



Domestic Violence Prevention & Investigation

with David Cropp

Domestic violence restraining orders: 3 takeaways from the recent court decision

The latest victory has implications for officers, victims and children seeking the protection of domestic violence restraining orders

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The Family Violence Appellate Project is a California non-profit organization that monitors family court decisions and argues for appellate review. Its latest victory has implications for officers, victims and children seeking the protection of domestic violence restraining orders.

In *De La Luz Perez v Torres-Hernandez* the victim sought to renew a three-year restraining order against her abusive ex-boyfriend. In applying for the original 2010 order, she claimed her ex-boyfriend had beaten her and cursed at her in front of their children. In the time since the original order was issued, the ex-boyfriend allegedly attacked the children (leaving bruises) during a court-ordered visitation and threatened the victim via cell phone.

Despite these incidents, the trial court refused to renew the restraining order, saying that “abuse” is not just harassing or annoying phone calls but requires evidence of physical violence or a threat of violence. The trial court commissioner went on to suggest that any violence suffered by the children was irrelevant to abuse alleged by their mother.

California’s Family Code Section 6203 defines “abuse” as any of the following:

1. To intentionally or recklessly cause or attempt to cause bodily injury.
2. Sexual assault.

3. To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

4. To engage in any behavior that has been or could be enjoined pursuant to Section 6320 (includes molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, making annoying phone calls, contact via mail and destroying personal property).

DEFINING 'HARASSING'

According to Nancy Lemon, legal director of the Family Violence Appellate Project, several cases interpret the word "harassing" to include a broad variety of actions, including disturbing the peace. It is not limited to physical abuse.

Thanks to the efforts of the FVAP and co-counsel, on July 11, 2016, the First District Court of Appeal overturned the trial court's ruling. The appellate decision confirms:

- There does not need to be evidence of new abuse or new threats of abuse, clarifying that a protective order should not have to be violated in order for the victim to renew it.
- Abuse does not have to be physical.
- Evidence of abuse against children is indeed relevant and should be considered when deciding whether to renew that person's protective order.

This opinion holds that evidence of child abuse is relevant to deciding whether to include the children as additional protected parties on a protective order. The FVAP petitioned for this case to be published so attorneys throughout California can rely on it to help domestic violence victims and children gain valuable protection.

3 IMPLICATIONS FOR OFFICERS

I've read thousands of domestic violence reports over the years. Some of my patrol years were prior to the creation of contemporary domestic violence laws, and considering the unflattering nature of how we used to respond to domestic violence, I sincerely appreciate how much more we know about domestic violence and the quality of our investigations and reports. That said here are three things this latest appellate decision reinforces for us:

1. Understand the dynamics of domestic violence and children exposed.

Stay involved in the latest trainings and updates, especially regarding the effects of domestic violence on children. Law enforcement sometimes views domestic abuse as physical. Do you have code sections in your state that expand the definition of domestic violence abuse?

2. Find out if you have appellate programs such as the FVAP

Typically we focus on the assaultive nature of domestic violence, but it's much more than that – especially when children are involved.

3. Comprehensive investigation and reporting

Remember, comprehensive investigation and reporting must include, if present, coercive control, including emotional, financial, sexual and sometimes spiritual. The effects on children are only as evident as our reports narrate. We must interview children on the effects domestic violence has on their life and environment. Family courts sometimes rely on our reports to assess the degree of abuse in restraining order cases.

APPELLATE PROGRAMS IN OTHER STATES

Nancy Lemon is a leading authority on domestic violence and one of my many colleagues in a statewide domestic violence expert witness group. She is the author of “Domestic Violence Law,” the premiere law school textbook on the subject, and teaches a domestic violence seminar at UC Berkeley Law and also directs the Domestic Violence Practicum. According to Nancy, there is nothing like the FVAP in other states, however:

- The DV LEAP in Washington, D.C., tries to cover the whole United States
- In New York, Sanctuary for Families does family law appeals in domestic violence cases, but does not cover the whole state.
- Other states may have law schools or non-profit organizations that do appeals like these on a limited basis and not statewide.
- A recent law school graduate from Indiana may soon be working with FVAP to learn the process, hoping to return to Indiana to get something going there.
- Joan Meier, who heads DV LEAP, co-authored a 2014 article with Nancy in Domestic Violence Report that offers more clarification: “Domestic Violence Appellate Litigation: Holding the Legal System Accountable.”

About the author

David Cropp is a retired sergeant with the Sacramento Police Department and has a combined 35 years of law enforcement experience. He is a regional domestic violence expert witness and consultant, and holds a POST Master Instructor Credential and a Master's Degree in Behavioral Science.

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