

First Supplement to Memorandum 92-56

Subject: Study F-1001 - Domestic Violence Prevention Statutes (Addition of Child to Definition of Domestic Violence)

This supplement provides further information regarding the staff proposal that children be added to the definition of domestic violence. See Memorandum 92-56 at p. 3, Item (3). Attached to this supplement is a copy of the Assembly Judiciary Committee consultant's analysis of the bill amending the definition of domestic violence and eliminating the reference to children. (AB 4000) The consultant who wrote the analysis is no longer working for the Assembly Committee on Judiciary. However, Mikki Sorenson, a current consultant to the Committee, reviewed the bill file and the analysis and said that she believed that the intent of the bill was to expand the definition of domestic violence and not to narrow it. She felt that the elimination of the reference to children was probably inadvertent.

Assembly Bill 4000 was authored by Assemblywoman Roybal-Allard. Henry, a staff member at her office, reviewed her bill file and could not find anything that indicated an intent to eliminate the reference to children. The staff member referred me to the bill's sponsor.

Alana Bowman, a deputy city attorney with the Los Angeles City Attorney's office, sponsored the bill. She confirmed that the intent of the legislation was to expand the definition of domestic violence. She said that she did not intend to prevent children from being protected by these statutes.

Respectfully submitted,

Pamela K. Mishey
Staff Counsel

Date of Hearing: May 9, 1990

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

AB 4000 (Roybal-Allard) - As Amended May 16, 1990

SUBJECT: This bill revises the definitions and other provisions of the Domestic Violence Prevention Act.

BACKGROUND

History. The Domestic Violence Prevention Act (DVPA) was adopted in 1979 [SB 9 (Smith) Chapter 795, Statute of 1979] and became operative on July 1, 1980.

In 1986, the Judicial Council sponsored AB 2661, (Harris) Chapter 387 - Statutes of 1986, which eliminated the filing fees for petitions for protective orders.

Facts. The sponsor states that its Domestic Violence Prosecution Unit, established in October 1986, prosecutes approximately 7,000 domestic violence cases a year under Penal Code Section 273.5. It estimates that 1,200 violations of restraining orders are prosecuted annually.

DIGEST

DVPA Purposes and Definitions

Existing law, the DVPA:

- 1) Proposes to prevent the recurrence of acts of violence by a spouse or household member against a spouse or household member and to provide a separation for a sufficient period of time to enable persons to seek resolution of the causes of violence.
- 2) Defines "abuse" as intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.
- 3) Defines "domestic violence" as abuse perpetrated against a family or household member or a parent of a minor child not borne of a marriage.

This bill:

- 1) Proposes to also prevent violence and sexual abuse against a spouse or cohabitant, former spouse or cohabitant, any other adult related in the second degree, or a person with whom respondent has had a child or has had a dating or engagement relationship.
- 2) Defines "abuse" to also include sexual assault.

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- 3) Defines "domestic violence" also as abuse against a cohabitant, former cohabitant, or a person with whom respondent has had a dating or engagement relationship. This bill deletes "unrelated person who resides in the household or has resided in the household within the last 6 months" from the definition of who falls within the protections of the DVPA. Instead the bill defines "cohabitant" and "former cohabitant" as being a person who regularly resides or formerly regularly resided in the household.
- 4) Defines "protective order" to mean an order issued by the court to the restrained party not to do any or all of the following: contact, molest, attack, strike, threaten, sexually assault, batter, telephone, or disturb the peace of the persons described in the DVPA.

DVPA Procedures and Fees

Existing law, the DVPA:

- 1) Authorizes the court to issue temporary restraining orders, with or without notice, upon an affidavit which shows reasonable proof of a past act or acts of abuse.
- 2) States that there is no filing fee for a petition or response relating to a protective order under the DVPA.
- 3) Requires the person who is personally serving a pleading to complete the proof of service form and to date and sign it.

This bill:

- 1) Specifies that the petition, temporary order, and hearing order shall be valid and enforceable without stating the petitioner's addresses (i.e., residence, school, employment, his/her child's school or child care).
- 2) Creates a rebuttable presumption that the proof of service was signed on the date of the service.
- 3) Provides that the waiver of fee for service of process by law enforcement may be requested on the petition and can be ordered by the court hearing the request for restraining orders. The order for waiver is to be included on the DVPA order.

DVPA Orders

Existing law, the DVPA:

- 1) Sets forth orders which the court may enter, after a noticed hearing, including: (a) specified Family Law Act (FLA) restraining orders regarding physical conduct, removal from the dwelling, property, custody and visitation; (b) a child support order, where defendant is the

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presumed father of the child in plaintiff's custody; (c) a restitution order for loss of earnings, out-of-pocket expenses, or for provision of services to the plaintiff; (d) an order for attorney's fees and costs; or, (e) an order requiring the parties to participate in counseling, when the party's so stipulate or where they intend to continue to reside together.

- 2) Permits the court to grant the above restraining orders for up to three years duration.

This bill:

- 1) Revises the provision which permits the court to order the parties to participate in counseling, by clarifying that the counseling may be through a community program or services including mental health or substance abuse services. The court may also order a restrained party to participate in batterer's treatment counseling. Where there is a history of domestic violence and a protective order in effect, at the request of the party protected by the order, the parties shall participate in counseling separately and at separate times. The court shall fix the cost and shall order the entire cost of the services to be borne by the parties in the proportion as the court deems reasonable. Prior to issuing the order, 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.
- 2) Requires all subsequent protective orders issued in these proceedings shall be issued on DVPA forms, as provided by the Judicial Council.

County Clerk's Responsibilities

Existing law requires the court to order the petitioner or petitioner's attorney to deliver or the county clerk to mail a copy of any order on the day it was granted, to law enforcement agencies with jurisdiction over the petitioner's residence.

This bill requires:

- 1) The clerk to mail a copy to each local law enforcement agency designated by the petitioner, rather than only those agencies with jurisdiction over petitioner's residence.
- 2) The court to order the county clerk to provide five certified, stamped, and endorsed copies of any order at no cost to a party.

Notice of Order

Existing law requires either the party to be (1) physically before the court when an order is made or (2) personally served a copy of the order, before an order is enforceable.

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This bill:

- 1) Specifies the order is valid without personal service if the party has "actual notice of the existence and substance of that order through personal appearance in court to hear the terms of the order from the court."
- 2) Requires that the forms for orders shall contain the following statement:

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

FISCAL EFFECT

This bill will be referred to the Assembly Committee on Ways and Means.

COMMENTS

- 1) Sponsor's Statement. According to the sponsor, Los Angeles City Attorney's Office:

This bill would enact a number of changes relative to the issuance of temporary restraining orders to prevent domestic violence including, among other things, the expansion of the definition of "abuse" to include acts of sexual assault and an expansion of the categories of persons who may be subject to the orders to include a number of modern relationships and living circumstances.

The bill would clarify current state law to specify that the terms and conditions of a restraining order issued after notice and a hearing may only be changed by court order, and would vest the court with the exclusive authority to change the terms and conditions of the order.

- 2) Proponents. The laws governing eligibility for a restraining order need to be expanded to include the many victims who do not qualify currently as they are not a blood relative, former or current spouse, co-parent, or live-in partner with their abuser. Many cases of domestic violence in a dating relationship must be handled through the harassment order, which offers less protection and can be a financial burden for petitioners.
- 3) Counseling Provisions. This bill adopts language which permits a court to order counseling under limited circumstances. This language was taken from the Family Law Act provisions which were approved by the Committee last year in AB 1903 (Committee on Judiciary) and added by the Committee to SB 884 (Morgan).

In summary, this bill provides that if there is a history of domestic violence and a protective order in effect, the protected party may

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request, and shall receive upon request, counseling separately and at a separate time.

- 4) Other Issues. Existing law only applies to unrelated adults who have resided in the household within the last six months. This bill deletes this provision, so that the DVPA would apply to anyone who has ever resided with the petitioner. Should there be any time limitation?

SUPPORT

Commission on the Status of Women
San Mateo County Advisory
Council on Women

OPPOSITION

Unknown

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ajud