

Memorandum 92-56

Subject: Study F-1001 - Domestic Violence Prevention Statutes
(Reorganization and Consolidation of Family Code Provisions)

Attached to this memorandum is a staff draft Tentative Recommendation proposing legislation that would consolidate the Family Code provisions for restraining orders intended to prevent domestic violence. In order to simplify consideration of the proposed legislation, the staff draft is organized with the provisions implementing the consolidation separated from the conforming revisions.

BACKGROUND

Under existing law, three separate bodies of law contain substantially similar provisions for restraining orders intended to prevent domestic violence. Provisions for obtaining the orders are included in the Family Law Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code), the Uniform Parentage Act (Part 7 (commencing with Section 7000) of Division 4 of the Civil Code), and the Domestic Violence Prevention Act (Chapter 4 (commencing with Section 540) of Part 2 of Title 7 of Code of Civil Procedure). The staff learned from one interested party who has been involved in the passage of legislation in this area that these provisions have been duplicated to make it clear that the orders are available whenever domestic violence is alleged, no matter the type of proceeding. This was necessary when the family laws were dispersed over various codes.

The Family Code as enacted continues the duplication in the existing law by continuing provisions for obtaining these orders in Division 6 (nullity, dissolution, or legal separation), Division 10 (prevention of domestic violence), and Part 3 of Division 12 (Uniform Parentage Act). While these provisions are substantially similar, consolidation of the provisions requires reconciliation of a number of inconsistencies.

RECONCILIATION OF INCONSISTENCIES

Inconsistencies Resolved by Mandatory Judicial Council Forms

The staff has studied these provisions and identified a number of minor and technical inconsistencies that appear to have been reconciled by the Judicial Council in drafting the practice forms used in this area. The majority of these practice forms are mandatory and, therefore, where the inconsistency is resolved by a mandatory form the staff has reconciled the statutes to conform with the form and has made note of this in the Comment to the section. See proposed Fam. Code §§ 2040, 6224, 6240, 6250, 6302, 6324, 6340, 7720.

Other Inconsistencies

Those inconsistencies could not be reconciled by reference to a Judicial Council practice form include the following:

(1) Time requirements for return on an ex parte order (proposed Fam. Code § 242). Family Code Section 242 as enacted continues an inconsistency in prior law. Code of Civil Procedure Section 527 provides the general rule that a return on an ex parte order must be made within 15 days (20 days upon good cause). However, specific family law provisions for ex parte orders intended to prevent domestic violence allow 20 days (25 days upon good cause). The restraining order issued in a proceeding to obtain deposit of an asset to secure future child support payments also uses the 20-day rule. See Fam. Code § 4620. Continuing both the general rule and the specific exceptions to it resulted in an unnecessarily confusing statute.

The staff draft proposes a unified scheme that applies the 20-day rule to all ex parte restraining orders issued under the code, other than the ex parte orders included in a summons.

(2) Orders included in a judgment (proposed Fam. Code §§ 6360-6361). The existing Family Law Act and the Uniform Parentage Act provided for including specified orders in a judgment. These provisions have been generalized in proposed Family Code Sections 6360-6361 to apply to a judgment under the code. The staff felt that as a matter of policy there is no reason to limit this rule to judgments in Uniform Parentage Act and dissolution, nullity, or legal separation proceedings.

(3) Definition of "domestic violence" (proposed Fam. Code § 6211). The Family Code as enacted continues the definition of "domestic violence" contained in existing Code of Civil Procedure Section 542(b) (taken from the Domestic Violence Prevention Act). This definition was revised in 1990 and eliminates reference to violence toward children. The bill did not amend the provisions in the Uniform Parentage Act that provide for orders to prevent violence against the child who is the subject of the proceeding. The draft legislation proposes revising the definition of domestic violence to include children. This continues the substance of the Uniform Parentage Act and expands the scope of the definition to children who are not the subject of a proceeding under the Uniform Parentage Act.

SHOULD OTHER PROVISIONS BE CONSOLIDATED?

Welfare and Institutions Code Section 213.5 contains provisions for issuance of restraining orders intended to prevent violence that are similar to those consolidated in Division 10 of the Family Code. The Welfare and Institutions Code section is intended for use during the pendency of a proceeding to declare a minor a dependent pursuant to the proceedings set forth in Welfare and Institutions Code Section 300 et seq. The staff considered whether the Welfare and Institutions Code section should also be consolidated in Division 10 of the Family Code.

The staff recommends that this section remain in the Welfare and Institutions Code for now. The staff, in a separate study, is working on draft legislation that would move the Welfare and Institutions Code sections that govern the dependency proceeding into the Family Code. If this move is approved by the Commission, then consolidation of the restraining order provisions would be appropriate.

However, if these sections are not be moved, then the staff recommends Welfare and Institutions Code Section 213.5 not be consolidated with the provisions in Division 10. This section is drafted for use by the juvenile court to protect a child who is the subject of a dependency proceeding. As a practical matter, it is

easier for users to find the restraining order provision when it is in the same code as the provisions for the proceeding in which the order is to be issued.

CONCLUSION

The staff recommends approving the staff draft for circulation as a tentative recommendation, subject to any needed revisions.

Respectfully submitted,

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft

TENTATIVE RECOMMENDATION

**Family Code:
Reorganization of Domestic Violence Provisions**

September 1992

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN October 15, 1992.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF RECOMMENDATION

This tentative recommendation contains proposed legislation to consolidate and reorganization the Family Code provisions dealing with prevention of domestic violence, without substantive change to the law.

REORGANIZATION OF DOMESTIC VIOLENCE PROVISIONS

The Family Code was enacted during the 1992 legislative session on recommendation of the Law Revision Commission.¹ The code is subject to a delayed operative date of January 1, 1994.² The code is based on a study and report prepared by the Law Revision Commission, which states that the major concern addressed by the new code is the dispersion of family law in several codes, including the Civil Code, Code of Civil Procedure, Evidence Code, Probate Code, and Welfare and Institutions Code.³ The Family Code as enacted contains provisions from these various codes that were identified as appropriate for inclusion in the new code. In the course of reviewing the family law continued in the new code, the Commission identified certain projects that merited further study.⁴

This tentative recommendation is the result of further study of the Family Code provisions dealing with prevention of domestic violence. Prior to enactment of the Family Code, three separate bodies of law contained substantially similar provisions for restraining orders intended to prevent domestic violence. Provisions for obtaining the orders are included in the Family Law Act,⁵ the Uniform Parentage Act,⁶ and the Domestic Violence Prevention Act.⁷

The Family Code as enacted continues the provisions for obtaining these orders in Division 6 (nullity, dissolution, or legal separation), Division 10 (prevention of domestic violence), and Part 3 of Division 12 (Uniform Parentage Act). In this tentative recommendation the Commission proposes repealing the substantive provisions for these orders in Division 6 and in Part 3 of Division 12 and consolidating these with the provisions of Division 10. This requires reconciliation of minor discrepancies between the three sets of provisions. Where possible, the Commission has reconciled these discrepancies by conforming the sections to the applicable Judicial Council form.

Other inconsistencies in existing law are proposed to be reconciled as follows:

(1) Time requirements for return on an ex parte order are governed under existing Code of Civil Procedure Section 527, which provides the general rule that the return be made in 15 days, absent a showing of good cause. However, a

1. 1992 Cal. Stat. ch. 162, § 10.

2. 1992 Cal. Stat. ch. 162, § 13.

3. *Family Code*, 22 Cal. L. Revision Comm'n Reports 1, 7 (1992).

4. *Family Code*, 22 Cal. L. Revision Comm'n Reports 1, 12 (1992).

5. See Part 5 (commencing with Section 4000) of Division 4 of the Civil Code.

6. See Part 7 (commencing with Section 7000) of Division 4 of the Civil Code.

7. See Chapter 4 (commencing with Section 540) of Part 2 of Title 7 of the Code of Civil Procedure.

number of specific family code provisions apply a 20-day rule.⁸ This tentative recommendation proposes that a single 20-day rule be applied.

(2) Existing law provides for including orders intended to prevent domestic violence in judgments in proceedings under the Uniform Parentage Act and in dissolution, nullity, or legal separation proceedings.⁹ This tentative recommendation proposes generalizing this provision to allow the orders to be included in any judgment under the code.

(3) The provisions for orders to prevent domestic violence in the Uniform Parentage Act provide for orders intended to prevent abuse of a child who is the subject of a proceeding under the act.¹⁰ The definition of domestic violence in the Domestic Violence Prevention Act, however, does not cover abuse against children.¹¹ This tentative recommendation proposes an amendment to the definition of domestic violence to include abuse of children. This continues existing provisions in the Uniform Parentage Act and expands the scope of the definition to include children who are not the subject of a proceeding under the Uniform Parentage Act.

8. See Code Civ. Proc. §§ 527 (applying 20-day rule to Civ. Code § 4359), 546(a); Civ. Code § 4701.1(d), 7020(a).

9. See Civ. Code §§ 4458, 4516, 7021.

10. See Civ. Code § 7020.

11. See Code of Civ. Proc. § 542(b).

PROPOSED LEGISLATION
Outline
FAMILY CODE

DIVISION 1. PRELIMINARY PROVISIONS AND DEFINITIONS

PART 2. DEFINITIONS

- § 55 (repealed). "Abuse"
§ 57 (repealed). "Affinity"
§ 60 (repealed). "Cohabitant"
§ 70 (repealed). "Domestic violence"
§ 75 (repealed). "Domestic violence prevention order"

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DIVISION 2. GENERAL PROVISIONS

PART 4. RESTRAINING ORDERS ISSUED WITHOUT NOTICE

- § 240 (repealed). Application of provisions of this part
§ 240 (added). Application of provisions of this part
§ 241 (amended). Granting temporary order without notice
§ 242 (repealed). Order to show cause
§ 242 (added). Order to show cause
§ 245 (repealed). Reissuance of restraining order

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DIVISION 6. NULLITY, DISSOLUTION, AND LEGAL SEPARATION

PART 1. GENERAL PROVISIONS

CHAPTER 4. RESTRAINING ORDERS

Repealed Articles:

- Article 2. Orders During Pendency of Proceeding
§§ 2035-2043 (repealed). Ex parte orders
Article 3. Orders Issuable After Notice and Hearing
§ 2045 (repealed). Protective orders included in judgment

Added Articles:

- Article 2. Ex Parte Orders
§ 2035 (added). Ex parte orders during pendency of proceeding
Article 3. Orders Issuable After Notice and Hearing
§ 2040 (added). Orders issuable after notice and hearing
Article 4. Orders Included in Judgment
§ 2045. (added) Orders included in judgment

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DIVISION 10. PREVENTION OF DOMESTIC VIOLENCE

- §§ 5500-5807 (repealed). Prevention of domestic violence

DIVISION 10. PREVENTION OF DOMESTIC VIOLENCE

PART 1. SHORT TITLE AND DEFINITIONS

- § 6200 (added). Short title
§ 6201 (added). Application of definitions

- § 6203 (added). "Abuse"
- § 6205 (added). "Affinity"
- § 6209 (added). "Cohabitant"
- § 6211 (added). "Domestic violence"
- § 6213 (added). "Domestic violence prevention order"

PART 2. GENERAL PROVISIONS

- § 6220 (added). Purposes of division
- § 6221 (added). Fees
- § 6222 (added). Order limiting visitation to situations where third person present
- § 6223 (added). Conditions for issuance of mutual restraining order
- § 6224 (added). Required statements in order
- § 6225 (added). Court to provide information to parties concerning terms and effect of order
- § 6226 (added). Explicit statement of address not required
- § 6227 (added). Reissuance of restraining order
- § 6228 (added). Support person for victim of domestic violence
- § 6229 (added). Judicial Council forms and instructions
- § 6230 (added). Remedies cumulative

PART 3. EMERGENCY PROTECTIVE ORDERS

CHAPTER 1. GENERAL PROVISIONS

- § 6240 (added). Definitions
- § 6241 (added). Designation of judicial officer to orally issue ex parte emergency protective order

CHAPTER 2. ISSUANCE AND EFFECT OF EMERGENCY PROTECTIVE ORDER

- § 6250 (added). Grounds for ex parte emergency protective order
- § 6251 (added). Finding required to issue order
- § 6252 (added). Orders included in emergency protective order
- § 6253 (added). Contents of order
- § 6254 (added). Availability of emergency protective order
- § 6255 (added). Issuance of ex parte emergency protective order
- § 6256 (added). Expiration of order
- § 6257 (added). Application for more permanent restraining order

CHAPTER 3. DUTIES OF LAW ENFORCEMENT OFFICER

- § 6270 (added). Reducing order to writing and signing order
- § 6271 (added). Service, filing, and delivery of order
- § 6272 (added). Means of enforcement
- § 6273 (added). Officer to carry copies of order

PART 4. RESTRAINING ORDERS

CHAPTER 1. GENERAL PROVISIONS

- § 6300 (added). Issuance on affidavit showing reasonable proof of past act or acts of abuse
- § 6301 (added). Persons who may be granted restraining order
- § 6302 (added). Notice in restraining order

CHAPTER 2. EX PARTE ORDERS

- § 6320 (added). Enjoining harassment, threats, and violence
- § 6321 (added). Exclusion from dwelling
- § 6322 (added). Enjoining additional specified behaviors
- § 6323 (added). Determining temporary custody and visitation
- § 6324 (added). Determining temporary use of property
- § 6325 (added). Restraints on community, quasi-community, and separate property

CHAPTER 3. ORDERS ISSUABLE AFTER NOTICE AND HEARING

- § 6340 (added). Orders described in Chapter 2 (commencing with Section 6320)
- § 6341 (added). Payment of child support by presumed father
- § 6342 (added). Payment of restitution for loss of earnings and out-of-pocket expenses

- § 6343 (added). Participation in counseling
- § 6344 (added). Payment of attorney's fees and costs
- § 6345 (added). Duration of restraining order granted after notice and hearing

CHAPTER 4. ORDERS INCLUDED IN JUDGMENT

- § 6360 (added). Orders included in judgment
- § 6361 (added). Statements required where order included in judgment

PART 5. REGISTRATION AND ENFORCEMENT OF ORDERS

- § 6380 (added). Transmittal to local law enforcement agency
- § 6381 (added). Enforcement of order
- § 6382 (added). Availability of information concerning order
- § 6383 (added). Service of restraining order by law enforcement officer
- § 6384 (added). When personal service not required
- § 6385 (added). Notice to Department of Justice
- § 6386 (added). Appointment of counsel and payment if fees and costs to enforce order
- § 6387 (added). Clerk to provide petitioner with copies of order
- § 6388 (added). Criminal penalty for violation of order

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DIVISION 12. PARENT AND CHILD RELATIONSHIP

PART 3. UNIFORM PARENTAGE ACT

CHAPTER 6. RESTRAINING ORDERS

Repealed Articles:

- Article 2. Ex Parte Orders
 - §§ 7710-7711 (repealed). Ex parte orders
- Article 3. Orders Issuable After Notice and Hearing
 - §§ 7720-7722 (repealed). Orders issuable after notice and hearing
- Article 4. Required Statements in Order
 - §§ 7730-7731 (repealed). Required statements in order
- Article 5. Registration and Enforcement of Orders
 - §§ 7740-7743 (repealed). Registration and enforcement of orders
- Article 6. Protective Orders Included in Judgment
 - § 7750 (repealed). Orders included in judgment

Added Articles:

- Article 2. Ex Parte Orders
 - § 7710 (added). Ex parte restraining orders
- Article 3. Orders Issuable After Notice and Hearing
 - § 7720 (added). Orders issuable after notice and hearing
- Article 4. Orders in Judgment
 - § 7730 (added). Orders included in judgment

DIVISION 1. PRELIMINARY PROVISIONS AND DEFINITIONS

PART 2. DEFINITIONS

Fam. Code § 55 (repealed). "Abuse"

SEC. ____ . Section 55 of the Family Code is repealed.

~~55. "Abuse" means intentionally or recklessly to cause or attempt to cause bodily injury, or sexual assault, or to place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.~~

Interim Comment. Former Section 55 is continued in Section 6203 without substantive change. The former section had generalized this definition to apply to the entire Family Code, whereas the section had previously applied only to the Domestic Violence Prevention Act. Section 6203 is applicable only to the Domestic Violence Prevention Act.

Fam. Code § 57 (repealed). "Affinity"

SEC. ____ . Section 57 of the Family Code is repealed.

~~57. "Affinity," when applied to the marriage relation, signifies the connection existing in consequence of marriage between each of the married persons and the blood relatives of the other.~~

Interim Comment. Former Section 57 is continued in Section 6205 without substantive change. The former section had generalized this definition to apply to the entire Family Code, whereas the section had previously applied only to the Domestic Violence Prevention Act. Section 6205 is applicable only to the Domestic Violence Prevention Act.

Fam. Code § 60 (repealed). "Cohabitant" "former cohabitant"

SEC. ____ . Section 60 of the Family Code is repealed.

~~60. "Cohabitant" means a person who regularly resides in the household. "Former cohabitant" means a person who formerly regularly resided in the household.~~

Interim Comment. Former Section 60 is continued in Section 6209 without substantive change. The former section had generalized this definition to apply to the entire Family Code, whereas the section had previously applied only to the Domestic Violence Prevention Act. Section 6209 is applicable only to the Domestic Violence Prevention Act.

Fam. Code § 70 (repealed). "Domestic violence"

SEC. ____ . Section 70 of the Family Code is repealed.

~~70. "Domestic violence" is abuse perpetrated against any of the following:~~

~~(a) A spouse, former spouse, cohabitant, former cohabitant, any other adult person related by consanguinity or affinity within the second degree, or a person with whom the respondent has had a dating or engagement relationship.~~

~~(b) A person who is the parent of a child and the presumption applies that the male parent is the father of any child of the female parent pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).~~

Interim Comment. Former Section 70 is continued in Section 6211 without substantive change. The former section had generalized this definition, whereas the section had previously applied to the Domestic Violence Prevention Act. Section 6211 is applicable only to the Domestic Violence Prevention Act.

Fam. Code § 75 (repealed). "Domestic violence prevention order"

SEC. ____. Section 75 of the Family Code is repealed.

75. "Domestic violence prevention order" means any of the following:

~~(a) An order made pursuant to subdivision (b), (c), or (d) of Section 2035 (order in pending dissolution, nullity, or legal separation proceeding).~~

~~(b) An order made pursuant to Section 2045 (order in judgment in dissolution, nullity, or legal separation proceeding).~~

~~(c) An order described in subdivision (b), (c), or (d) of Section 2035 made pursuant to subdivision (a) or (b) of Section 5550 (ex parte order under Domestic Violence Prevention Act).~~

~~(d) An order issued under Part 4 (commencing with Section 5600) of Division 10 (ex parte emergency protective order under Domestic Violence Prevention Act).~~

~~(e) An order described in subdivision (b), (c), or (d) of Section 2035 made pursuant to subdivision (a) or (b) of Section 5750 (order after notice and hearing made under Domestic Violence Prevention Act).~~

~~(f) An order made pursuant to subdivision (a), (b), or (c) of Section 7710 (ex parte order under Uniform Parentage Act).~~

~~(g) An order described in subdivision (a), (b), or (c) of Section 7710 made pursuant to Section 7720 (order after notice and hearing under Uniform Parentage Act).~~

~~(h) An order included in the judgment pursuant to Section 7750 (Uniform Parentage Act).~~

Interim Comment. Former Section 75 is restated in Section 6213 without substantive change. This definition has been added to the Family Code for drafting convenience. The former section was applicable to the entire Family Code, while Section 6213 is applicable only to Division 10, the Domestic Violence Prevention Act. Where this term is used outside the Domestic Violence Prevention Act, the definition in Section 6213 is made expressly applicable by use of a cross-reference. See, e.g., Sections 213, 2335, 3100, 3101, 3111, 3177, 3192, and 7604.

DIVISION 2. GENERAL PROVISIONS

PART 4. RESTRAINING ORDERS ISSUED WITHOUT NOTICE

Fam. Code § 240 (repealed). Application of provisions of this part

SEC. ____. Section 240 of the Family Code is repealed.

240. Except as otherwise provided by law, this part applies to an order under any of the following provisions:

~~(a) Article 2 (commencing with Section 2035) of Chapter 4 of Part 1 of Division 6 (ex parte protective orders in proceedings for dissolution, nullity, or legal separation).~~

~~(b) Chapter 4 (commencing with Section 3600) of Part 1 of Division 9 (spousal and child support during pendency of proceeding).~~

~~(c) Part 3 (commencing with Section 5530) of Division 10 (Domestic Violence Prevention Act).~~

~~(d) Chapter 6 (commencing with Section 7700) of Part 3 of Division 12 (Uniform Parentage Act).~~

Interim Comment. Former Section 240 is generalized in new Section 240. The former section applied only to specified restraining orders. New Section 240 is expanded to apply to all ex parte restraining orders issued under this code, except for orders issued in a summons pursuant to Part 3 (commencing with Section 231) of this division. See, e.g., Sections 4620 (ex parte restraining order in proceeding to secure deposit of assets), 6320-6325 (ex parte restraining order in proceeding under Domestic Violence Prevention Act).

Fam. Code § 240 (added). Application of provisions of this part

SEC. ____. Section 240 is added to the Family Code, to read:

240. (a) Except as provided in subdivision (b), this part applies to a restraining order issued without notice under this code.

(b) This part does not apply to a temporary restraining order issued pursuant to Part 3 (commencing with Section 231).

Comment. Section 240 generalizes and continues without substantive change the fourth sentence of former Code of Civil Procedure Section 545. The former section required that ex parte restraining orders issued pursuant to the Domestic Violence Prevention Act be obtained in the manner provided for in Code of Civil Procedure Section 527. The provisions of Part 4 (commencing with Section 240) of Division 2 of the Family Code are drawn from and supersede the provisions of Code of Civil Procedure Section 527, insofar as that section formerly applied to ex parte restraining orders issued under this code. See also Section 210 (general rules of practice and procedure); Code Civ. Proc. §§ 527(b) (section not applicable to this part), 529 (exemption from undertaking requirement).

Fam. Code § 241 (amended). Granting temporary order without notice

SEC. ____. Section 241 of the Family Code is amended to read:

241. Except as provided in Section ~~5530~~ 6300, an order described in Section 240 may not be granted without notice to the respondent unless it appears from facts shown by the affidavit in support of the application for the order, or in the application for the order, that great or irreparable injury would result to the petitioner before the matter can be heard on notice.

Comment. Section 241 is a new provision drawn from a part of the first sentence of the last paragraph of Code of Civil Procedure Section 527(a). The introductory clause has been added to Section 241 to recognize that Section 6300 provides for the issuance of an order under Division 10 (Prevention of Domestic Violence) on an affidavit showing reasonable proof of a past act of abuse. The reference to a "verified" application has been omitted as surplus. See Section 212 (pleadings to be verified). The reference to "petitioner" has been substituted for the former reference to "applicant." This is not a substantive change.

Interim Comment. Section 241 is revised to correct a cross-reference.

Fam. Code § 242 (repealed). Order to show cause

SEC. ____ . Section 242 of the Family Code is repealed.

~~242. (a) Except as provided in subdivision (b), if an order described in Section 240 is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why a permanent order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date of the order.~~

~~(b) The matter shall be made returnable not later than 20 days or, if good cause appears to the court, 25 days from the date of the order, in an order under:~~

~~(1) Article 2 (commencing with Section 2035) of Chapter 4 of Part 1 of Division 6.~~

~~(2) Division 10 (commencing with Section 5500).~~

~~(3) Article 2 (commencing with Section 7710) of Chapter 6 of Part 3 of Division 12.~~

~~(c) The court may on motion of the applicant or on its own motion shorten the time for service on the respondent of the order to show cause in an order under:~~

~~(1) Division 10 (commencing with Section 5500).~~

~~(2) Article 2 (commencing with Section 7710) of Chapter 6 of Part 3 of Division 12.~~

Interim Comment. Former Section 242 is restated in new Section 242. The former section was intended to continue existing, inconsistent rules. The 15 or 20 day rule was drawn from Code of Civil Procedure 527, which provides the rule for civil actions generally. However, existing law made exceptions for ex parte orders in proceedings for dissolution, nullity, and legal separation, for ex parte orders pursuant to the Domestic Violence Prevention Act, and for ex parte orders in proceedings under the Uniform Parentage Act. For each of these the 20 or 25 day rule applied. In addition, orders shortening time were expressly allowed for orders under the Domestic Violence Prevention Act and the Uniform Parentage Act, but not for orders in proceedings for dissolution, nullity, or legal separation. This approach has been simplified by applying a single set of rules.

Fam. Code § 242 (added). Order to show cause

SEC. ____ . Section 242 is added to the Family Code, to read:

242. (a) Except as provided in subdivision (b), if an order described in subdivision (a) of Section 240 is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why a permanent order should not be granted, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date of the order.

(b) The court may on motion of the petitioner or on its own motion shorten the time for service on the respondent of the order to show cause in an order.

Comment. Subdivision (a) of Section 242 continues without substantive change the third sentence of the last paragraph of former Code of Civil Procedure Section 527(a), the second sentence of former Code of Civil Procedure Section 546(a), and the second sentence of former Civil Code Section 7020(a).

Subdivision (b) continues without substantive change the third sentences of former Code of Civil Procedure Section 546(a) and former Civil Code Section 7020(a). The reference to

"petitioner" has been substituted for the former reference to "applicant." This is not a substantive change.

Fam. Code § 245 (repealed). Reissuance of restraining order

SEC. ____ . Section 245 of the Family Code is repealed.

~~245. (a) The court may, upon the filing of an affidavit by the applicant that the respondent could not be served within the time required by statute, reissue an order previously issued and dissolved by the court for failure to serve the respondent.~~

~~(b) The reissued order shall state on its face the date of expiration of the order.~~

~~(c) No fee shall be charged for the reissuance of the order unless the order had been dissolved three times previously.~~

Interim Comment. Former Section 245 is continued in Section 6227 without substantive change. The former section had generalized this rule to apply to the entire Family Code, whereas the section had previously applied only to the Domestic Violence Prevention Act. Section 6227 applies only to the Domestic Violence Prevention Act.

DIVISION 6. NULLITY, DISSOLUTION, AND LEGAL SEPARATION

PART 1. GENERAL PROVISIONS

CHAPTER 4. RESTRAINING ORDERS

Fam. Code §§ 2035-2043 (repealed). Ex parte orders

SEC. ____ . Article 2 (commencing with Section 2035) of Chapter 4 of Part 1 of Division 6 of the Family Code is repealed.

Fam. Code § 2035 (repealed). Orders issuable ex parte

Interim Comment. Former Section 2035 is continued in Chapter 2 (commencing with Section 6320) of Part 4 of Division 10 without substantive change. A new Section 2035 is added to refer to the general domestic violence statute.

Fam. Code § 2036 (repealed). Conditions for issuance of mutual restraining order

Interim Comment. Former Section 2036 is continued in Section 6223 without substantive change.

Fam. Code § 2036.5 (repealed). Order excluding party from dwelling issued after notice and hearing

Interim Comment. Former Section 2036.5 is continued in Section 6340(b) without substantive change.

Fam. Code § 2037 (repealed). Required statements in order

Interim Comment. Subdivisions (a) and (b) of former Section 2037 are continued in Section 6224 without substantive change. Subdivision (c) is continued in Section 6302 without substantive change.

Fam. Code § 2038 (repealed). Transmittal to local law enforcement agency

Interim Comment. Former Section 2038 is continued in Section 6380 without substantive change.

Fam. Code § 2039 (repealed). Availability of information concerning order

Interim Comment. Former Section 2039 is continued in Section 6382 without substantive change.

Fam. Code § 2040 (repealed). Enforcement of order

Interim Comment. Former Section 2040 is continued in Section 6381 without substantive change.

Fam. Code § 2041 (repealed). Service of restraining order by law enforcement officer

Interim Comment. Former Section 2041 is continued in Section 6383 without substantive change.

Fam. Code § 2042 (repealed). Criminal penalty for violation of order

Interim Comment. Former Section 2042 is continued in Section 6388 without substantive change.

Fam. Code § 2043 (repealed). Judicial Council forms and instructions

Interim Comment. Former Section 2043 is continued in Section 6229 without substantive change.

Fam. Code § 2035 (added). Ex parte orders

SEC. ____. Article 2 (commencing with Section 2035) is added to Chapter 4 of Part 1 of Division 6 of the Family Code, to read:

Article 2. Ex Parte Orders

Fam. Code § 2035 (added). Ex parte orders during pendency of proceeding

2035. During the pendency of the proceeding, on application of either party, the court may issue ex parte restraining orders as provided in Chapter 2 (commencing with Section 6320) of Part 4 of Division 10.

Comment. Section 2035 is new. This section provides a reference to the chapter in Division 10 (Domestic Violence Prevention Act) that contains the substantive provisions for the issuance of ex parte restraining orders. See Section 6200 Comment (consolidation of substantive provisions regarding issuance of restraining orders intended to prevent domestic violence).

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2. See also Sections 2000 (application of part), 6228 (support person for victim of domestic violence).

Fam. Code § 2040 (added). Orders issuable after notice and hearing

SEC. ____. Article 3 (commencing with Section 2040) is added to Chapter 4 of Part 1 of Division 6 of the Family Code, to read:

Article 3. Orders Issuable After Notice and Hearing

Fam. Code § 2040 (added). Orders issuable after notice and hearing

2040. After notice and a hearing, the court may issue restraining orders as provided in Chapter 3 (commencing with Section 6340).

Comment. Section 2040 is new. This section provides a reference to the chapter in Division 10 (Domestic Violence Prevention Act) that contains the substantive provisions for the issuance of restraining orders after notice and hearing. See Section 6200 Comment (consolidation of substantive provisions regarding issuance of restraining orders intended to prevent domestic violence). The former Family Law Act, applicable to dissolution, nullity, and legal separation proceedings, did not contain a general provision for the issuance of restraining orders after notice and hearing, despite a provision for issuance of an order excluding a party from a dwelling after notice and hearing. The addition of this general provision is not a substantive change. See Cal. R. Ct. 1296.29 (restraining order after hearing).

See also Sections 2000 (application of part), 6228 (support person for victim of domestic violence).

Fam. Code § 2045 (repealed). Orders included in judgment

SEC. _____. Article 3 (commencing with Section 2045) of Chapter 4 of Part 1 of Division 6 of the Family Code is repealed.

Interim Comment. Subdivisions (a) and (b) of former Section 2045 are continued in Chapter 4 (commencing with Section 6360) of Part 4 of Division 10 without substantive change. Subdivisions (b) and (c) are continued without substantive change in Sections 6380 and 6388. New Section 2045 is added to refer to the general domestic violence statute.

Fam. Code § 2045 (added). Orders included in judgment

SEC. _____. Article 4 (commencing with Section 2045) is added to Chapter 4 of Part 1 of Division 6 of the Family Code, to read:

Article 4. Orders Included in Judgment

Fam. Code § 2045 (added). Orders included in judgment

2045. A judgment entered in the proceeding may include restraining orders as provided in Chapter 4 (commencing with Section 6360) of Part 4 of Division 10.

Comment. Section 2045 is new. This section provides a reference to the chapter in Division 10 (Domestic Violence Prevention Act) that contains the substantive provisions for issuance of restraining orders in a judgment. See Section 6200 Comment (consolidation of substantive provisions regarding issuance of restraining orders intended to prevent domestic violence). See also Sections 2000 (application of part), 6228 (support person for victim of domestic violence).

DIVISION 10. PREVENTION OF DOMESTIC VIOLENCE

Fam. Code §§ 5500-5807 (repealed). Prevention of domestic violence

SEC. ____. Division 10 (commencing with Section 5500) of the Family Code is repealed.

Interim Comment. Division 10 of the Family Code has been repealed to allow for renumbering and reorganization of the provisions and to allow for expansion of Division 9 (Support). The substance of the statutes is continued without substantive change in Division 10 of this code. Former Sections 5501 and 5505 have been omitted. Former Section 5501 referred to additional definitions applicable to Division 10. This is now obsolete, since those definitions are now continued in Division 10. Former Section 5505 defined "protective order." This section is restated in new Section 6320. See Section 6320 Comment.

The following table indicates the disposition of each of the former Family Code sections in Division 10 of this code.

<i>Repealed</i>	<i>Added</i>	<i>Repealed</i>	<i>Added</i>
5500	6201	5605	6245
5501	omitted	5606	6246
5505	omitted	5650	6260
5510	6200	5651	6261
5511	6220	5652	6262
5512	6221	5700	6280
5513	6222	5701	6281
5514	6223	5702	6282
5515	6224	5703	6283
5516	6225	5750	6340(a)
5517	6226	5751	6340(b)
5518	6227	5752	6341
5519	6228	5753	6342
5520	6229	5754	6343
5530	6300	5755	6344
5531	6301	5756	6345
5550	6320-6325	5800	6380
5551	6302	5801	6382
5552	6321	5802	6383
5600	6240	5803	6384
5601	6241	5804	6385
5602	6242	5805	6386
5603	6243	5806	6387
5604	6244	5807	6388

Fam. Code §§ 6200-6388 (added). Prevention of domestic violence

SEC. ____. Division 10 (commencing with Section 6200) is added to the Family Code, to read:

DIVISION 10. PREVENTION OF DOMESTIC VIOLENCE

PART 1. SHORT TITLE AND DEFINITIONS

Fam. Code § 6200 (added). Short title

6200. This division may be cited as the Domestic Violence Prevention Act.

Comment. Section 6200 continues former Code of Civil Procedure Section 541 without substantive change.

This division collects the substantive provisions for issuance of restraining orders intended to prevent domestic violence. Formerly these substantive provisions were duplicated in separate bodies of law, such as the former Family Law Act, the Domestic Violence Prevention Act, and the Uniform Parentage Act. Now that these bodies of law have been consolidated in the Family Code, these duplicative provisions have been consolidated and continued in this division. References to the applicable substantive provisions in this division are continued in the division governing dissolution, nullity, or legal separation and in the division governing the Uniform Parentage Act. See Sections 2035, 2040, & 2045 (restraining orders in dissolution, nullity, or legal separation proceeding), 7710, 7720, & 7730 (restraining orders in Uniform Parentage Act proceeding).

Interim Comment. This section continues former Section 5510 without substantive change. The reference to this division as the Domestic Violence Prevention "Act" has been substituted for the former reference to the Domestic Violence Prevention "Law." This change conforms this section to other sections in this code and former Code of Civil Procedure Section 541.

Fam. Code § 6201 (added). Application of definitions

6201. Unless the provision or context otherwise requires, the definitions in this part govern the construction of this division.

Comment. Section 6201 continues the introductory clause of former Code of Civil Procedure Section 542 without substantive change. The introductory clause of this section has been added for conformity with other sections in this code. See Section 50 & Comment.

Fam. Code § 6203 (added). "Abuse"

6203. "Abuse" means intentionally or recklessly to cause or attempt to cause bodily injury, or sexual assault, or to place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

Comment. Section 6203 continues former Code of Civil Procedure Section 542(a) without substantive change. For provisions adopting this definition by reference, see Section 3022 (determining best interest of child in custody proceeding); Evid. Code § 1107 (admissibility of expert witness testimony regarding battered women's syndrome).

Fam. Code § 6205 (added). "Affinity"

6205. "Affinity," when applied to the marriage relation, signifies the connection existing in consequence of marriage between each of the married persons and the blood relatives of the other.

Comment. Section 6205 is a new provision drawn from Code of Civil Procedure Section 17(9).

Fam. Code § 6209 (added). "Cohabitant"; "former cohabitant"

6209. "Cohabitant" means a person who regularly resides in the household. "Former cohabitant" means a person who formerly regularly resided in the household.

Comment. Section 6209 continues former Code of Civil Procedure Section 542(c) without change.

Fam. Code § 6211 (added). "Domestic violence"

6211. "Domestic violence" is abuse perpetrated against any of the following persons:

(a) A spouse, former spouse, cohabitant, former cohabitant, a child, an adult person related by consanguinity or affinity within the second degree, or a person with whom the respondent has or has had a dating or engagement relationship.

(b) A parent or a child when the presumption applies that the male parent is the father of a child of the female parent or the child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

Comment. Section 6211 continues former Code of Civil Procedure Section 542(b) without substantive change. In subdivision (a), the reference to an ongoing dating or engagement relationship has been added. This conforms this section with a part of Penal Code Section 13700(b), defining "domestic violence" for purposes of setting standards for law enforcement response to domestic violence. The references to a child in subdivisions (a) and (b) have been added. See also Sections 6203 ("abuse" defined), 6209 ("cohabitant" and "former cohabitant" defined), 6213 ("domestic violence prevention order" defined).

Fam. Code § 6213 (added). "Domestic violence prevention order"

6213. "Domestic violence prevention order" means an order, issued ex parte, after notice and hearing, or in a judgment, as applicable, that does any of the following:

(a) Enjoins a party from any of the acts described in Section 6320.

(b) Excludes a party from a dwelling.

(c) Enjoins a party from specified behavior that the court determines is necessary to effectuate orders under subdivision (a) or (b).

Comment. Section 6213 is a new provision included for drafting convenience. The term "domestic violence prevention order" is used in Sections 6222, 6225, 6228, 6385, 6386, 6388. The term is adopted by reference in Sections 213, 2335, 3100, 3101, 3111, 3177, 3192, and 7604.

PART 2. GENERAL PROVISIONS

Fam. Code § 6220 (added). Purposes of division

6220. The purposes of this division are to prevent the recurrence of acts of violence 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.

Comment. Section 6220 continues former Code of Civil Procedure Section 540 without substantive change. The former section contained a list of persons that duplicated the list in what is now Section 6211. This language has been omitted as surplus. See also Sections 6203 ("abuse" defined), 6205 ("affinity" defined), 6209 ("cohabitant" and "former cohabitant" defined), 6211 ("domestic violence" defined).

Fam. Code § 6221 (added). Fees

6221. (a) There is no filing fee for a petition or response relating to an order issued pursuant to this division.

(b) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order obtained under this division may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver.

(c) The declaration required by subdivision (b) shall be on one of the following forms:

(1) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(2) Any other form that the Judicial Council may adopt for this purpose pursuant to Section 6229.

(d) In conjunction with a hearing pursuant to this division, the court may issue an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order obtained under this division.

Comment. Section 6221 continues former Code of Civil Procedure Section 546.5 without substantive change. In subdivision (a), the reference to an "order issued pursuant to this division" has been substituted for the former reference to a "protective order, restraining order, or a permanent injunction." This is not a substantive change. In subdivisions (b) and (d), references to "this division" have been substituted for the former reference to "this section." The former reference was unclear, since former Code of Civil Procedure Section 546.5 did not provide for the issuance of orders. The reference has been corrected to include any of the orders issued under the Domestic Violence Prevention Act, this division of the Family Code.

Fam. Code § 6222 (added). Order limiting visitation to situations where third person present

6222. In making an award of temporary custody of a child pursuant to this division, if a domestic violence prevention order has been directed to a parent of

the child, the court shall consider whether the best interest of the child requires that the visitation granted to that parent with respect to the child shall be limited to situations in which a third person, specified by the court, is present. A parent may submit to the court the name of a person that the parent considers suitable to be present during visitation. The determination of the best interest of the child pursuant to this section shall include the considerations specified in Section 3022. The court shall also consider in its deliberations the nature of the acts from which the parent was enjoined and the period of time that has elapsed since that order.

Comment. Section 6222 continues former Code of Civil Procedure Section 547.5 without substantive change. The phrase "domestic violence prevention order" has been substituted for the references to orders under specific sections formerly in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 6213 defines "domestic violence prevention order" to include these orders. See also Sections 3044 (parent convicted under certain Penal Code provisions not allowed unsupervised visitation), 3131 (action by district attorney where child taken or detained in violation of visitation order); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

Fam. Code § 6223 (added). Conditions for issuance of mutual restraining order

6223. A mutual restraining order enjoining the parties from any of the acts described in Section 6320, may not be issued unless both parties personally appear and each party presents evidence of abuse or domestic violence.

Comment. Section 6223 continues without substantive change former Code of Civil Procedure Section 545.5, the second paragraph of former Civil Code Section 4359(a), and former Civil Code Section 7020(f). The reference to Section 6320 has been substituted for a specific list of acts. This is not a substantive change, since Section 6320 duplicates the omitted list.

Interim Comment. Section 6223 continues former Family Code Sections 2036, 5514, and 7711 without substantive change. In former Section 5514 a reference to "other named persons described in subdivision (a) of Section 70" had been substituted for a reference to "other named family and household members." This revision was made because former Civil Procedure Section 542 was amended in 1990 to eliminate the definition of "family and household member." See 1990 Cal. Stat. ch. 752, § 2. However, in consolidating these sections it appeared that "family and household member" was preferable, since the persons described in Section 6211 do not appear to include minor children.

Fam. Code § 6224 (added). Required statements in order

6224. An order issued pursuant to this division shall state, on its face, the date of expiration of the order and the following statements in substantially the following form:

"This order is effective when made. The law enforcement agency shall enforce it immediately upon receipt. It is enforceable anywhere in California by any law enforcement agency that has received the order or is shown a copy of the order. If proof of service on the restrained person has not been received, the law enforcement agency shall advise the restrained person of the terms of the order and then shall enforce it."

Comment. Section 6224 continues without substantive change former Code of Civil Procedure Section 552, the first sentence of former Civil Code Section 4359(c), and former Civil Code

Section 7020(c). This section generalizes the requirements of the former sections to apply to all orders issued pursuant to this division. This is not a substantive change. See Cal. R. Ct. 1285.05 (temporary restraining order in dissolution, nullity, or legal separation proceeding), 1296.10 (order to show cause and temporary restraining order in proceeding pursuant to Domestic Violence Prevention Act or Uniform Parentage Act), 1296.29 (restraining order after hearing in dissolution, nullity, or legal separation or in proceedings under Domestic Violence Prevention Act or Uniform Parentage Act).

Fam. Code § 6225 (added). Court to provide information to parties concerning terms and effect of order

6225. The court, in issuing a domestic violence prevention order pursuant to this division where both parties are present in court, shall inform both the petitioner and the respondent of the terms of the order, including notice that the respondent is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and including notice of the penalty for violation.

Comment. Section 6225 continues former Code of Civil Procedure Section 550(f) without substantive change. The reference to "domestic violence prevention order" has been substituted for the reference to an order "predicated on" what are now Sections 6320-6322. This is not a substantive change, since "domestic violence prevention order" has been defined to include the same orders. See Section 6213 ("domestic violence prevention order" defined). See also Gov't Code § 12021(g) (penalty for violation of firearm prohibition in restraining order).

Fam. Code § 6226 (added). Explicit statement of address not required

6226. A petition for an order pursuant to this division is valid and the order is enforceable without explicitly stating the address of the petitioner or the petitioner's place of residence, school, employment, the place where the petitioner's child is provided child care services, or the child's school.

Comment. Section 6226 generalizes and continues the last sentence of former Code of Civil Procedure Section 545 without substantive change. This section has been expanded to apply to orders contained in a judgment. The references to "petitioner" have been substituted for the former references to "applicant." This is not a substantive change.

Fam. Code § 6227 (added). Reissuance of restraining order

6227. (a) If the petitioner files an affidavit stating that the respondent could not be served within the time required by statute, the court may reissue an order previously issued and dissolved by the court for failure to serve the respondent.

(b) The reissued order shall state on its face the date of expiration of the order.

(c) No fee may be charged for the reissuance of the order unless the order has been dissolved three times previously.

Comment. Section 6227 continues former Code of Civil Procedure Section 527(b) without substantive change. The reference to "petitioner" has been substituted for the former reference to "applicant." This is not a substantive change.

Fam. Code § 6228 (added). Support person for victim of domestic violence

6228. (a) It is the function of a support person to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence in the proceedings specified in this section.

(b) The support person shall assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person who alleges he or she is a victim of domestic violence and the other party must be present in close proximity. The support person is not present as a legal advisor and shall not give legal advice.

(c) A support person may accompany either party to any proceeding to obtain a domestic violence prevention order. Where the party is not represented by an attorney, the support person may sit with the party at the table that is generally reserved for the party and the party's attorney.

(d) Notwithstanding any other provision of law to the contrary, if a court has issued a domestic violence prevention order, a support person may accompany a party protected by the domestic violence prevention order during a mediation session held pursuant to an action or proceeding under this code. The agency charged with providing family court services shall advise the party protected by the order of the right to have a support person during mediation. A mediator may exclude a support person from a mediation session if the support person participates in the mediation session, or acts as an advocate, or the presence of a particular support person is disruptive or disrupts the process of mediation. The presence of the support person does not waive the confidentiality of the mediation, and the support person is bound by the confidentiality of the mediation.

(e) In a proceeding subject to this section, a support person may accompany a party in court where there are allegations or threats of domestic violence and, where the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney.

(f) Nothing in this section precludes a court from exercising its discretion to remove a person from the courtroom who it believes is prompting, swaying, or influencing the party protected by the order.

Comment. Section 6228 generalizes and continues former Civil Code Section 4351.6 without substantive change. The phrase "domestic violence prevention order" has been substituted for the references to orders under specific sections formerly in the Civil Code and the Code of Civil Procedure. Section 6213 defines "domestic violence prevention order" to include the orders formerly referred to, except Code of Civil Procedure 527.6, which provides for similar orders in situations not covered by this division. This is not a substantive change, since, insofar as former Civil Code Section 4351.6 applied to Code of Civil Procedure Section 527.6, the former section is continued in new subdivision (f) of Code of Civil Procedure Section 527.6. See Code Civ. Proc. § 527.6 (civil harassment orders) & Comment. See also Section 6211 ("domestic violence" defined).

In subdivision (d), a reference to "action or proceeding under this code" has been substituted for the former reference to "action or proceeding under this part," meaning the former Family

Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). This is not intended as a substantive change.

Former Civil Code Section 4351.6(e) has been omitted. This is not a substantive change, since the former subdivision duplicated a provision that is continued in Section 6228(b).

Fam. Code § 6229 (added). Judicial Council forms and instructions

6229. The Judicial Council shall prescribe the form of the orders and any other documents required by this division and shall promulgate instructions for applying for orders under this division.

Comment. Section 6229 continues without substantive change former Code of Civil Procedure Section 543, the first sentence of the third paragraph of subdivision (b) and the first sentence of the fourth paragraph of subdivision (c) of former Code of Civil Procedure Section 546, and the last paragraph of former Civil Code Section 4359(a).

Fam. Code § 6230 (added). Remedies cumulative

6230. The remedies provided in this division are in addition to any other remedies, either civil or criminal, which may be available to the petitioner.

Comment. Section 6230 continues former Code of Civil Procedure Section 549 without substantive change. The word "petitioner" has been substituted for "plaintiff" to conform to revisions made to former law. See 1990 Cal. Stat. ch. 752.

PART 3. EMERGENCY PROTECTIVE ORDERS

CHAPTER 1. GENERAL PROVISIONS

Fam. Code § 6240 (added). Definitions

6240. As used in this part:

(a) "Emergency protective order" means an ex parte order issued under this part.

(b) "Judicial officer" means a judge, commissioner, or referee designated under Section 6241.

(c) "Law enforcement officer" means one of the following officers who requests or enforces an emergency protective order under this part:

(1) A police officer.

(2) A sheriff's officer.

(3) A peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2 of the Penal Code.

Comment. Section 6240 is a new section that defines several terms for the purposes of this part relating exclusively to emergency protective orders. The terms "judicial officer" and "law enforcement officer" are consistent with the Judicial Council form for the emergency protective order. See Cal. R. Ct. 1295.90 (rev. Jan. 1, 1992).

Provisions concerning emergency protective orders relating to domestic violence from former Code of Civil Procedure Section 546(b) and provisions concerning emergency protective orders relating to child abuse from former Code of Civil Procedure Section 546(c) have been unified to the extent practicable in this part. This approach is consistent with the unified Judicial Council form for the emergency protective order.

Fam. Code § 6241 (added). Designation of judicial officer to orally issue ex parte emergency protective order

6241. The presiding judge of the superior court in each county shall designate at least one judge, commissioner, or referee to be reasonably available to issue orally, by telephone or otherwise, emergency protective orders at all times whether or not the court is in session.

Comment. Section 6241 continues without change the first sentence of the first paragraph of former Code of Civil Procedure Section 546(b). See Section 6240(b) ("judicial officer" defined by reference to this section). See also Section 6240(a) ("emergency protective order" defined).

CHAPTER 2. ISSUANCE AND EFFECT OF EMERGENCY PROTECTIVE ORDER

Fam. Code § 6250 (added). Grounds for ex parte emergency protective order

6250. The judicial officer may issue an emergency protective order ex parte where a law enforcement officer asserts reasonable grounds to believe either or both of the following:

(a) That a person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.

(b) That a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.

Comment. Section 6250 continues without substantive change the second sentence of the first paragraph of subdivision (a) and the second sentence of the first paragraph of subdivision (b) of former Code of Civil Procedure Section 546. In subdivision (a), the phrase "by the person against whom the order is sought" has been added. This is not intended as a substantive change. See Sections 6203 ("abuse" defined), 6211 ("domestic violence" defined).

With regard to orders issued under subdivision (b), the effect of the definition of "law enforcement officer" in Section 6240(c) is to provide authority for park police to seek orders in child abuse situations. This is consistent with the Judicial Council form for the emergency protective order. See Cal. R. Ct. 1295.90 (rev. Jan. 1, 1992).

See also Sections 6240(a) ("emergency protective order" defined), 6240(b) ("judicial officer" defined).

Fam. Code § 6251 (added). Finding required to issue order

6251. An emergency protective order may be issued only if the judicial officer finds both of the following:

(a) That reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists or that a child is in immediate and present danger of abuse.

(b) That an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence or child abuse.

Comment. Section 6251 continues without substantive change the first sentence of the second paragraph of subdivision (b) and the first sentence of the second paragraph of subdivision (c) of former Code of Civil Procedure Section 546. See also Sections 6203 ("abuse" defined), 6211

("domestic violence" defined), 6240(a) ("emergency protective order" defined), 6240(b) ("judicial officer" defined).

Fam. Code § 6252 (added). Orders included in emergency protective order

6252. An emergency protective order may include any of the following specific orders as appropriate:

(a) Orders set forth in Sections 6320, 6321, and 6322.

(b) An order determining the temporary care and control of any minor children of the endangered person and the person against whom the order is sought.

(c) An order authorized in Section 213.5 of the Welfare and Institutions Code, including provisions placing the temporary care and control of the endangered child and any other minor children in the family or household with the parent or [legal] guardian of the endangered child who is not a restrained party.

Comment. The introductory clause and subdivisions (a) and (b) of Section 6252 continue without substantive change the third sentence of the first paragraph of former Code of Civil Procedure Section 546(b). In subdivision (b), the phrase "by the person against whom the order is sought" has been added. This is not intended as a substantive change.

The introductory clause and subdivision (c) continue without substantive change the second sentence of the first paragraph of former Code of Civil Procedure Section 546(c).

See also Sections 6203 ("abuse" defined), 6211 ("domestic violence" defined), 6240(a) ("emergency protective order" defined).

Fam. Code § 6253 (added). Contents of order

6253. An emergency protective order shall include all of the following:

(a) A statement of the grounds asserted for the order.

(b) The date and time the order expires.

(c) The address of the superior court for the district or county in which the endangered person resides.

(d) The following statements, which shall be printed in English and Spanish:

(1) "To the Protected Party: This order will last only until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court, at the address noted above. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application."

(2) "To the Restrained Party: This order will last until the date noted above. The protected party may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the application."

(e) In the case of an endangered child, the following statement, which shall be printed in English and Spanish: "This order will last only until the date and time noted above. A more permanent restraining order under Section 213.5 of the Welfare and Institutions Code may be applied for from the court, at the address

noted above. You may seek the advice of an attorney in connection with the application for a more permanent restraining order.”

Comment. Section 6253 continues without substantive change the parts of the second paragraphs of subdivisions (b) and (c) of former Code of Civil Procedure Section 546 that enumerated the contents of an emergency protective order. The language concerning attorney advice in subdivision (e) has been conformed to the language of subdivision (d)(1). See also Section 6240(a) (“emergency protective order” defined).

Fam. Code § 6254 (added). Availability of emergency protective order

6254. The fact that the endangered person has left the household to avoid abuse does not affect the availability of an emergency protective order.

Comment. Section 6254 continues without substantive change the seventh paragraph of subdivision (b) and the seventh paragraph of subdivision (c) of former Code of Civil Procedure Section 546. The endangered person may be an adult or a child. See also Section 6203 (“abuse” defined), 6240(a) (“emergency protective order” defined).

Fam. Code § 6255 (added). Issuance of ex parte emergency protective order

6255. An emergency protective order shall be issued without prejudice to any party.

Comment. Section 6255 continues without substantive change the last sentence of the first paragraph of subdivision (a) and the last sentence of the first paragraph of subdivision (b) of former Code of Civil Procedure Section 546. See also Section 6240(a) (“emergency protective order” defined).

Fam. Code § 6256 (added). Expiration of order

6256. An emergency protective order expires not later than the close of judicial business on the second day of judicial business following the day of its issuance.

Comment. Section 6256 continues without substantive change the sixth paragraph of subdivision (b) and the third sentence of the first paragraph of subdivision (c) of former Code of Civil Procedure Section 546. See also Section 6240(a) (“emergency protective order” defined).

Fam. Code § 6257 (added). Application for more permanent restraining order

6257. If an emergency protective order concerns an endangered child, the child’s parent or [legal] guardian who is not a restrained party, or a person having temporary custody of the endangered child, may apply for a more permanent restraining order under Section 213.5 of the Welfare and Institutions Code.

Comment. Section 6257 continues the third paragraph of former Code of Civil Procedure Section 546(c) without substantive change. For provisions relating to orders concerning endangered children, see Section 6250(b), 6251(a), 6252(b)-(c). See also Section 6240(a) (“emergency protective order” defined).

CHAPTER 3. DUTIES OF LAW ENFORCEMENT OFFICER

Fam. Code § 6270 (added). Reducing order to writing and signing order

6270. A law enforcement officer who requests an emergency protective order shall reduce the order to writing and sign it.

Comment. Section 6242 continues without substantive change the second sentence of the second paragraph of subdivision (b) and the second sentence of the second paragraph of subdivision (c) of former Code of Civil Procedure Section 546. The requirement of this section is satisfied by use of the Judicial Council form. See Cal. R. Ct. 1295.90 (rev. Jan. 1, 1992). See also Sections 6240(a) ("emergency protective order" defined), 6240(c) ("law enforcement officer" defined).

Fam. Code § 6271 (added). Service, filing, and delivery of order

6271. A law enforcement officer who requests an emergency protective order shall do all of the following:

(a) Serve the order on the restrained party, if the restrained party can reasonably be located.

(b) Give a copy of the order to the protected party or, if the protected party is a minor child, to a parent or [legal] guardian of the endangered child who is not a restrained party, if the parent or [legal] guardian can be reasonably located, or to a person having temporary custody of the endangered child.

(c) File a copy of the order with the court as soon as practicable after issuance.

Comment. Section 6271 continues without substantive change the fifth paragraph of subdivision (b) and the sixth paragraph of subdivision (c) of former Code of Civil Procedure Section 546. See Section 6252 (b)-(c) (orders concerning endangered child). See also Sections 6240(a) ("emergency protective order" defined), 6240(c) ("law enforcement officer" defined).

Fam. Code § 6272 (added). Means of enforcement; protection of officer from liability

6272. (a) A law enforcement officer shall use every reasonable means to enforce an emergency protective order.

(b) A law enforcement officer who acts in good faith to enforce an emergency protective order under this section is not civilly or criminally liable.

Comment. Section 6272 continues without substantive change the last paragraph of subdivision (b) and the last paragraph of subdivision (c) of former Code of Civil Procedure Section 546. See also Sections 6240(a) ("emergency protective order" defined), 6240(c) ("law enforcement officer" defined).

Fam. Code § 6273 (added). Officer to carry copies of order

6273. A law enforcement officer who requests an emergency protective order under this part shall carry copies of the order.

Comment. Section 6273 continues without substantive change the fourth paragraph of subdivision (b) and the fifth paragraph of subdivision (c) of former Code of Civil Procedure Section 546. See also Sections 6240(a) ("emergency protective order" defined), 6240(c) ("law enforcement officer" defined).

PART 4. RESTRAINING ORDERS

CHAPTER 1. GENERAL PROVISIONS

Fam. Code § 6300 (added). Issuance on affidavit showing reasonable proof of past act or acts of abuse

6300. A restraining order may be granted pursuant to this division, with or without notice, to restrain any person upon an affidavit which, to the satisfaction of the court, shows reasonable proof of a past act or acts of abuse for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved.

Comment. Section 6300 continues the first sentence of former Code of Civil Procedure Section 545 without substantive change. The former reference to a "temporary" restraining order has been omitted, for consistency with other sections in this part. This is not a substantive change. See also Sections 6203 ("abuse" defined), 6211 ("domestic violence" defined).

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2.

Fam. Code § 6301 (added). Persons who may be granted restraining order

6301. (a) A restraining order may be granted pursuant to this division to any person described in Section 6211.

(b) The right to petition for relief shall not be denied because the petitioner has vacated the household to avoid abuse, and in the case of a marital relationship, notwithstanding that a petition for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, has not been filed.

Comment. Section 6301 continues the second and third sentences of former Code of Civil Procedure Section 545 without substantive change. A reference to Section 6211 has been substituted for the reference to former Code of Civil Procedure Section 542. This is not a substantive change, since the relevant part of the former section is continued in Section 6211. The former reference to a "temporary" restraining order has been omitted, for consistency with other sections in this part. This is not a substantive change. See also Section 6203 ("abuse" defined).

Fam. Code § 6302 (added). Notice in restraining order

6302. A restraining order shall set forth on its face a notice in substantially the following form:

"NOTICE TO RESTRAINED PARTY: If you do not appear at the court hearing specified herein, the court may grant the requested orders for a period of up to 3 years without further notice to you."

Comment. Section 6302 continues the second paragraph of Code of Civil Procedure Section 546(a) and former Civil Code Section 4359(d) without substantive change. A reference to "restrained party" has been substituted for a former reference to "defendant" in former Code of Civil Procedure Section 546(a). The former reference to "Petitioner/Respondent" in former Civil Code Section 4359(d) has been replaced by the reference to "Restrained Party." This is not a substantive change. See Cal. R. Ct. 1296.10 (order to show cause and restraining order). The former reference to a "temporary" restraining order has been omitted, for consistency with other sections in this part. This is not a substantive change.

CHAPTER 2. EX PARTE ORDERS

Fam. Code § 6320 (added). Enjoining harassment, threats, and violence

6320. On application by a party, the court may issue ex parte an order enjoining another party from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, telephoning, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, other named family and household members.

Comment. Section 6320 continues without substantive change former Civil Code Sections 4359(a)(2) and 7020(a)(1) and restates without substantive change former Civil Code Section 542(d). The sections in this chapter supersede the first sentence of former Code of Civil Procedure Section 546(a). A reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2. See also Section 6223 (conditions for issuance of mutual restraining order).

Fam. Code § 6321 (added). Exclusion from dwelling

6321. On application by a party, the court may issue ex parte an order excluding one party from the family dwelling, the common dwelling of both parties, or the dwelling of the other party, for the period of time and upon the conditions the court determines, regardless of which party holds legal or equitable title or is the lessee of the dwelling, upon a showing of all of the following:

(a) Facts sufficient for the court to ascertain that the petitioner has a right under color of law to possession of the premises.

(b) The party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, or control of the other party, or any minor child of the parties or of the other party.

(c) Physical or emotional harm would otherwise result to the other party, to any person under the care, custody, or control of the other party, or to any minor child of the parties or of the other party.

Comment. Section 6321 continues the last paragraph of former Code of Civil Procedure Section 546(a) and former Civil Code Sections 4359(a)(3) and 7020(a)(2) without substantive change. This section supersedes the third part of former Civil Code Section 5102(a). The sections in this chapter supersede the first sentence of former Code of Civil Procedure Section 546(a). The reference to "the common dwelling of both parties" has been added. This language is drawn from former Civil Code Section 7020(b) and replaces the reference in former Civil Code Section 7020(a)(2) to the "dwelling of the party with care, custody and control" of the child who is the subject of a Uniform Parentage Act proceeding. A reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2.

Fam. Code § 6322 (added). Enjoining additional specified behaviors

6322. On application by a party, the court may issue ex parte an order enjoining a party from specified behavior that the court determines is necessary to effectuate orders under Section 6320 or 6321.

Comment. Section 6322 continues former Civil Code Sections 4359(a)(6) and 7020(a)(3) without substantive change. The sections in this chapter supersede the first sentence of former Code of Civil Procedure Section 546(a). A reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2.

Fam. Code § 6323 (added). Determining temporary custody and visitation

6323. On application by a party, the court may issue ex parte an order determining the temporary custody of a minor child, and the right of a party to visit the minor child upon the conditions the court determines.

Comment. Section 6323 continues former Civil Code Sections 4359(a)(4) and 7020(a)(4) without substantive change. The sections in this chapter supersede the first sentence of former Code of Civil Procedure Section 546(a). Former Code of Civil Procedure Section 546(a) did not provide authorization to determine visitation of a child where the petitioner and respondent were not married. The provision in former Civil Code Section 7020(a)(4) allowing a determination of visitation with a child who is the subject of a proceeding under the Uniform Parentage Act has been generalized to apply to other unmarried parents. A reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2. See also Section 6222 (order limiting visitation to situations where third person present).

Fam. Code § 6324 (added). Determining temporary use of property

6324. On application by a party, the court may issue ex parte an order determining the temporary use, possession, and control of real or personal property of the parties.

Comment. Section 6324 continues part of former Civil Code Section 4359(a)(5) without substantive change. The sections in this chapter supersede the first sentence of former Code of Civil Procedure Section 546(a). Former Code of Civil Procedure Section 546(a) did not provide for issuance of an ex parte order determining temporary use of property for unmarried parties. This section has been generalized to allow this order. This is not a substantive change, since the Judicial Council form allows this order. See Cal. R. Ct. 1296.10 (order to show cause and temporary restraining order). A reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment.

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2.

Fam. Code § 6325 (added). Restraints on community, quasi-community, and separate property and determination of payment of debts

6325. On application by a married person, the court may issue ex parte the following orders:

(a) An order restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life, and if the order is directed against a party, requiring that party to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures.

(b) An order determining payment of any liens or encumbrances coming due during the pendency of the order.

Comment. Section 6325 continues former Civil Code Section 4359(a)(1) and part of former Civil Code Section 4359(a)(5) without substantive change. The sections in this chapter supersede the first sentence of former Code of Civil Procedure Section 546(a). A reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The former reference to Code of Civil Procedure Section 527 has been omitted. This is not a substantive change. See Section 240 & Comment. See also Section 11 (reference to married person includes formerly married person).

For general provisions relating to ex parte restraining orders, see Part 4 (commencing with Section 240) of Division 2.

CHAPTER 3. ORDERS ISSUABLE AFTER NOTICE AND HEARING

Fam. Code § 6340 (added). Orders described in Chapter 2 (commencing with Section 6320)

6340. (a) Subject to subdivision (b), the court may issue, after notice and a hearing, an order described in Chapter 2 (commencing with Section 6320).

(b) After notice and a hearing, the court may order the exclusion of one party from the family dwelling, the common dwelling of both parties, or the dwelling of the other party when the court finds that physical or emotional harm would otherwise result to the other party, to a person under the care, custody, or control of the other party, or to a minor child of the parties or of the other party.

Comment. Section 6340 generalizes and continues without substantive change former Code of Civil Procedure Section 547(a), the last part of former Civil Code Section 5102(a), and the first two sentences of former Civil Code Section 7020(b). The reference in former Civil Code Section 7020(b) to the dwelling of "the party with the care, custody and control" of a minor who is the subject of a Uniform Parentage Act proceeding has been omitted as surplus. In subdivision (b), the phrase "when the court finds" has been substituted for inconsistent references in the former sections to a "showing" by the petitioner and a "finding" by the court.

This section generalizes the former sections in the following manner. The former Family Law Act, applicable to proceedings for dissolution, nullity, and legal separation, did not contain a provision for orders after hearing, except in the case of former Civil Code Section 5102 which provided for orders excluding a party from a dwelling. This section makes it clear that any of the orders described in Section 6320 may be issued. This is not a substantive change. See Cal. R. Ct. 1296.29 (restraining order after hearing). Former Code of Civil Procedure Section 547(a) did not provide authorization to determine visitation of a child where the petitioner and respondent were not married. The provision in former Civil Code Section 7020(b) allowing a determination of

visitation with a child who is the subject of a proceeding under the Uniform Parentage Act has been generalized to apply to other unmarried parents. Former Civil Code Section 7020(b) did not provide for orders determining the temporary use of property in a proceeding under the Uniform Parentage Act. This section generalizes former Code of Civil Procedure Section 547(a) which provided for these orders as between unmarried parties in a proceeding under the Domestic Violence Prevention Act. This is not a substantive change. See Cal. R. Ct. 1296.31E (domestic violence miscellaneous orders attachment).

Fam. Code § 6341 (added). Payment of child support by presumed father

6341. (a) Where there exists a presumption that the respondent is the natural father of a minor child, pursuant to Section 7611, and the child is in the custody of the petitioner, the court, after notice and a hearing, may order a party to pay an amount necessary for the support and maintenance of the child if the order would otherwise be authorized in an action brought pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(b) An order made pursuant to this section shall be without prejudice in an action brought pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

Comment. Section 6341 continues former Code of Civil Procedure Section 547(b) without substantive change. The short title of the uniform act has been added before the citation. This is not a substantive change.

Fam. Code § 6342 (added). Payment of restitution for loss of earnings and out-of-pocket expenses

6342. The court may issue, after notice and a hearing, any of the following orders:

(a) An order that restitution be paid to the family or household member for loss of earnings and out-of-pocket expenses, including, but not limited to, expenses for medical care and temporary housing, incurred as a direct result of the abuse inflicted by the respondent or any actual physical injuries sustained therefrom.

(b) An order that restitution be paid by petitioner for out-of-pocket expenses incurred by a party as a result of any order issued ex parte which is found by the court to have been issued upon facts shown at a noticed hearing to be insufficient to support the order.

(c) An order requiring that the respondent shall pay any public or private agency for the reasonable cost of providing services to a family or household member required as a direct result of the abuse inflicted by the respondent or any actual injuries sustained therefrom.

(d) An order for restitution under this section shall not include damages for pain and suffering.

Comment. Section 6342 continues former Code of Civil Procedure Section 547(c), the last two sentences of former Civil Code Section 7020(b) without substantive change. See also Section 6203 ("abuse" defined).

Fam. Code § 6343 (added). Participation in counseling

6343. (a) Subject to subdivision (d), the court may issue, after notice and a hearing, an order requiring any party to participate in counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, including, but not limited to, mental health or substance abuse services, where it is shown that the parties intend to continue to reside in the same household or have continued to reside in the same household after previous instances of domestic violence. The court may also order a restrained party to participate in batterer's treatment counseling.

(b) Where there has been a history of domestic violence between the parties and an order described in Section 6320 is in effect, at the request of the party protected by the order, the parties shall participate in counseling separately and at separate times.

(c) The court shall fix the costs and shall order the entire cost of the services to be borne by the parties in such proportions as the court deems reasonable.

(d) Before issuing the court order requiring counseling, the court shall find that the financial burden created by the court order for counseling does not otherwise jeopardize a party's other financial obligations.

Comment. Section 6343 continues former Code of Civil Procedure Section 547(d) without substantive change. In subdivision (b), the reference to an order described in Section 6320 has been substituted for the former reference to "protective" order. This is not a substantive change. See also Section 6211 ("domestic violence" defined).

Fam. Code § 6344 (added). Payment of attorney's fees and costs

6344. The court may issue, after notice and a hearing, an order for the payment of attorney's fees and costs of the prevailing party.

Comment. Section 6344 continues former Code of Civil Procedure Section 547(e) without substantive change. See also Sections 270-275 (general provisions for attorney's fees and costs).

Fam. Code § 6345 (added). Duration of restraining order granted after notice and hearing

6345. A restraining order granted after notice and a hearing pursuant to this division, in the discretion of the court, shall have a duration of not more than three years, unless otherwise terminated or extended by further order of the court either on written stipulation filed with the court or on the motion of any party.

Comment. Section 6345 continues former Code of Civil Procedure Section 548 and the third sentence of former Civil Code Section 7020(b) without substantive change. The requirement that the stipulation be written has been generalized. Former Civil Code Section 7020(b) did not contain a writing requirement, but rather allowed stipulation by "mutual consent."

CHAPTER 4. ORDERS INCLUDED IN JUDGMENT

Fam. Code § 6360 (added). Orders included in judgment

6360. A judgment entered under this code may include any of the orders described in Section 6320, 6321, or 6322.

Comment. Section 6360 generalizes and continues without substantive change the first sentences of former Civil Code Sections 4458, 4516, and 7021. The former sections applied only to judgments pursuant to the former Family Law Act and the Uniform Parentage Act, whereas this section allows the inclusion of these orders in any judgment under this code. See also Sections 6380 (transmittal to local law enforcement agency), 6388 (criminal penalty for violation of order).

Fam. Code § 6361 (added). Statements required where order included in judgment

6361. If an order is included in a judgment pursuant to Section 6360, the judgment shall state on its face both of the following:

(a) Which provisions of the judgment are the orders.

(b) The date of expiration of the orders, which shall be not more than three years from the date the judgment is issued unless extended by the court after notice and hearing.

Comment. Section 6361 generalizes and continues without substantive change the second sentences of former Civil Code Sections 4458, 4516, and 7021. The former sections applied only to judgments pursuant to the former Family Law Act and the Uniform Parentage Act, whereas this section allows the inclusion of these orders in any judgment under this code. See also Sections 6380 (transmittal to local law enforcement agency), 6388 (criminal penalty for violation of order).

PART 5. REGISTRATION AND ENFORCEMENT OF ORDERS

Fam. Code § 6380 (added). Transmittal to local law enforcement agency

6380. The court shall order the petitioner or the attorney for the petitioner to deliver, or the county clerk to mail, a copy of an order granted pursuant to this division, or an extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, extension, modification, or termination was granted, to each local law enforcement agency designated by the petitioner or the attorney for the petitioner having jurisdiction over the residence of the petitioner and other locations where the court determines that acts of domestic violence against the petitioner and any other person protected by the order are likely to occur.

Comment. Section 6380 continues without substantive change the first sentence of the first paragraph of former Code of Civil Procedure Section 550(a), the first sentence of the first paragraph of former Civil Code Section 4359(b), and the first sentence of former Civil Code Section 7020(e) and the third sentences of former Civil Code Sections 4458, 4516, and 7021. The references in former Section 7740 to jurisdiction over the residence of the party with custody of a minor child who is the subject of a Uniform Parentage Act proceeding has been omitted as surplus. The reference to other locations where the court determines that acts of violence against "any other person protected by the order" are likely to occur has been added. This conforms this section to Section 6230 which allows the court to extend the protection of the order to other named family and household members. See also Section 6211 ("domestic violence" defined).

Fam. Code § 6381 (added). Enforcement of order

6381. (a) Notwithstanding Section 6380 and subject to subdivision (b), an order issued pursuant to this division is enforceable in any place in this state.

(b) An order issued pursuant to this division is not enforceable by a law enforcement agency of a political subdivision unless that law enforcement agency has received a copy of the order pursuant to Section 6380 or has otherwise received a copy of the order or the officer enforcing the order has been shown a copy of the order.

Comment. Section 6381 generalizes and continues the last paragraph of former Civil Code Section 4359(b) without substantive change. The former section applied only to the former Family Law Act.

Fam. Code § 6382 (added). Availability of information concerning order

6382. Each appropriate law enforcement agency shall make available to any law enforcement officer responding to the scene of reported domestic violence, through an existing system for verification, information as to the existence, terms, and current status of an order issued pursuant to this division.

Comment. Section 6382 continues without substantive change the first sentence of the second paragraph of former Code of Civil Procedure Section 550(a), the last sentence of the first paragraph of former Civil Code Section 4359(b), and the last sentence of former Civil Code Section 7020(e). See also Section 6211 ("domestic violence" defined).

Fam. Code § 6383 (added). Service of restraining order by law enforcement officer

6383. (a) A domestic violence prevention order issued pursuant to this division may, upon request of the petitioner, be served upon the respondent by any law enforcement officer who is present at the scene of reported domestic violence involving the parties to the action.

(b) The moving party shall provide the officer with an endorsed copy of the order and a proof of service which the officer shall complete and transmit to the issuing court.

(c) It shall be a rebuttable presumption that the proof of service was signed on the date of service.

Comment. Section 6383 generalizes and continues without substantive change the last two sentences of the second paragraph of former Code of Civil Procedure Section 550(a), former Code of Civil Procedure Section 550(h), former Civil Code Section 4359(e), and former Civil Code Section 7020(g). The reference to a "domestic violence prevention order" has been substituted for former references to specific orders found in the former Civil Code provisions. This is not a substantive change, since "domestic violence prevention orders" are defined to include the same orders. See Section 6213 ("domestic violence prevention order" defined). The reference to "domestic violence prevention order" also supersedes the use of the phrase "restraining order against domestic violence" used in former Code of Civil Procedure Section 550(a). See also Section 6211 ("domestic violence" defined).

Fam. Code § 6384 (added). When personal service not required

6384. (a) If a person named in a restraining order issued pursuant to this division has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required for enforcement of that order.

(b) The judicial forms for restraining orders shall contain a statement in substantially the following form:

“NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF THE FACE OF THIS FORM INDICATES THAT BOTH PARTIES ARE PERSONALLY PRESENT AT THE HEARING WHERE THE ORDER WAS ISSUED.”

Comment. Subdivision (a) of Section 6384 continues former Code of Civil Procedure Section 550(e) without substantive change. In subdivision (a), a reference to this division has been substituted for the former reference to “this section.” The former reference was unclear, since former Code of Civil Procedure Section 546.5 did not provide for the issuance of orders. The reference has been corrected to include any of the orders issued under the Domestic Violence Prevention Act, now this division of the Family Code.

Subdivision (b) of Section 6384 continues former Code of Civil Procedure Section 550(g) without change. The former reference to “temporary restraining orders or restraining orders issued after a hearing” has been replaced by a reference to “restraining orders.” This is not a substantive change.

Fam. Code § 6385 (added). Notice to Department of Justice

6385. (a) Except as provided in subdivision (b), upon receipt of a copy of a domestic violence prevention order issued pursuant to this division, together with the subsequent proof of service thereof, the local law enforcement agency having jurisdiction over the residence of the petitioner shall immediately notify the Department of Justice regarding the name, race, date of birth, and other personal descriptive information as required by a form prescribed by the Department of Justice, the date of issuance of the order, and the duration of the order or its expiration date.

(b) Proof of service of the order is not required for the purposes of this section if the order indicates on its face that both parties were personally present at the hearing where the order was issued and that, for the purpose of Section 6384, no proof of service is required.

(c) The failure of the petitioner to provide the Department of Justice with the personal descriptive information regarding the person restrained does not invalidate the restraining order.

(d) If a court issues a modification, extension, or termination of the order described in subdivision (a), the court shall notify the law enforcement agency having jurisdiction over the residence of the petitioner. The law enforcement agency shall then immediately notify the Department of Justice.

(e) There shall be no civil liability on the part of, and no cause of action shall arise against, an employee of a local law enforcement agency or the Department of

Justice, acting within the scope of employment, if a person described in subdivision (g) of Section 12021 of the Penal Code unlawfully purchases or receives or attempts to purchase or receive a firearm and a person is injured by that firearm or a person who is otherwise entitled to receive a firearm is denied a firearm and either wrongful action is due to a failure of a court to provide the notification provided for in this section.

Comment. Section 6385 continues former Code of Civil Procedure Section 550(b)-(d) without substantive change. The word "petitioner" has been substituted for "plaintiff" to conform to revisions made to former law. See 1990 Cal. Stat. ch. 752. The former section has been revised to correct cross-references. The reference to "domestic violence prevention order" has been substituted for the reference to an order based on what are now Sections 6320-6322. This is not a substantive change, since "domestic violence prevention order" has been defined to include the same orders. See Section 6213 ("domestic violence prevention order" defined). See also Section 6225 (court to provide information to parties concerning terms and effect of order); Penal Code § 12021(g) (criminal penalty for acquiring firearm while subject to restraining order against domestic violence).

Fam. Code § 6386 (added). Appointment of counsel and payment of fees and costs to enforce order

6386. (a) The court may, in its discretion, appoint counsel to represent the petitioner in a proceeding to enforce the terms of a domestic violence prevention order issued pursuant to this division.

(b) In a proceeding in which private counsel was appointed by the court pursuant to subdivision (a), the court may order the respondent to pay reasonable attorney's fees and costs incurred by the petitioner.

Comment. Section 6386 restates former Code of Civil Procedure Section 553 without substantive change. The words "petitioner" and "respondent" have been substituted for "plaintiff" and "defendant" to conform to revisions made to former law. See 1990 Cal. Stat. ch. 752. The reference to "domestic violence prevention order" has been substituted for the reference to an order based on what are now Sections 6320-6322. This is not a substantive change, since "domestic violence prevention order" has been defined to include the same orders. See Section 6213 ("domestic violence prevention order" defined). See also Sections 270-275 (general provisions for attorney's fees and costs).

Fam. Code § 6387 (added). Clerk to provide petitioner with copies of order

6387. The court shall order the county clerk to provide, without cost, to a petitioner five certified, stamped, and endorsed copies of an order, and of an extension, modification, or termination or an order granted pursuant to this division.

Comment. Section 6387 continues without substantive change the last sentence of the first paragraph of former Code of Civil Procedure Section 550(a).

Fam. Code § 6388 (added). Criminal penalty for violation of order

6388. A willful and knowing violation of a domestic violence prevention order issued pursuant to this division is a crime punishable under Section 273.6 of the Penal Code.

Comment. Section 6388 continues without substantive change former Code of Civil Procedure Section 551, the last sentence of former Civil Code Section 4359(c), former Civil Code Section 7020(h) and the last sentences of former Civil Code Section 4458, 4516 and 7021. The reference to "domestic violence prevention order" has been substituted for the reference to an order based on what are now Sections 6320-6322. This is not a substantive change, since "domestic violence prevention order" has been defined to include the same orders. See Section 6312 ("domestic violence prevention order" defined).

DIVISION 12. PARENT AND CHILD RELATIONSHIP

PART 3. UNIFORM PARENTAGE ACT

SEC. ____. The heading of Chapter 6 (commencing with Section 7700) of Part 3 of Division 12 of the Family Code is amended to read:

CHAPTER 6. ~~PROTECTIVE AND TEMPORARY CUSTODY~~ RESTRAINING ORDERS

Fam. Code §§ 7710-7710 (repealed). Ex parte orders

SEC. ____. Article 2 (commencing with Section 7710) of Chapter 6 of Part 3 of Division 12 of the Family Code is repealed.

Fam. Code § 7710 (repealed). Orders issuable ex parte

Interim Comment. Former Section 7710 is continued in Chapter 2 (commencing with Section 6320 of Part 4 of Division 10. without substantive change. A new Section 7710 is added to refer to the general domestic violence statute.

Fam. Code § 7711 (repealed). Limitation on issuance of mutual restraining order

Interim Comment. Former Section 7711 is continued in Section 6223 without substantive change.

Fam. Code § 7710 (added). Ex parte orders

SEC. ____. Article 2 (commencing with Section 7710) is added to Chapter 6 of Part 3 of Division 12 of the Family Code, to read:

Article 2. Ex Parte Orders

Fam. Code § 7710 (added). Ex parte restraining orders

7710. During the pendency of a proceeding under this part, upon application, the court may issue ex parte restraining orders as provided in Chapter 2 (commencing with Section 6320) of Part 4 of Division 10.

Comment. Section 7710 is new. This section provides a reference to the chapter in Division 10 (Domestic Violence Prevention Act) that contains the substantive provisions for the issuance of ex parte restraining orders. See Section 6200 Comment (consolidation of substantive provisions regarding issuance of restraining orders intended to prevent domestic violence). See also Section 6228 (support person for victim of domestic violence).

Fam. Code §§ 7720-7722 (repealed). Orders issuable after notice and hearing

SEC. ____ Article 3 (commencing with Section 7720) of Chapter 6 of Part 3 of Division 12 of the Family Code is repealed.

Fam. Code § 7720 (repealed). Orders issuable after notice and hearing

Interim Comment. Former Section 7720 is continued in Sections 6340 and 6342 without substantive change. A new Section 7720 is added to refer to the general domestic violence statute.

Fam. Code § 7721 (repealed). Order excluding party from dwelling on showing that physical or emotional harm would result

Interim Comment. Former Section 7721 is continued in Section 6340 without substantive change.

Fam. Code § 7722 (repealed). Duration of restraining order granted after notice and hearing

Interim Comment. Former Section 7722 is continued in Section 6345 without substantive change.

Fam. Code § 7720 (added). Orders issuable after notice and hearing

SEC. ____ Article 3 (commencing with Section 7720) is added to Chapter 6 of Part 3 of Division 12 of the Family Code, to read:

Article 3. Orders Issuable After Notice and Hearing

Fam. Code § 7720 (added). Orders issuable after notice and hearing

7720. After notice and a hearing, the court may issue restraining orders as provided in Chapter 3 (commencing with Section 6340) of Part 4 of Division 10.

Comment. Section 7720 is new. This section provides a reference to the chapter in Division 10 (Domestic Violence Prevention Act) that contains the substantive provisions for the issuance of restraining orders after notice and hearing. See Section 6200 Comment (consolidation of substantive provisions regarding issuance of restraining orders intended to prevent domestic violence). See also Section 6228 (support person for victim of domestic violence).

The former provisions for issuance of orders after notice and hearing in a proceeding under the Uniform Parentage Act did not provide for issuance of the orders in Sections 6343 (counseling) or 6344 (attorneys fees and costs). However, the Judicial Council form used for orders after hearing applies to proceedings under the Uniform Parentage Act and allows for attorneys fees and costs. See Cal. R. Ct. 1296.31. Since, the counseling order could be obtained by unmarried parties under the Domestic Violence Prevention Act, allowing the order in proceedings under the Uniform Parentage Act is not a substantive change.

Fam. Code §§ 7730-7731 (repealed). Required statements in order

SEC. ____ Article 4 (commencing with Section 7730) of Chapter 6 of Part 3 of Division 12 of the Family Code is repealed.

Fam. Code § 7730 (repealed). Statement of expiration date

Interim Comment. Former Section 7730 is continued in the introductory clause of Section 6224 without substantive change.

Fam. Code § 7731 (repealed). Notice to defendant in restraining order

Interim Comment. Former Section 7731 is continued in Section is continue in Section 6302 without substantive change.

Fam. Code § 7730 (added). Orders included in judgment

SEC. ____. Article 4 of (commencing with Section 7730) is added to Chapter 6 of Part 3 of Division 12 of the Family Code, to read:

Article 4. Orders in Judgment

Fam. Code § 7730 (added). Orders included in judgment

7730. A judgment entered in the proceeding may include restraining orders as provided in Chapter 4 (commencing with Section 6360) of Part 4 of Division 10.

Comment. Section 7730 is new. This section provides a reference to the chapter in Division 10 (Domestic Violence Prevention Act) that contains the substantive provisions for the inclusion of restraining orders in a judgment. See Section 6200 Comment (consolidation of substantive provisions regarding issuance of restraining orders intended to prevent domestic violence). See also Section 6228 (support person for victim of domestic violence).

Fam. Code §§ 7740-7743 (repealed). Registration and enforcement of orders

SEC. ____. Article 5 of Chapter 6 of Part 3 of Division 12 of the Family Code is repealed.

Fam. Code § 7740 (repealed). Transmittal to local law enforcement agency

Interim Comment. Former Section 7740 is continued in Section 6380 without substantive change.

Fam. Code § 7741 (repealed). Availability of information concerning order

Interim Comment. Former Section 7741 is continued in Section 6382 without substantive change.

Fam. Code § 7742 (repealed). Service of restraining order by law enforcement officer

Interim Comment. Former Section 7742 is continued in Section 6383 without substantive change.

Fam. Code § 7743 (repealed). Criminal penalty for violation of order

Interim Comment. Former Section 7743 is continued in Section 6388 without substantive change.

Fam. Code § 7750 (repealed). Orders included in judgment

SEC. ____. Article 6 (commencing with Section 7750) of Chapter 6 of Part 3 of Division 12 of the Family Code is repealed.

Fam. Code § 7750 (repealed). Orders included in judgment

Interim Comment. Subdivisions (a) and (b) of former Section 7750 are continued in Chapter 4 (commencing with Sections 6360) of Part 4 of Division 10 without substantive change.

Subdivisions (b) and (c) are continued without substantive change in Sections 6380 and 6388. New Section 7730 has been added and contains a cross-reference to Chapter 4 (commencing with Section 6360) of Part 4 of Division 10.

CONFORMING REVISIONS

CIVIL CODE

§ 1799.98 (technical amendment). Bona fide purchaser of property sold pursuant to enforcement of security interest

CODE OF CIVIL PROCEDURE

§ 527.6 (technical amendment). Temporary restraining order and injunction prohibiting harassment

§ 529 (technical amendment). Undertaking when injunction granted

§ 917.7 (amended). Stay of proceedings

EVIDENCE CODE

§ 1107 (technical amendment). Expert testimony regarding battered women's syndrome

FAMILY CODE

§ 213. Responding party's request for affirmative relief alternative to moving party's requested relief

§ 753 (technical amendment). Excluding one spouse from other's dwelling

§ 2335 (technical amendment). Evidence of specific acts of misconduct

§ 3022 (technical amendment). Factors considered in determining best interest of child

§ 3064 (technical amendment). Limitation on ex parte order granting or modifying custody order

§ 3100 (technical amendment). Visitation rights generally

§ 3101 (technical amendment). Visitation rights of stepparent or grandparent in dissolution, nullity, or legal separation proceeding

§ 3111 (technical amendment). Separate meetings where history of domestic violence or domestic violence prevention order

§ 3177 (technical amendment). Separate mediation where domestic violence prevention order

§ 3192 (technical amendment). Separate counseling where protective order against domestic violence

§ 7604 (technical amendment). Pendente lite relief of custody or grant of visitation rights

GOVERNMENT CODE

§ 26833.5 (technical amendment). Certified copies of order under certain domestic relations laws

§ 26841 (technical amendment). Fees for protective order

PENAL CODE

§ 12021 (technical amendment). Firearms

§ 12025.5 (technical amendment). Justifiable violations of Section 12025

§ 12031 (technical amendment). Carrying loaded firearms

§ 12076 (technical amendment). Register of firearm sales

WELFARE AND INSTITUTIONS CODE

§ 304 (technical amendment). Custody of dependent child of the court

§ 362.4 (technical amendment). Juvenile court order concerning custody or visitation

Appendix: Revised Comments

CODE OF CIVIL PROCEDURE

§ 527 (technical amendment). Injunctions and temporary restraining orders

FAMILY CODE

§ 3. Construction of provision drawn from uniform act

§ 211. Judicial Council rules of practice and procedure

§ 270. Costs and attorney's fees during pendency of proceeding

§ 754. Limitation on disposition of separate property residence if notice of pendency of proceeding recorded

§ 1816. Continuing instruction programs

§ 1830. Jurisdiction of family conciliation court

§ 1833. Contents of petition

§ 3600. Order for support during pendency of proceeding

CIVIL CODE

Civ. Code § 1799.98 (technical amendment). Bona fide purchaser of property sold pursuant to enforcement of security interest

SEC. ____ Section 1799.98 of the Civil Code is amended to read:

1799.98. (a) Nothing in this title shall be construed to make applicable or affect or operate as a waiver of any of the provisions of any of the following:

(1) Title 13 (commencing with Section 2787) of Part 4 of Division 3 this code.

(2) Parts 1 (commencing with Section 700), 2 (commencing with Section 760), 3 (commencing with Section 900), and 4 (commencing with Section 1100) of Division 4 of the Family Code.

(3) Sections 4301 and 4302 of the Family Code.

~~(4) Subdivision (e) of Section 2035 of the Family Code.~~

(b) The delivery of notice pursuant to Section 1799.91 is not evidence that the person to whom the notice was delivered entered or did not enter the transaction in the capacity of a surety.

Comment. Section 1799.98 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

Interim Comment. Section 1799.98 is amended to omit a cross-reference. Former Family Code Section 2035(c) provided for an ex parte order excluding a spouse from the dwelling of the other spouse in cases involving domestic violence. This provision has been repealed and consolidated with similar provisions applicable to unmarried parties in Family Code Section 6021. The omission of this cross-reference from this section is not a substantive change. See Section 753 (excluding one spouse from other's dwelling).

CODE OF CIVIL PROCEDURE

Code Civ. Proc. § 527.6 (technical amendment). Temporary restraining order and injunction prohibiting harassment

SEC. ____ Section 527.6 of the Code of Civil Procedure is amended to read:

527.6. (a) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order, and an injunction prohibiting harassment as provided in this section.

(b) For the purposes of this section, "harassment" is a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff. "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with subdivision (a) of Section 527. A temporary restraining order may be granted with or without notice upon an affidavit which, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would result to the plaintiff. A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, unless otherwise modified or terminated by the court.

(d) Within 15 days of the filing of the petition, a hearing shall be held on the petition for the injunction. The defendant may file a response which explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive such testimony as is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(e) Nothing in this section shall preclude either party from representation by private counsel or from appearing on his or her own behalf.

(f) In a proceeding under this section where there are allegations or threats of domestic violence, a support person may accompany a party in court and, where the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and his or her attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The support person is not present as a legal advisor and shall not give legal advice. The support person shall assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person who alleges he or she is a victim of domestic violence and the other party must be present in close proximity. Nothing in this subdivision precludes the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(g) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition.

(h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement

agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment.

(i) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(j) Any willful disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(k) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code or by ~~Part 4 (commencing with Section 240) of Division 2~~ Division 10 of the Family Code. Nothing in this section shall preclude a plaintiff's right to utilize other existing civil remedies.

(l) The Judicial Council shall promulgate forms and instructions therefor, rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise.

Comment. New subdivision (f) of Section 527.6 continues the substance of former Civil Code Section 4351.6 insofar as it applied to a proceeding under Section 527.6. Subdivisions designations have been adjusted for the insertion of new subdivision (f).

New subdivision (k) is amended to replace the former Civil Code and Code of Civil Procedure references with a reference to the Family Code.

Interim Comment. The former reference to Part 4 (commencing with Section 240) of Division 2 has been replaced by a reference to Division 10 (Domestic Violence Prevention Act). This is not a substantive change. Formerly Section 240 contained cross-references to the orders restraining domestic violence, which have been consolidated and continued in a new Division 10. Section 240 has been amended and generalized to apply to all ex parte restraining orders issued pursuant to the Family Code, except those included in a summons.

Code Civ. Proc. § 529 (technical amendment). Undertaking when injunction granted

SEC. ____ Section 529 of the Code of Civil Procedure is amended to read:

529. (a) On granting an injunction, the court or judge must require an undertaking on the part of the applicant to the effect that the applicant will pay to the party enjoined such damages, not exceeding an amount to be specified, as the party may sustain by reason of the injunction, if the court finally decides that the applicant was not entitled to the injunction. Within five days after the service of the injunction, the person enjoined may object to the undertaking. If the court determines that the applicant's undertaking is insufficient and a sufficient undertaking is not filed within the time required by statute, the order granting the injunction must be dissolved.

(b) This section does not apply to any of the following persons:

(1) Either spouse against the other in a proceeding for legal separation or dissolution of marriage.

(2) The applicant for an order ~~described in Section 240~~ pursuant to Division 10 of the Family Code.

(3) A public entity or officer described in Section 995.220.

Comment. Subdivision (b) of Section 529 is amended to replace the former Civil Code provisions with a reference to the Family Code.

Interim Comment. The former reference to Part 4 (commencing with Section 240) of Division 2 has been replaced by a reference to Division 10 (Domestic Violence Prevention Act). This is not a substantive change. Formerly Section 240 contained cross-references to the orders restraining domestic violence, which have been consolidated and continued in a new Division 10. Section 240 has been amended and generalized to apply to all ex parte restraining orders issued pursuant to the Family Code.

Code Civ. Proc. § 917.7 (amended). Stay of proceedings

SEC. ____. Section 917.7 of the Code of Civil Procedure is amended to read:

917.7. The perfecting of an appeal shall not stay proceedings as to those provisions of a judgment or order which award, change, or otherwise affect the custody, including the right of visitation, of a minor child in any civil action, in an action filed under the Juvenile Court Law, or in a special proceeding, or the provisions of a judgment or order for the temporary exclusion of a party from ~~the family dwelling or the dwelling of the other party a dwelling~~, as provided in the Family Code. However, the trial court may in its discretion stay execution of such provisions pending review on appeal or for such other period or periods as to it may appear appropriate. Further, in the absence of a writ or order of a reviewing court providing otherwise, the provisions of the judgment or order allowing, or eliminating restrictions against, removal of the minor child from the state are stayed by operation of law for a period of 30 days from the entry of the judgment or order and are subject to any further stays ordered by the trial court, as herein provided.

Comment. Section 917.7 is amended to substitute a general reference to the Family Code for the former reference to former Civil Code Section 4359. For provisions of the Family Code relating to the temporary exclusion of a party from a dwelling, see, e.g., Fam. Code §§ 2035, 2040, 2045, 6321, 6340, 6360, 7710, 7720, 7730.

Interim Comment. In consolidating the domestic violence provisions, the type of dwellings from which a party may be excluded has been revised to include the common dwelling of both parties. This section has been amended to include a general reference and to allow the Family Code provisions to control the type of dwellings that will be at issue. This will prevent a conflict from arising in the future where, for example, the Family Code statute would be amended to change the list of dwellings, but a similar revision would not be made to this provision in the Code of Civil Procedure..

EVIDENCE CODE

Evid. Code § 1107 (technical amendment). Expert testimony regarding battered women's syndrome

SEC. ____. Section 1107 of the Evidence Code is amended to read:

1107. (a) In a criminal action, expert testimony is admissible by either the prosecution or the defense regarding battered women's syndrome, including the

physical, emotional, or mental effects upon the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge.

(b) The foundation shall be sufficient for admission of this expert testimony if the proponent of the evidence establishes its relevancy and the proper qualifications of the expert witness. Expert opinion testimony on battered women's syndrome shall not be considered a new scientific technique whose reliability is unproven.

(c) For purposes of this section, "abuse" and "domestic violence" are defined as provided in Sections ~~55 and 70~~ 6203 and 6211 of the Family Code.

(d) This section is intended as a rule of evidence only and no substantive change affecting the Penal Code is intended.

Comment. Subdivision (c) of Section 1107 is amended to substitute references to the provisions of the Family Code that replaced the relevant provisions of Code of Civil Procedure Section 542.

Interim Comment. This section has been amended to correct cross-references to Family Code sections renumbered due to reorganization and consolidation of the Family Code provisions dealing with domestic violence.

FAMILY CODE

Fam. Code § 213 (technical amendment). Responding party's request for affirmative relief alternative to moving party's requested relief

213. (a) In a hearing on an order to show cause, or on a modification thereof, or in a hearing on a motion, other than for contempt, the responding party may seek affirmative relief alternative to that requested by the moving party, on the same issues raised by the moving party, by filing a responsive declaration within the time set by statute or rules of court.

(b) This section applies in any of the following proceedings:

(1) A proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties.

(2) A proceeding relating to a domestic violence prevention order as defined in Section 6213.

(3) Any other proceeding in which there is at issue the visitation, custody, or support of a minor child.

Comment. Subdivision (a) of Section 213 continues former Civil Code Section 4355.6 without substantive change.

Subdivision (b) is new and has been added to state the application of this section. The application of former Section 4355.6 was unclear, because the section did not include any language specifying the proceedings to which it applied.

Interim Comment. The reference to the definition contained in Section 6213 has been added. In reorganizing the Family Code provisions dealing with domestic violence this definition was moved from Division 1 (Preliminary Provisions and Definitions), where it was applicable to the

entire Family Code, to Division 10 (Domestic Violence Prevention Act), where it applies only to that division.

Fam. Code § 753 (technical amendment). Excluding one spouse from other's dwelling

753. Notwithstanding Section 752, except as provided in Article 2 (commencing with Section 2035), Article 3 (commencing with Section 2040), or Article 4 (commencing with Section 2045) of Chapter 4 of Part 1 of Division 6, neither spouse may be excluded from the other's dwelling.

Comment. Section 753 restates the second part of former Civil Code Section 5102(a) without substantive change.

Interim Comment. Cross-references to Articles 3 and 4 of Chapter 4 of Part 1 of Division 6 have been added to this section. This is not a substantive change. Former Article 2 provided for an order excluding a spouse from a dwelling either ex parte or after notice and hearing. New Article 2 includes only ex parte orders and Article 3 includes orders after notice and hearing. Article 4 provides for exclusion orders to be included in a judgment. The reference to this article is new and has been added to provide a complete set of references to sections that provide for these orders.

Fam. Code § 2335 (technical amendment). Evidence of specific acts of misconduct

2335. In a pleading or proceeding for dissolution of marriage or legal separation of the parties, including depositions and discovery proceedings, evidence of specific acts of misconduct is improper and inadmissible, except in any of the following cases:

- (a) Where child custody is in issue and the evidence is relevant to that issue.
- (b) Where a domestic violence prevention order as defined in Section 6213, is sought or has been obtained and the evidence is relevant in connection with the order.

Comment. The introductory part and subdivision (a) of Section 2335 continue former Civil Code Section 4509 without substantive change. The phrase "under this part," meaning under the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code), has been omitted as surplus.

Subdivision (b) is a new provision that recognizes that evidence of specific acts of misconduct is admissible in proceedings to obtain or retain in effect a domestic violence prevention order. See, e.g., Section 6223 (presentation of evidence of abuse or domestic violence required for mutual restraining order).

See also Section 3022 (history of abuse of child or other parent must be considered in determining best interest of child for purposes of custody).

Interim Comment. The reference to the definition contained in Section 6213 has been added. In reorganizing the Family Code provisions dealing with domestic violence this definition was moved from Division 1 (Preliminary Provisions and Definitions), where it was applicable to the entire Family Code, to Division 10 (Domestic Violence Prevention Act), where it applies only to that division.

Fam. Code § 3022 (technical amendment). Factors considered in determining best interest of child

3022. In making a determination of the best interest of the child in a proceeding under this division, the court shall, among any other factors it finds relevant, consider all of the following:

(a) The health, safety, and welfare of the child.

(b) Any history of abuse by one parent against the child or against the other parent. As a prerequisite to the consideration of allegations of abuse, the court may require substantial independent corroboration including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence. As used in this subdivision, "abuse against the child" means child abuse as defined in Section 11165.6 of the Penal Code and "abuse against the other parent" means abuse as defined in Section 55 6203 of this code.

(c) The nature and amount of contact with both parents.

Comment. Section 3022 continues former Civil Code Section 4608 without substantive change. A reference to this division has been substituted for a narrower reference to "this title," which referred to former Title 4 (commencing with former Civil Code Section 4600) of the former Family Law Act. This is not intended as a substantive change. See also Sections 3040 (order of preference in awarding custody), 3041 (additional requirements for custody award to nonparent), 3042 (consideration of wishes of child in custody case), 3043 (nomination of guardian by parent), 3044 (parent convicted under certain Penal Code provisions), 3080 (presumption for joint custody where parents agree to joint custody).

Interim Comment. The reference to the definition contained in Section 6203 has been added. In reorganizing the Family Code provisions dealing with domestic violence this definition was moved from Division 1 (Preliminary Provisions and Definitions), where it was applicable to the entire Family Code, to Division 10 (Domestic Violence Prevention Act), where it applies only to that division.

Fam. Code § 3064 (technical amendment). Limitation on ex parte order granting or modifying custody order

3064. The court shall refrain from making an order granting or modifying a custody order on an ex parte basis unless there has been a showing of immediate harm to the child or immediate risk that the child will be removed from the State of California. "Immediate harm to the child" includes having a parent who has committed acts of domestic violence as defined in Section 6211, where the court determines that the acts of domestic violence are of recent origin or are a part of a demonstrated and continuing pattern of acts of domestic violence.

Comment. Section 3064 continues the last two sentences of former Civil Code Section 4600.1(e) without substantive change.

Interim Comment. The reference to the definition of "domestic violence" has been added. The former version of this Family Code section had omitted a statutory cross-reference to the definition, since the definition had been made applicable to the entire code. In reorganizing the

Family Code provisions dealing with domestic violence this definition was moved to Division 10 (Domestic Violence Prevention Act), where it is applicable only to that division.

Fam. Code § 3100 (technical amendment). Visitation rights generally

3100. (a) Subject to Chapter 11 (commencing with Section 3155), in making an order pursuant to Chapter 4 (commencing with Section 3080), the court shall order reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interest of the child. In the discretion of the court, reasonable visitation rights may be granted to any other person having an interest in the welfare of the child.

(b) In making an award authorizing visitation pursuant to this section, if a domestic violence prevention order as defined in Section 6213, has been directed to a parent, the court shall consider whether the best interest of the child requires that any visitation granted to that parent shall be limited to situations in which a third person, specified by the court, is present. The court shall include in its deliberations a consideration of the nature of the acts from which the parent was enjoined and the period of time that has elapsed since that order. A parent may submit the name of a person to the court that the parent deems suitable to be present during visitation.

Comment. Subdivision (a) of Section 3100 continues former Civil Code Section 4601 without substantive change.

Subdivision (b) continues former Civil Code Section 4601.5 without substantive change. The phrase "domestic violence prevention order" has been substituted for the references to orders under specific sections formerly in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 6213 defines "domestic violence prevention order" to include these orders.

See also Sections 3022 (factors to be considered in determining best interest of child), 3044 (parent convicted under certain Penal Code provisions not allowed unsupervised visitation with child), 3131 (action by district attorney where child taken or detained in violation of visitation order); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal). For comparable provisions, see Sections 5513 (Domestic Violence Prevention Act), 7604(b) (Uniform Parentage Act).

Interim Comment. The reference to the definition of "domestic violence prevention order" has been added. In reorganizing the Family Code provisions dealing with domestic violence this definition was moved from Division 1 (Preliminary Provisions and Definitions), where it was applicable to the entire Family Code, to Division 10 (Domestic Violence Prevention Act), where it applies only to that division.

Fam. Code § 3101 (technical amendment). Visitation rights of stepparent or grandparent in dissolution, nullity, or legal separation proceeding

3101. (a) In a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has jurisdiction to award reasonable visitation rights to any of the following persons if visitation by the person is determined to be in the best interest of the minor child:

(1) A person who is a party to the marriage that is the subject of the proceeding with respect to a minor child of the other party to the marriage.

(2) A person who is a grandparent of a minor child of a party to the marriage.

(b) There is a rebuttable presumption affecting the burden of proof that the visitation of a grandparent is not in the best interest of a minor child if the parties to the marriage agree that the grandparent should not be awarded visitation rights.

(c) Visitation rights granted to a stepparent or grandparent pursuant to this section shall not conflict with any visitation or custodial right of a natural or adoptive parent who is not a party to the proceeding.

(d) In making an award of visitation pursuant to this section, if a domestic violence prevention order as defined in Section 6213, has been directed to a stepparent or grandparent during the pendency of the proceeding, the court shall consider whether the best interest of the child requires that any visitation by that stepparent or grandparent should be denied.

Comment. Subdivision (a) of Section 3101 restates former Civil Code Section 4351.5(a)-(b) without substantive change. The "notwithstanding" clauses of the former subdivisions have been omitted as surplus. The reference to former Civil Code Section 4601 has been omitted as surplus. References to the "superior" court have been omitted as surplus. See Section 200 (jurisdiction in superior court).

Subdivision (b) continues former Civil Code Section 4351.5(k) without substantive change.

Subdivision (c) continues former Civil Code Section 4351.5(j) without substantive change.

Subdivision (d) continues former Civil Code Section 4351.5(l) without substantive change. The phrase "domestic violence prevention order" has been substituted for the references to orders under specific sections formerly in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 6213 defines "domestic violence prevention order" to include these orders.

See also Section 3022 (factors to be considered in determining best interest of child); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

Interim Comment. The reference to the definition of "domestic violence prevention order" has been added. In reorganizing the Family Code provisions dealing with domestic violence this definition was moved from Division 1 (Preliminary Provisions and Definitions), where it was applicable to the entire Family Code, to Division 10 (Domestic Violence Prevention Act), where it applies only to that division.

Fam. Code § 3111 (technical amendment). Separate meetings where history of domestic violence or domestic violence prevention order

3111. (a) As used in this section:

(1) "Domestic violence" means domestic violence as defined in Section 6211.

(2) "Domestic violence prevention order" means domestic violence prevention order as defined in Section 6213.

(b) Where there has been a history of domestic violence between the parties, or where a domestic violence prevention order is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or at the request of a party who is protected by the order, the parties shall meet with the probation officer, domestic relations investigator, or court appointed evaluator separately at separate times.

Comment. Section 3111 continues the second paragraph of former Civil Code Section 4602 without substantive change. The phrase "domestic violence prevention order" has been

substituted for the references to orders under specific former sections in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 6213 defines "domestic violence prevention order" to include these orders.

Interim Comment. The reference to the definitions of "domestic violence" and "domestic violence prevention order" have been added. In reorganizing the Family Code provisions dealing with domestic violence these definitions they moved from Division 1 (Preliminary Provisions and Definitions), where it were applicable to the entire Family Code, to Division 10 (Domestic Violence Prevention Act), where they apply only to that division.

Fam. Code § 3176 (technical amendment). Separate mediation permitted where history of domestic violence

3176. The mediator has the authority to meet with the parties separately when a request for separate mediation is made by one of the parties in any proceeding where there has been, between the parties, a history of domestic violence between the parties as defined in Section 6211.

Comment. Section 3176 continues the last sentence of former Civil Code Section 4607(d) without substantive change.

Staff Note. Can this section be repealed as superseded by Section 3177?

Interim Comment. The reference to the definition of "domestic violence" has been added. The former version of this Family Code section had omitted a statutory cross-reference to the definition, since the definition had been made applicable to the entire code. In reorganizing the Family Code provisions dealing with domestic violence this definition was moved to Division 10 (Domestic Violence Prevention Act), where it is applicable only to that division.

Fam. Code § 3177 (technical amendment). Separate mediation where domestic violence prevention order

3177. (a) As used in this section:

(1) "Domestic violence" means domestic violence as defined in Section 6211.

(2) "Domestic violence prevention order" means domestic violence prevention order as defined in Section 6213.

(b) In a proceeding in which mediation is required pursuant to this chapter, where there has been a history of domestic violence between the parties or where a domestic violence prevention order is in effect, at the request of the party alleging domestic violence or protected by the order, the parties shall meet with the mediator appointed pursuant to this chapter separately at separate times.

(b) (c) Any intake form that an agency charged with providing family court services may require the parties to complete before the commencement of mediation shall include a provision which indicates that at the request of a party alleging domestic violence in a written declaration under penalty of perjury or at the request of a party who is protected by the order, the parties shall meet with the mediator appointed pursuant to this chapter separately at separate times.

Comment. Section 3177 continues former Civil Code Section 4607.2 without substantive change. The "notwithstanding" clause in the former section has been omitted as surplus. The phrase "domestic violence prevention order" has been substituted for the references to orders under specific sections formerly in the Civil Code and the Code of Civil Procedure. This is not a

substantive change, since Section 6213 defines "domestic violence prevention order" to include these orders.

Interim Comment. The reference to the definitions of "domestic violence" and "domestic violence prevention order" have been added. In reorganizing the Family Code provisions dealing with domestic violence these definitions they moved from Division 1 (Preliminary Provisions and Definitions), where it were applicable to the entire Family Code, to Division 10 (Domestic Violence Prevention Act), where they apply only to that division.

Fam. Code § 3192 (technical amendment). Separate counselling where protective order against domestic violence

3192. (a) As used in this section:

(1) "Domestic violence" means domestic violence as defined in Section 6211.

(2) "Domestic violence prevention order" means domestic violence prevention order as defined in Section 6213.

(b) In a proceeding in which counseling is ordered pursuant to this chapter, where there has been a history of domestic violence between the parties or where a domestic violence prevention order is in effect, at the request of a party alleging domestic violence in a written declaration under penalty of perjury or at the request of a party who is protected by the order, the parties shall meet with the mental health professional, or attend other community programs or services, separately at separate times.

Comment. Section 3192 continues former Civil Code Section 4608.1(b) without substantive change. Unlike the former section, this section does not contain a reference to the section defining "domestic violence." This is not a substantive change. See Section 70 ("domestic violence" defined). The phrase "domestic violence prevention order" has been substituted for the references to orders under specific former sections in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 75 defines "domestic violence prevention order" to include these orders.

Interim Comment. The reference to the definitions of "domestic violence" and "domestic violence prevention order" have been added. In reorganizing the Family Code provisions dealing with domestic violence these definitions they moved from Division 1 (Preliminary Provisions and Definitions), where it were applicable to the entire Family Code, to Division 10 (Domestic Violence Prevention Act), where they apply only to that division.

Fam. Code § 7604 (technical amendment). Pendente lite relief of custody or grant of visitation rights

7604. (a) A court may order pendente lite relief consisting of an award of custody or the grant of reasonable visitation rights pursuant to Part 2 (commencing with Section 3020) of Division 8, if the court finds both of the following:

(1) Based on the tests authorized by Section 7501, a parent and child relationship exists pursuant to Section 7500.

(2) The award of custody or the granting of visitation rights would be in the best interest of the child.

(b) In making an award authorizing visitation pursuant to this section, if a domestic violence prevention order as defined in Section 6213, has been directed

to a parent, the court shall consider whether the best interest of the child requires that any visitation granted to that parent shall be limited to situations in which a third person, specified by the court, is present. The court shall include in its deliberations a consideration of the nature of the acts from which the parent was enjoined and the period of time that has elapsed since that order. A parent may submit the name of a person to the court that the parent deems suitable to be present during visitation.

Comment. Section 7604 continues former Civil Code Section 7004.5 without substantive change. There is no comparable provision in the Uniform Parentage Act (1973).

In subdivision (a), a reference to Part 2 (commencing with Section 3020) of Division 8 has been substituted for narrower references to former Civil Code Sections 4600 and 4601. This is not intended as a substantive change.

In subdivision (b), the phrase "domestic violence prevention order" has been substituted for the references to orders under specific former sections in the Civil Code and the Code of Civil Procedure. This is not a substantive change, since Section 6213 defines "domestic violence prevention order" to include these orders. For provisions in this code that are comparable to subdivision (b), see Sections 3100(b) (visitation rights generally), 5513 (Domestic Violence Prevention Act).

See also Sections 200 (jurisdiction in superior court), 3044 (parent convicted under certain Penal Code provisions not to be allowed unsupervised visitation with child), 3131 (action by district attorney where child taken or detained in violation of visitation order), 3155-3183 (mediation of custody or visitation issues); Code Civ. Proc. § 917.7 (order not automatically stayed by appeal).

Interim Comment. The reference to the definition of "domestic violence prevention order" has been added. In reorganizing the Family Code provisions dealing with domestic violence this definition was moved from Division 1 (Preliminary Provisions and Definitions), where it was applicable to the entire Family Code, to Division 10 (Domestic Violence Prevention Act), where it applies only to that division.

GOVERNMENT CODE

Gov't Code § 26833.5 (technical amendment). Certified copies of order under certain domestic relations laws

SEC. 80. Section 26833.5 of the Government Code is amended to read:

26833.5. No fee shall be charged to an indigent plaintiff for certified copies of any order issued pursuant to any of the following:

(a) Article 2 (commencing with Section 2035), Article 3 (commencing with Section 2040), or Article 4 (commencing with Section 2045) of Chapter 4 of Division 6 of the Family Code.

(b) Division 10 (commencing with Section 5500) of the Family Code.

(c) Article 2 (commencing with Section 7710), or Article 3 (commencing with Section 7720), or Article 4 (commencing with Section 7730) of Chapter 6 of Part 3 of Division 12 of the Family Code.

Comment. Section 26833.5 is amended to substitute references to the Family Code provisions that replaced the former Civil Code and Code of Civil Procedure provisions. The references to restraining orders included in a judgment have been added.

Gov't Code § 26841 (technical amendment). Fees for protective order

SEC. 84. Section 26841 of the Government Code is amended to read:

26841. The superior court in any county may increase the fee for the filing of any paper in response to an order or an application for ~~an order described in subdivision (b) or (c) of Section 2035 of the Family Code, issued pursuant to that section, or issued to any person in accordance with Division 10 (commencing with Section 5500)~~ a domestic violence prevention order as defined in Section 6213 of the Family Code, by five dollars (\$5), upon the adoption of a resolution to that effect by the board of supervisors. The five dollars (\$5) shall be disposed of pursuant to the provisions of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code.

Comment. Section 26841 is amended to substitute a reference to "a domestic violence prevention order as described in Section 6213 of the Family Code" for the references to former provisions in the Code of Civil Procedure and Civil Code. This is not a substantive change.

Interim Comment. Section 26841 is amended to correct a cross-reference. This is made necessary by the reorganization and consolidation of the Family Code sections dealing with domestic violence.

PENAL CODE

Penal Code § 12021 (technical amendment). Firearms

SEC. 114. Section 12021 of the Penal Code is amended to read:

12021. (a) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c)(1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 136.5, 140, 171b, 171c, 171d, 241, 243, 244.5, 245, 245.5, 246.3, 247, 417, 417.2, 626.9, subdivision (b) or (d) of Section 12034, subdivision (a) of Section 12100, 12320, or 12590 and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by

the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2).

(2) Any person whose continued employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction prior to the effective date of the amendments which added this paragraph to this section, at any time until January 1, 1993, may petition the court for relief from this prohibition. The court may reduce or eliminate the prohibition, impose conditions on the elimination or reduction of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate. In making its decision, the court may consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature in enacting this paragraph to permit persons who were convicted of an offense specified in this subdivision prior to the effective date of the amendments which added this paragraph to this section to seek relief from the prohibition imposed by this subdivision.

(d) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, (2) is found to be a fit and proper subject to be dealt with under the juvenile court law, and (3) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision.

Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars (\$1,000), or received both punishments.

(g) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a ~~restraining order issued pursuant to Division 10 (commencing with Section 5500) of the Family Code and predicated on subdivision (b), (c), or (d) of Section 2035~~ domestic violence prevention order as defined in Section 6213 of the Family Code, is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section ~~5516~~ 6225 of the Family Code. However, this subdivision does not apply if the firearm is received as part of the disposition of community property pursuant to Division 7 (commencing with Section 2500) of the Family Code.

Comment. Subdivision (g) of Section 12021 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions. The reference to former Code of Civil Procedure Section 550(f) is replaced by a reference to Family Code Section 6225, which requires the court to give the respondent notice that the respondent is prohibited from purchasing or receiving or attempting to purchase or receive a firearm, including a notice of the penalty for violation. The reference to "domestic violence prevention order as defined in Section 6213 of the Family Code" has been substituted for the reference to orders under specific sections of the Code of Civil Procedure and the Civil Code. This is not a substantive change, since Section 6213 defines "domestic violence prevention order" to include these orders.

Interim Comment Section 12021 is amended to correct a cross-reference. This is made necessary by the reorganization and consolidation of the Family Code sections dealing with domestic violence.

Penal Code § 12025.5 (technical amendment). Justifiable violations of Section 12025

SEC. 115. Section 12025.5 of the Penal Code is amended to read:

12025.5. A violation of Section 12025 is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This section may not apply when the circumstances involve a mutual restraining order issued pursuant to ~~Sections 2035 and 2036 of the Family Code, or Sections 5514 and 5550 of the Family Code, or Sections 7710 and 7711~~ Division 10 (commencing with Section 6200) of the Family Code, absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to defendants charged with violating Section 12025 or of committing other similar offenses.

Upon trial for violating Section 12025, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

Comment. Section 12025.5 is amended to substitute a reference to the Family Code provisions that replaced the former Civil Code provision and to include similar mutual restraining orders issued under other domestic violence provisions. The word "mutual" has been substituted for "reciprocal" to conform to the terminology of the Family Code provisions. See also Fam. Code § 6223 (conditions for issuance of mutual restraining order).

Interim Comment Section 12021 is amended to correct the cross-references. This is made necessary by the reorganization and consolidation of the Family Code sections dealing with domestic violence.

Penal Code § 12031 (technical amendment). Carrying loaded firearms; misdemeanor; punishment; exceptions

SEC. 117. Section 12031 of the Penal Code is amended to read:

12031. (a) (1) Except as provided in subdivision (b), (c) or (d), every person who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory is guilty of a misdemeanor.

(2) Notwithstanding subdivisions 2 and 3 of Section 836, a peace officer may make an arrest without a warrant:

(A) When the person arrested has violated this section, although not in the officer's presence.

(B) Whenever the officer has reasonable cause to believe that the person to be arrested has violated this section, whether or not this section has, in fact, been violated.

(3) (A) Every person convicted under this section who has previously been convicted of an offense enumerated in Section 12001.6, or of any crime made punishable under this chapter, shall serve a term of at least three months in a county jail, or, if granted probation, or if the execution or imposition of sentence is

suspended, it shall be a condition thereof that he or she be imprisoned for a period of at least three months.

(B) The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this subdivision, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(b) Subdivision (a) shall not apply to any of the following:

(1) Peace officers listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any of those officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the agency from which the officer has retired. The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this paragraph and paragraph (3).

Any officer retired after January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm.

No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it is in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027, except that any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a loaded firearm pursuant to this section, shall not be required to have an endorsement in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027 until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to paragraph (2).

(2) A retired peace officer who retired after January 1, 1981, shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm every five years. An honorably retired peace officer, described in paragraph (1), retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a firearm.

(3) An honorably retired peace officer listed in subdivision (c) of Section 830.5 authorized to carry loaded firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a loaded firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

(4) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(5) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of those clubs.

(6) The carrying of pistols, revolvers, or other firearms capable of being concealed upon the person by persons who are authorized to carry those weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

(7) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977; or (B) if hired on or after that date, if they have received a firearms qualification card from the Department of Consumer Affairs, in each case while acting within the course and scope of their employment.

(8) Upon approval of the sheriff of the county in which they reside, honorably retired federal officers or agents of federal law enforcement agencies including, but not limited to, the Federal Bureau of Investigation, the Secret Service, the United States Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, the Drug Enforcement Administration, the United States Border Patrol, and officers or agents of the Internal Revenue Service who were authorized to carry weapons while on duty, who were assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

Retired federal officers or agents shall provide the sheriff with certification from the agency from which they retired certifying their service in the state, the nature of their retirement, and indicating the agency's concurrence that the retired federal officer or agent should be accorded the privilege of carrying a loaded firearm.

Upon approval, the sheriff shall issue a permit to the retired federal officer or agent indicating that he or she may carry a loaded firearm in accordance with this paragraph. The permit shall be valid for a period not exceeding five years, shall be carried by the retiree while carrying a loaded firearm, and may be revoked for good cause.

The sheriff of the county in which the retired federal officer or agent resides may require recertification prior to a permit renewal, and may suspend the privilege for

cause. The sheriff may charge a fee necessary to cover any reasonable expenses incurred by the county.

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(1) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also, under the express terms of the charter, (A) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (B) are not less than 18 years of age nor more than 40 years of age, (C) possess physical qualifications prescribed by the commission, and (D) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(2) The carrying of weapons by animal control officers or zookeepers, regularly compensated as such by a governmental agency when acting in the course and scope of their employment and when designated by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry the weapons, or by persons who are authorized to carry the weapons pursuant to Section 607f of the Civil Code, while actually engaged in the performance of their duties pursuant to that section.

(3) Harbor police officers designated pursuant to Section 663.5 of the Harbors and Navigation Code.

(d) Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to Section 12033. The certificate shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of his or her power as a peace officer, and who is employed while not on duty as a peace officer.

(1) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority (A) if hired prior to January 1, 1977; or (B) if hired on or after January 1, 1977, if they have completed a course in the carrying and use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

(3) Private investigators and private patrol operators who are licensed pursuant to Chapter 11.5 (commencing with Section 7512) of, and alarm company operators who are licensed pursuant to Chapter 11.6 (commencing with Section 7590) of, Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(4) Uniformed security guards or night watch persons employed by any public agency, while acting within the scope and in the course of their employment.

(5) Uniformed security guards, regularly employed and compensated in that capacity by persons engaged in any lawful business, and uniformed alarm agents employed by an alarm company operator, while actually engaged in protecting and preserving the property of their employers or on duty or en route to or from their residences or their places of employment and security guards and alarm agents en route to or from their residences or employer-required range training. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their names.

(6) Uniformed employees of private patrol operators and private investigators licensed pursuant to Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code while acting within the course and scope of their employment.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section, "prohibited area" means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case which holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by that person for lawful purposes connected with that business, from having a loaded firearm within the person's place of business, or any person in lawful possession of private property from having a loaded firearm on that property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, provided that the hunting at that place and time is not prohibited by the city council.

(j) (1) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of the weapon is necessary for

the preservation of that person or property. As used in this subdivision, "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

(2) A violation of this section is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This paragraph may not apply when the circumstances involve a mutual restraining order issued pursuant to ~~Sections 2035 and 2036 of the Family Code, or Sections 5514 and 5550 of the Family Code, or Sections 7710 and 7711~~ Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to defendants charged with violating Section 12025 or of committing other similar offenses.

Upon trial for violating this section, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(l) Nothing this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his or her place of residence, including any temporary residence or campsite.

Comment. Subdivision (j)(2) of Section 12031 is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 4359 and to include similar mutual restraining orders issued under other domestic violence provisions. The word "mutual" has been substituted for "reciprocal" to conform to the terminology of the Family Code provisions. See also Fam. Code § 6223 (conditions for issuance of mutual restraining order).

Interim Comment Section 12031 is amended to correct the cross-references. This is made necessary by the reorganization and consolidation of the Family Code sections dealing with domestic violence.

Penal Code § 12076 (technical amendment). Register of firearm sales

SEC. 118. Section 12076 of the Penal Code is amended to read:

12076. (a) The purchaser or transferee of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser or transferee. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information

required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(b) Two copies of the original sheet of the register, on the date of sale or transfer, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento. The third copy of the original shall be mailed, postage prepaid, to the chief of police, or other head of the police department, of the city or county wherein the sale or transfer is made. Where the sale or transfer is made in a district where there is no municipal police department, the third copy of the original sheet shall be mailed to the sheriff of the county wherein the sale or transfer is made.

The third copy for firearms, other than pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of receipt and no information shall be compiled therefrom.

(c) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser or transferee is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

If the department determines that the purchaser or transferee is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or county in which the sale or transfer was made, or if the sale or transfer was made in a district in which there is no municipal police department, the sheriff of the county in which the sale or transfer was made, of that fact.

If the department determines that the copies of the register submitted to it pursuant to subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or transferee or the pistol, revolver, or other firearm to be purchased or transferred, or if any fee required pursuant to subdivision (d) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (d), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased or transferred, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(d) The Department of Justice may charge the dealer a fee sufficient to reimburse all of the following:

(1)(A) The department for the cost of furnishing this information. All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby

created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section and Section 12289.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8103 of the Welfare and Institutions Code, made by the act which also added this paragraph.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by the amendments to Section 8104 of the Welfare and Institutions Code made by the act which also added this paragraph.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section ~~5804~~ 6385 of the Family Code created by the act which also added this paragraph.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by the act which added paragraph (2) to this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by the act which added paragraph (3) to this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by the act which added paragraph (4) to this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section ~~5804~~ 6385 of the Family Code created by the act which added paragraph (5) to this subdivision, and the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code created by the act which added paragraph (6) to this subdivision.

(e) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, its acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

Comment. Paragraphs (5) and (6) of Section 12076(d) are amended to substitute references to the Family Code provisions that replaced former Code of Civil Procedure Section 550(b).

Interim Comment Section 12076 is amended to correct the cross-references. This is made necessary by the reorganization and consolidation of the Family Code sections dealing with domestic violence.

WELFARE AND INSTITUTIONS CODE

Welf. & Inst. Code § 304 (technical amendment). Custody of dependent child of the court

SEC. 135. Section 304 of the Welfare and Institutions Code is amended to read:

304. When a minor has been adjudged a dependent child of the juvenile court pursuant to subdivision (c) of Section 360, no other division of any superior court may hear proceedings pursuant to Part 2 (commencing with Section 3020) of Division 8 of the Family Code regarding the custody of the minor. While the minor is a dependent child of the court all issues regarding his or her custody shall be heard by the juvenile court. In deciding issues between the parents or between a parent and a guardian regarding custody of a minor who has been adjudicated a dependent of the juvenile court, the juvenile court may review any records that would be available to the domestic relations division of a superior court hearing such a matter. The juvenile court, on its own motion, may issue an order directed to either of the parents enjoining any action specified in ~~subdivision (b), (e), or (d)~~ of Section ~~2035~~ 6213 of the Family Code. The Judicial Council shall adopt forms for these restraining orders. These form orders shall not be confidential and shall be enforceable in the same manner as any other order issued pursuant to ~~Section 2035~~ Division 10 of the Family Code.

This section shall not be construed to divest the domestic relations division of a superior court from hearing any issues regarding the custody of a minor when that minor is no longer a dependent of the juvenile court.

Comment. Section 304 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions. The reference to Section 6213 is broader than the former reference. Section 6213 includes an order restraining specific acts, excluding a party from a dwelling, and restraining additional behavior necessary to enforce the first two orders. The former reference did not include the order restraining additional behavior.

Interim Comment Section 304 is amended to correct the cross-references. This is made necessary by the reorganization and consolidation of the Family Code sections dealing with domestic violence.

Welf. & Inst. Code § 362.4 (technical amendment). Juvenile court order concerning custody or visitation

SEC. 137. Section 362.4 of the Welfare and Institutions Code is amended to read:

362.4. When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor's attainment of the age of 18 years, and proceedings for the declaration of the nullity or dissolution of the marriage, or for legal separation, of the minor's parents, or proceedings to establish the paternity of the minor child brought under the

Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code, are pending in the superior court of any county, or an order has been entered with regard to the custody of that minor, the juvenile court on its own motion, may issue an order directed to either of the parents enjoining any action specified in subdivision ~~(b), (c), or (d)~~ of Section ~~2035~~ 6213 of the Family Code or determining the custody of, or visitation with, the child.

Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court. The order of the juvenile court shall be filed in the proceeding for nullity, dissolution, or legal separation, or in the proceeding to establish paternity, at the time the juvenile court terminates its jurisdiction over the minor, and shall become a part thereof.

If no action is filed or pending relating to the custody of the minor in the superior court of any county, the juvenile court order may be used as the sole basis for opening a file in the superior court of the county in which the parent, who has been given custody, resides. The court may direct the parent or the clerk of the juvenile court to transmit the order to the clerk of the superior court of the county in which the order is to be filed. The clerk of the superior court shall, immediately upon receipt, open a file, without a filing fee, and assign a case number.

The clerk of the superior court shall, upon the filing of any juvenile court custody order, send by first-class mail a copy of the order with the case number to the juvenile court and to the parents at the address listed on the order.

The Judicial Council shall adopt forms for any custody or restraining order issued under this section. These form orders shall not be confidential.

Comment. Section 362.4 is amended to substitute the new reference to the Uniform Parentage Act in the Family Code. The reference to Section 6213 is broader than the former reference. Section 6213 includes an order restraining specific acts, excluding a party from a dwelling, and restraining additional behavior necessary to enforce the first two orders. The former reference did not include the order restraining additional behavior.

Interim Comment Section 362.4 is amended to correct the cross-references. This is made necessary by the reorganization and consolidation of the Family Code sections dealing with domestic violence.

Appendix

Revised Comments

Staff Note. The following comments need to be revised in connection with the reorganization and consolidation of the Family Code provisions dealing with domestic violence.

CODE OF CIVIL PROCEDURE

Code Civ. Proc. § 527 (technical amendment). Injunctions and temporary restraining orders

Comment. Section 527 is amended to delete provisions that applied only to orders described in Family Code Section 240, those orders now being governed by Part 4 (commencing with Section 240) of Division 2 of the Family Code, not by this section.

The provision formerly in subdivision (b) of Section 527 is continued in Family Code Section ~~245-6227~~. The new language in subdivision (b) makes clear that the section does not apply to an order described in Family Code Section 240. The provisions of Section 527 that applied to the orders described in Family Code Section 240 have been duplicated in Part 4 (commencing with Section 240) of Division 2 of the Family Code.

FAMILY CODE

Fam. Code § 3. Construction of provision drawn from uniform act

Comment. Section 3 generalizes former Civil Code Sections 5003, 5150(1)(i), and 5301, Code of Civil Procedure Section 1651, and Evidence Code Section 891. This section expands the uniform construction rule to the Uniform Parentage Act, which formerly lacked a uniform construction provision. Provisions of the Family Code drawn from uniform acts include:

Uniform Premarital Agreement Act (§§ 1600-1617)

Uniform Divorce Recognition Act (§§ 2090-2093)

Uniform Child Custody Jurisdiction Act (§§ 3400-3425)

Uniform Reciprocal Enforcement of Support Act (§§ 4800-4854)

Uniform Act on Blood Tests to Determine Paternity (§§ 7550-7557)

Uniform Parentage Act (§§ ~~7600-7750~~ 7730)

See also Sections 7900-7910 (Interstate Compact on Placement of Children).

The former Uniform Civil Liability for Support Act has not been continued as a uniform act. For the disposition of the former sections, see the Comments to Sections 3550-3551, 3554, 3651, 3900, 3910(a), 4000, 4002, 4005(a), 4300, 4303, 4320, 4400, 4402-4405.

Fam. Code § 211. Judicial Council rules of practice and procedure

Comment. Section 211 continues without change and generalizes former Civil Code Section 4001. The former provision applied only to former Part 5 (commencing with Section 4000) of Division 4 of the Civil Code (the former Family Law Act), whereas Section 211 applies to the entire Family Code.

For other provisions relating to Judicial Council rules, see, e.g., Sections 2021, 2025, 2070, 2321. For provisions relating to Judicial Council forms, see, e.g., Sections 95, 115, 2043, 2062, 2250, 2331, 2401, 2402, 3417, 3634, 3668, 3694, 3772, 4506, 4732, 5295, ~~5512~~ 6221, ~~5520~~ 6229, 7710. For provisions relating to other Judicial Council matters, see, e.g., Sections 1816 (development of training program), 1850-1852 (duties in connection with statewide coordination of family mediation and conciliation services), 2400 (adjustment of dollar amounts to reflect California Consumer Price Index), 2406 (summary dissolution brochure), 3153 (guidelines for determining eligibility for county payment of counsel), 3161 (uniform standards of practice for mediation), 4005 (development of age increase formula), 4066 (study and report on child support guidelines), 4552 (duties regarding procedure for deposit of money to secure future child support payments, including development of rules and forms).

Fam. Code § 270. Costs and attorney's fees during pendency of proceeding

Comment. Section 270 continues former Civil Code Section 4370(a) without substantive change. The phrase "proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties" replaces the former reference to "proceeding under this part." The phrase "proceeding under this part" as used in former Civil Code Section 4370(a) referred to the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code).

Section 272 requires that the award of attorney's fees and costs under Section 270 be just and reasonable under relevant circumstances of the parties. See *In re Marriage of Hublou*, 231 Cal. App. 3d 956, 282 Cal. Rptr. 695 (1991).

Special provisions may govern attorney's fees and costs in particular circumstances. See, e.g., Sections 916 (attorney's fees in enforcing right to reimbursement after division of community property), 1101(g) (breach of fiduciary duty), 2255 (attorney's fees and costs in proceeding for judgment of nullity of marriage), 2334 (order for attorney's fees during period of continuance for reconciliation), 3027 (attorney's fees in proceeding to recover monetary sanction for false accusation of child abuse or neglect), 3028 (attorney's fees in proceeding to recover compensation for failure to assume caretaker responsibility or for thwarting other parent's visitation or custody rights), 3113, 3150-3153, 3174 (appointment of counsel to represent child in custody or visitation proceeding), 3407 (attorney's fees where custody or visitation proceeding commenced in clearly inappropriate forum), 3408 (attorney's fees where jurisdiction declined by reason of conduct), 3416 (attorney's fees for enforcement of sister state custody order), 3652 (attorney's fees in proceeding to modify or terminate child support order), 4002 (attorney's fees for county enforcement of child support), 4303 (attorney's fees for county enforcement of spousal support), 4403 (attorney's fees for county enforcement of parent's right to support), 4803 (limitation on recovery of attorney's fees in proceeding under Uniform Reciprocal Enforcement of Support Act), 5283(d) (earnings assignment order), 5755, 5805 ~~6386~~ (attorney's fees in proceeding under Domestic Violence Prevention Act), 6602 (contract for attorney's fees for services in litigation for minor), 7640 (counsel fees and costs under Uniform Parentage Act), 7827, 7860-7864, 7895 (appointment of counsel in proceeding to declare child free from parental custody and control), 8800 (independent adoption).

Fam. Code § 754. Limitation on disposition of separate property residence if notice of pendency of proceeding recorded

Comment. Section 754 continues former Civil Code Section 5102(b) without substantive change. See also Section 700 (real property includes leasehold interests in real property).

Section 754 provides a means of restraining transfer or encumbrance of a separate property dwelling for a three-month period during the pendency of separation, annulment, or dissolution proceedings. The restraint applies to voluntary dispositions of the dwelling, as well as involuntary dispositions, such as pursuant to a writ of execution. As to the authority of the court to restrain transfer during pendency of these proceedings, see ~~Section~~ Sections 2035 and 2040. See also Section 2030 (temporary restraining order in summons). A community property dwelling may not be transferred or encumbered without joinder or consent of both spouses. See Sections 1100(c) (disposition or encumbrance of personal property family dwelling), 1102 (lease, transfer, or encumbrance of real property).

For background on former Civil Code Section 5102, see *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2630 (1980).

Fam. Code § 1816. Continuing instruction programs

Comment. Section 1816 continues former Code of Civil Procedure Section 1745.5 without substantive change. ~~See also Sections 55 ("abuse" defined), 70 ("domestic violence" defined).~~

Fam. Code § 1830. Jurisdiction of family conciliation court

Comment. Section 1830 restates former Code of Civil Procedure Section 1760 without substantive change. The reference to legal separation has been added to conform with other sections. See, e.g., Sections 1831, 1840, 1841. See also Sections ~~70 (“domestic violence” defined)~~, 1842 (conciliation court may accept other cases where no minor children involved), 3155-3183 (mediation of visitation or custody issues), 3190-3192 (counseling of parents and child).

Fam. Code § 1833. Contents of petition

Comment. Section 1833 continues former Code of Civil Procedure Section 1763 without substantive change. See also Section ~~70 (“domestic violence” defined)~~.

Fam. Code § 3600. Order for support during pendency of proceeding

Comment. Section 3600 continues the first sentence of former Civil Code Section 4357(a) without substantive change. The language describing the support proceedings to which this section applies is drawn from the first sentence of former Civil Code Section 4700(a)(1), with the addition of language to make clear that this section applies to a child for whom support is authorized under Section 3901. This is not intended as a substantive change. The word “support” has been substituted for “support and maintenance” with reference to support of a husband or wife, since “maintenance” is surplus. The word “support” has been substituted for “support and education” with reference to support of a child. This is not a substantive change. See Section 150 (when used with reference to minor child, “support” includes education). A reference to “child” has been substituted for “children.” This is not a substantive change. See Section 10 (singular includes plural). A reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

See also Sections ~~240-245 (ex parte support orders)~~, 273 (attorney’s fees for enforcement of support order), 2254 (order for support of putative spouse), 3017 (support order required where parent receiving public assistance).