


**DOMESTIC VIOLENCE  
UPDATE**  
DECEMBER, 2015



**BEYOND THE BENCH | 23**

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**LOOKING BACK  
AND LOOKING  
FORWARD**



**BEYOND THE BENCH | 23**

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**LOOKING AHEAD**



**BEYOND THE BENCH | 23**

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**STATUTES AND FORMS**

BEYOND THE BENCH | 23

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**AB1081 (FC 243, 245 AND WIC 213.5) CH, EA, WV, SV AS WELL**

- Respondent entitled as a matter of course to 1 continuance for reasonable period to respond to petition
- Court may grant a continuance on own motion
- Either party may request a continuance for good cause orally at hearing, or in writing before.
- If continuance granted, TRO will automatically continue unless otherwise ordered by court
- If continuance granted court may modify or terminate TRO

BEYOND THE BENCH | 23

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**INVITATION TO COMMENT FORMS AND RULES**

- Will go to RUPRO in mid-December for later public comment
- Implement AB 1081
  - DV-115, DV-115-INFO, DV-116, DV-200, DV-200-INFO, DV-505-INFO, CRC 5.94 and Form FL-306.
  - JV-251 and CRC 5.630
- Changes to Civil Code section 527.6 (Civil Harassment), 527.8 (Workplace Violence), 527.85 (Private Postsecondary School Violence), and Welfare and Institutions Code section 15657.03 (Elder Abuse) require changes to Forms as well.

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**INVITATION TO COMMENT –SPECIFIC AREAS OF INTEREST**

- Is there reason why forms FL-306, DV-115, CH-115, EA-115, SV-115, and WV-115 should maintain an item for a party to indicate the number of times the hearing has been continued?
- Is there a reason why the forms should maintain an item for a party to specify the date of the last hearing?
- Are there ways to further harmonize the domestic violence and juvenile law forms in this proposal with the changes proposed to the civil harassment, elder abuse, and workplace violence forms?
- Should the 116 forms for the court's order include an option to deny a continuance?
- Is there a reason why the title of Form DV-116 should be made the same as the other civil forms? Is there another title that would be more suitable for these forms in light of the requirements of AB 1081? Is there a term that is more understandable for self-represented litigants than "continuance"?
- How would this proposal affect low or moderate-income members of the public?



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**AB 439 (FC 6343) BATTERER'S TREATMENT PROGRAM**

- Effective July 1, 2016
- Forms by July 1, 2016
  - DV-805 (proof of enrollment)
  - DV-815 (progress report)
  - DV-130 (modify to include new requirements)
- If ordered to batterer intervention program restrained party shall:
  - Register for program by court ordered deadline-if none 30 days from order;
  - Sign release for program to release proof of enrollment, attendance records, completion or termination reports to court and protected party;
  - Provide court + protected party with name, address and phone # of program;



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**J.J. V. M.F. (2014) 223 CAL APP 4TH 968**

- Court sua sponte issued mutual ROs J. J. request, M. F. never felt threatened or asked for DVRO
- Must be primarily an aggressor
  - Calling regarding the jacket in light of past DV is not primarily an aggressor
  - Made repeated calls in good faith, young son ill, weather cold on way to school, child had only 1 warm jacket
- Self-defense
  - Not defined in family code
  - Civil Code 50: "any necessary force may be used to protect from wrongful injury the person or property of oneself, or of a...child..."



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**ISADORA M. (2015) 239 CAL APP 4TH 11**

- To grant mutual orders, both parties must file requests giving the requisite notice.
- T/Ct. must make detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense
- Cannot use a prior conviction for DV as a substitute to make the factual findings for a mutual order



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**AB 536 (FC 6305) MUTUAL RESTRAINING ORDER**

- Effective January 1, 2016
- July 1, 2016 forms
  - Modify DV-120
  - Modify DV-120-INFO on how to get mutual restraining orders
- (a)(2) find both primary aggressor
- (a)(1):
  - Personal appearance
  - Written evidence of abuse or DV
  - Can't be in responsive pleading; must be in application for relief



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**SB 28 (FC 4320) SPOUSAL SUPPORT**

- (i) documented evidence, including a plea of nolo contendere of DV.....



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**AB 1407 (FC 6347)**

- Commencing July 1, 2016;
- Notice and hearing court can order a wireless telephone service provider to transfer the billing responsibility and rights to a wireless telephone number or numbers to a requesting party.
- Upon transfer of billing responsibility for and rights to a wireless telephone number or numbers, the requesting party to assume all financial responsibility for the transferred wireless telephone number or numbers, and mobile device costs.
- Cannot sue the wireless company for actions taken in accordance with the terms of the court order.
- Judicial Council forms on or before July 1, 2016 (modifies others to allow order)
  - DV-900 (order transferring cell phone account)
  - DV-901 (contact info- not filed with court)



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**SB 676 (P C 502.01 AND 647.8)**

- Existing law provides that a person who photographs or records by any means the image of the intimate body part or parts of another identifiable person, under circumstances where the parties agree or understand that the image shall remain private, and the person subsequently distributes the image taken, with the intent to cause serious emotional distress, and the depicted person suffers serious emotional distress, is guilty of disorderly conduct, a misdemeanor.
- This bill makes the forfeiture provisions described above applicable to illegal telecommunications equipment, or a computer, computer system, or computer network, and any software or data, when used in committing a violation of disorderly conduct related to invasion of privacy.



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**AB 2643 (CIVIL CODE 1708.85) EFF. 7/1/15**

- Creates a private right of action against a person who intentionally distributes a photograph or recorded image of another that exposes the intimate body parts, or him or her engaged in specified sexual acts, without his or her consent, knowing that the other person had a reasonable expectation that the material would remain private. The bill establishes affirmative defenses to that cause of action, including waiver or consent of the person appearing in the material.
- Can file as Jane/John Doe --form MC-125
- Attorney General has many web pages about cyber security



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THERE ARE FAR BETTER THINGS  
AHEAD THAN ANY WE LEAVE BEHIND

THE FAR, FAR  
ROAD AHEAD

BEYOND THE BENCH | 23

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**STATUTES AND RULES EFFECTIVE JULY 1, 2016**

To implement F C 6345 and respond to various suggestions...

- DV-520-INFO (Get Ready for the Court Hearing) revised for clarity and legal accuracy
- DV-400 terminate DVRO
- DV-400-INFO provides guidance to parties about the forms and procedures for requesting the orders;
- DV-130 revised to reflect orders amended after a court hearing;
- FL-300 revised to serve as the means by which a party asks for the orders;
- FL-320 revised to serve as the means by which a party responds to a request to modify or terminate the orders.
- CRC 5.92; 5.151

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**VOISINE V. U.S. USCT**

- Defendants convicted of possessing firearms after a misdemeanor conviction of DV
- Convicted of simple assault and misdemeanor DV –argue that this does not automatically qualify under 18 USC 922 (g)(9), because under Maine law, violation can be reckless, not intentional.
- The Court agreed to review only the recklessness question;
- The Court it declined to review a second question presented by the petition: whether the ban on possession of firearms by individuals convicted of domestic violence violated their rights under the Second Amendment.

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**GUN VIOLENCE  
RESTRAINING  
ORDER**

January 1, 2016

**BEYOND THE BENCH | 23**

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A gun violence restraining order is an order, in writing, signed by the court, prohibiting and enjoining a named person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. This division establishes a civil restraining order process to accomplish that purpose.

**GVRO**

PC 18100 et. seq.

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**GVRO GENERAL PROVISIONS**

Prohibits the subject of the petition from having in his or her custody or control, or owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition.

"Immediate family" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

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**GVRO**

- Two paths:
  - "Temporary emergency gun violence restraining order" (PC 18125)
  - "Ex-parte gun violence restraining order (P C 18150)
- Titles confusing... forms use different labels
  - "Temporary"= Firearms Emergency Protective Order (EPO-002)
  - "Ex-parte"= Temporary Firearms Restraining Order (GV-110 *et. seq.*)



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**GVRO-- DIFFERENCES**

- TEMPORARY
  - law enforcement only
  - Expires in 21 days, period, unless officer petitions for an order after hearing
  - Reasonable cause of Immediate and present danger of causing personal injury to himself, herself, or another and necessary to prevent injury because less restrictive means are ineffective, or inadequate or inappropriate
  - Must include statement of grounds
  - J.O. available 24/7



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**GVRO--DIFFERENCES**

- EX-PARTE
  - Law enforcement or immediate family member
  - Expires in 21 days, but a hearing w/in 21 days to issue 1 year GVRO
  - Shows that there is a substantial likelihood of a significant danger in the near future of causing personal injury to himself, herself, or another and necessary to prevent injury because less restrictive means are ineffective, or inadequate or inappropriate.
  - Issue or deny order same day as requested if possible



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**EX PARTE GVRO'S (PC 18155)**

In order to grant an *ex parte* GVRO, the Court shall examine the petitioner and/or consider declarations and consider the following factors:

- A recent threat of violence or act of violence
- A recent threat of violence or act of violence toward himself or herself.
- A violation of an EPO or restraining order
- A pattern of violent acts or violent threats within the past 12 months
- The unlawful and reckless use, display, or brandishing of a firearm
- The history of use, attempted use, or threatened use of physical violence
- Prior felony conviction
- Recent acquisition of firearms, ammunition, or other deadly weapons.



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**PC §18170  
GVRO – ORDER AFTER HEARING**

After notice and hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that **both** of the following are true:

- (1) The subject of the petition, or a person subject to an ex parte gun violence restraining order, as applicable, poses a significant danger of personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition.
- (2) A gun violence restraining order is necessary to prevent personal injury to the subject, or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition.



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**PC §18175  
GVRO – ORDER AFTER HEARING**

- The gun violence restraining order issued under this chapter shall have a duration of one year, subject to termination-on written request-- by further order of the court
- GVRO's can be renewed by family or officer after notice and hearing and on clear and convincing proof or up to one year at each renewal hearing under PC §18190.
- Can turn into licensed firearms dealer ( AB 950)
- GV-XXX (23 in number) forms parallel DV forms and are to be approved at December 10 J.C. meeting. Will be available by January 1.



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### LOOKING BACK

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### DV GENERALLY

- Appellate courts are broadly interpreting DV statutes
- IRMO Nadkarni (2009) 173 Cal.App.4th 1483—abuse includes behavior that harasses or disturbs the peace of the victim

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**AB 2089 UNCODIFIED (2014)**

(a) Every person has a right to be safe and free from violence and abuse in his or her home and intimate relationships.

(b) Domestic violence is a pervasive public safety and public health problem that affects people of all income levels, cultures, religions, ages, ethnic backgrounds, sexual orientations, and neighborhoods.



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**AB 2089 UNCODIFIED**

(c) Domestic violence is not limited to actual and threatened physical acts of violence, but also includes sexual abuse, stalking, psychological and emotional abuse, financial control, property control, and other behaviors by the abuser that are designed to exert coercive control and power over the victim.

(d) There is a positive correlation between domestic violence and child abuse, and children, even when they are not physically assaulted, suffer deep and lasting emotional, health, and behavioral effects from exposure to domestic violence.



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**AB 2089 UNCODIFIED**

(e) Domestic violence victims face significant barriers to safely leaving an abusive relationship, including, but not limited to, a risk of retaliation and escalated violence by the abuser, concerns over the safety and custody of their children, an impending loss of financial support and housing, the responsibility for other household members and pets, and difficulties accessing legal and community systems to seek protection from abuse.



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**AB 2089 UNCODIFIED**

(f) Studies have shown that obtaining a civil protective order against an abuser can increase a victim's safety, decrease a victim's fear of future harm, and improve a victim's overall sense of well being and self-esteem.

(g) Because the issuance of civil protective orders often results in declines in domestic violence, public money spent on protective order intervention produces significant cost savings to society, including decreasing victims' time off from work, property loss, use of health services, and use of community, legal, and criminal justice interventions.

(h) Civil protective orders are most effective when they offer comprehensive relief to address the various barriers victims face when safely separating from an abuser, are specific in their terms, and are consistently enforced.



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**AB 2089 UNCODIFIED**

- F.C. 6203 (b): "abuse is not limited to the actual infliction of physical injury or assault"
- F.C. 6300 testimony or affidavit of victim is sufficient
- F.C. 6301 (c) the length of time since the last abuse is not, by itself, determinative. The court shall consider the totality of the circumstances in determining whether a petition for relief will be granted or denied"
- F.C. 6305 refer to P.C. 836 to determine dominant aggressor



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**IRMO NADKARNI (2009) 173 CAL APP 4<sup>TH</sup> 1483**

- H claims W traveled to India left C's 14 and 16 alone in U.S.
- H access W's emails "in sheer panic and desperation"
  - Uses some e-mails in court (including e-mails to her atty); won't use others "except as evidence in future legal proceedings"
  - H has e-mails to W's clients and attorney
- W
  - Fears he will file e-mails to embarrass her and ruin business (threat)
  - Fears he will use e-mails in litigation (threat)
  - Uses e-mails to find out her social schedule (stalking)
  - Fears for her safety
- Past history of physical abuse H jailed



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**NADKARNI**

- F. C. 6220

The purpose of this division is to prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence.

- F.C. 6203

(a) For purposes of this act, "abuse" means any of the following:

...

(4) To engage in any behavior that has been or could be enjoined pursuant to Section 6320.

(b) Abuse is not limited to the actual infliction of physical injury or assault.




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**NADKARNI**

F.C. 6320:

The court may issue an...order enjoining a party from molesting... stalking ...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...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.

Disturbing the peace is: **...destroying the mental or emotional calm...**by accessing, reading and publicly disclosing...confidential e-mails.




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**NADKARNI**

- H accesses W's e-mail account-attaches e-mails to court pleading
- No allegation of physical violence after 1999 (vicious beating-H jailed)
- Knew her social and work schedule through the e-mails
- DV is abuse, abuse is "harassing" "disturbing the peace of the other party"
- "Disturbing the peace" is "a former husband's conduct in destroying the mental or emotional calm of his former wife by accessing, reading and publicly disclosing her confidential emails".
- DVPA to be broadly construed.




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**IRMO FAJOTA (2014) 230 CAL APP 4TH 1487**

- T/C orders a DVRO
- H violates DVRO
- The clear terms of section 3044 require that a court apply a presumption that it is detrimental to the best interest of the child to award joint or sole physical or legal custody to a parent if the court has found that that parent has perpetrated any act of domestic violence against the other parent in the preceding five years. The presumption is rebuttable, but the court must apply the presumption in any situation in which a finding of domestic violence has been made. A court may not "call . . . into play" the presumption contained in section 3044 only when the court believes it is appropriate."
- 3011 does not trump 3044 ( Christina L. (2014) 229 Cal. App. 4th 731)



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**CURRENT CASE  
LAW**

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**EVILSIZOR (2015)237 CAL APP 4TH 1416**

- H downloads W's e-mails (incl. to her atty.) and diary from phone, 219,000 pages
  - Q as to his permission
- May have hacked into her Facebook account
- Disclosed private info to her family, and friends
- H threatens to take info to IRS
- H attaches in court filings
- W has sleepless nights, sick to stomach, friends mad at her, embarrassed in front of friends, parents are mad at her, W suffers "extreme embarrassment, fear and intimidation"
- No allegations of physical abuse



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**EVILSIZOR**

- Not necessary to prove physical abuse to get DVRO
- Lack of physical abuse may be considered by a trial court in granting DVRO
  - Conness (2004) 122 Cal App 4<sup>th</sup> 197
  - Burquet (2014) 223 Cal APP 4<sup>th</sup> 1140
- F C 3044 attaches, may be rebutted



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**EVILSIZOR**

- COURT ORDER:
  - H be "prohibited from using, delivering, copying, printing or disclosing the messages or content of [Evilsizor's] text messages or e-mail messages or notes, or anything else downloaded from her phone or from what has been called the family computer except as otherwise authorized by the court."
  - prohibited from trying to access or otherwise interfere with Evilsizor's internet-service provider accounts or social-media accounts.
- Not violate free speech
  - Free speech not absolute
  - Determined abusive after full hearing—not prior restraint
  - Abusive speech is not protected speech
  - Order must be narrowly tailored it cannot be overly broad



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**ALTAFULLA V ERVIN(2015) 238 CAL APP 4<sup>TH</sup> 571**

- H threatened prior W and kids "One day I will take a gun and shoot all four of you" – H denies, but later admitted he made an "unfortunate and irresponsible statement"
- H marries W
- H finds out W unfaithful because his x-W hired a PI to follow him; in court W "tactily" admits affair with a business associate.
- When H finds out he
  - Describes to W's 17 and 9 year old daughters "blow jobs" in graphic terms
  - Warned daughters not to use W's towels so they not get STD
  - Dismantles children's bedroom furniture
  - Emails W's friends, relatives, co-workers the surveillance report



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### ALTAFULLA

- No violence between H and W ( one incident where police called)
- H argues t he allegations of an affair were accurate, so not abusive- factual accuracy not important if abusive use
- Ct. relies on Nadkarni
- Distribute info to coworkers, relatives etc. was calculated to cause and caused significant emotional distress to W and children.
- 17 year old "severely traumatized" and went to a psychiatric facility--facility not release her until H left home
- Ct. looks to earlier "outrageous" statement to prior W showed a serious lack of judgment and self-control
- Grant 5 year order OK, even if ask for 3 in papers- asked for 5 at hearing



BEYOND THE BENCH | 23

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### ALTAFULLA

- H claims DVPA unconstitutional
- Gun ban
  - District of Columbia v Heller (2008) 554 U.S. 570 allows some restriction on right to bear arms
  - Reducing domestic violence is a compelling government interest
  - Firearm restriction is a temporary burden in light of the anger management issues that arise in DV
  - Prohibition in DV narrowly tailored, so OK
- Vagueness and targeting of speech in 6320
  - State has compelling interest to protect innocent individuals form fear, abuse or annoyance is a compelling interest



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### ELONIS VS. U.S.

- H and W separate, 2 children
- F starts to listen to violent rap, changes user name on Facebook to "Tone Dougie" and posts graphically violent language and imagery on page.
- Posts crude, degrading and violent material about W threaten to shoot up a kindergarten class.
  - "That's it, I've had about enough. I'm checking out and making a name for myself . Enough elementary schools in a ten mile radius to initiate the most heinous school shooting ever imagined And hell hath no fury like a crazy man in a kindergarten class. The only question is...which one?"
  - "There is one way to love you, but a thousand ways to kill you. I am not going to rest until your body is a mess, soaked in blood and dying form all the little cuts"
- W gets a DVRO against him
- FBI takes notice



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### ELONIS

- Is convicted under 18 U.S.C. 875 (c): "any communication containing any threat... to injure the person of another;" in interstate commerce
- W and other say they considered the posts to be a threat and felt afraid
- Elonis says he was only emulating Eminem's rap lyrics and was not posting anything that had not been said already. He not intend a threat
- 3<sup>rd</sup> circuit: defendant intend to communicate with purpose of issuing a threat or with knowledge that a reasonable person would view communication as a threat
- SCOTUS says defendant must transmit the communication for the purpose of issuing a threat or with the knowledge that the communication would be viewed as a threat.
- Elonis convicted on how his posts would be understood by a reasonable person...disregarding what a defendant thinks reduces it to negligence.
- SCOTUS decline to rule on whether reckless is enough



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### PEOPLE V. MURILLO (2015) 238 CAL APP 4<sup>TH</sup> 1122

- P. C. 140(a) makes it a crime to threaten a crime victim with violence.
- In April 2012, Jane Doe 1 and Jane Doe 2 reported to law enforcement that Shane Villalpando had raped them. Murillo and Villalpando were friends; Murillo had Facebook account as a rapper "Lil A".
- Murillo posted a song lamenting Villalpando's incarceration, referred to Jane Doe 1 and Jane Doe 2 by their first and last names, and described the girls as "hoe[s]," among other profanities. The lyrics also stated: "[T]hese bitches caught him slippin' [¶] Then they fuckin' snitchin' [¶] ... I'm fucking all these bitches [¶] Hunting down all these snitches [¶] ... Shit you know we have no fear [¶] I'll have your head just like a deer [¶] It will be hanging on my wall



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### PEOPLE V. MURILLO

- Threatening statements that a reasonable listener would understand, in light of the context and surrounding circumstances, to constitute a true threat, namely, 'a serious expression of an intent to commit an act of unlawful violence', rather than an expression of jest or frustration."
- 140(a) does not require that a threat to harm a crime witness or victim be immediate or that the defendant has the apparent ability to carry out the threat.
- People v. Lowery (2011) 52 Cal 4<sup>th</sup> 419
- Court does not discuss Elonis



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**PEOPLE VS. SHIVERS (2015) 235 CAL APP 4<sup>TH</sup> SUPP 8 UNPUBLISHED**

- Perrette has DVRO against Shivers
- Shivers violates order
  - comes with in 8 inches
  - falsely shouts he has an RO against Perrett
- Shivers disturbs Perrett's peace
- PC 273.6 misdemeanor any "intentional and "knowing violation of a protective order"
- Knowing= know of order and be aware of what it states; people need not prove that Shivers knew his acts were unlawful.
- Court not really address self-defense as a defense to violation



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**SHIVERS PUBLISHED**

- PC 653.2-
- (a), a person is guilty of a misdemeanor if he, "with intent to place another person in reasonable fear for his or her safety, or the safety of the other person's immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of imminently causing that other person unwanted physical contact, injury or harassment, by a third party, electronically distributes, publishes, e-mails, hyperlinks, or makes available for downloading, personal identifying information, including, but not limited to, a digital image of another person, or an electronic message of a harassing nature about another person, which would be likely to incite or produce that unlawful action."
- The statute defines "harassment" as "a knowing and willful course of conduct directed at a specific person that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing the person and that serves no legitimate purpose." (Pen. Code, § 653.2, subd. (c)(1).)
- "Of a harassing nature" is defined as "of a nature that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing of the person and that serves no legitimate purpose." (Pen. Code, § 653.2, subd. (c)(2).)



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**SHIVERS PUBLISHED**

- Shivers tweets ... "if you see my stalker Pauley Perrette, follow me[ to my usual hangout]...call LAPD" more than once
- Shivers intended to incite unlawful action by a third person—tweets posted with specific intent to incite or produce unwanted physical contact.
- A reasonable person would consider the that electronic message likely to incite or produce unwanted physical contact, injury or harassment by a third party.



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**CUETO V. DOZIER (2015) 241 CAL APP 4TH 550**

- W granted a 2 year DVRO
- F C 6345 renewal of DVRO 5 years or permanently
- Court deny renewal
- Reinforces Ritchie v. Konrad (2004) 115 Cal App4th 1275 renew if by preponderance a "reasonable apprehension" of future abuse.
  - Standard is "reasonable person in same circumstances"
  - Do not need to prove a violation of order "the fact that a DVRO has proved effective is a good reason for seeking its renewal"
  - Need not prove lack of violation



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**CUETO**

- Review on abuse of discretion
- Court deny but admonish H to stay away.
- Long history of physical abuse
- Nothing in the record to suggest that circumstances changed and H had "moved on" so that the likelihood of future abuse diminished
- H failed to go to anger management classes as ordered earlier



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**IN RE D. P. (2015) 237 CAL APP 4TH 911**

- M and D have a long history of DV-- D against M, DCFS detains D.P. (1 month old)
- M stayed with D despite pattern of DV, against her and her other child
  - Minimized risk
  - Not see impact on D.P.
  - Exposed other children to DV harm
  - Chose to stay with D
- D.P. no actual emotional harm, but substantial risk



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**EMILIO G. (2015) 235 CAL APP 4TH 1133**

- M puts Emilio up for adoption shortly after birth; G's adopt; term D's rights in S F
- D (bio-dad) says he is a Kelsey S. (1 Cal 4th 816) father
  - Promptly come forward and demonstrate full commitment to parental responsibilities
- Kelsey S. unwed father can try to block adoption by showing presumed father or Kelsey S.
- Kelsey S. allows D to promptly come forward and demonstrate full commitment - emotional, financial and otherwise
- Kelsey S.: D "must promptly assume or attempt to assume his parental responsibilities as fully as the mother allowed and his circumstances permitted"
- D bears burden to show in child's best interest to retain parental rights



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**EMILIO G.**

- D not supportive—was harmful to M
  - No financial support-- he take over her car
  - Was violent and unpredictable to her and her family
  - Brought a paternity case in LA (denied) before birth as part of harassment an emotional abuse Scheduled hearings when he knew M in labor
  - Controlling, isolated her from friends
  - Broke up via text because she was "ungrateful and unappreciative" pre-birth
  - Afraid to get a DVRO because of his reaction
- A custody dispute between parents with DV history and uncomfortable relationship would stress Emilio-- not in his best interest.



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**ADOPTION OF T. K. (2015)**

- D cyber stalk M before and after birth --was "creepy" court relied heavily
- Hacked into her cell phone
  - Appeared at med appointment
  - Called first adoptive couple-scared them off
  - While M visit an atty D called and asked atty to rep him
  - Showed up uninvited to the birth—escorted out
- Not a Kelsey S. father
- Distinguishes Baby Boy W (2014) 232 Cal App 4th 438 (social media campaign)
- "Disagrees" with H.R. (2012) 205 Cal App 4th 455



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**IN RE N.L. (2015) 236 CAL APP 4<sup>TH</sup> 1460**

- N. L. detained, M has monitored visits parents held educational rights
- D gets DVRO because M violent to him at school and M threaten to remove child from school
- At DVRO hearing D counsel agrees to drop RO as to child, court issues
  - It is a safety issue for the father
  - If woman ask for order, would not be an issue
- Insufficient evidence that N.L.'s safety at issue without DVRO
  - M had educational rights
  - M on monitored visitation
  - No evidence threats in front of child
  - M had good interaction with child.



**BEYOND THE BENCH | 23**

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**IN RE M. W. (2015) 238 CAL APP 4<sup>TH</sup> 1444**

- 12/24/13 M consume either a "4 pack of wine" or 6 medium bottles of brandy and took "a lot" of pain pills. And drove her kids in the car. DCFS detains children for failure to protect and substance abuse; substance abuse not an issue on appeal
- M tells DCFS that D abused her in 2005 and that she had not seen him since
- DV incident in 2007 D arrested, M not ask for EPO- no further DV
- D says he in jail since 8/13 and had not seen kids since;
- 2007 DV incident
  - DV too remote in time
  - No current risk to the children as a result of DV/F not see kids
  - 300(b)(1) circumstances at time of hearing subject minor to risk of harm.



**BEYOND THE BENCH | 23**

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**IN RE M. W.**

- [W]e are unaware of any authority requiring a parent to obtain a restraining order in response to a single act of domestic violence. We are likewise unaware of any authority supporting the court's assertion that a request for a restraining order necessarily would have led to (1) a CLETS search being run and (2) mother thereafter being notified of its results. Neither the court nor DCFS cited any statutes, regulations, or case law demonstrating that the chain of events described by the court is mandated or even permitted.
- Moreover, nothing inherent in the circumstances surrounding the domestic violence incident – which consisted of a slap to mother's face – should have prompted mother to inquire about father's prior criminal history or caused her to reasonably foresee that father might later sexually abuse the children



**BEYOND THE BENCH | 23**

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**IN RE JONATHAN B (2015) 235 CAL APP 4<sup>TH</sup> 115**

- D hit M in face in 2009, parents separate in 2013, D moves out, D sees kids parents communicate well re the children
- 5/14 D gets drunk, attacks M; M gets an EPO
- DCFS detains for M's failure to protect by allowing father to frequent the home and have unlimited access to the children. Ct. allows ongoing visits with D.
- M did everything she could, assault unpredictable



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**IN RE M.W. (2015) 238 CAL APP 4<sup>TH</sup> 1444**

- 12/24/13 M consume either a "4 pack of wine" or 6 medium bottles of brandy and took "a lot" of pain pills. And drove her kids in the car. DCFS detains children for failure to protect and substance abuse; substance abuse not an issue on appeal
- M tells DCFS that D abused her in 2005 and that she had not seen him since
- D says he in jail since 8/13 and had not seen kids;
- Record is that there was an incident of abuse in 2007, M did not seek EPO at the time
  - DV too remote in time
  - No current risk to the children as a result of DV



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**IN RE DANIEL B. (2014) 231 CAL APP 4<sup>TH</sup> 663**

- D stabbed M in shoulder, while she held 1 year old Daniel, 10 year old Andrew present, long history of DV
- Both children detained , released to M, D on monitored visitation
- Family maintenance services for M: include a group to address DV, Ct. orders that DV treatment program determine how long program will last.
- Ct can order counseling if "necessary and proper"
- M wanted individual counseling, Ct order for group OK- no abuse of discretion with the level of violence and history
- Leaving term open ended OK too, BUT cannot delegate end of treatment to the program, end determined by the court.



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**JESUS M. JR. (2015) 235 CAL APP 4TH 104**

- 2010 family court issue DVRO because of physical violence
- D repeatedly violated DVRO
- Juvenile court asserts jurisdiction under WIC 300 (b) on father's conduct in the past, injuring the children "emotionally, not physically".- D has limited monitored visitation.
- Court intimates that DCFS should have filed under 300 (c).
- Insufficient evidence for jurisdictional finding
  - 300 (b) requires child's exposure to "substantial risk of serious physical harm".
  - Lots of emotional harm, no physical harm here
  - DV years ago, but now harasses mother, and denigrate her to children



**BEYOND THE BENCH | 23**

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**FATON V. AHMEDO (2015) 236 CAL. APP. 4TH 1160**

- DVRO granted against Ahmedo , both SRL
- Ahmedo brings reconsideration motion, both hire counsel, Ahmedo wins, second DVRO hearing, DVRO granted again
- Faton files for fees per 6344 as prevailing party
- Ahmedo says Faton can't get fees as not requested before hearing
  - Need not plead before hearing, can be granted as long as notice and a hearing OK due process
  - OK request not on Mandatory J C forms:
    - FC 6221: "Any order issued by a court to which this division applies shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (1) of Section 6380. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable."



**BEYOND THE BENCH | 23**

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**MICHAELS V. TURK (2015) 239 CAL APP 4HT 1411**

- Be sure to get the commissioner stipulations
- "While there are circumstances where consent may be implied from the actions of a party or her counsel, these actions must be apparent from the record".



**BEYOND THE BENCH | 23**

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