

IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT

[REDACTED]  
*Plaintiff and Appellant,*

*v.*

[REDACTED]  
*Defendant and Respondent.*

Appeal from a Judgment of the [REDACTED]  
[REDACTED]

**MOTION FOR JUDICIAL NOTICE**

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(SBN 317949)  
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## **MOTION FOR JUDICIAL NOTICE**

This appeal involves statutory construction of the Domestic Violence Prevention Act. (DVPA; Fam. Code, § 6200 et seq.)

While the plain language of the relevant statutes dictates a result in Appellant [REDACTED] favor, legislative history can be useful for confirming Appellant's proffered interpretation. (See, e.g., *Isidora M. v. Silvino M.* (2015) 239 Cal.App.4th 11, 19 [“Assuming arguendo the plain language of the statutory scheme does not resolve the interpretive question . . . the legislative history . . . is clear.”].) As such, Appellant respectfully requests this Court take judicial notice of four documents relating to the legislative history of the DVPA. (Cal. Rules of Court, rule 8.252; Evid. Code, §§ 452, subds. (c) & (h), 459; see *id.*, §§ 453, 454.) Appellant thus moves this Court to take judicial notice of the following excerpts of legislative histories:

Exhibit A: Assembly Committee on the Judiciary, Analysis of Assembly Bill Number 2517 (2019-2020 Reg. Sess.), 3d reading, June 5, 2020;

Exhibit B: Legislative Analyst, Report to the Assembly Committee on Criminal Justice, analysis of Senate Bill Number 9 (1979-1980 Reg. Sess.), as amended on June 26, 1979;

Exhibit C: Legislative Counsel's Digest, Senate Bill Number 9 (1979-1980 Reg. Sess.), as amended on June 4, 1979; and

Exhibit D: Senate Committee Report on Senate Bill  
Number 9 (1979-1980 Reg. Sess.), as amended on January 24,  
1979.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

Appellant moves this Court to take judicial notice of the four legislative history documents attached as exhibits A, B, C, and D, to aid the Court in construing the DVPA when deciding this appeal. (See Evid. Code, §§ 452, subds. (c) & (h), 453, 454, 459; Cal. Rules of Court, rule 8.252; see also *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497-1498 [concluding the court's plain language interpretation "comports with the legislative history of the DVPA"]; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 30 (*Kaufman*) ["we will grant motions for judicial notice of legislative history materials without a showing of statutory ambiguity"].)

These materials include excerpts from the legislative histories of one recent Assembly Bill from 2020 (AB 2517), and one Senate Bill from 1979 (SB 9) that was part of the original enactment of the DVPA. (See Stats. 2020, ch. 245 (A.B. 2517); Stats. 1979, ch. 795 (S.B. 9).) These materials were not provided to the trial court.

The Assembly Judiciary Committee analysis for AB 2517 was obtained from Westlaw. The three documents of legislative history for SB 9 were compiled by Legislative Research & Intent LLC.

These materials are pertinent to Appellant’s arguments regarding the proper interpretation of portions of the DVPA, including a trial court’s authority to include or not include certain debt or mortgage payment terms as part of a DVPA restraining order. (Fam. Code, §§ 6324, 6340, 6342.5.)

Evidence Code section 459, subdivision (a) allows this Court to take judicial notice of materials listed in section 452. In turn, Evidence Code section 452, subdivision (c) allows this Court to take judicial notice of “[o]fficial acts of the legislative . . . departments . . . of any state of the United States.” Such official legislative acts include legislative history materials. (*Almond Alliance of California v. Fish and Game Commission* (2022) 79 Cal.App.5th 337, 342, fn. 3 (*Almond*).)

Although only certain legislative history materials are appropriately subject to judicial notice, the four exhibits in this motion are appropriate for judicial notice. (See *Kaufman, supra*, 133 Cal.App.4th at pp. 30-31.) Exhibits A and D are legislative committee reports and thus subject to judicial notice in this Court. (*Id.* at pp. 32, 39.) Exhibit B is a report of the legislative analyst and thus subject to judicial notice in this Court. (*Ibid.*) And Exhibit C is a legislative counsel’s digest and thus subject to judicial notice in this Court. (*Id.* at p. 35.)

Furthermore, courts commonly take judicial notice of legislative history materials when construing statutes. (E.g., *Almond, supra*, 79 Cal.App.5th at p. 342, fn. 3 [“various legislative history documents”]; *Kaufman, supra*, 133 Cal.App.4th at p. 39 [legislative committee reports and enrolled bill reports];

*St. John's Well Child & Family Center v. Schwarzenegger* (2010) 50 Cal.4th 960, 967, fn. 5, 969, fn. 9 [bills, legislative counsel opinion, and voter initiative ballot materials]; *Hughes Electronics Corp. v. Citibank Delaware* (2004) 120 Cal.App.4th 251, 266, fn. 13 [legislative histories and amendments “relevant and appropriate” for judicial notice]; see also, e.g., *Martin v. Szeto* (2004) 32 Cal.4th 445, 452, fn. 9 [granting judicial notice of legislative history even though the materials were ultimately found “not . . . useful” for construing a statute].)

Finally, these legislative history materials are appropriate for judicial notice as “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code, § 452, subd. (h); see *Almond, supra*, 79 Cal.App.5th at p. 342, fn. 3.)

## CONCLUSION

For the foregoing reasons, Appellant respectfully requests this Court grant the motion and take judicial notice of Exhibits A, B, C, and D attached to the motion, and consider these legislative history materials, as needed, when deciding the appeal.

Dated: July 27, 2022

Cory D. Hernandez  
(SBN 317949)  
Jodi Lewis (SBN 339211)  
Jennafer Dorfman Wagner  
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Erin C. Smith (SBN 234852)

Respectfully Submitted,

/s/ Amari L. Hammonds  
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## **PROPOSED ORDER**

Appellant's motion for judicial notice is granted. The Court takes judicial notice of Exhibits A, B, C, and D attached to the motion.

Dated: \_\_\_\_\_

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Presiding Justice

# EXHIBIT A

## 1) ASSEMBLY THIRD READING

## 2) AB 2517

(Gloria)

As Amended May 13, 2020

Majority vote

**SUMMARY:**

Allows a court, effective January 1, 2022, to make a finding in a domestic violence restraining order issued after notice and a hearing that specific debts were incurred as a result of domestic violence.

**Major Provisions**

- 1) Allows a court, effective January 1, 2022, to issue an order, after notice and a hearing for a domestic violence restraining order, determining the use, possession, and control of real or personal property of the parties to the restraining order during the period the order is in effect, and the payment of any liens or encumbrances coming due during the period that the restraining order is in effect.
- 2) Allows the court, effective January 1, 2022, to include in an order under 1), above, a finding that specific debts were incurred as the result of domestic violence and without the consent of a party. Provides that acts that support this finding may include, but are not limited to, obtaining a party's personal identifying information and using it for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person.
- 3) Requires the Judicial Council to adopt and/or modify any forms necessary to effectuate this bill.

**COMMENTS:**

In addition to physical abuse, an abusive partner can financially abuse their victim by, among other things, forbidding the victim from working or sabotaging their work, controlling how money is spent, withholding money for basic family expenses, such as food, shelter and medicine, not allowing the victim to access bank accounts or to make any financial decisions, forcing the victim to file fraudulent tax returns, running up large amounts of debt on joint accounts, refusing to pay bills, and ruining the victims' credit score. One study found that nearly every victim of domestic violence has also been economically abused.

This bill seeks to protect victims of domestic violence from being financially abused by their abusers and provide a remedy to address the situation if needed by first clarifying that a restraining order issued under the Domestic Violence Prevention Act (DVPA) after notice and a hearing can determine

the use, possession, and control of real or personal property of the parties to the restraining order during the period the order is in effect, and also the payment of any liens or encumbrances coming due during that same time period. More importantly, the bill allows the court to include in the restraining order a finding that specific debts were incurred as the result of domestic violence and without the consent of the victim, including an act of identity theft.

*Financial abuse is a form of domestic violence.* Abusers may, in addition to physically or psychologically abusing their victims, financially abuse them as well. One study of survivors of domestic violence found that 98% had been physically abuse and 99% had been economically abused. (Adrienne Adams, *et al.*, *Development of the Scale of Economic Abuse*, *Violence Against Women*, 14(5), 563 (2008).) Abusers typically use violence or threats of violence, whether subtle or not, to keep their victims from working or having access to money, thus ensuring that they have financial control of their victim. Financial abuse can include forbidding a victim to work or sabotaging their work or employment, controlling how money is spent, withholding money for basic family expenses, such as food, shelter and medicine, not allowing the victim access to bank accounts or make any financial decisions, forcing the victim file fraudulent tax returns, running up large amounts of debt on joint accounts, refusing to pay bills, and ruining their victims' credit score.

An abuser can also create personal debt for their victim or force the victim to create the debt themselves, creating additional financial abuse and potential causing long-term harm to the victim and their children. Also called coercive debt, this includes all nonconsensual, credit related transactions. Writes one researcher of this situation: "[C]urrent policies relating to personal debt do not consider the possibility that the debt may have been generated through coercion, fraud, or threat of harm. Survivors' short-term safety and long-term financial well-being would be enhanced by policies that take into account how personal debts were generated and that create avenues for debt forgiveness or restructuring." (Adrienne Adams, *Measuring the Effects of Domestic Violence on Women's Financial Well-Being*, CFS Research Brief 2011-5.6, p. 5 (Center for Financial Security, University of Wisconsin-Madison 2011).) This bill seeks to do just that.

*This bill expands the ability to divide property and debt as part of a restraining order.* Under existing law, a court may issue an ex parte order determining the temporary use, possession, and control of the real or personal property of the parties and the payment of any liens or encumbrances coming due during the period the temporary order is in effect. (Family Code Section 6324.) The temporary order only lasts 21 days or, if there is good cause, 25 days. (Family Code Section 6320.5.) Note, during the COVID-19 pandemic, the California Supreme Court has issued emergency statewide orders extending the time period of temporary restraining orders issued or set to expire during the state of emergency to be continued "for a period of time that the court determines is sufficient to

allow for a hearing on the long-term order to occur, for up to 90 days." (California Supreme Court, Emergency Rule No. 8 (b)(2), effective April 6, 2020.)

The court is also able, after notice and a hearing, to issue any domestic violence restraining order that could be issued *ex parte*, which includes an order determining the temporary use, possession, and control of the real or personal property of the parties and the payment of any liens or encumbrances coming due during the period the order is in effect. (Family Code Section 6340.) An order after a hearing -- a personal conduct, stay-away, and residence exclusion order -- can last no more than five years, but it can be renewed for either five years or permanently, without a showing of further abuse since the issuance of the original order and subject to termination or modification by further order of the court. (Family Code Section 6345 (a).) However, the duration of any orders, other than those protective orders, that are also contained in a court order issued after notice and a hearing, including, but not limited to, orders for custody, visitation, support, and disposition of property, shall be governed by the law relating to those specific subjects. (Family Code Section 6345 (b).) Note, during the COVID-19 pandemic, the California Supreme Court emergency order extends the time period of orders issued after a hearing that are set to expire during the state of emergency to be automatically extended "for up to 90 days from the date of expiration to enable a protected party to seek a renewal of the restraining order." (California Supreme Court, Emergency Rule No. 8 (b)(4), effective April 6, 2020.)

This bill clarifies that an order determining the use, possession, and control of real or personal property of the parties is effective during the period the order is in effect, as is any order impacting the payment of any liens or encumbrances coming due during that same period. This ensures that the court establishing the protective order can also determine whose debt is whose and help protect a victim of financial abuse, whether for five years or even, potentially, permanently.

More importantly, the bill allows a court to include in the protective order after hearing a finding that specific debts were incurred as the result of domestic violence and without the consent of one of the parties.

Specifically, the bill provides that acts that support a finding that a debt was incurred as the result of domestic violence may include, but are not limited to, obtaining a party's personal identifying information and using it for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person.

Finally, the bill requires the Judicial Council to update its forms based on the bill's provisions so that victims can easily seek the relief they are entitled to under the bill. This provision is particularly important since the vast majority of victims of domestic violence (up to 90% or even more by Judicial Council estimates) are unrepresented and must try, the best they

are able, to seek relief on their own.

**According to the Author:**

Financial abuse is a very harmful component of domestic violence. It occurs in 99% of domestic violence cases and can include stealing money, credit, property, or identity from a partner; and/or forcing a partner to file fraudulent legal financial documents or overspend on credit cards. AB 2517 will play a critical part in providing some protections judges can use in determining who is responsible for paying off the debt that happened. This bill is essential in helping survivors get back on track faster.

**Arguments in Support:**

The bill's sponsor, the California Partnership to End Domestic Violence, writes in support:

This bill aims to help survivors who have experienced [financial] abuse by establishing some protections the court can use in determining who is responsible for paying off the incurred debt. Currently Domestic Violence Restraining Orders allows judges to assign specific debts to be paid by the restrained party. By adding space for the judge to also identify which debts were incurred as a result of the domestic violence and through theft of the protected party's identity, the survivor will be able to use the restraining order as proof for civil debt relief under Civil 1798.93 which requires a person to establish a preponderance of the evidence. The COVID-19 pandemic created or deepened economic hardships for thousands of Californians, including survivors and their families. These economic vulnerabilities put survivors at risk of ending up further in poverty or returning to their abusive partners. Every step we take to improve economic security of survivors will help keep them safe during this already tumultuous time.

Adds the California Low-Income Consumer Coalition:

Financial abuse occurs in the great majority of domestic violence cases and can include stealing money, credit, property, or identity from a partner. It may also include forcing a partner to file fraudulent legal financial documents or overspend on credit cards. Abusive partners can incur debt without a survivor's consent, or coerce a survivor into incurring the debt by threats of harm. This debt and the credit score impact can have long-term consequences for survivors, and create barriers to educational, housing, and employment opportunities. Since these debts are incurred through the abusive partner stealing the survivor's identity, it is important for survivors to have the tools to access existing federal and state protections for identity theft and debt defense.

Enacting this legislation will help survivors who have experienced such abuse by establishing protections the court can use in determining who is responsible for the incurred debt. Currently, Domestic Violence

Restraining Orders allow the judge to assign specific debts to be paid by the restrained party. By adding a space for the judge to also identify which debts were incurred because of the domestic violence and through theft of the survivor's identity, the survivor will be able to use the restraining order as documentation for civil debt relief protections under current law, which requires a person to have proof of the abuse. This new regime would also allow survivors to provide the restraining order to creditors to notify them of the identity theft.

### **Arguments in Opposition:**

The California Land Title Association (CLTA), which represents the title insurance industry, opposes the bill unless it is amended to specifically prevent a court, as part of a domestic violence order determining the use, possession, and control of real or personal property of the parties, from invalidating a transfer, encumbrance, or conveyance of real property. CLTA explains its concerns with the bill as now in print:

While we support the underlying purpose of the bill, we strongly oppose the bill's lack of an express provision clarifying that a court could not invalidate a properly executed and recorded lien in issuing a ruling determining the temporary use, possession, and control of real property. Without such a provision, AB 2517 stands to create a new class of victim in the form of adversely affected innocent third parties that have unknowingly engaged in transactions involving real property subject to liens that were incurred in connection with instances of domestic violence. . . .

If lenders are forced to view every loan secured by real property, such as a second mortgage or home equity line of credit, as one that could be potentially invalidated due to acts outside their knowledge, loans could become more difficult or costly to obtain, thereby negatively impacting all California consumers seeking to utilize those funds for various uses, such as home improvements, paying off higher-interest debts, etc.

### **FISCAL COMMENTS:**

According to the Assembly Appropriations committee, minor and absorbable costs (GF/Trial Court Trust fund) to the courts in additional workload to make findings regarding the origins of specified debt in domestic violence cases and for Judicial Council to modify existing forms.

### **VOTES:**

#### **ASM JUDICIARY: 11-0-0**

**YES:** Mark Stone, Gallagher, Chau, Chiu, Gonzalez, Holden, Kalra, Kiley, Maienschein, Obernolte, Reyes

#### **ASM APPROPRIATIONS: 18-0-0**

**YES:** Gonzalez, Bigelow, Bauer- Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Petrie- Norris, McCarty, Robert Rivas, Voepel

**UPDATED:**

VERSION: May 13, 2020

CONSULTANT: Leora Gershenzon / JUD. / (916) 319-2334 FN: 0002805

# EXHIBIT B

ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE  
BILL McVITTIE, Chairman

BILL ANALYSIS

State Capitol - Room 5016  
445-3268

Staff Member SDB  
Ways & Means YES  
Rev. & Tax. NO

HEARING DATE: July 2, 1979

July 5, 1979  
July 9, 1979

BILL: Senate Bill 9 (as amended June 26, 1979)

AUTHOR: Smith

SUBJECT: Domestic Violence

BILL DESCRIPTION

Existing law provides a procedure whereby persons residing together may petition the court for a temporary restraining order (TRO) in order to prevent the recurrence of domestic violence. (C.C.P. Sec. 527(b)) SB 9 would repeal this procedure, and would enact a comprehensive Domestic Violence Prevention Act which would become operative on July 1, 1980. It would also make conforming changes in the Family Law Act and the Uniform Parentage Act.

A. Domestic Violence Prevention Act (Sections 8, 11, 14)

Under SB 9, the Domestic Violence Prevention Act would generally specify the following provisions:

1) Who may petition.

Under this bill, a spouse, former spouse, parent, child, any other person related within the second degree, or any other person who regularly resides and has sexual relations with another family or household member residing in the household, or who within the last six months regularly resided in the household during which time he or she had sexual relations with another household member presently residing in the household, could petition the court for a TRO for the purpose of preventing a recurrence of domestic violence.

2) Ex parte orders.

This bill would permit the issuance of such orders ex parte, returnable on an order to show cause no later than 15 days, or 20 days upon good cause, from the date the TRO was granted. Whether with or without notice, however, the plaintiff must, under this bill, show reasonable proof of a past act or acts of abuse. These provisions are identical to the provisions of C.C.P. Section 527(b).

3) Orders which may be issued.

- a. Orders specified under the Family Law Act,  
Section 4359 of the Civil Code. (See Comment B)
- b. Support and maintenance orders for a minor.

Under this bill these orders could be issued only if the defendant was the presumed natural father of the minor child and such child was in the plaintiff's custody.

c. Orders for restitution.

The court could order that loss of earnings by the plaintiff, and out-of-pocket expenses (e.g., expenses for temporary shelter for the plaintiff, medical costs) incurred by the plaintiff as a result of such abuse be reimbursed by the defendant.

d. Order requiring counseling.

In addition, the court could order any party to participate in counseling where either party stipulates or where it is shown that the parties intend to continue to reside in the same household after previous instances of domestic violence.

e. Order for payment of attorney's fees and costs of the prevailing party.

4) Duration of order: 90 days.

Protective orders issued under the Act would remain in effect for not more than 90 days, unless extended by order of the court or by stipulation of the parties. If extended by stipulation, such orders would last no more than one year. Under current C.C.P. Section 527(b), such orders last for 30 days only, unless terminated by the court.

5) Remedies are cumulative.

The bill would specify that the remedies under the Act would be in addition to any other remedies available to plaintiff.

6) Appointment of counsel. The bill would allow the court in appropriate cases to appoint counsel or the district attorney to represent the plaintiff in any proceeding to enforce the terms of any order issued under the Act. The court may then order the defendant to pay reasonable attorney's fees and costs incurred by the plaintiff, or to reimburse the county for costs incurred when the district attorney represents plaintiff.

7) Registration and enforcement.

SB 9 would require the court to order the plaintiff or the attorney for plaintiff to deliver, and the county clerk to mail, a copy of any order, or extension, modification or termination thereof granted pursuant to this chapter, to appropriate local law enforcement agencies by the end of the business day on which such order, modification or termination was granted.

Under current law the county clerk transmits a copy of such orders to local law enforcement agencies if requested by an attorney of record and approved by the court.

b) SB 9 would require each appropriate law enforcement agency to maintain a file of all such orders filed with them and to make available through an existing system for verification, information concerning the existence, terms and current status of any order issued pursuant to this Act to any officer responding to domestic violence calls.

Under current law these provisions are discretionary, giving the law enforcement agencies the authority but not mandating the dissemination of this information to officers responding to such calls.

8) Violations are misdemeanors.

Violations of orders pursuant to this Act would be misdemeanors. This provision is identical to existing law.

9) Notice to law enforcement officers.

An order issued pursuant to this Act would state on its face the expiration date of the order and a notice to law enforcement officers of the State of California mandating enforcement of its provisions.

B. TRO's under the Family Law Act. (Sections 1, 2 and 3)

Under existing provisions of the Family Law Act, the court may issue a TRO pending trial in a suit for marriage dissolution, legal separation, or annulment to:

- 1) restrain any person from disposing of property.
- 2) enjoin any party from molesting or disturbing the peace of the other party or a person in his or her care, custody, or control.
- 3) exclude either party from the family dwelling or from the dwelling of the other upon a showing that physical or emotional harm would otherwise result.
- 4) determine the temporary custody of any minor children of the marriage.

This bill would greatly expand the court's authority to issue further TRO's where domestic violence is involved. It would provide that a court could:

- 1) enjoin any party from contacting, attacking, striking, threatening, sexually assaulting, or battering the other party. In the discretion of the court, and upon a showing of good cause, this order would also protect other named family and household members.
- 2) exclude one party from the family dwelling for as long as and upon such conditions as the court may determine, regardless of who holds legal or equitable title to or the lease in the dwelling. The petitioner must show that the party to be excluded has assaulted or threatened to assault him/her and that physical or emotional harm would otherwise result to petitioner or any person in his or her care, custody, or control.
- 3) determine not only the temporary custody of any minor children of the marriage but also specify the conditions upon which a party could exercise visitation rights.
- 4) determine the temporary use, possession, and control of property of the parties and the payment of due liens or encumbrances thereon during the pendency of the order.

- 5) restrain the transfer, concealment, hypothecation, encumbrance or any disposition of property, whether real or personal, community or separate, except in the usual course of business or for the necessities of life, and if such order is directed at a party, requiring such party to notify the other party of any proposed extraordinary expenditures and to account to the court for all such expenditures.
- 6) Make such further orders as are necessary to prevent acts of domestic violence.
- 7) Transmittal to police agencies.

Like the provision under the Domestic Violence Prevention Act, SB 9 would provide for the transmission of these orders to local law enforcement agencies by the party who obtained the order or his attorney and the county clerk.

- 8) Violations are misdemeanors.

Whereas under present law, violations of Civil Code section 4359 are punishable under civil contempt, this bill would clearly make such violations misdemeanors.

- 9) Includable in interlocutory and final judgments. An order which is issued by the court pursuant to this section must state on its face the expiration date. However, these orders may be included in interlocutory and final judgments affecting marriage. Such orders would expire one year from the date of entry of judgment unless extended by the court after notice and hearing. Again, violations of these orders would be misdemeanors.

C. TRO's under the Uniform Parentage Act. (Section 6)

This bill would provide that in an action to determine paternity of a child the court may issue a TRO pursuant to C.C.P. Section 527 to:

- 1) enjoin any party from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering or disturbing the peace of the other party or the minor child.
- 2) exclude one party from the dwelling of the party who has care, custody, and control of the child. There must be a showing that the party to be excluded has assaulted or threatens to assault the custodial party or the minor child and that physical or emotional harm would otherwise result to the party or child.

3) grant further relief as the court determines necessary to prevent acts of domestic violence.

If the TRO is granted ex parte, the order would be made returnable on an order to show cause no later than 15 days, or 20 days upon good cause, from the date the TRO was granted. Upon notice and hearing, any order would remain in effect for a maximum of 90 days, unless extended by the court or by mutual consent of the parties. Such orders would be transmitted to law enforcement agencies, and willful violations of the order would constitute misdemeanors.

D. Misdemeanor Sanctions. (Section 13)

Section 273.6 would be added to the Penal Code to provide that willful violations of TRO's obtained under the Act

- 1) to enjoin abuse,
- 2) exclude a party from a dwelling, or
- 3) to grant further relief as determined by the court, would be misdemeanors punishable by a fine not to exceed \$500 or by imprisonment in the county jail for not to exceed 6 months or by both. (Section 13)

E. No Civil Compromise. (Section 14)

This bill would prohibit the civil compromise, under Penal Code Section 1377, of prosecutions of cases involving a violation of any court order described in Penal Code Section 273.6. However, this prohibition would not apply where the court finds that

- 1) no threat or coercion was used upon the family or household member,
- 2) that a recurrence of the acts constituting the misdemeanor is not likely, and
- 3) that the offense charged is a first offense in violation of Penal Code Section 273.6.

F. Miscellaneous Provisions. (Sections 4, 9, 10, 12, 15 and 16)

- 1) The Judicial Council would be required to promulgate forms and instructions for applications for orders and orders granted under the Act.

- 2) Applications for TRO's under this Act would be exclusive of provisions under C.C.P. Section 527.6, which governs injunctions prohibiting harassment.
- 3) A party granted a TRO under this Act would not be required under C.C.P. Section 529 to make a written undertaking for damages sustained because of the TRO.
- 4) An indigent plaintiff would not be charged a fee for certified copies of orders issued under these provisions.
- 5) There would be a presumption affecting the burden of proof that joint custody is in the best interests of minor children.
- 6) This bill contains an SB 90 disclaimer.

COMMENTS:

1) Need for legislation.

AB 1019 (Fazio, 1977) added Section 527(b) to the Code of Civil Procedure permitting persons residing together to petition the court for a TRO in order to prevent the recurrence of acts of domestic violence. A study of domestic violence made by the Family Law Advisory Commission indicated the need for a complete revision of the Section 527(b) procedure in order to expand the court's authority to make specific orders which would be easier for the police to enforce.

2) Criminal Justice Concerns.

a) Prohibition of Civil Compromises.

This bill would generally prohibit civil compromises of acts of domestic violence when committed in violation of a court order describe in P.C. Sec. 273.6 unless the court finds that:

- a) no threat or coercion was used upon the person,
- b) that a recurrence is not likely, and
- c) that the offense charged is the first offense under Section 273.6 for the defendant.

SB 9 (as amended June 26, 1979)

July 2, 1979

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How likely is it that the court will be able to find the above three criteria under these circumstances? The court orders comprehended by Section 273.6 are only issued upon some showing that the defendant has assaulted or threatened to assault the other person and that physical or emotional harm would result absent the court order. As a practical matter is it likely after such a demonstration, that upon commission of a subsequent offense the court will be able to find that "recurrence is not likely", or that "no threat or coercion was used"? Does this amount to elimination of civil compromises in these instances? Is this the intent?

- 1) Proponents of this legislation feel that this provision would put "teeth" into the law, would force district attorneys to prosecute perpetrators of domestic violence, and thus place potential spouse or child abusers on notice that they cannot escape such charges. Is this a valid conclusion? What will result when the "victim" simply refuses to go forward and testify? Will the prosecutor be forced to seek sanctions against him/her to force the case to trial? How prevalent are instances in which the "victims" refuse to proceed? Will this provision place a hardship on the prosecutors and waste the court's time?
- 2) No prohibition against dismissals.

These provisions preclude the civil compromise in the above instances, however, they do not prevent the dismissal of the case. Will this be the manner in which these cases are disposed of when the victim is unwilling and the above 3 criteria cannot be found by the court? Is this the author's intent? Should the court, prosecutor and defense attorney have a way out of these cases?

3) Opponents of this particular provision argue that this prohibition eliminates a way for parties who have reconciled or otherwise settled their dispute to terminate a criminal action. They suggest that the result will be more court congestion if these cases are forced to proceed to trial. Should the option of a civil compromise be available where all parties (i.e. judge, prosecution, defendant, and victim) agree that money damages would sufficiently compensate the victim? Where there is little likelihood that another prosecution for the same offense would occur in the future notwithstanding the fact that a threat or coercion was used or this was not the first violation?

b) Law Enforcement required to maintain orders.

Under current law, law enforcement agencies are authorized, but not required, to make available to officers responding to domestic violence calls information concerning the existence and current status of any TRO. Will SB 9's provisions requiring such verification and bookkeeping increase costs to law enforcement agencies? Will the law enforcement agency be susceptible to suit for enforcing a court order which has been superseded but not yet delivered to it for filing? Should this be specified in view of the fact that all orders will bear conspicuous notices to law enforcement officers mandating enforcement of its provisions? What will result when an officer enforces an order in the afternoon, which has been modified or terminated, or is subsequently modified or terminated during that day? Will he be required to return the following day, upon request, and enforce the provisions of the subsequent order as well? How much additional work will these provisions generate for law enforcement agencies? How costly will these provisions be? Will law enforcement be able to accommodate this additional load? Will the law enforcement agencies be aware of pending court days which will affect the orders in their possession? Should they?

c) Appointment of counsel or district attorney.

This bill would allow the court to appoint private counsel or the district attorney to represent the plaintiff to enforce the terms of these orders and additionally, require the defendant to pay expenses. What is the purpose of this provision? Violations of these orders are specified to be misdemeanors. Doesn't the district attorney automatically prosecute all such criminal offenses? What is the necessity and purpose of allowing appointment of private counsel? Is this a criminal proceeding?

d) Violations of TRO's under Family Law Act.

Violations of TRO's issued under the Family Law Act are presently punishable under civil contempt. This bill would make such violations clearly misdemeanors, rendering the person susceptible to the county jail for 6 months, \$500 fine or both. Is this necessary or desirable considering the fact that provisions currently exist in the Penal Code for many of the acts which are cognizable by court order under this Act (i.e. if the defendant "attacked, struck, sexually assaulted, battered, or threatened" the other person, there are currently penal sanctions available)? Should persons be susceptible to two criminal sanctions for the same act, for commission of the offense, and for violation of the order enjoining the commission of the crime? This Act allows a court to exclude a person from a home when he/she holds legal and equitable title to the property. This Act also allows a court to enjoin a person from "contacting" the other party. Shall misdemeanor sanctions apply when one party simply contacts the other? Should misdemeanor sanctions apply when a person has failed to exercise the visitation rights with his/her children as ordered by the court? When the person refuses or neglects to pay due liens or encumbrances on property of the parties as ordered by the court? Are these areas which should be punished as criminal offenses, or should there be at least the option of pursuing the remedy of civil contempt when appropriate?

e) Misdemeanor for violations of Domestic Violence Prevention Act.

Violations of orders issued pursuant to this act would be misdemeanors. Under existing law, violations of orders issued pursuant to Section 527 (b) C.C.P. would also be a misdemeanor, so the penalty remains basically the same. What has changed, however, is the court's authority to issue the TRO's under this Act. Inasmuch as it has been greatly expanded, such that orders not cognizable under the existing statute become so under the Domestic Violence Prevention Act, the question remains whether it is necessary or desirable to extend criminal sanctions to enforce orders encompassing these additional areas or whether the option of civil contempt would be appropriate.

3) SENATE VOTES: Judiciary: Ayes 5 Noes 2  
Finance: No Vote - 2nd Reading per Jt. Rule 28.8  
Floor: Ayes 26 Noes 1

SOURCE: The Family Law Advisory Commission of the Senate Judiciary Judiciary Subcommittee on Administration of Justice

SUPPORT: Marin Abused Women's Services  
Women in Politics  
American Association of University Women  
City Council of Los Angeles  
National Association of Social Workers, Inc.  
The State Bar  
Marin County Commission on the Status of Women

OPPOSITION: American Civil Liberties Union  
County of Los Angeles  
Peace Officers Research Association of California

ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE  
BILL McVITTIE, Chairman

( State Capitol - Room 501e  
445-3268

BILL ANALYSIS

Staff Member SDB  
Ways & Means YES  
Rev. & Tax. NO

HEARING DATE: July 9, 1979

BILL: Senate Bill 9 (as proposed to be amended by Author -  
per mock-up)  
AUTHOR: Smith

FURTHER ANALYSIS:

Misdemeanor Provisions.

Section 273.6 would be added to the Penal Code to provide that any willful and knowing violations of TRO's:

- a) enjoins any party from molesting, attacking, striking, threatening, sexually assaulting, battering, or disturbing the peace of the other party, or other named family and household members;
- b) excludes one party from a family dwelling; or
- c) enjoins a party from specified behavior which the court determines is necessary to effectuate orders under paragraphs (a) or (b), would be misdemeanors punishable by a fine not to exceed \$500.00 or by imprisonment in the county jail for not to exceed 6 months or by both.

The legislation would require a "willful and knowing" violation of the TRO's before the person would be subject to misdemeanor sanctions. It would further delete "contacting" from the possible orders which would subject a person to criminal sanctions.

Broad Relief Provisions.

The amendments would delete all provisions in the bill which would authorize the court to "grant such further relief which the court determines necessary to prevent acts of domestic violence". Inserted in their stead would be provisions for enjoining a party from specified behavior which the court determines is necessary to effectuate orders enjoining abuse or excluding a party from a dwelling.

Counseling

Under the Domestic Violence Prevention Act, the court would only be authorized to order the parties to participate in counseling if they both so stipulate and where it is shown that they intend to continue to reside together after previous instances of domestic violence.

SB 9 (as proposed to be  
amended by author)  
July 9, 1979  
Page 2

Civil Compromise.

Civil compromises of prosecutions of cases involving violation of any court order as described in Section 276.6 would be prohibited unless the offense charged is the first such offense committed by the defendant against the family or household member under Section 273.6.

Operative Dates.

Section 4 of this legislation would become operative on January 1, 1980 (child custody provisions). The remaining provisions would become operative July 1, 1980.

Document received by the CA 3rd District Court of Appeal.

# EXHIBIT C

BILL DIGEST

BILL: SB 9  
(As amended 6/4/79)

HEARING DATE: 6/6/79

AUTHOR: Smith

SUBJECT: Domestic Violence: Restraining Orders

OBJECTIVE:

The intent of this bill is to provide comprehensive legislation delineating the criteria for obtaining restraining orders to prevent recurrent acts of domestic violence and to provide for separation of the persons involved so that they may seek to resolve the causes of the violence.

BILL DESCRIPTION:

1. Domestic Violence Prevention Act (Sections 7, 10, 13)

Existing Section 527 (b) of the Code of Civil Procedure permits persons residing together to petition a court for a temporary restraining order (TRO) in order to prevent the recurrence of domestic violence.

This bill would repeal Section 527 (b) and enact the comprehensive Domestic Violence Prevention Act, which would become operative on July 1, 1980. It would specify who could petition for a TRO, what acts could be restrained, and how long such orders would last; it would expand the court's authority to issue orders on related matters. This bill would make conforming changes in the Family Law Act and the Uniform Parentage Act. It, moreover, would require law enforcement agencies

(CONTINUED)

to maintain a file on all orders registered with them and would make wilful violations of these orders misdemeanors.

Specifically, this bill would authorize a TRO to be granted pursuant to C.C.P. §527, with or without notice, upon reasonable proof of past acts of abuse. The TRO may be granted to a family or household member defined in the bill as spouse, former spouse, parent, child, any other person related by consanguinity or affinity within the second degree, or any other person who regularly resides or who within the last six months regularly resided in the household. The petitioner must have actually been living with the person at whom the order is directed. The right to relief would not be denied because the petitioner has vacated the household to avoid abuse or because a petition for legal separation, annulment, or marriage dissolution has been filed.

This bill would permit the issuance of certain orders ex parte, returnable on an order to show cause no later than 15 days, or 20 days upon good cause from the date the TRO was granted. Ex parte orders would be available for orders provided under the Family Law Act or in the case of non marital parties, for orders enjoining abuse, excluding a party from a dwelling, or granting relief as determined necessary by the court to prevent further domestic violence, and in either case where there is an order determining the temporary custody of a minor child of the plaintiff and the defendant. An ex parte order to exclude one party from a residence may be granted only when there is a sufficient showing that the plaintiff has a right under color of law to possession of the premises.

Under this bill, orders which may be issued upon notice and hearing would include:

- (1) orders provided under the Family Law Act (see Item 2, on page 3 of this analysis.)
- (2) orders for the support and maintenance of a minor child of whom the defendant is the presumed father.
- (3) orders for restitution based on (a) loss of earnings by the plaintiff and out-of-pocket expenses, such as medical care and temporary housing, incurred by the plaintiff as a result of abuse or

(CONTINUED)

(b) out-of-pocket expenses incurred by a party as a result of an ex parte order which was improperly issued.

(4) orders requiring any party to participate in counseling either where the parties stipulate or where they intend to continue living together after previous instances of domestic violence.

These orders would remain in effect for not more than 90 days, unless extended by order of the court or stipulation of the parties. If extended by stipulation, such orders would last no more than one year.

The bill would make several other provisions regarding relief. It would provide that the remedies under the Act would be in addition to any other remedies available to the plaintiff. It would allow the court to appoint counsel for the plaintiff in any proceeding to enforce the terms of specified orders under the Act. Moreover, it would require the court to send a copy of any order to each local law enforcement agency which was designated by the party who obtained the order and which would thereupon have a system to make available the current status of any order for purposes of responding to the scene of reported domestic violence. Wilful violations of orders enjoining abuse, excluding a party from a dwelling, or granting relief as determined necessary by the court to prevent further domestic violence would be misdemeanors. Any order issued pursuant to this Act would state on its face the date of expiration and that it must be enforced by all law enforcement officers in the state.

2. TRO's under the Family Law Act (Section 1)

Under existing provisions of the Family Law Act, the court may issue a TRO pending trial in a suit for marriage dissolution, legal separation, or annulment to:

- (1) restrain any person from disposing of property.
- (2) enjoin any party from molesting or disturbing the peace of the other party or a person in his or her care, custody, or control.
- (3) exclude either party from the family dwelling

(CONTINUED)

or from the dwelling of the other upon a showing that physical or emotional harm would otherwise result.

(4) determine the temporary custody of any minor children of the marriage.

This bill would greatly expand the court's authority to issue further TRO's where domestic violence is involved. It would provide that a court could:

- (1) enjoin any party from contacting, attacking, striking, threatening, sexually assaulting, or battering the other party. In the discretion of the court, upon a showing of good cause, this order would also protect other named family and household members.
- (2) exclude one party from the family dwelling for as long as and upon such conditions as the court may determine, regardless of who holds legal or equitable title to or the lease in the dwelling. The petitioner must show that the party to be excluded has assaulted or threatened to assault the other party and that physical or emotional harm would otherwise result to the other party or any person in his or her care, custody, or control.
- (3) determine not only the temporary custody of any minor children of the marriage but also specify the conditions upon which a party could exercise visitation rights.
- (4) determine the temporary use, possession, and control of property of the parties and the payment of due liens or encumbrances thereon during the pendency of the order.
- (5) make further orders necessary to prevent acts of domestic violence.

3. TRO's under the Uniform Parentage Act (Section 5)

This bill would provide that the court in an action to determine paternity of a child may issue a TPO pursuant C.C.P. §527 to:

- (1) enjoin any party from contacting, molesting,

(CONTINUED)

attacking, striking, threatening, sexually assaulting, battering or disturbing the peace of the other party or the minor child.

- (2) exclude one party from the dwelling of the party who has care, custody, and control of the child. There must be a showing that the party to be excluded has assaulted or threatens to assault the custodial party or the minor child and that physical or emotional harm would otherwise result to the party or child.
- (3) grant further relief as the court determines necessary to prevent acts of domestic violence.

If the TRO is granted ex parte, the order would be made returnable on an order to show cause no later than 15 days, or 20 days upon good cause, from the date the TRO was granted. Upon notice and hearing, any order would remain in effect for a maximum of 90 days, unless extended by the court or by mutual consent of the parties. Such orders would be transmitted to law enforcement agencies, and wilful violations of the order would constitute misdemeanors.

4. Orders Includable in Interlocutory and Final Judgments (Sections 2, 3, and 6)

Orders which were issued by the court to prevent domestic violence, as specified in the bill, could be included in interlocutory and final judgments for annulment, marriage dissolution, legal separation, and paternity actions. Such orders would expire one year from the date of entry of judgment unless extended by the court after notice and hearing. Violations of these orders would be misdemeanors.

5. No Civil Compromise (Section 12)

This bill would prohibit the civil compromise, under Penal Code Section 1377, of prosecutions of cases involving domestic violence. However, this prohibition would not apply where the court finds that no threat or coercion was used upon the family or household member, that a recurrence of the acts constituting the misdemeanor is not likely, and that the offense charged is a first offense in violation of the Act.

(CONTINUED)

6. Miscellaneous Provisions (Sections 8, 9, 11 and 14).

- (a) The Judicial Council would be required to promulgate forms and instructions for applications for orders and orders granted under the Act.
- (b) Applications for TRO's under this Act would be exclusive of provisions under C.C.P. §527.6, which governs injunctions prohibiting harassment.
- (c) A party granted a TRO under this Act would not be required under C.C.P. §529 to make a written undertaking for damages sustained because of the TRO.
- (e) An indigent plaintiff would not be charged a fee for the first certified copy of an order issued under this measure.
- (f) This bill contains an SB 9G disclaimer.

SOURCE:

Family Law Advisory Commission of the Senate Judiciary  
Subcommittee on Administration of Justice

SUPPORT:

Family Service Council of California  
Los Angeles City Council  
San Francisco Victim Witness Assistance Program  
Family Service Association of San Diego County  
Los Angeles City Attorney  
Long Beach Area Council of Churches  
Legal Aid Society of Monterey County  
The Salvation Army Family Services Department  
California Women Lawyers  
Lawyers Club of San Diego  
Tulare County Legal Service Association  
The National Conference of Christians and Jews  
Women's Concerns  
WEAVE  
Alternatives for California Women  
Southern California Coalition on Battered Women  
WAVES  
Various other shelters and programs for battered women

(CONTINUED)

OPPOSITION:

American Civil Liberties Union  
County of Los Angeles

COMMENT:

1. Proponents of this bill contend that a complete revision of Section 527(b) of the Code of Civil Procedure is necessary to facilitate law enforcement in the area of domestic violence. They claim that law enforcement officers often regard orders currently issued pursuant to Section 527(b) as too vague. According to proponents, this measure would authorize the court to frame specific TRO's to protect parties involved in domestic violence.
2. Under Section 527(b) of the Code of Civil Procedure, a TRO may remain in effect, in the discretion of the court, for a maximum of 30 days. This bill would increase the maximum to 90 days.

SB 965 (Dills), which was passed by the Assembly Judiciary Committee on May 30, 1979, would also extend the duration of a TRO to prevent domestic violence to 90 days.

3. This bill would make wilful violations of certain orders issued under this measure misdemeanors. The punishment for a misdemeanor is imprisonment not exceeding 6 months, or a fine not exceeding \$500, or both.
4. Opponents of this bill argue that its provisions would increase costs to county departments. They claim that undetermined increases would include expenses incurred for medical and psychiatric treatment as well as counseling, law enforcement bookkeeping, and services rendered by appointed counsel.
5. This bill would generally prohibit the civil compromise of criminal charges. Opponents argue that this prohibition eliminates a way for parties who have reconciled or otherwise settled their dispute to terminate a criminal action. They suggest that the result will be more court congestion if these cases are forced to proceed to trial. Proponents, on the other hand, claim that the prohibition will force the district attorney to prosecute perpetrators of domestic violence and thus notify potential spouse or child batterers that they cannot escape such charges.

(CONTINUED)

6. Opponents claim that the definition of "family or household member" under this bill is overbroad in including persons who reside together regularly or who have resided together regularly within the last six months. They assert that this definition would permit the extraordinary remedies of a restraining order to reach non-familial relationships which they contend should not be covered by this type of legislation. Should the bill limit who may petition for a TRO to family members rather than any persons regularly residing together? Is it preferable social policy to include under the coverage of this bill as many households as possible in which domestic violence may occur?
7. This bill would provide that under the Family Law Act a TRO may be issued to determine the temporary use, possession, and control of property of the parties and the payment of due liens or encumbrances thereon during the pendency of the order. The provision goes further than existing law which would permit a TRO to restrain a party from disposing of property. Since the TRO may be issued ex parte and thus affect a party's property rights without his or her knowledge, should there be a requirement that the plaintiff show that the determination regarding property be directly related to domestic violence? If so, should there be a separate alternative for TRO's which would prohibit a party from disposing of property?

# EXHIBIT D

# SENATE COMMITTEE ON JUDICIARY

1979 REGULAR SESSION

SB 9 (Smith)  
As amended January 24  
Various Codes

S  
B  
9

## DOMESTIC VIOLENCE

### HISTORY

Source: Family Law Advisory Commission of the Senate Judiciary Subcommittee on Administration of Justice

Prior Legislation: AB 1019 (Ch. 720, 1977)

Support: Family Service Council of California, Los Angeles City Council, San Francisco Victim Witness Assistance Program, Family Service Association of San Diego County, Los Angeles City Attorney, Long Beach Area Council of Churches, Legal Aid Society of Monterey County, the Salvation Army Family Services Department, California Women Lawyers, Lawyers Club of San Diego, Tulare County Legal Service Association, the National Conference of Christians and Jews, Women's Concerns, WEAVE, Alternatives for California Women, Southern California Coalition on Battered Women, WAVES, and various other shelters and programs for battered women

Opposition : No Known

### PURPOSE

Existing law provides a procedure by which a victim of domestic violence may, under limited circumstances, petition the court for a temporary restraining order (TRO) for the purpose of preventing a recurrence of the domestic violence.

This bill would repeal this procedure, and would enact a comprehensive Domestic Violence Prevention Act. The Act would specify who could petition for a TRO, what

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would last, and would expand the court's authority to issue orders relating to custody and visitation of children, restitution of loss of earnings or out-of-pocket expenses resulting from the domestic violence, and award of attorneys fees and costs.

The bill would require law enforcement agencies to maintain a file on all such orders filed with them.

In addition, SB 9 would make conforming changes in the Family Law Act to specifically authorize the courts to issue specified orders pending trial in a dissolution, legal separation or annulment proceeding, to prevent acts of domestic violence.

The bill would make violations of these TROs misdemeanors.

Lastly, the bill would prohibit the civil compromise under Pen. C. Sec. 1377 of such misdemeanors.

The purpose of the bill is to provide the courts with effective tools with which to prevent domestic violence.

#### COMMENT

##### A. Domestic Violence Prevention Act

AB 1019 (Fazio, 1977) added Sec. 527(b) to the Code of Civil Procedure permitting persons residing together to petition the court for a TRO in order to prevent the recurrence of acts of domestic violence. A study made by the Family Law Advisory Commission to this Committee indicated the need for a complete revision of the Sec. 527(b) procedure in order to expand the court's authority to make specific orders which would be easier for the police to enforce.

(More)

SB 9 would repeal C.C.P. Sec. 527(b) and enact the Domestic Violence Prevention Act.

1. Who may petition

Under this bill, a spouse, former spouse, parent, child, any other person related within the second degree, or any other person who regularly resides or who within the last six months resided in the household could petition the court for a TRO for the purpose of preventing a recurrence of domestic violence.

The expansion of the class of persons who might petition for this type of TRO would ensure that many households in which violence might occur are reached.

The bill specifies that the right to petition for relief would not be denied because the plaintiff had vacated the household to avoid the abuse. This, according to proponents, is especially important because oftentimes it is the woman (and/or the children) who is battered and who leaves the household initially. Apparently, some courts have denied Sec. 527(b) motions this past year because the separation of the parties had been effected by the woman's vacating the household.

2. Ex parte orders

This bill would permit the issuance of such orders ex parte, returnable on an order to show cause no later than 15 days, or 20 days upon good cause, from the date the TRO was granted.

Whether with or without notice, however, the plaintiff must, under the bill, show reasonable proof of a past act or acts of abuse.

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These provisions are identical to Sec. 527(b) provisions.

3. Orders which may be issued

- a. Orders specified under the Family Law Act, Section 4359 Civ. C. (See Comment B).
- b. Support and maintenance orders for a minor

Under the bill these orders could be issued only if the defendant was the presumed natural father of the minor child and such child was in the plaintiff's custody.

c. Orders for restitution

The court could order that loss of earnings by the plaintiff, and out-of-pocket expenses (e.g., expenses for temporary shelter for the plaintiff, medical costs) incurred by the plaintiff as a result of such abuse be paid back to plaintiff by the defendant.

d. Order requiring counseling

In addition the court could order any party to participate in medical, psychiatric or other psychological treatment or counseling.

Counseling, according to some proponents, would enhance the chances of getting at the root of a specific family situation in which domestic violence recurs. A program initiated in San Diego County has apparently been successful in bringing persons who would otherwise not go to counseling to participate in such treatment.

(More)

- e. Order for payment of attorney's fees and costs of the party to whom the TRO is granted.
4. Duration of order: 90 days

Protective orders issued under the Act would remain in effect for not more than 90 days, unless extended by order of the court or by stipulation of the parties. If extended by stipulation, such orders would last no more than one year.

Under current C.C.P. Sec. 527(b), such orders last for 30 days only, unless extended.

5. Remedies are cumulative

The bill would specify that the remedies under the Act would be in addition to any other remedies available to plaintiff.

6. Appointment of counsel

The bill would allow the court in appropriate cases to appoint counsel for plaintiff in any proceeding to enforce the terms of any order issued under the act.

7. Registration and enforcement

SB 9 would require the court, upon a party's request, to order the county clerk to transmit a copy of the TRO to local law enforcement agencies by the end of the business day on which the TRO was granted.

This provision was adopted from that in C.C.P. Sec. 527(b).

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#### 8. Violations are misdemeanors

Violations of orders pursuant to this Act would be misdemeanors.

Some states provide higher penalties for violations of protective orders relating to domestic violence. In Ohio, for example, a first violation is punishable as a misdemeanor (6 months jail and/or \$1000 fine), and a second offense is punishable as a felony (6 months to 5 years and/or \$5000 fine). In Massachusetts, any violation of such protective orders is punishable by 2 1/2 years prison term, or a fine up to \$5000.

#### B. TRO's under the Family Law Act

Under existing provisions of the Family Law Act, the court may issue a TRO pending trial in a suit for dissolution, legal separation or nullity of marriage, to prevent the disposition of property by either party pending trial, to order either party to vacate a family dwelling, to prevent any party from "molesting or disturbing the peace" of the other party and the minor children, or to award temporary custody of the minor children of the parties.

This bill would greatly expand the court's authority to issue further orders where domestic violence was involved. The language of the orders would be more specific, to avoid the argument that such orders were too vague and therefore unenforceable.

##### 1. "Kick-out orders"

Under SB 9, a court could order one party excluded from the family dwelling or from the dwelling of the other party, regardless

the lease on the dwelling. The petitioner would, under the bill, make a showing that the party to be excluded has assaulted or threatened to assault the other party, or that physical or emotional harm would result to the other party and/or any person in such party's custody.

These "kick-out" orders, proponents state, are necessary because too often law enforcement officers have refused to enforce TRO's for fear of violating the property rights of the party being ejected.

2. Temporary custody and visitation rights

Under SB 9, the court could issue an order not only determining the temporary custody of any minor children of the marriage, but also specifying the conditions upon which a party could exercise visitation rights.

3. Possession and use of property

The court could, under SB 9, also issue an order determining the temporary use, possession and control of property of the parties, and the payment of due liens or encumbrances thereon during the pendency of the order.

This, according to proponents, would prevent arguments between parties during the pendency of the proceedings, which could result in further violence.

4. Other orders

This bill would greatly expand the court's authority to make further orders necessary to prevent acts of domestic violence.

(More)

This general category of permissible orders would be very helpful, proponents state, in that orders could be drafted to fit each situation, hence increasing the likelihood that such orders would be enforced.

5. Transmittal to police agencies

Like the provision under the Domestic Violence Prevention Act, SB 9 would provide for the transmission of these orders to local law enforcement agencies at the request of the party or the attorney for such party.

6. Violations are misdemeanors

Whereas under present law violations of Civil Code Section 4359 are punishable under civil contempt, this bill would clearly make such violations misdemeanors.

7. Includable in interlocutory and final judgments

Orders which were issued by the court to prevent domestic violence (as specified under Sec. 4359 Civ. C.) could, under this bill, be included in interlocutory and final judgments affecting marriage. Such orders would expire one year from the date of entry of judgment, unless extended by the court after notice and hearing. Again, violations of these orders would be misdemeanors.

C. No civil compromise

Finally, SB 9 would prohibit the civil compromise, under Pen. C. Sec. 1377, of prosecutions of cases involving domestic violence. This, according to proponents, would put teeth into the law, would force district attorneys to prosecute appropriate

(More)

cases, and would notify potential spouse or child batterers that they could not "buy their way out."

Opponents to this particular provision of the bill state that the option of a civil compromise should be available where all parties (i.e., judge, prosecution, defendant and victim) agree that money damages would sufficiently compensate the victim and there is little likelihood that another prosecution for the same offense would occur in the future.

D. Judicial Council Forms

SB 9 would require the Judicial Council to draft and provide forms for the restraining orders which could be issued pursuant to the Act. Such standardized forms would help law enforcement officials to determine quickly and accurately the nature of the restrictions placed upon the party.

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