

Beyond the Bench 2017, San Diego, Materials

Family Code Sections

6203.

(a) For purposes of this act, "abuse" means 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.
- (b) Abuse is not limited to the actual infliction of physical injury or assault.

6320.

(a) The court may issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, credibly impersonating as described in Section 528.5 of the Penal Code, falsely personating as described in Section 529 of the Penal Code, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.

(b) On a showing of good cause, the court may include in a protective order a grant to the petitioner of the exclusive care, possession, or control of any animal owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent. The court may order the respondent to stay away from the animal and forbid the respondent from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

(c) This section shall become operative on July 1, 2014.

Penal Code section **646.9.**

(a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of

the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to Section 290.006.

(e) For the purposes of this section, "harasses" means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

(f) For the purposes of this section, "course of conduct" means two or more acts occurring 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."

(g) For the purposes of this section, "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of "credible threat."

(h) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person

participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k) (1) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(2) This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(l) For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

Civil Code section 1708.8.

(a) A person is liable for physical invasion of privacy when the person knowingly enters onto the land or into the airspace above the land of another person without permission or otherwise commits a trespass in order to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a private, personal, or familial activity and the invasion occurs in a manner that is offensive to a reasonable person.

(b) A person is liable for constructive invasion of privacy when the person attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a private, personal, or familial activity, through the use of any device, regardless of whether there is a physical trespass, if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the device was used.

(c) An assault or false imprisonment committed with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff is subject to subdivisions (d), (e), and (h).

(d) A person who commits any act described in subdivision (a), (b), or (c) is liable for up to three times the amount of any general and special damages that are proximately caused by the violation of this section. This person may also be liable for punitive damages, subject to proof according to Section 3294. If the plaintiff proves that the invasion of privacy was committed for a commercial purpose, the person shall also be subject to disgorgement to the plaintiff of any proceeds or other consideration obtained as a result of the violation of this section. A person who comes within the description of this subdivision is also subject to a civil fine of not less than five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000).

(e) A person who directs, solicits, actually induces, or actually causes another person, regardless of whether there is an employer-employee relationship, to violate any provision of subdivision (a), (b), or (c) is liable for any general, special, and consequential damages resulting from each said violation. In addition, the person that directs, solicits, actually induces, or actually causes another person, regardless of whether there is an employer-employee relationship, to violate this section shall be liable for punitive damages to the extent that an employer would be subject to punitive damages pursuant to subdivision (b) of Section 3294. A person who comes within the description of this subdivision is also subject to a civil fine of not less than five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000).

(f) (1) The transmission, publication, broadcast, sale, offer for sale, or other use of any visual image, sound recording, or other physical impression that was taken or captured in violation of subdivision (a), (b), or (c) shall not constitute a violation of this section unless the person, in the first transaction following the taking or capture of the visual image, sound recording, or other physical impression, publicly transmitted, published, broadcast, sold, or offered for sale the visual image, sound recording, or other physical impression with actual knowledge that it was taken or captured in violation of subdivision (a), (b), or (c), and provided compensation, consideration, or remuneration, monetary or otherwise, for the rights to the unlawfully obtained visual image, sound recording, or other physical impression.

(2) For the purposes of paragraph (1), “actual knowledge” means actual awareness, understanding, and recognition, obtained prior to the time at which the person purchased or acquired the visual image, sound recording, or other physical impression, that the visual image, sound recording, or other physical impression was taken or captured in violation of subdivision (a), (b), or (c). The plaintiff shall establish actual knowledge by clear and convincing evidence.

(3) Any person that publicly transmits, publishes, broadcasts, sells, or offers for sale, in any form, medium, format, or work, a visual image, sound recording, or other physical impression that was previously publicly transmitted, published, broadcast, sold, or offered for sale by another person, is exempt from liability under this section.

(4) If a person’s first public transmission, publication, broadcast, or sale or offer for sale of a visual image, sound recording, or other physical impression that was taken or captured in violation of subdivision (a), (b), or (c) does not constitute a violation of this section, that person’s subsequent public transmission, publication, broadcast, sale, or offer for sale, in any form, medium, format, or work, of the visual image, sound recording, or other physical impression, does not constitute a violation of this section.

(5) This section applies only to a visual image, sound recording, or other physical impression that is captured or taken in California in violation of subdivision (a), (b), or (c) after January 1, 2010, and shall not apply to any visual image, sound recording, or other physical impression taken or captured outside of California.

(6) Nothing in this subdivision shall be construed to impair or limit a special motion to strike pursuant to Section 425.16, 425.17, or 425.18 of the Code of Civil Procedure.

(7) This section shall not be construed to limit all other rights or remedies of the plaintiff in law or equity, including, but not limited to, the publication of private facts.

(g) This section shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel or employees of governmental agencies or other entities, either public

or private, who, in the course and scope of their employment, and supported by an articulable suspicion, attempt to capture any type of visual image, sound recording, or other physical impression of a person during an investigation, surveillance, or monitoring of any conduct to obtain evidence of suspected illegal activity or other misconduct, the suspected violation of any administrative rule or regulation, a suspected fraudulent conduct, or any activity involving a violation of law or business practices or conduct of public officials adversely affecting the public welfare, health, or safety.

(h) In any action pursuant to this section, the court may grant equitable relief, including, but not limited to, an injunction and restraining order against further violations of subdivision (a), (b), or (c).

(i) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

(j) It is not a defense to a violation of this section that no image, recording, or physical impression was captured or sold.

(k) For the purposes of this section, “for a commercial purpose” means any act done with the expectation of a sale, financial gain, or other consideration. A visual image, sound recording, or other physical impression shall not be found to have been, or intended to have been, captured for a commercial purpose unless it is intended to be, or was in fact, sold, published, or transmitted.

(l) (1) For the purposes of this section, “private, personal, and familial activity” includes, but is not limited to:

(A) Intimate details of the plaintiff’s personal life under circumstances in which the plaintiff has a reasonable expectation of privacy.

(B) Interaction with the plaintiff’s family or significant others under circumstances in which the plaintiff has a reasonable expectation of privacy.

(C) If and only after the person has been convicted of violating Section 626.8 of the Penal Code, any activity that occurs when minors are present at any location set forth in subdivision (a) of Section 626.8 of the Penal Code.

(D) Any activity that occurs on a residential property under circumstances in which the plaintiff has a reasonable expectation of privacy.

(E) Other aspects of the plaintiff’s private affairs or concerns under circumstances in which the plaintiff has a reasonable expectation of privacy.

(2) “Private, personal, and familial activity” does not include illegal or otherwise criminal activity as delineated in subdivision (g). However, “private, personal, and familial activity” shall include the activities of victims of crime in circumstances under which subdivision (a), (b), or (c) would apply.

(m) (1) A proceeding to recover the civil fines specified in subdivision (d) or (e) may be brought in any court of competent jurisdiction by a county counsel or city attorney.

(2) Fines collected pursuant to this subdivision shall be allocated, as follows:

(A) One-half shall be allocated to the prosecuting agency.

(B) One-half shall be deposited in the Arts and Entertainment Fund, which is hereby created in the State Treasury.

(3) Funds in the Arts and Entertainment Fund created pursuant to paragraph (2) may be expended by the California Arts Council, upon appropriation by the Legislature, to issue grants pursuant to the Dixon-Zenovich-Maddy California Arts Act of 1975 (Chapter 9 (commencing with Section 8750) of Division 1 of Title 2 of the Government Code).

(4) The rights and remedies provided in this subdivision are cumulative and in addition to any other rights and remedies provided by law.

(n) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Cases

Court of Appeal, First District, Division 1, California.

IN RE: the MARRIAGE OF Keri EVILSIZOR and Joseph Sweeney. Keri Evilsizor, Respondent, v. Joseph Sweeney, Appellant. Decided: May 27, 2015 A142396

Appellant Joseph Sweeney downloaded the contents of respondent Keri Evilsizor's cell phones around the time Evilsizor gave birth to the couple's daughter. After these dissolution proceedings were initiated a few months later, Sweeney filed with the court copies of some downloaded text messages. Evilsizor sought a restraining order under the Domestic Violence Prevention Act (DVPA) to stop Sweeney from further disseminating the downloaded information.¹ After taking testimony and finding that Sweeney's actions amounted to abuse under the DVPA, the trial court prohibited Sweeney from distributing the information without first receiving the court's permission. We conclude that the order did not violate Sweeney's constitutional rights to free speech, and we therefore affirm.

Court of Appeal, Fourth District, Division 1, California.

Carolina ALTAFULLA, Plaintiff and Respondent, v. John ERVIN, Defendant and Appellant.D065980Decided: June 09, 2015

Defendant and appellant John Ervin challenges a restraining order issued against him under the Domestic Violence Prevention Act (Fam.Code, § 6200 et seq.; DVPA).¹ He also argues the trial court erred in failing to issue an order restraining his former domestic partner, plaintiff and respondent Carolina Altafulla.

The trial court's orders arise out of Ervin's discovery that Altafulla had been unfaithful. In response to the discovery of Altafulla's unfaithfulness, Ervin sent emails to Altafulla's employer and their mutual friends and attached a surveillance report that he believed established the unfaithfulness. More importantly, at the home he shared with Altafulla, and in fairly graphic terms, Ervin described oral copulation to Altafulla's 17-year-old and nine-year-old daughters, stated his belief Altafulla had engaged in oral copulation with another man, and then warned the girls about what he believed was a risk they could contract sexually transmitted diseases from towels their mother might use. In an apparent further effort to traumatize the children, Ervin began dismantling their bedroom furniture. Altafulla's 17-year-old daughter was in fact so traumatized by Ervin's behavior that she required inpatient care at a mental health facility, which would not release her until Ervin had moved out of the home.

Among other claims, Ervin contends this record is not sufficient to support a DVPA restraining order. We disagree. Ervin's email campaign and emotional abuse of Altafulla's daughters amounted to conduct that was alarming, annoying and harassing, served no legitimate purpose, would cause a reasonable person substantial emotional distress, and actually did cause substantial emotional distress. As such, Ervin's conduct constituted harassment within the meaning of the DVPA and was therefore sufficient to support issuance of a restraining order. As we explain, we reject Ervin's other claims and affirm the trial court's orders.

Resources

Tech Safety and Domestic Violence Information: <https://www.techsafety.org/appdevelopers>

Study on App Use and Mental Health:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5335803/>

Questions to Ask About Platform Features & Approaches

Aspect	Questions/Issues
Security	<ul style="list-style-type: none"> • What information is collected and how is it stored? • What steps are being taken to protect confidential information?
Privacy	<ul style="list-style-type: none"> • Are privacy rights explained to users? • Is confidentiality or limitations on confidentiality explained to users? • What protections are in place to avoid disclosure of information? • Is personal information sold to advertisers? • Is location information collected to sell targeted ads?
Content	<ul style="list-style-type: none"> • Is the content being provided to provide education or information to parents current, evidence-based, and focused on the best interests of children? • Is there an effort to focus on reducing conflict? • Are parents who need to go to court for protection or to ensure their rights disparaged? • Are there diverse images and information that will appeal to people of various backgrounds? • Is the material available in multiple languages? • Does the content favor mothers or fathers or does it do a good job of recognizing the diversity of families and the connections children have to extended families and multiple caregivers? • Does the language use jargon, concepts that may make one parent angry or feel criticized? • Does the content disparage courts or parents who need to go to court?
Legal Framework	<ul style="list-style-type: none"> • Is the content legally accurate? • Do professionals get information on how they can make sure they are adhering to the legal requirements in their jurisdiction/does the platform adhere to the requirements for use in their jurisdiction (for example, are professionals using the platform providing counseling, mediation, or legal information and as such, are they meeting the legal requirements under their license, etc.??) • Are families clear about whether the site or platform will meet court requirements (for example, mandatory parent education, mediation, or or check-ins for court visits)?
Accessibility	<ul style="list-style-type: none"> • Is the platform accessible financially? Available to lower-literacy users? • Does the platform adhere to ADA requirements for those with limited vision or hearing?
Design	<ul style="list-style-type: none"> • Is the design user-friendly? Visually appealing?