice" without allowing a continuance.[87] Another exception to the twenty day maximum is the reissuance of DVPA orders

81. *Id.* § 7020(a)(3).
82. *Id.* § 7020(b).
83. Protective Orders, *supra* note 57, at 7.
84. CAL. CIV. PROC. CODE § 527.6(b) (West Supp. 1980).
85. *Id.* §§ 527(a), 546; CAL. CIV. CODE §§ 4359(a), 7020(a) (West Supp. 1979).
86. CAL. CIV. PROC. CODE § 527.6(c), (d) (West Supp. 1979).
87. CAL. RULE CT. 1225(a).

where the plaintiff established by affidavit that the defendant could not be served in time. No fees are to be charged unless the order has been issued three times previously.[88]

If a TRO is issued after a noticed hearing under the DVPA or the UPA they will normally remain in effect for a maximum of ninety days. The orders can be extended by mutual consent of the parties for up to one year. The court can also limit or extend the ninety day effective period.[89] Injunctions against harassment following notice and hearing can remain in effect up to three years and are renewable.[90] Restraining orders incorporated into a FLA or UPA judgment under sections 4458, 4516, or 7021 of the Civil Code can remain in effect up to one year from the date of entry of the judgment unless extended by the court after notice and hearing.[91]

A second procedural limitation on the Senate Bill 9 protective orders is the notice date required on the orders. Any order issued under the FLA, the UPA, or the DVPA must now state the date of expiration on its face. The same is true of reissued DVPA orders.[92]

Another change is the relaxation of bond requirements. Ordinarily the party who obtains a preliminary injunction must assure payment of damages if the court later determines that the injunction should not have issued.[93] The new legislation eliminates the bond requirement for obtaining restraining orders in legal separation or dissolution proceedings, DVPA proceedings, or UPA proceedings.

A last procedural requirement of Senate Bill 9 is that all FLA, DVPA, or harassment proceeding motions must be submitted on the prescribed Judicial Council forms.[94]

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88. CAL. CIV. PROC. CODE § 527(b) (West Supp. 1979).

89. *Id.* § 548; CAL. CIV. CODE § 7020(b) (West Supp. 1979).

90. CAL. CIV. PROC. CODE § 527.6(d) (West Supp. 1980).

91. CAL. CIV. CODE §§ 4458, 4516, 7021 (West Supp. 1979).

92. CAL. CIV. PROC. CODE §§ 527(b), 552 (West Supp. 1980), CAL. CIV. CODE §§ 4359(a), 4458, 4516, 7020(c), 7021 (West Supp. 1979).

93. Protective Orders, *supra* note 57, at 11.

94. CAL. CIV. PROC. CODE § 527.6(k) (West Supp. 1980). No provision for mandatory forms was incorporated into the UPA. The new forms, however, have been drafted to encompass UPA proceedings. The new forms can be found in WEST'S CALIFORNIA CODE FORMS, CIVIL PROCEDURE § 527.6 (2d ed. Supp. 1979).

G. *Registration and Enforcement of TRO's Under Senate Bill 9*

The new legislation clarifies the procedure for registration and enforcement of TRO's. The registration procedure is now mandatory, both on the part of the prevailing party or his or her attorney and the court clerk. Orders issued under the DVPA, the FLA, or the UPA or the modification, extension, or termination of such orders must be delivered by the applicant party or his or her attorney and mailed by the clerk at the close of the business day on which the order is granted. The restraining order can be mailed to law enforcement agencies near the complainant's residence, place of employment, his or her children's school, or other places where violence is likely to occur.[95] A similar mailing requirement applies to harassment orders, but the order need only be forwarded to such law enforcement agencies "within the court's discretion as are requested by the plaintiff."[96]

In addition, law enforcement agencies where DVPA, FLA, or UPA orders are registered must maintain a verification system and make available to officers responding to reports of domestic violence the existence, terms, and current status of the orders.[97] This verification duty is not, however, mandatory for harassment orders.[98]

The court may, in its discretion, appoint counsel or the District Attorney to represent a plaintiff in enforcing a DVPA order (whether issued ex parte, or on a noticed hearing[99]) concerning restraint of personal conduct, dwelling exclusion, or restraint of specific conduct in connection with dwelling exclusion. If counsel is appointed, attorney's fees and costs may be assessed against the defendant.[100]

Criminal sanctions may be imposed for any willful or knowing violation of three DVPA or FLA orders, whether issued ex parte, upon noticed hearing, or at judgment. The criminal sanctions apply to orders restraining personal con-

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95. CAL. CIV. PROC. CODE § 550; CAL. CIV. CODE §§ 4359(b), 4458, 4516, 7020(d), 7021 (West Supp. 1979).

96. CAL. CIV. PROC. CODE § 527.6(g) (West Supp. 1980).

97. *Id.* § 550; CAL. CIV. CODE §§ 4359(b), 4458, 4516, 7020(d), 7021 (West Supp. 1979).

98. CAL. CIV. PROC. CODE § 527.6(g) (West Supp. 1980).

99. *Id.* §§ 546, 547.

100. *Id.* § 553(a), (b).

duct, excluding one party from the home, or restraining other specified behavior in connection with exclusion from the home. Violation of the order is a misdemeanor, punishable by up to six months imprisonment, or a maximum $500 fine, or both.[101] Identical sanctions are imposed for willful and knowing violations of UPA protective orders.[102] Violations of harassment orders are punished as contempts.[103] Furthermore, the misdemeanor offense cannot be compromised unless it is the first Penal Code section 273.6 offense against the family or household member.[104]

H. *Ambiguous Areas of Senate Bill 9*

As with any new legislation there are areas of Senate Bill 9 that appear ambiguous and will need clarification as the laws are applied. The following is a brief summary of sections that may prove troublesome.

1. *Family Law Act.* The FLA authorizes an ex parte order for payment of any "liens or encumbrances coming due during the pendency of the order."[105] This subsection appears to authorize ex parte orders for payment of money, however, this may produce a constitutional due process problem if the party ordered to pay has not yet appeared in the action or otherwise become validly subject to the court's in personam jurisdiction. While the order certainly binds the applicant-party, it remains to be seen how the courts will respond to requests for such orders against the other spouse.[106]

The amendments to the FLA mentions "family and household members" but no definitions are given.[107] Since this statute was passed at the same time as the DVPA, and both are part of Senate Bill 9, the definitions contained in the DVPA[108] will probably apply.[109]

Another problem under the FLA concerns sections 4458 and 4516 of the Civil Code which are identical statutes. Both

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101. *Id.* § 551; CAL. PENAL CODE § 273.6 (West Supp. 1979).

102. CAL. PENAL CODE § 273.6 (West Supp. 1979).

103. CAL. CIV. PROC. CODE § 527.6(i) (West Supp. 1980); CAL. PENAL CODE § 166 (West 1970).

104. CAL. PENAL CODE § 1377(4) (West Supp. 1979).

105. CAL. CIV. CODE § 4359(a)(5) (West Supp. 1979).

106. *See* Protective Orders, *supra* note 57, at 3.

107. CAL. CIV. CODE § 4359(a)(2) (West Supp. 1979).

108. See definitions in CAL. CIV. PROC. CODE § 542(e) (West Supp. 1979).

109. Protective Orders, *supra* note 57, at 3.

statutes authorize protective orders in final judgments. This repetition appears to be an oversight on the part of the drafter, believing that section 4458 referred only to judgments of nullity and section 4516 was needed for disolution and legal separation. Section 4458 refers to a "judgment entered pursuant of this part"[110] which is a reference to, and includes the entire FLA, therefore, section 4516 is unnecessary as nullities are already included in section 4458.

2. *Domestic Violence Prevention Act.* Under the DVPA several statutes will need interpretation. Foremost is section 546 of the Civil Code (move out orders) which requires the applicant to show "a right [to possession of the premises] under color of law."[111] This limitation applies in marital and nonmarital situations when ex parte relief is sought under the DVPA rather than the FLA. What constitutes a "right under color of law" in nonmarital situations is not defined by the act. Black's Law Dictionary defines "color of law" as "an appearance of legal right to possession."[112] Perhaps a claim of possession, supported by evidence of rent or trust deed payments, will qualify as "color of law."

The reissuance of DVPA orders is technically limited to authorizing ex parte orders issued in DVPA proceedings.[113] However, since the DVPA incorporates section 4359 of the Civil Code and the amendments and additions were enacted under one bill, it is arguable that TRO's issued in FLA proceedings should be capable of reissuance.[114]

DVPA orders must contain the following notice: "Notice: These orders shall be enforced by all law enforcement officers in the State of California."[115] This has not been incorporated into the FLA or the UPA; however, since the statutes are so similar the omission may have been a legislative oversight. It would appear prudent to include the notice on all forms.[116] Another probable legislative oversight appears in section 529 of the Civil Code which relaxes bond requirements for restraining orders in DVPA or UPA proceedings and in legal

110. CAL. CIV. CODE § 4458 (West Supp. 1980).
111. CAL. CIV. PROC. CODE § 546 (West Supp. 1980).
112. BLACK'S LAW DICTIONARY 241 (5th ed. 1979).
113. CAL. CIV. PROC. CODE § 526(b) (West Supp. 1980).
114. Protective Orders, *supra* note 57, at 10.
115. CAL. CIV. PROC. CODE § 552 (West Supp. 1980).
116. Protective Orders, *supra* note 57, at 11.

separation or dissolution proceedings but says nothing about nullities. It seems doubtful that the omission was intentional.[117] Bonds were not required for harassment orders in the past and are not required now.

A possible source of confusion exists in the forwarding of orders to law enforcement agencies for registration. The statutes require registration for "any" of the orders. However, not all violations are punishable as misdemeanors. Thus, there is some question whether the property-related orders must be registered or only those orders subject to criminal penalties. The Los Angeles Police Department takes the position that enforcement by the police is limited to personal conduct, dwelling exclusion, and enjoining specified behavior which the court determines is necessary to effectuate personal conduct or dwelling exclusion orders.[118] Thus, there is no need to register the other orders as they cannot be enforced under section 273.6.[119]

The DVPA provides for appointment of counsel or the District Attorney to represent a plaintiff in enforcing DVPA orders regarding personal conduct, dwelling exclusion and orders restraining specific conduct.[120] This is confusing as the provision was not part of the FLA or the UPA. Since the protective orders issued under all of the Acts are substantially the same, perhaps, by implication, appointed counsel is also available under the FLA and the UPA.[121]

A further ambiguity in the DVPA is found in the provisions that, in effect, provide financial restitution for an intentional tort by compensating the victim of domestic violence.[122] This raises procedural questions since section 527 of the Civil Code provides that hearings must be held within twenty days. This probably does not provide enough time to muster the medical testimony, damages, and defense necessary for a hearing on the merits. Does the suit for damages then follow the ordinary timing of civil trial procedures instead of the twenty days mandated under section 527? If so, is this purely an inci-

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117. *Id.*

118. Domestic Violence Restraining Orders, Office of Operations (order effective July 1, 1980, Los Angeles Police Department).

119. CAL. PENAL CODE § 273.6 (West Supp. 1979).

120. CAL. CIV. PROC. CODE § 553(a) (West Supp. 1980).

121. Protective Orders, *supra* note 57, at 13.

122. CAL. CIV. PROC. CODE § 547(c) (West Supp. 1980).

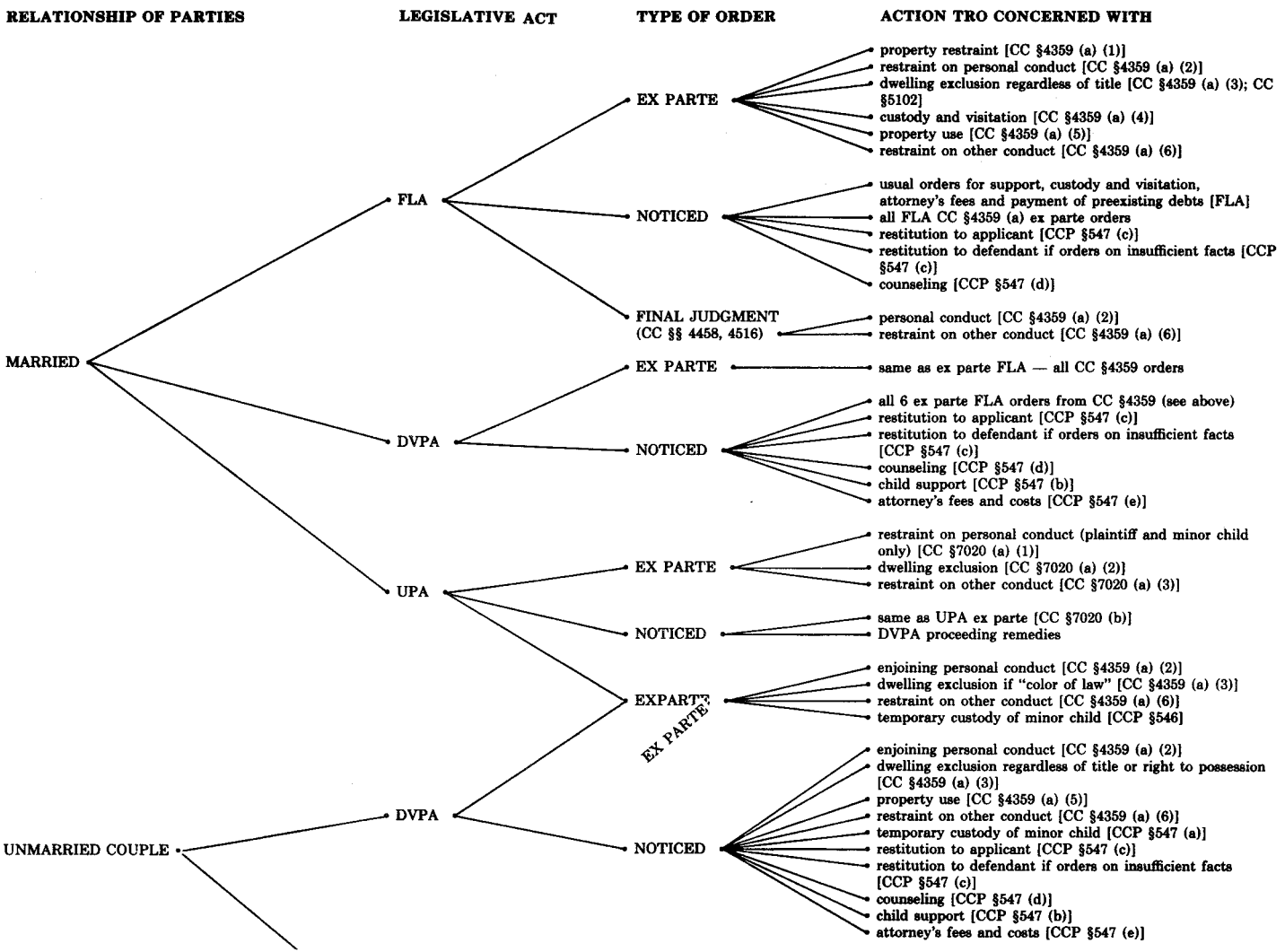
dental damage provision to an equitable remedy or is a jury trial necessary?[123] These questions remain to be answered.

IV. Conclusion

Although certainly not a panacea for the social ills of domestic violence, Senate Bill 9 is a starting point from which California's victims of domestic violence can seek viable legal methods for handling their problems. Through the use of restraining orders, the legislation provides all victims—not just spouses or cohabitive persons—with some protection from domestic violence. With the passage of Senate Bill 9 the law enforcement officer called to the scene of a domestic altercation will now have specific procedures available to protect the victim.

123. Protective Orders, *supra* note 57, at 6.

APPENDIX A


RELATIONSHIP OF PARTIES
LEGISLATIVE ACT
TYPE OF ORDER
ACTION TRO CONCERNED WITH
MARRIED
UNMARRIED COUPLE
FLA
DVPA
UPA
DVPA
EX PARTE
NOTICED
FINAL JUDGMENT (CC §§ 4458, 4516)
EX PARTE
NOTICED
EX PARTE
NOTICED
EXPARTE
EX PARTE
NOTICED
property restraint [CC §4359 (a) (1)]
restraint on personal conduct [CC §4359 (a) (2)]
dwelling exclusion regardless of title [CC §4359 (a) (3); CC §5102]
custody and visitation [CC §4359 (a) (4)]
property use [CC §4359 (a) (5)]
restraint on other conduct [CC §4359 (a) (6)]
usual orders for support, custody and visitation, attorney's fees and payment of preexisting debts [FLA]
all FLA CC §4359 (a) ex parte orders
restitution to applicant [CCP §547 (c)]
restitution to defendant if orders on insufficient facts [CCP §547 (c)]
counseling [CCP §547 (d)]
personal conduct [CC §4359 (a) (2)]
restraint on other conduct [CC §4359 (a) (6)]
same as ex parte FLA — all CC §4359 orders
all 6 ex parte FLA orders from CC §4359 (see above)
restitution to applicant [CCP §547 (c)]
restitution to defendant if orders on insufficient facts [CCP §547 (c)]
counseling [CCP §547 (d)]
child support [CCP §547 (b)]
attorney's fees and costs [CCP §547 (e)]
restraint on personal conduct (plaintiff and minor child only) [CC §7020 (a) (1)]
dwelling exclusion [CC §7020 (a) (2)]
restraint on other conduct [CC §7020 (a) (3)]
same as UPA ex parte [CC §7020 (b)]
DVPA proceeding remedies
enjoining personal conduct [CC §4359 (a) (2)]
dwelling exclusion if "color of law" [CC §4359 (a) (3)]
restraint on other conduct [CC §4359 (a) (6)]
temporary custody of minor child [CCP §546]
enjoining personal conduct [CC §4359 (a) (2)]
dwelling exclusion regardless of title or right to possession [CC §4359 (a) (3)]
property use [CC §4359 (a) (5)]
restraint on other conduct [CC §4359 (a) (6)]
temporary custody of minor child [CCP §547 (a)]
restitution to applicant [CCP §547 (c)]
restitution to defendant if orders on insufficient facts [CCP §547 (c)]
counseling [CCP §547 (d)]
child support [CCP §547 (b)]
attorney's fees and costs [CCP §547 (e)]

ABBREVIATIONS
FLA — Family Law Act DVPA — Domestic Violence Prevention Act UPA — Uniform Parentage Act

CODE PROVISIONS	PROCEDURAL
FLA: CC §§4369, 4458 UPA: CC §§7020, 7021 DVPA: CC §540 et seq. HARASSMENT: CCP §527.6	CCP §527 Calif. Rules of Court §1225