

DOMESTIC VIOLENCE PREVENTION ACT

DVPA (Family Code §§6200 et seq)

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| Purpose | To prevent DV and provide for separation for period sufficient to enable parties to seek a resolution of the causes of the violence (Fam Code §6220). But see <i>Nevarez v. Tonna</i> (227 Cal.App. 4th 774; court need not believe there is possibility of future abuse to grant RO). | |
| Proof | TRO: Reasonable proof of past act(s) of abuse (FC §6300); OAH: Preponderance of evidence (Evidence Code §115) Renewal: Preponderance of evidence that protected party entertains reasonable apprehension of future abuse, without showing of further abuse since issuance of original order. (<i>Ritchie v. Konrad</i> (2004) 115 Cal.App.4th 1275) | |
| Abuse §6203 | <ul style="list-style-type: none"> Intentionally or recklessly cause/attempt to cause bodily injury, or Sexual assault, or Place person in reasonable apprehension of imminent serious bodily injury to that person or another, or FC §6320(a) behavior that has been or could be enjoined: molest, attack, strike, stalk¹, threaten, sexually assault, batter, credibly impersonate another person², falsely personate³, harass, telephone (including but not limited to annoying telephone calls⁴), destroy personal property, contact directly/indirectly by mail or otherwise, come within specified distance, disturb peace⁵ | |
| Required Relationship | Per Fam Code §6211, domestic violence is abuse against: <ul style="list-style-type: none"> Spouse or former spouse, or Cohabitant/former cohabitant⁶ FC§6209, or Current or former dating/engagement partner⁷ §6210 or Party with whom person has child(ren), or Child of party or child subject to paternity action, or Consanguinity or affinity to 2nd degree (parents, grandparents, siblings, children) | Father against stepfather does not have required relationship for DVRO; including child as party does not provide nexus to confer jurisdiction. (<i>Hauck v. Riehl</i> (2014) 224 Cal.App.4th 695) For DVRO request from mother based on father's abuse of child: consider if abuse placed mother in reasonable apprehension of imminent serious bodily injury to herself or child, disturbed mom's peace. (<i>Gou v. Xiao</i> (2014) 228 Cal. App.4th 812) |
| Who Can Be Protected | Petitioner; for good cause, other named family or household members (FC§6320a) Minor 12 and older does not need guardian ad litem (FC §6301(a), CCP§372(b)(1)) | |
| Mutual Orders | Not allowed unless 1) both parties personally appear, 2) both present written evidence of abuse (respondent must file DVPA request), and 3) court makes detailed findings of fact that both acted primarily as aggressors and neither acted primarily in self-defense. (FC §6305) | |
| Orders | Ex Parte Temporary Restraining Order | Order After Hearing |
| | <ul style="list-style-type: none"> Personal conduct; no contact; stay away (§6320(a)) Pets: care, stay away, personal conduct towards animal (§6320(b)) Residence exclusion (§6321) Other restraints necessary to effectuate court's orders (§6322) Prohibit getting address (§6322.7) Temporary custody and visitation (§6323) Parentage by stipulation, subject to set-aside (§6323(b)(2)) Temporary use/possession of real/personal property, liens (§6324) Specified acts re community/separate property per §2045 (§6325) Prohibit insurance changes (§6325.5) Firearms/ammunition (§6389) | <ul style="list-style-type: none"> All ex parte orders (§6340(a)) Child & spousal support, without prejudice (§6341(a) & (c)) Restitution: for petitioner for loss of earnings, out-of-pocket costs (§6342(a)(1)); to respondent for out-of-pocket costs if ex parte order found to be insufficient at hearing (§6342(a)(2)); to respondent to agency for cost of services to petitioner (§6342(a)(3)). No restitution for pain and suffering. (§6342(b)) Batterer's intervention program (§6343) Attorney's fees and costs (§6344) Transfer billing responsibility for & rights to cell phone (§6347(a)) Order to not post photos, videos etc. to internet site does not violate free speech (<i>Phillips v. Campbell</i> (2016) 2 Cal.App.5th 844) |
| Duration | <ul style="list-style-type: none"> 21 days, or 25 days if good cause (FC §242(a) and 6320(b)) Custody/visit/support orders survive termination of TRO (§6340(a)). <i>Moore v. Bedard</i> (2013) 213 Cal.App.4th 1206 | Not more than 5 years for protective orders, firearms (§6345(a)); custody/ support/ visitation orders survive expiration of DVRO (§6340(a)). If order is silent, 3 years. (FC §6345(c)) |
| | Duration of renewal: 5 years or permanently, filed within 3 months before expiration of order (FC §6345(a)) | |
| Denial | After hearing, upon denying petition, court shall provide brief statement of reasons for decision, in writing or on record. (FC §6340(b)) | |
| Notice | TRO: may issue ex parte with or without notice (FC §6300). DVRO: personal service at least five days before hearing (FC §243(a)). Respondent may file response (FC §243(c)). Renewal: personal service at least five days before hearing. If respondent is evading service, alternative service possible, e.g., publication, first class mail, home/work delivery (CCP §414.20-50) | |
| Continuance | Respondent: entitled to one continuance upon request for reasonable time to respond (FC §245(a)). Either party: for good cause; request in writing before hearing, or orally at hearing; or on court's own motion. (FC §245(b)) | |
| Modification | Personally serve protected party at least 16 court days in advance of hearing (CCP §1005(b)) to terminate or modify restraining order prior to expiration date; protected party may waive notice if present and does not challenge sufficiency of notice. (FC §6345(d)) | |
| Priorities for Enforcement Penal Code §§ 136.2(c) and (e) | <ul style="list-style-type: none"> Emergency Protective Order (EPO), if more restrictive and if same parties Any no contact provision in any restraining order, whether criminal or civil A criminal protective order (CPO) | |

1 Stalk (Penal Code §646.9)

- Willfully, maliciously and repeatedly follow or willfully and maliciously harass another person, and
- Make credible threat with intent to place person in reasonable fear for his/her safety or safety of immediate family.

2 Credibly impersonate (Penal Code §528.5)

- Knowingly and without consent credibly impersonates another actual person through or on website or by other electronic means for purpose of harming, intimidating, threatening, or defrauding another person.
- Credible if another person would reasonably believe, or did reasonably believe, that defendant was or is person who was impersonated.
- Electronic means includes opening email account or account or profile on social networking website in another person's name.

3 Falsely personate (Penal Code §529)

- Falsely personates in private or official capacity and in that assumed character, also:
 - Becomes bail or surety for any party, or
 - Verifies, publishes, acknowledges, or proves, in name of another, written instrument w/ intent that it be recorded, delivered or used as true, or
 - Does any other act that subjects falsely personated party to be liable in suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or where benefit accrues to party personating

4 Harassing by phone (Penal Code §653m)

- With intent to annoy: telephones or makes contact by means of electronic communication device, and addresses to or about other person any obscene language or addresses to other person threat to inflict injury to person, property of person, or member of person's family, or
- Makes repeated telephone calls or makes repeated contact by means of electronic communication device with intent to annoy other person at residence, whether or not conversation ensues from call or electronic contact. Does not apply to calls/contacts made in good faith.

5 Disturbing one's peace is abuse. (See IRMO Nadkarni (2009) 173 Cal.App.4th 1483 – email hack; Evilsizor v. Sweeney (2015) 237 Cal.App.4th 1416 – disseminating info from personal journal, ISP, social media; Altafulla v. Ervin (2015) 238 Cal.App.4th 571 – sharing personal info w/ family and employer).

6 Cohabitant (Fam Code §6209): Person who regularly resides in household; social unit, not roommates, sub lessees. (*O'Kane v. Irvine* (1996) 47 CA4th 207)

7 Dating relationship (Fam Code §6210): Frequent, intimate association characterized by expectation of affection or sexual involvement independent of financial considerations.