

DOMESTIC VIOLENCE

Risk, Children, and Final Custody Orders

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Sacramento**
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LEARNING OBJECTIVES

- Increase awareness of differences between DV cases originating in FL courtrooms and those in dependency courtrooms
- Increase understanding of custody orders in general and how juvenile and family courts differ in their abilities to make such orders.
- Participants will gain tools for making final custody orders in DV cases that will avoid appeal, confusion, and future risk to children and victims.

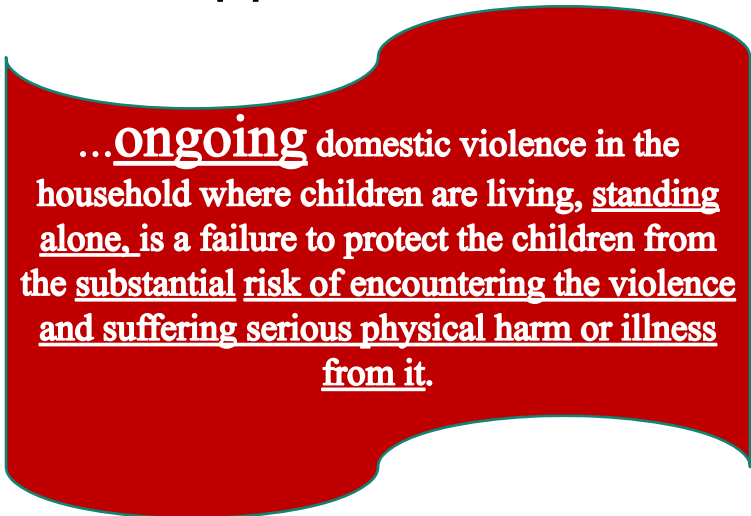
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**WHY DO SO MANY
DEPENDENCY CASES
INVOLVE DOMESTIC
VIOLENCE?**

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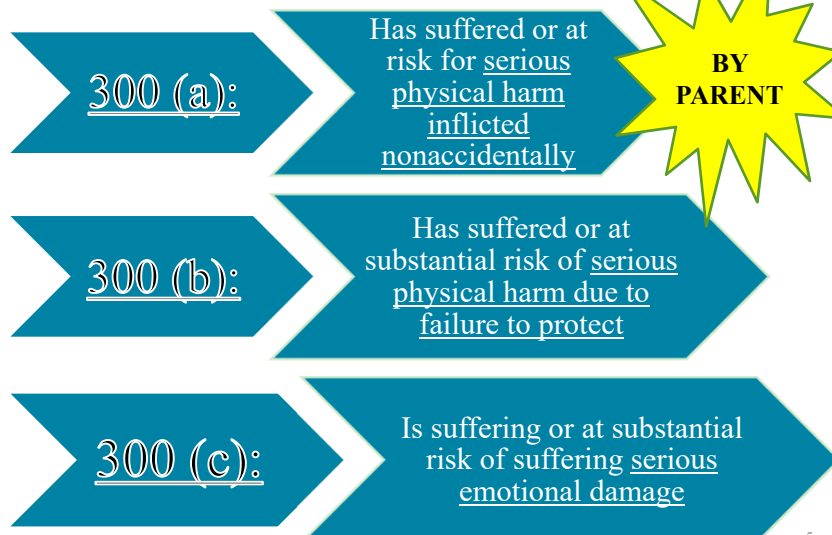
***In re Heather A.* (1996) 52
Cal.App.4th 183, 194**



...ongoing domestic violence in the household where children are living, standing alone, is a failure to protect the children from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.

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IN DOMESTIC VIOLENCE CASES, Children May be Defined by:



DV IN DEPENDENCY CASES

**Possible Situations Leading to
Agency Involvement**

- One parent is victim, other parent is aggressor, and victim fails to protect child,
- Both parents are physically aggressive and we find both to be primary aggressors in recent altercations.
- Non-custodial parent is non-aggressor (and could have no relationship with child).
- Victim parent now is in second or third DV relationship, and other parent was one of those relationships.
- Aggressor parent has custody of child because victim parent abandoned them both and fled, and aggressor is now doing it again in new relationship.

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INFO TO JUDGE IN DET REPORT

- mom had black eye (observed by maternal grandmother)
- child with bruise (observed by pre-school teacher),
- informal supervision for past three months with dad agreeing to leave home but does not stay away,
- SW tells mom to get a RO and mom does not

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JURISDICTION WIC 300

AT TIME OF HEARING

Violence in the household has harmed the child or places child at risk of harm



Violence is ongoing or likely to continue

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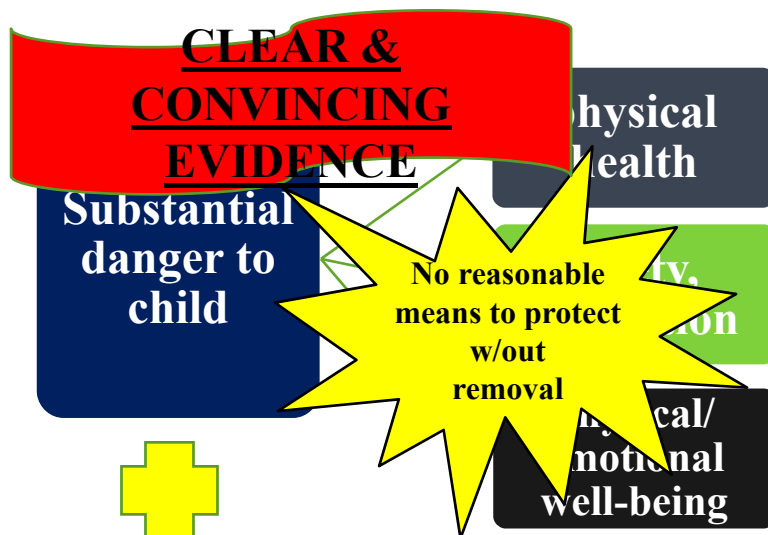
DISPOSITION

DO YOU REMOVE?

Can reasonable services prevent removal?

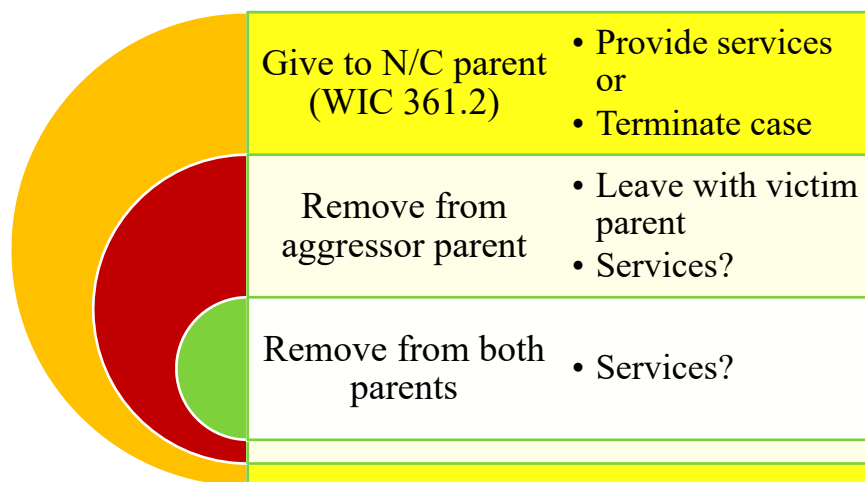
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REMOVE CHILD IF.....

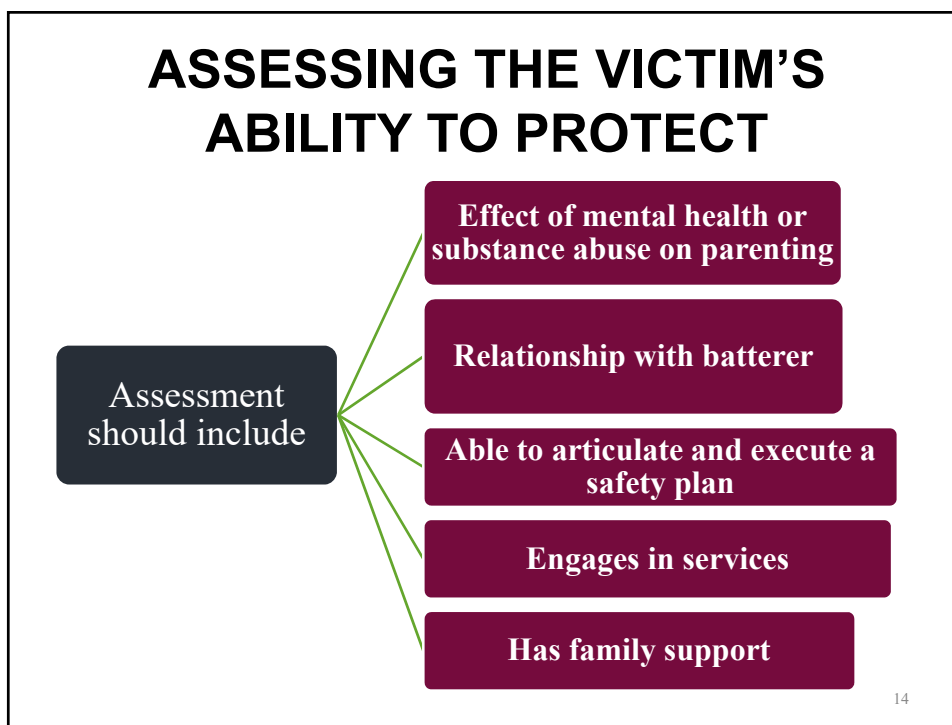
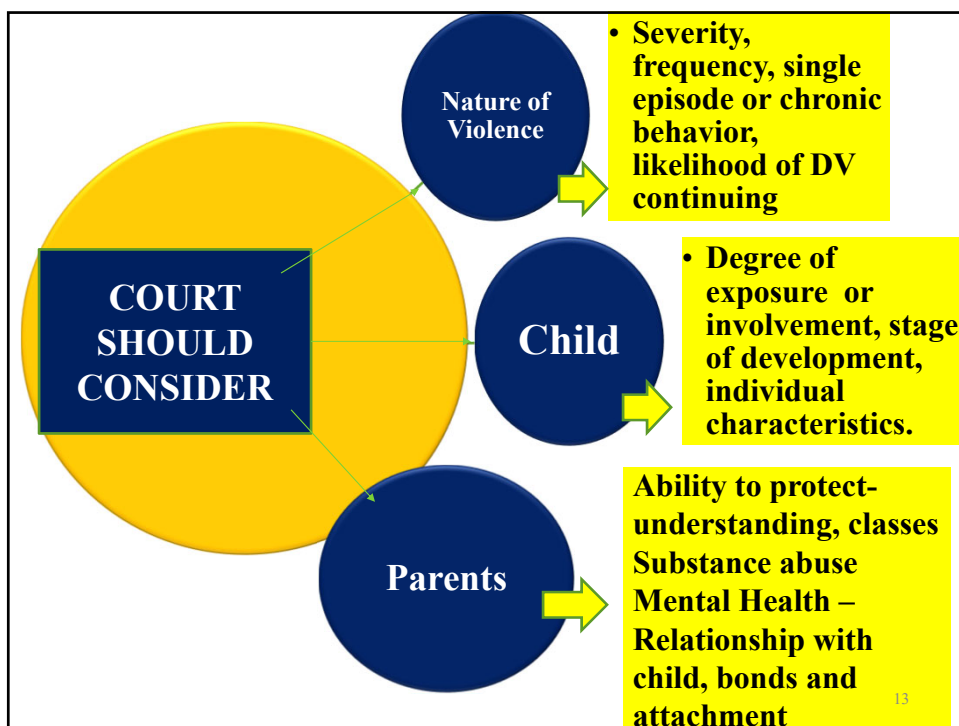


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WHAT SHOULD JUDGE DO AT DISPO? WHY?



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REASONABLE SERVICES TO BE DELIVERED –Dependency Case Plan

For Perpetrator	For Victim
BTP	Trauma informed services
Monitored visitation	Substance abuse and mental health
Parenting classes – include impact of DV on kids	Culturally competent providers
Culturally and linguistically appropriate services	Individual/group counseling re DV and to help decide to leave or to stay in relationship
Substance abuse/mental health	Safe housing, employment, economic advocacy services

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DV IN FAMILY LAW CASES

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Family Code 3020

Perpetration of child abuse or domestic violence in a house where child resides is detrimental to best interest of child.

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MOM'S REQUEST FOR RO TO FAMILY LAW JUDGE:

Most recent event: "On 12/01 he was yelling at me and I was frightened that he would hit me."

"The child was not in the room."

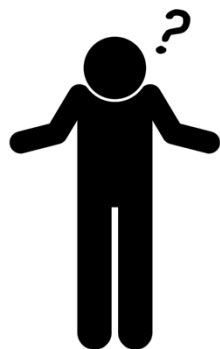
"The SW told me to go get a RO."

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What does a
judge hear?



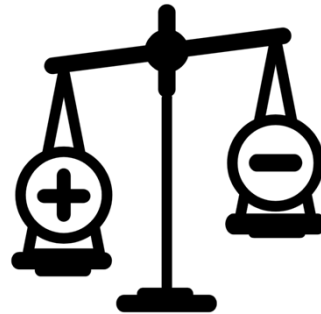
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What
does a
judge
know?

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HOW DOES
JUDGE
DECIDE
CUSTODY?



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**COULD BE
BEFORE DISPO
OR AFTER 6 TO
18 MONTHS OF
SERVICES!**

**THE
JUVENILE
CASE!**

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Physical Custody

- **Physical Custody**
 - With whom the child primarily lives with.
- **Types of Physical Custody Orders**
 - Sole physical custody
 - Child resides with one parent, subject to the other parent's visitation
 - Joint physical custody
 - The child has frequent and continuous contact with both parents (usually close to equal parenting times).



Legal Custody

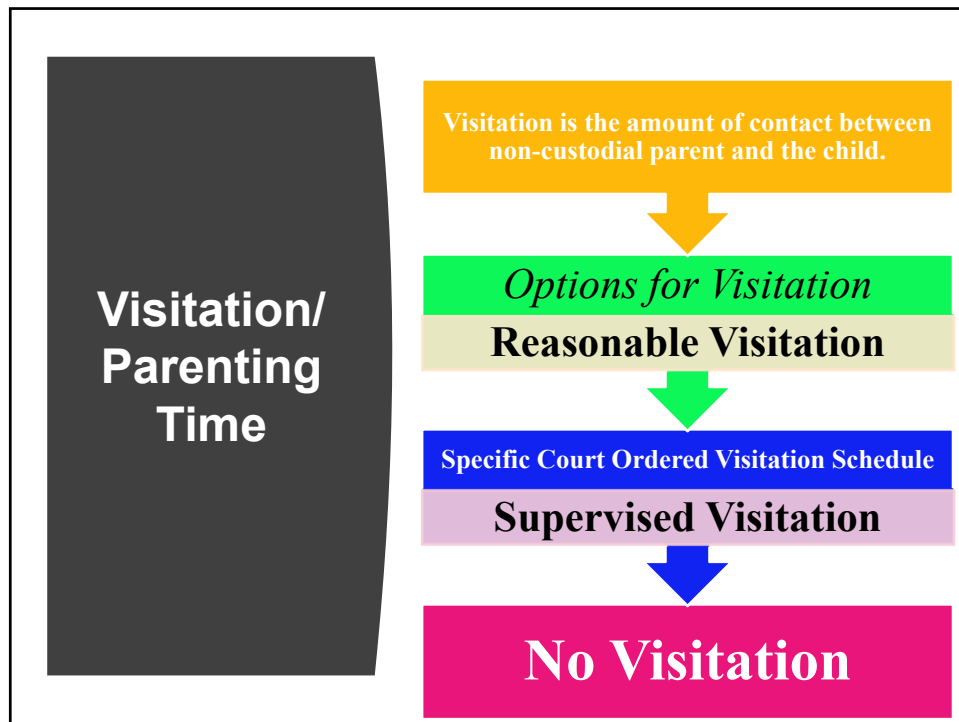


- **Legal Custody**
 - The power to make **decisions** about the health, welfare, and education of the child.
 - **Sole Legal Custody**
 - One parent shall have the right and the responsibility to make decisions regarding health, education, and welfare of a child (Family Code 3006)
 - **Joint Legal Custody**
 - Joint legal custody implies that both parents retain all *legal* rights with respect to their child and neither parent's rights are superior.
 - Joint legal custody requires an ongoing decision-making process between parents that approximates the intact nuclear family.
 - Parents must consult with each other on such matters as the child's health care, education, religious training, extracurricular activities, summer activities, discipline, hours for school nights and weekends, and age of driving.
- **Legal Custody can be granted based on different legal issues.**
 - Example: Mother may receive sole legal custody for the health and medical decisions for a child, and a father may receive the sole legal custody of the education of the child.

What does Sole Legal Custody *really* mean?

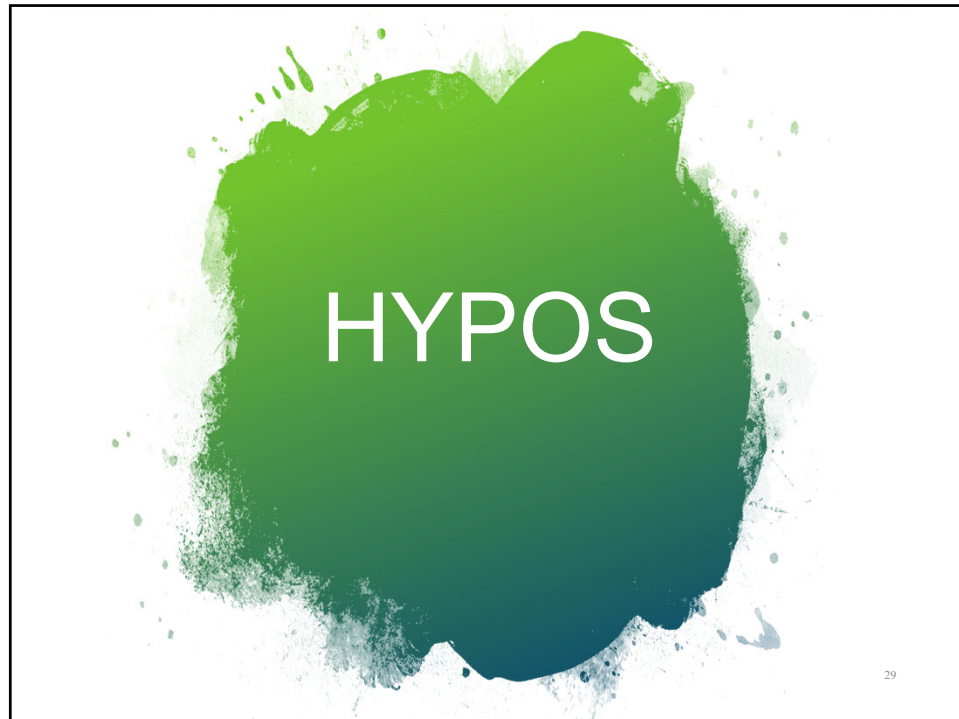
- Noncustodial Parent still has *some* rights!
 - The noncustodial parent cannot be denied access to records and information about the child simply because he or she doesn't have custody
 - Examples: Medical, Dental, and School Records
- Passports:
 - If a parent does not have legal custody, they cannot get passports for the child
 - Issues arise especially if the parent with legal custody cannot be found!





Visitation

- The visitation schedule should be catered to the child's needs, not to the parent's needs.
- Parent's schedules and preferences come after the child's best interests.



FINAL CUSTODY ORDER

- Mother was found to be primary aggressor. She has participated in all of her services, but the social worker is unable to conclude that she has benefitted. Child, age 10, has been residing with Father and paternal grandmother for 12 months. Mother has had supervised visits. Recently, mother's visits have changed to unsupervised and during an exchange she angrily confronted grandma in the presence of the child. She has also gone to the child's school, in violation of court orders, to discuss the child's performance and grades. She argues that she is the only one who knows about the child's educational needs and should be the sole legal and physical custodial parent. Father says that she remains angry, controlling, and confrontational. The social worker agrees and recommends joint legal and sole physical to father.

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Family Law Court

In the JV-200, dad is to have supervised visitation a minimum of two times per month, and is required to take parenting classes, substance abuse treatment, and a BIP. The Juvenile Court has issued a three year restraining order. He has done none of his required services. He is now in family court seeking sole legal and physical custody of the child because mom's new boyfriend beat the child.

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MODIFICATION OF FINAL CUSTODY ORDER....

- **Legal standard is:**
 - 1) a significant change in circumstance PLUS
 - 2) a finding that a change is in the child's best interest.

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SOME CASE LAW!!!



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- In the JV-200, the juvenile court makes the following comment: “And in order to modify the court’s orders, . . . Father will have to complete . . . a full drug program with weekly testing, a parenting program and individual counseling.”

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- In the JV-200, the juvenile court makes the following comment: “The court expects that the family court would consider whether father has completed a full drug program with weekly testing, a parenting program and individual counseling before this order is modified.”

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- The Family Law Judicial Officer is strongly encouraged to review the Dependency file to determine both whether there has been a significant change of circumstances since this order was made and whether modification of the order is in the best interests of the child.

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- There is a DVRO protecting dad from mom, because she was verbally abusive to dad and the child. The court ordered joint legal custody, and told the parents to go to the family court to work out their parenting plan.

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- There is a DVRO issues protecting mom and the child as dad was physically violent. Nevertheless, the parents agree to joint custody. When the J.O. hesitates, dad says that the Family Code provides that if the parents agree, the court is bound.

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- Juvenile Court's custody order gives physical and legal custody to mom and gives dad visitation as agreed upon by the parents.

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TAKE AWAYS!

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